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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 717 and 748

Fair Credit Reporting—Proper Disposal of Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is adopting a final rule to implement section 216 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) by amending security program regulations and NCUA's Guidelines for Safeguarding Member Information and establishing a section in new part 717. The final rule generally requires federal credit unions (FCUs) to develop, implement, and maintain appropriate measures to properly dispose of consumer information derived from consumer reports to address the risks associated with identity theft. FCUs are expected to implement these measures consistent with the provisions in NCUA's Guidelines for Safeguarding Member Information.

DATES: Effective December 29, 2004.

FOR FURTHER INFORMATION CONTACT: Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel, National Credit Union Administration, (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 216 of the FACT Act adds a new section 628 to the Fair Credit Reporting Act (FCRA) that, in general, is designed to protect a consumer against the risks associated with unauthorized access to information about the consumer contained in a consumer report, such as fraud and identity theft. 15 U.S.C. 1681w. Section 216 of the

FACT Act requires NCUA to adopt a rule requiring any FCU "that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation." Pub. L. 108-159, 117 Stat. 1985-86. The FACT Act mandates that the rule be consistent with the requirements issued pursuant to the Gramm-Leach-Bliley Act (GLBA) (Pub. L. 106-102), as well as other provisions of Federal law. The FACT Act also requires NCUA to consult and coordinate with the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), Federal Trade Commission (FTC), and Securities and Exchange Commission (collectively, the Agencies) so that, to the extent possible, NCUA's rule is consistent and comparable with the regulations issued by each of the other agencies.

II. Background

In 2001, NCUA amended the security program rule to establish standards for federally insured credit unions (FICUs) relating to administrative, technical, and physical safeguards to protect the security and confidentiality of member records and information, pursuant to section 501 of GLBA. 15 U.S.C. 6805(b). NCUA worked with the Agencies and state insurance authorities to develop appropriate standards. 66 FR 8152 (Jan. 30, 2001). The Federal banking agencies issued their standards as guidelines under section 39 of the Federal Deposit Insurance Act. 12 U.S.C. 1831p.¹ NCUA determined it could best meet the congressional directive to prescribe standards by amending the rule governing security programs and by providing guidance in an appendix to the rule. 12 CFR part 748, appendix A; 66 FR 8152 (Jan. 30, 2001).

Section 748.0 requires an FICU to develop a security program that implements safeguards designed to: (1) Ensure the security and confidentiality of member records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against

unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to a member. 12 CFR 748.0(b)(2).

Appendix A to part 748 sets forth NCUA's Guidelines for Safeguarding Member Information (Guidelines), which are substantially identical to the guidelines issued by the Agencies. 66 FR 8152 (Jan. 30, 2001). The Guidelines "are intended to outline industry best practices and assist credit unions to develop meaningful and effective security programs to ensure their compliance with the safeguards contained in the regulation." *Id.*

The Guidelines direct FICUs to assess the risks to their member information and member information systems and, in turn, implement appropriate security measures to control those risks. 12 CFR part 748, appendix A. For example, under the risk-assessment framework, FICUs should evaluate whether the controls the FICU has developed sufficiently protect its member information from unauthorized access, misuse, or alteration when the FICU disposes of the information. "[A] credit union's responsibility to safeguard member information continues through the disposal process." 66 FR 8152, 8155.

On May 28, 2004, the NCUA Board published a proposal to add a section to the new fair credit reporting rule and amend the security program rule and Guidelines for Safeguarding Member Information (Guidelines) to require FCUs to implement controls designed to ensure the proper disposal of consumer information within the meaning of section 216. 69 FR 30601 (May 28, 2004). NCUA's proposed regulation and the preamble were substantively similar to a joint notice of proposed rulemaking issued by the FRB, OCC, FDIC and OTS (the Federal banking agencies). 69 FR 31913 (June 8, 2004).

In the proposal, NCUA noted that section 216 of the FACT Act requires NCUA to issue final regulations for entities under its enforcement authority under section 621 of the FCRA. Unlike the current provisions in the security program rule, which apply to all FICUs, the requirements in NCUA's final rule apply solely to FCUs. *See* 15 U.S.C. 1681s(b)(3). Federally insured state-chartered credit unions are subject to the enforcement jurisdiction of the FTC for purposes of the FCRA. *See* 15 U.S.C. 1681s(a). State charters, therefore,

¹ 12 CFR parts 30, app. B; 208, app. D-2 and 225, app. F; 364, app. B; 570, app. B. *See* 66 FR 8616 Feb. 1, 2001.

should refer to the final rule issued by the FTC regarding the proper disposal of consumer information under section 216.

III. Summary of Comments

NCUA received fourteen comment letters: One from a corporate credit union; four from natural person credit unions; five from credit union trades or leagues; one from a consumer; two from financial services trade organizations; and a joint letter from seven consumer rights organizations. The Agencies also received numerous letters from financial institutions, industry trade organizations, consumer advocacy groups, consumers, and trade associations from the information destruction industry. NCUA and the Agencies considered the comments and suggestions submitted.

Of the letters received by NCUA, twelve commenters generally supported the proposed regulation requiring FCUs to properly dispose of consumer information. One commenter stated that the proposal balanced the concerns of consumers and the industry by providing reasonable protections from identity theft and the unintended disclosure of consumer information while giving FCUs sufficient latitude for the disposal of consumer information. One comment letter, submitted on behalf of seven consumer groups, found the proposed rule weak and inadequate to meet Congress' intended purpose of preventing identity theft and other fraud.

IV. Analysis of Final Rule

Section-by-Section Overview

Section 717.83—Disposal of Consumer Information

As set forth in the proposal, NCUA is establishing a new part 717 to house its fair credit reporting rules and adds a subpart setting forth the duties of users of consumer reports regarding identity theft. To implement section 216, NCUA is adding § 717.83 to require FCUs to develop and maintain, as part of their information security programs, appropriate controls designed to ensure that they properly dispose of consumer information. The final rule retains the statute's rule of construction as proposed stating that this requirement does not impose any requirements to maintain or destroy consumer records beyond those imposed by any other law. The final rule also does not affect any requirement to maintain or destroy consumer records imposed under any other provision of law.

The only revisions to § 717.83 from the proposed rule incorporate examples

of appropriate measures to properly dispose of consumer information and clarify "consumer information" in its definition and through examples. These additions required a renumbering of the section and are discussed in further detail below.

The final rule also includes a general definitions section, § 717.3, to define the terms "you" and "consumer." Although these definitions were not included in the proposed disposal rule, they were published in another FACT Act proposal.² The final rule refers to FCUs using the plain language term "you" because section 216 requires NCUA to adopt a final disposal rule for FCUs. The final rule also uses the term "consumer." Paragraph (e) of § 717.3 defines the term "consumer" to mean an individual, which follows the statutory definition in section 603(c) of the FCRA, 15 U.S.C. 1681a(c). NCUA will add more definitions to § 717.3 as the agency adopts other rules to implement provisions of the FCRA.

Section 748.0—Security Program

The final rule retains § 748.0(c) as proposed. Paragraph (c) cross references the section 216 requirement in § 717.83, for ease of reference when FCUs adopt or modify their information security programs.

Guidelines for Safeguarding Member Information

The final rule amends the Guidelines to specifically address the disposal of consumer information by: (1) Defining "consumer information" as defined in § 717.83; (2) adding an objective regarding the proper disposal of member information and consumer information; and (3) providing that an FCU should implement appropriate measures to properly dispose of member information and consumer information. NCUA discusses the final rule's slight variations from the proposal below.

The changes to the Guidelines are intended to provide guidance to FCUs for compliance with § 717.83. As noted above, the requirements of this final rule only apply to FCUs, while federally insured state-chartered credit unions are subject to the jurisdiction of the FTC on this matter. NCUA believes, however, that federally insured state charters may find this guidance helpful in adopting meaningful and effective security programs that deal with the disposal of consumer information.

² On April 8, 2004, NCUA issued its first proposal to add a new part 717, implementing section 411 of the FACT Act. See 69 FR 23380 (Apr. 28, 2004). This final disposal rule, however, will be the first section to establish the new part 717.

In accordance with section 216, NCUA has consulted with the Agencies to ensure that, to the extent possible, the final rules issued by the respective agencies to implement section 216 are consistent and comparable.

Proper Disposal of Consumer Information and Member Information

Consumer Information

Proposed § 717.83(c)(1) defined "consumer information" to mean "any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the credit union for a business purpose." "Consumer information" was also defined to mean "a compilation of such records."

Commenters generally supported NCUA's proposed definition of this term, but argued that NCUA should include statements or illustrations to clarify the nature and scope of "consumer information." Several commenters found the proposed phrase "about an individual" to be ambiguous and urged NCUA to adopt a definition expressly stating that "consumer information" only includes information that identifies a particular individual.

Similarly, some commenters supported NCUA's explanation in the proposal that "consumer information" does not include information derived from a consumer report that does not identify any particular consumer, such as the mean credit score derived from a group of consumer reports. These commenters suggested that NCUA include this example or similar examples in the definition.

In § 717.83(d)(1), the final rule defines "consumer information" as proposed but modifies the term to expressly exclude from the definition "any record that does not identify an individual." NCUA believes that qualifying the term "consumer information" to cover only personally identifiable information appropriately focuses on the information derived from a consumer report that, if improperly disposed, could be used to commit fraud or identity theft against a consumer. NCUA believes that limiting this definition to information that identifies a consumer is consistent with the current law relating to the scope of the term "consumer report" under the FCRA and the purposes of section 216 of the FACT Act.

Under the final rule, an FCU must implement measures to properly dispose of consumer information that identifies a consumer, such as the

consumer's name and the credit score derived from a consumer report. This requirement, however, does not apply to aggregate information, such as the mean credit score that is derived from a group of consumer reports, or blind data, such as a series of credit scores that do not identify the subjects of consumer reports from which those scores are derived. The final rule includes examples of records that illustrate this aspect, but it does not rigidly define the nature and scope of personally identifiable information. These examples are found in § 717.83(d)(1)(i). NCUA notes that there are a variety of types of information apart from an individual's name, account number, or address that, depending on the circumstances or when used in combination, could identify the individual.

As discussed in the proposal, NCUA notes that the scope of information covered by the terms "consumer information" and "member information" will sometimes overlap, but will not always coincide. The definition of "consumer information" is drawn from the term "consumer" in section 603(c) of the FCRA, which defines a "consumer" as an individual. 15 U.S.C. 1681a(c). By contrast, "member information" under the Guidelines, only covers nonpublic personal information about a "member," as defined in § 716.3(n), namely, an individual who obtains a financial product or service to be used primarily for personal, family, or household purposes and who has a continuing relationship with the FCU.

The relationship between consumer information and member information can be illustrated through the following examples. Payment history information from a consumer report about an individual, who is an FCU's member, will be *both* consumer information because it comes from a consumer report and member information because it is nonpublic personal information about a member. In some circumstances, member information will be broader than consumer information. For instance, information that an FCU maintains about its member's transactions with the FCU would be only member information because it does not come from a consumer report. In other circumstances, consumer information will be broader than member information. Consumer information would include information from a consumer report that an FCU obtains about an individual who guarantees a loan for a business entity or who has applied for employment with the FCU. In these instances, the

consumer reports would not be member information because the information would not be about a "member" within the meaning of the Guidelines but would be consumer information.

NCUA believes the phrase "derived from consumer reports" covers all of the information about a consumer that is taken from a consumer report, including information that results in whole or in part from manipulation of information from a consumer report or information from a consumer report that has been combined with other types of information. Consequently, an FCU that possesses any of this information must properly dispose of it. For example, any record about a consumer derived from a consumer report, such as the consumer's name and credit score, that is shared between an FCU and its credit union service organization (CUSO) affiliate must be disposed of properly by each affiliate that possesses that information. Similarly, a consumer report that is shared among affiliates after the consumer has been given a notice and has elected not to opt out of that sharing, and therefore is no longer a "consumer report" under section 603(d)(2)(A)(iii) of the FCRA, would still be consumer information. Accordingly, an affiliate that receives consumer information under these circumstances must properly dispose of the information. NCUA notes that a CUSO affiliate subject to the jurisdiction of the FTC must properly dispose of consumer information in accordance with the FTC's final rule.

The proposed definition of consumer information included the qualification "for a business purpose," as set forth in section 216. NCUA believes that this phrase encompasses any commercial purpose for which an FCU might maintain or possess consumer information. Commenters did not raise concerns about this interpretation.

Proper Disposal

In the proposed rule, NCUA requested comment on the standard for proper disposal. Of the comment letters received by NCUA, five commenters thought that the concept was clear and sufficiently explained the nature and scope of an FCU's responsibilities under the rule, but two of those commenters welcomed additional clarification through guidance or examples. Four commenters believed "proper disposal" was not clear in the proposed rule and asked for either a definition or examples in the regulatory text like those used in the FTC's proposed rule. 69 FR 21388 (April 20, 2004). Some of these commenters stated that the rule should adopt a clear standard that requires

FCUs to render paper and electronic data unreadable and incapable of being reconstructed. They also asked that the rule provide examples of proper disposal techniques consistent with the FTC's proposed regulatory text.

NCUA believes that there is no need to adopt a definition of the term "disposal" because, in the context of the duty imposed under section 216, the ordinary meaning of that term applies. The final rule, however, includes examples of appropriate measures to properly dispose of consumer information as requested by the commenters in renumbered paragraph (b) of § 717.83. NCUA believes these examples will be helpful as illustrative guidance for compliance with the rule.

NCUA notes that any sale, lease, or other transfer of any medium containing consumer information constitutes disposal of the information insofar as the information itself is not the subject of the sale, lease or other transfer between the parties. By contrast, the sale, lease, or other transfer of consumer information from an FCU to another party can be distinguished from the act of throwing out or getting rid of consumer information, and accordingly, does not constitute disposal subject to NCUA's rule.

New Objective for an Information Security Program

NCUA proposed to add a new objective regarding the proper disposal of consumer information in paragraph II.B. of the Guidelines. A few commenters expressed objections to this aspect of the proposal primarily as it relates to service providers.

The final rule slightly revises the proposal to add a new objective in the Guidelines providing that an FCU should design its information security program to "[e]nsure the proper disposal of member information and consumer information." With this revision from the proposal, NCUA omitted the proposed provision stating that an FCU should ensure proper disposal of consumer information "in a manner consistent with the disposal of member information." By making this change and adding the reference to "member information" in paragraph II.B., the Guidelines more clearly and fully state an FCU's information security objectives with respect to disposing of information. As noted in the proposal, a credit union should properly dispose of member information as part of designing and maintaining its information security program under the Guidelines. The inclusion of "member information" in the objective, therefore,

does not establish a new objective in the Guidelines.

NCUA continues to believe that including this additional objective in paragraph II.B. of the Guidelines is important because section 216's disposal requirement applies to an FCU's consumer information maintained or otherwise in the possession of the FCU's service providers. NCUA notes that, under current paragraph III.D.2., an FCU is expected to "[r]equire its service providers by contract to implement appropriate measures designed to meet the objectives" of the Guidelines.

By expressly incorporating a provision in paragraph II.B. of the Guidelines, FCUs should contractually require service providers to develop appropriate measures for the proper disposal of consumer information and, where warranted, monitor service providers to confirm that they have satisfied their contractual obligations. As some commenters observed, the particular contractual arrangement that an FCU may negotiate with a service provider may take varied forms or use general terms. As a result, some credit unions already may have existing contracts that are sufficiently broad to cover the proper disposal of member information and consumer information, and therefore they would not have to be amended. NCUA continues to believe that the parties should have substantial latitude in negotiating the contractual terms appropriate to their arrangement in any manner that satisfies the objectives of the Guidelines. NCUA, therefore, has not prescribed any particular standards that relate to these service provider contracts.

The final rule also amends paragraph III.G.4. of the Guidelines to allow an FCU a reasonable period of time, after the final rule is issued, to amend its contracts with its service providers to incorporate the necessary requirements in connection with the proper disposal of consumer information. After reviewing the varying comments on this provision of the proposal, NCUA has determined that FCUs should modify contracts that will be affected by the final rule's requirements, if necessary, no later than July 1, 2006.

New Provision To Implement Measures to Properly Dispose of Consumer Information

NCUA has amended paragraph III.C. of the Guidelines by adding a new provision stating that an FCU, as part of its information security program, should develop, implement, and maintain, appropriate measures to properly dispose of consumer information and

member information. Like the proposal, this new provision also provides that FCUs should implement these measures "in accordance with the provisions in paragraph III." of the Guidelines.

Paragraph III. of the Guidelines presently states that an FCU should undertake measures to design, implement, and maintain its information security program to protect member information and member information systems. Because "member information systems" is defined to include any methods used to dispose of member information, an FCU presently must use risk-based measures to protect member information. Building on this provision in the Guidelines, NCUA proposed a provision in paragraph III.C.4. stating that FCUs should develop controls "in a manner consistent with the disposal of member information." Commenters generally supported this provision because FCUs could develop and implement risk-based protections, rather than be subject to a prescriptive standard that required them to adopt particular methods for disposing of consumer information.

In the final rule, NCUA has revised the proposed provision in paragraph III.C.4. by omitting "in a manner consistent with the disposal of member information." In its place, the Guidelines now provide a more direct and general statement that FCUs should develop and maintain risk-based measures to properly dispose of consumer information and member information. Under this final amendment to the Guidelines, an FCU is expected to properly dispose of both classes of information, which is consistent with the Guidelines and the FACT Act.

An FCU should broaden the scope of its risk assessment to include an assessment of the reasonably foreseeable internal and external threats associated with the methods it uses to dispose of consumer information, and adjust its risk assessment in light of the relevant changes relating to such threats. By expressly referencing the disposal requirement in § 748.0(c) and the Guidelines, NCUA expects FCUs to integrate into their information security programs the risk-based measures in paragraph III of the Guidelines for the disposal of consumer information.

After reviewing the comments, NCUA continues to believe that it is not necessary to propose a prescriptive rule describing proper methods of disposal.

Nonetheless, consistent with interagency guidance previously issued through the Federal Financial Institutions Examination Council

(FFIEC),³ NCUA expects FCUs to have appropriate disposal procedures for records maintained in paper-based or electronic form. In addition, as noted above, the final rule includes illustrative examples of appropriate measures to properly dispose of consumer information in § 717.83(b). An FCU's information security program should ensure that paper records containing either member or consumer information should be rendered unreadable as indicated by the FCU's risk assessment, such as by shredding or any other means. FCUs also should recognize that computer-based records present unique disposal problems. Residual data frequently remains on media after erasure. Since that data can be recovered, FCUs should apply additional disposal techniques to sensitive electronic data.⁴

Compliance

The final rule requires FCUs to implement the appropriate measures to properly dispose of consumer information by July 1, 2005. NCUA believes that any changes to an FCU's existing information security program likely will be minimal because many of the measures that an FCU already uses to dispose of member information can be adapted to properly dispose of consumer information. Several commenters agreed with NCUA's assessment and noted that they already have appropriate disposal policies in place. Nevertheless, a comment on behalf of small credit unions and a few comments to the Federal banking agencies noted the proposed period for compliance would be relatively short in light of the work required to amend policies and locate and track consumer information in an institution's existing information system. Accordingly, NCUA has determined that the final rule should afford FCUs a six-month period to adjust their systems and controls.

V. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under \$10 million in assets). The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

³ See FFIEC Information Security Booklet, page 63 at: http://www.ffiec.gov/ffiecinfobase/booklets/information_security/information_security.pdf.

⁴ See footnote 3, *supra*.

Accordingly, a regulatory flexibility analysis is not required.

The rule requires an FCU to implement appropriate controls designed to ensure the proper disposal of consumer information. An FCU must develop and maintain these controls as part of implementing its existing information security program as required by § 748.0.

Any modifications to an FCU's information security program needed to address the proper disposal of consumer information could be incorporated through the process the FCU presently uses to adjust its program under paragraph III.E. of the Guidelines, particularly because of the similarities between the consumer and member information and the measures commonly used to properly dispose of both types of information. To the extent the rule imposes new requirements for certain types of consumer information, developing appropriate measures to properly dispose of that information likely would require only a minor modification of an FCU's existing information security program.

Because some consumer information will be member information and because segregating particular records for special treatment may entail considerable costs, NCUA believes that many FCUs, including small entities, already are likely to have implemented measures to properly dispose of both member and consumer information. In addition, NCUA and the Federal banking agencies, through the Federal Financial Institutions Examination Council (FFIEC), already have issued guidance regarding their expectations concerning the proper disposal of all of an institution's paper and electronic records. See FFIEC Information Security Booklet, December 2002, p. 63.⁵ Therefore, the rule does not require any significant changes for FCUs that currently have procedures and systems designed to comply with this guidance.

NCUA anticipates that, in light of current practices relating to the disposal of information in accordance with § 748.0, the Guidelines, and the guidance issued by the FFIEC, the final rule would not impose undue costs on FCUs. NCUA believes that the controls that small FCUs would need to develop and implement, if any, to comply with the rule likely pose a minimal economic impact on those entities.

Paperwork Reduction Act

NCUA has determined that the final rule does not increase paperwork requirements under the Paperwork

Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

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

Small Business Regulatory Enforcement Fairness Act

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

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

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

List of Subjects

12 CFR Part 717

Consumer protection, Credit unions, Information, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 748

Credit unions, Crime, Currency, Reporting and recordkeeping requirements, and Security measures.

By the National Credit Union Administration Board on November 18, 2004.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons stated in the preamble, NCUA amends 12 CFR chapter VII as set forth below:

■ 1. Part 717 is added to read as follows:

PART 717—FAIR CREDIT REPORTING

Subpart A—General Provisions

Sec.

717.1–717.2 [Reserved]

717.3 Definitions.

Subparts B–H [Reserved]

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

717.80–717.82 [Reserved]

717.83 Disposal of consumer information.

Authority: 15 U.S.C. 1681a, 1681s, 1681w, 6801 and 6805(b).

Subpart A— General Provisions

§ 717.1–717.2 [Reserved]

§ 717.3 Definitions.

As used in this part, unless the context requires otherwise:

- (a) [Reserved]
- (b) [Reserved]
- (c) [Reserved]
- (d) [Reserved]
- (e) *Consumer* means an individual.
- (f) [Reserved]
- (g) [Reserved]
- (h) [Reserved]
- (i) [Reserved]
- (j) [Reserved]
- (k) [Reserved]
- (l) [Reserved]
- (m) [Reserved]
- (n) [Reserved]
- (o) *You* means a Federal credit union.

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 717.80–717.82 [Reserved]

§ 717.83 Disposal of consumer information.

(a) *In general.* You must properly dispose of any consumer information that you maintain or otherwise possess in a manner consistent with the Guidelines for Safeguarding Member Information, in appendix A to part 748 of this chapter.

(b) *Examples.* Appropriate measures to properly dispose of consumer information include the following examples. These examples are illustrative only and are not exclusive or exhaustive methods for complying with this section.

(1) Burning, pulverizing, or shredding papers containing consumer

⁵ See footnote 3, *supra*.

information so that the information cannot practicably be read or reconstructed.

(2) Destroying or erasing electronic media containing consumer information so that the information cannot practicably be read or reconstructed.

(c) *Rule of construction.* This section does not:

(1) Require you to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(2) Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

(d) *Definitions.* As used in this section:

(1) *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the credit union for a business purpose. Consumer information also means a compilation of such records. The term does not include any record that does not identify an individual.

(i) *Consumer information* includes:

(A) A consumer report that you obtain;

(B) Information from a consumer report that you obtain from your affiliate after the consumer has been given a notice and has elected not to opt out of that sharing;

(C) Information from a consumer report that you obtain about an individual who applies for but does not receive a loan, including any loan sought by an individual for a business purpose;

(D) Information from a consumer report that you obtain about an individual who guarantees a loan (including a loan to a business entity); or

(E) Information from a consumer report that you obtain about an employee or prospective employee.

(ii) *Consumer information* does not include:

(A) Aggregate information, such as the mean credit score, derived from a group of consumer reports; or

(B) Blind data, such as payment history on accounts that are not personally identifiable, you use for developing credit scoring models or for other purposes.

(2) *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d). The meaning of consumer report is broad and subject to various definitions, conditions and exceptions in the Fair Credit Reporting Act. It includes written or oral communications from a

consumer reporting agency to a third party of information used or collected for use in establishing eligibility for credit or insurance used primarily for personal, family or household purposes, and eligibility for employment purposes. Examples include credit reports, bad check lists, and tenant screening reports.

PART 748—SECURITY PROGRAM, REPORT OF CRIME AND CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

■ 2. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b); 31 U.S.C. 5311 and 5318.

■ 3. Amend § 748.0 by adding paragraph (c) to read as follows:

§ 748.0 Security program.

* * * * *

(c) Each Federal credit union, as part of its information security program, must properly dispose of any consumer information the Federal credit union maintains or otherwise possesses, as required under § 717.83 of this chapter.

■ 4. Amend appendix A to part 748 as follows:

■ a. Add the following sentence at the end of paragraph I.: “These Guidelines also address standards with respect to the proper disposal of consumer information pursuant to sections 621(b) and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s(b) and 1681w).”;

■ b. Add the following sentence at the end of paragraph I.A.: “These Guidelines also apply to the proper disposal of consumer information by such entities.”;

■ c. Redesignate paragraphs I.B.2.a. through d. as I.B.2.c. through f.;

■ d. Add new paragraphs I.B.2.a. and b., III.C.4., and III.G.3. and III.G.4. to read as set forth below; and

■ e. Amend paragraph II.B. by removing the word “and” after the word “information;” and adding the following phrase after the word “member” at the end of the sentence: “; and ensure the proper disposal of member information and consumer information”.

Appendix A to Part 748—Guidelines for Safeguarding Member Information

I. * * *

B. * * *

2. * * *

a. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the credit union for a business purpose. Consumer

information also means a compilation of such records. The term does not include any record that does not identify an individual.

b. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d). The meaning of consumer report is broad and subject to various definitions, conditions and exceptions in the Fair Credit Reporting Act. It includes written or oral communications from a consumer reporting agency to a third party of information used or collected for use in establishing eligibility for credit or insurance used primarily for personal, family or household purposes, and eligibility for employment purposes. Examples include credit reports, bad check lists, and tenant screening reports.

* * * * *

III. * * *

C. * * *

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of member information and consumer information in accordance with the provisions in paragraph III.

* * * * *

G. * * *

3. *Effective date for measures relating to the disposal of consumer information.* Each Federal credit union must properly dispose of consumer information in a manner consistent with these Guidelines by July 1, 2005.

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., a Federal credit union's existing contracts with its service providers with regard to any service involving the disposal of consumer information should implement the objectives of these Guidelines by July 1, 2006.

[FR Doc. 04–25995 Filed 11–26–04; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18606; Directorate Identifier 2004–CE–17–AD; Amendment 39–13877; AD 2004–24–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc. Model (Otter) DHC–3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Bombardier Inc. Model (Otter) DHC–3 airplanes that have been modified by 524085 BC, Ltd. Supplemental Type Certificate (STC) Number ST01243NY or SA01243NY. This AD requires you to

replace the existing Viking Air Ltd. elevator servo tab assembly with a redesigned Viking Air Ltd. elevator servo tab assembly. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. There has been one failure of the elevator servo tab assembly. We are issuing this AD to prevent the structural failure of the elevator servo tab. This failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on December 28, 2004.

As of December 28, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Bombardier Inc., Regional Aircraft, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html or call (202) 741-6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-2004-18606.

FOR FURTHER INFORMATION CONTACT: David Lawson, Aerospace Engineer, ANE-171, New York Aircraft Certification Office, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone: 516-228-7327; facsimile: 516-794-5531.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Transport Canada, which is the airworthiness authority for Canada, notified FAA that an unsafe condition may exist on all Bombardier Inc. Model (Otter) DHC-3 airplanes that incorporate 524085 BC, Ltd. STC Number ST01243NY or SA01243NY. Transport Canada reports one incident of structural failure of the elevator servo tab balance assembly.

What is the potential impact if FAA took no action? Vibration may cause structural failure of the elevator servo tab. This failure could lead to loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Bombardier Inc. Model (Otter) DHC-3 airplanes that incorporate 524085 BC, Ltd. STC Number ST01243NY or SA01243NY. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 29, 2004 (69 FR 45293-95). The NPRM proposed to replace the existing Viking Air Ltd. elevator servo tab assembly with a redesigned Viking Air Ltd. elevator servo tab assembly.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue: Question as to Whether Viking Air Is Authorized for Replacement Parts

What is the commenter's concern? The commenter wants the issuance of the Airworthiness Directive to be delayed until it is determined whether the manufacture of the parts is authorized through a Canadian Parts Design Approval (PDA), a Canadian Approval Limitation Record (ALR), or 14 CFR 21.303(a). The commenter claims that the manufacturing of these parts should be authorized through a Canadian PDA, not an ALR, and that Viking Air is not authorized to manufacture the parts per 14 CFR 21.303(a).

What is FAA's response to the concern? The FAA does not agree. Viking Air manufactured the parts that are being removed per the AD for STC SA01243NY under a Canadian ALR. The modification parts being installed per the AD following Viking Air Service Bulletin V3/01 are the same parts as in the latest amendment to STC SA01243NY. Viking Air, under the Canadian ALR, 22-80 manufactured the parts for STC SA01243NY for export to the United States with Transport Canada Civil Aviation (TCCA) Export Certificates of Airworthiness. Per the Implementation Procedures Agreement (IPA) of the U.S./Canadian Bilateral Aviation Safety Agreement (BASA), the FAA accepts TCCA Export Certificates of Airworthiness for replacement and modification parts. Civil Airworthiness Regulations (CAR)/Airworthiness Manual Chapter 561 covers the manufacturing of replacement and modification parts. Regulation 14 CFR 21.303 "Replacement and modification

parts" does not apply to parts manufactured in Canada for export to the United States under the terms of the IPA of the US/Canadian BASA.

Therefore, FAA has determined that Viking Air does have the authority to manufacture parts for the accomplishment of this AD action.

We have made no changes to the final rule based on this comment.

Additional Information

Are there any changes from the NPRM? The STC holder issued a revision to the original type certificate because of a typographical error. Both the original and the revised STC (ST01243NY or SA01243NY) may be used.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains information relating to this subject in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at <http://dms.dot.gov>.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 11 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost of U.S. operators
7.5 workhours × \$65 per hour = \$488	\$2,630 (The operator may return the original parts to Viking Air Ltd. for credit.).	\$3,118	\$34,298

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**.

Include “Docket No. FAA–2004–18606; Directorate Identifier 2004–CE–17–AD” in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under 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. FAA amends § 39.13 by adding a new AD to read as follows:

2004–24–01 Bombardier Inc.: Amendment 39–13877; Docket No. FAA–2004–18606; Directorate Identifier 2004–CE–17–AD.

When Does This AD Become Effective?

- (a) This AD becomes effective on December 28, 2004.

What Other ADs Are Affected by This Action?

- (b) None.

What Airplanes Are Affected by This AD?

- (c) This AD affects the following airplane models and serial numbers that are certificated in any category: All Bombardier Inc. Model (Otter) DHC–3 airplanes incorporating 524085 BC, Ltd. Supplemental Type Certificate Number ST01243NY or SA01243NY.

What Is the Unsafe Condition Presented in This AD?

- (d) This AD is the result of one incident of structural failure of the elevator servo tab balance assembly. The actions specified in this AD are intended to prevent the structural failure of the elevator servo tab, which could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

- (e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Perform the following actions: (i) Remove the existing elevator servo tab assembly, consisting of the following part numbers (P/N): C3TE13–12, VALTOC1136–2, and NAS40–2A–LT; (ii) Install the redesigned elevator servo tab assembly, P/N V3TE1137–1.	Replace the elevator servo tab assembly within 300 hours time-in-service (TIS) after December 28, 2004 (the effective date of this AD).	Follow Viking Air Ltd. Service Bulletin V3/01, dated March 6, 2002.
(2) Balance the servo tab assembly to achieve a nose heavy static moment within the limits set by Viking Air Ltd. Service Bulletin V3/01, dated March 6, 2002.	After installation of the redesigned servo tab assembly, balance prior to further flight.	Follow Viking Air Ltd. Service Bulletin V3/01, dated March 6, 2002.
(3) Do not install any of the following part numbers as part of the servo tab assembly: (i) P/N C3TE13–12; (ii) P/N VALTOC1136–2; (iii) P/N NAS40–2A–LT.	The part numbers should not be installed as of December 28, 2004 (the effective date of this AD).	Not applicable.

May I Request an Alternative Method of Compliance?

- (f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise,

send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, New York Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact David Lawson,

Aerospace Engineer, ANE–171, New York Aircraft Certification Office, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone: 516–228–7327; facsimile: 516–794–5531.

Is There Other Information That Relates to This Subject?

(g) Transport Canada Airworthiness Directive Number CF-2002-48, dated November 21, 2002, and Viking Air Ltd. Service Bulletin Number V3/01, dated March 6, 2002, also address the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Viking Air Ltd. Service Bulletin Number V3/01, dated March 6, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Bombardier Inc., Regional Aircraft, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html or call (202) 741-6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-2004-18606.

Issued in Kansas City, Missouri, on November 15, 2004.

Scott L. Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04-25674 Filed 11-26-04; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2004-18562; Directorate Identifier 2003-NM-147-AD; Amendment 39-13883; AD 2004-24-07]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-600, -700, -700C, -800, and -900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737-600, -700, -700C, -800, and -900 series airplanes. This AD requires replacing the bracket for the wire bundle of the fuel quantity indicating system (FQIS), performing a general visual inspection of the FQIS wire bundle for damage, and doing corrective actions if necessary. This AD

is prompted by a report of an incorrectly installed FQIS wire bundle. We are issuing this AD to prevent chafing of the FQIS wire(s) in the center fuel tank, which, when combined with a lightning strike or a power wire short to the FQIS wire(s), could result in arcing in the center fuel tank and consequent fuel tank explosion.

DATES: This AD becomes effective January 3, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of January 3, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207. You can examine this information 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.

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

FOR FURTHER INFORMATION CONTACT:

Technical information: Douglas Pegors, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6504; fax (425) 917-6590.

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

Examining the Docket

The AD docket contains the proposed AD, comments, and any final disposition. 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.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 737-600, -700, -700C, -800, and -900 series airplanes. That action, published in the **Federal Register** on July 8, 2004 (69 FR 41207), proposed to require replacing the bracket for the wire bundle of the

fuel quantity indicating system (FQIS), performing a general visual inspection of the FQIS wire bundle for damage, and doing corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Agree With Proposed AD

Two commenters, the Air Line Pilots Association, on behalf of its members, and the manufacturer, generally agree with the proposed AD.

Request To Reduce Compliance Time

One commenter, the Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, requests reducing the compliance time specified in paragraph (f) of the proposed AD. The proposed compliance time is "within 24 months after the effective date of this AD." The commenter notes that Boeing issued Special Attention Service Bulletin 737-28-1190, dated January 16, 2003, over a year and a half ago. The commenter contends that the compliance time in the proposed AD should be reduced to ensure the prevention of a chafed wire in the fuel tank.

We do not agree to reduce the compliance time in the final rule. In developing an appropriate compliance time, we considered the safety implications, parts availability, and maintenance schedules that would allow for timely accomplishment and minimal fuel tank entries. Minimizing fuel tank entries reduces the potential for unintended hazardous conditions. In consideration of all of these factors, we determined that the compliance time, as proposed, represents an appropriate interval in which the required actions can be done in a timely manner within the fleet, while still maintaining an adequate level of safety. Operators are always permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time. If additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 1,063 airplanes of the affected design in the worldwide fleet. This AD will affect about 518 airplanes of U.S. registry.

Replacing the bracket will take about 1 work hour per airplane, at an average labor rate of \$65 per work hour. Required parts will cost about \$186 per airplane. Based on these figures, we estimate the cost of the required replacement on U.S. operators to be \$130,018, or \$251 per airplane.

Inspecting the FQIS wire bundle will take approximately 1 work hour per airplane, at an average labor rate of \$65 per work hour. Based on these figures, we estimate the cost of the required inspection on U.S. operators to be \$33,670, or \$65 per airplane.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

- (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.

We prepared a regulatory evaluation of the estimated costs to comply with this 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, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2004-24-07 Boeing: Amendment 39-13883.
Docket No. FAA-2004-18562;
Directorate Identifier 2003-NM-147-AD.

Effective Date

(a) This AD becomes effective January 3, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737-600, -700, -700C, -800, and -900 series airplanes, as listed in Boeing Special Attention Service Bulletin 737-28-1190, Revision 1, dated March 27, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of an incorrectly installed fuel quantity indicating system (FQIS) wire bundle. We are issuing this AD to prevent chafing of the FQIS wire(s) in the center fuel tank, which, when combined with a lightning strike or a power wire short to the FQIS wire(s), could result in arcing in the center fuel tank and consequent fuel tank explosion.

Compliance

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

Replacement and Inspection

(f) Within 24 months after the effective date of this AD, replace the bracket for the FQIS wire bundle with a new, improved bracket, perform a general visual inspection of the FQIS wire bundle for damage, and perform any applicable corrective actions, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-28-1190, Revision 1, dated March 27, 2003. Do any applicable corrective actions before further flight.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Actions Accomplished in Accordance With Previous Issue of Service Bulletin

(g) Actions accomplished before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin

737-28-1190, dated January 16, 2003, are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install a bracket, part number 287A9111-3, for the FQIS wire bundle, on any airplane.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(j) You must use Boeing Special Attention Service Bulletin 737-28-1190, Revision 1, dated March 27, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of the document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on November 17, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04-26190 Filed 11-26-04; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 201**

[Docket No. 1990N-0309]

RIN 0910-AF50

Drug Labeling; Sodium Labeling for Over-the-Counter Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the regulations for sodium labeling for over-the-counter (OTC) drug products by extending the sodium content labeling requirement to

rectal drug products containing sodium phosphate/sodium biphosphate (sodium phosphates). FDA is taking this action because people with certain medical conditions are at risk for an electrolyte imbalance to occur when using rectal sodium phosphates products. Serious adverse events and deaths have occurred because of the high level of sodium present in these products. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: This rule is effective November 29, 2005.

FOR FURTHER INFORMATION CONTACT: Neel Patel, Center for Drug Evaluation and Research (HFD-560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 24, 2004 (69 FR 13765), FDA issued a proposed rule to amend the regulations for sodium labeling for OTC drug products to require sodium content labeling for rectal drug products containing sodium phosphates. FDA considers it important that consumers be aware of the sodium content of OTC rectal drug products containing sodium phosphates and that this information appear in product labeling so that it will be readily available to consumers, physicians, and other health professionals. Some OTC laxative drug products intended for rectal administration can contain very high levels of sodium from both active and inactive ingredients. Significant amounts of some of these products may be absorbed causing an electrolyte imbalance.

Section 201.64 (21 CFR 201.64) requires orally ingested sodium phosphates products to bear sodium content information. FDA proposed to add paragraph (k) to § 201.64 to require sodium content information to appear in the labeling of rectal drug products containing dibasic sodium phosphate and/or monobasic sodium phosphate.

II. Final Rule Amending Sodium Labeling Regulations

FDA did not receive any comments to its proposed new labeling requirements, its discussion of the statutory authority to require this labeling, or its discussion of this labeling requirement being constitutionally permissible under the first amendment. Accordingly, FDA is not repeating those discussions in this final rule, but is incorporating the discussions regarding statutory authority and the first amendment by reference (see 69 FR 13766 to 13767).

FDA is finalizing its proposal by requiring sodium content information to appear in the labeling of OTC rectal drug products containing dibasic sodium phosphate and/or monobasic sodium phosphate.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation).

FDA concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. As discussed in this section of the document, the final rule will not be economically significant as defined by the Executive order. With respect to the Regulatory Flexibility Act, FDA concludes that the rule would not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for the final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation adjusted statutory threshold is about \$110 million.

The purpose of this final rule is to extend the requirement for sodium content labeling to OTC rectal drug products that contain sodium phosphates so that the information is available to: (1) Health professionals and (2) individuals who need to limit their sodium intake. The final rule would require minor relabeling of OTC rectal drug products containing sodium phosphates. There are fewer than five

major manufacturers of these products in the OTC drug marketplace. One company manufactures a nationally branded product with the others producing private label products. One large manufacturer produces about one-half to two-thirds of the products covered by this final rule. Three small manufacturers account for the remainder of the market. There may be other manufacturers/marketers not identified in sources FDA reviewed, but FDA believes there are a limited number and they would be small manufacturers. FDA concludes that this final rule would not have a significant economic impact on small entities, using the U.S. Small Business Administration designations for this industry (750 employees). Together, fewer than 300 stockkeeping units (SKUs) are marketed. The manufacturer of the nationally branded product and some private label manufacturers of these products already include sodium content information in the labeling of their products. Any necessary relabeling (addition of sodium content labeling) will impose direct one-time costs on some manufacturers. FDA has been informed that the cost to relabel these products ranges from \$500 to \$3,500 per SKU. Using \$3,500 per SKU, and assuming all SKUs would need to be relabeled, the total one-time cost to relabel these products would be \$1,050,000. Actual costs will be lower because most of these products already include the sodium content information in their labeling.

Manufacturers that have not voluntarily included sodium content information may also incur one-time costs to test their products to determine the sodium content. The cost to test for one cation (e.g., sodium) is about \$150 for private label manufacturers. Assuming they repeat the testing, the total one-time costs for an estimated 10 products would be \$3,000.

FDA considered but rejected several labeling alternatives: (1) A longer implementation period and (2) an exemption from coverage for small entities. A longer time period would unnecessarily delay the benefit of the new labeling to consumers who self-medicate with these products. FDA rejected an exemption for small entities because the labeling is also needed by consumers who purchase products marketed by those entities.

For the reasons stated previously and under the Regulatory Flexibility Act (5 U.S.C. 605(b)), FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirement in this document is not subject to review by the Office of Management and Budget because it does not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

V. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.64 is amended by adding paragraph (k) to read as follows:

§ 201.64 Sodium labeling.

* * * * *

(k) The labeling of OTC drug products intended for rectal administration containing dibasic sodium phosphate and/or monobasic sodium phosphate

shall contain the sodium content per delivered dose if the sodium content is 5 milligrams or more. The sodium content shall be expressed in milligrams or grams. If less than 1 gram, milligrams should be used. The sodium content shall be rounded-off to the nearest whole number if expressed in milligrams (or nearest tenth of a gram if expressed in grams). The sodium content per delivered dose shall follow the heading "Other information" as stated in § 201.66(c)(7). Any product subject to this paragraph that contains dibasic sodium phosphate and/or monobasic sodium phosphate as an active ingredient intended for rectal administration and that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after November 29, 2005, is misbranded under sections 201(n) and 502(a) and (f) of the act.

Dated: November 18, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26269 Filed 11–26–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[Docket No. IN–141–FOR]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving, with an additional requirement, an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposed revisions to and additions of rules about definitions, identification of interests, topsoil, siltation structures, impoundments, refuse piles, prime farmland, lands eligible for re-mining, permitting, performance bond release, surface and ground water monitoring, roads, inspection, and civil penalties. Indiana intends to revise its program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

DATES: Effective: November 29, 2004.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (317) 226–6700. E-mail: IFOMAIL@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the Indiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the July 26, 1982, **Federal Register** (47 FR 32071). You can also find later actions concerning the Indiana program and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Amendment

By letter dated May 19, 2004 (Administrative Record No. IND–1726), the Indiana Department of Natural Resources, Division of Reclamation (Indiana or IDNR) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Indiana sent the amendment in response to a June 17, 1997, letter (Administrative Record No. IND–1575) that we sent to Indiana in accordance with 30 CFR 732.17(c) and in response to the required program amendments at 30 CFR 914.16(f), (s), and (hh) through (mm). The amendment also included changes made at Indiana's own initiative.

We announced receipt of the proposed amendment in the July 19, 2004, **Federal Register** (69 FR 42931). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment

period ended on August 18, 2004. We received comments from one Federal agency.

During our review of the amendment, we identified concerns about inspection of abandoned sites and several editorial-type errors. We notified Indiana of these concerns by letter dated July 26, 2004, (Administrative Record No. IND-1732).

By letter dated September 14, 2004 (Administrative Record No. IND-1733), Indiana responded to our July 26, 2004, letter. Indiana intends to make changes to its inspection of abandoned sites rule and to correct the editorial-type errors through the errata and program amendment processes at a later date. Therefore, we are proceeding with this final rule **Federal Register** document.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with an additional requirement as described below.

A. Minor Revisions to Indiana's Rules

Indiana proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules:

312 Indiana Administrative Code (IAC) 25-4-17(a)(1), Surface mining permit applications—identification of interests; 25-4-115(a)(3), Permit approval or denial; 25-4-118(8), Permit

conditions; 25-6-17(b)(2)(I), Surface mining-siltation structures; 25-6-23(a)(2), Surface mining-surface and ground water monitoring; and 25-7-1(a)(1) and (d)(2), Inspections of sites.

Because these changes are minor, we find that they will not make Indiana's rules less effective than the corresponding Federal regulations.

B. Revisions to Indiana's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Indiana's rules listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.

Topic	State Rule 312 IAC	Federal Regulation 30 CFR
Definition of lands eligible for remining	25-1-75.5	701.5.
Definition of unanticipated event or condition	25-1-155.5	701.5.
Prime farmland	25-4-102(d)(1), (e), (f)	785.17(c)(1), (d)(4), (e).
Performance bond release	25-5-16(b), (c)	800.40(a)(3), (b).
Surface mining and underground mining; hydro- logic balance; siltation structures.	25-6-17(a)(3), (d)(2), (d)(3); 25-6-81(a)(3), (d)(2), (d)(3).	816.46(b)(3), (c)(2); 817.46(b)(3), (c)(2).
Surface mining and underground mining; hydro- logic balance; permanent and temporary im- poundments.	25-6-20(a), (c); 25-6-84(a), (c)	816.49(a), (c); 817.49(a), (c).
Civil penalties; hearing request	25-7-20	845.19(a).

Because the above State rules have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations. We also find that Indiana's revisions at 25-6-20(a)(9)(E) and 25-6-84(a)(9)(E) that change the term "subsection" to the term "clause" in the phrase "the following impoundments shall be exempt from the examination requirements of this subsection" satisfy the required amendment at 30 CFR 914.16(ii)(3), and we are removing it.

C. 312 IAC 25-1-8 Definition of Affected Area

1. 312 IAC 25-1-8(a)(1) through (7). Indiana designated the existing provision as subsection (a) and amended the definition of "affected area" to mean "any land or water surface area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations." Subdivisions (a)(1) through (7) specify those areas of a permit that will be considered affected areas. At subdivisions (a)(2), (4), and (6), Indiana replaced the terms "an" with the term "any" to refer to areas that would be considered "affected areas." At subdivision (a)(3), Indiana added the word "any" before the word "adjacent." At subdivision (a)(4), Indiana added the language "except as provided in this

section" at the end of the subdivision. Indiana restructured subdivision (a)(5) and changed the words "a site" to "any area." At subdivision (a)(6), Indiana made minor wording revisions by adding the word "property" between the words "other" and "material"; changing the word "incidental" to "incident"; and adding the word "and" after the word "mining." At subdivision (a)(7), Indiana removed the words "of a mine" from the end of the subdivision.

We find that the revised language at subsection (a) is substantively the same as the counterpart language in the Federal definition of "affected area" at 30 CFR 701.5. Therefore, we are approving 312 IAC 25-1-8(a).

2. 312 IAC 25-1-8(b) and (c). Indiana added introductory language at subsection (b) to identify the roads associated with the permit area that are considered affected areas and added subdivisions (b)(1) through (4) to identify the criteria for exemption of those roads that are not considered affected areas. Roads must meet all of the criteria listed in subdivisions (b)(1) through (4) before being considered for exemption. Subsection (b) identifies as affected areas those roads used for the purposes of access to, or for hauling coal to or from, any surface coal mining and reclamation operation unless they meet the criteria in subdivisions (b)(1)

through (4). Subdivision (b)(1) specifies that for a road to be exempt, it must be "designated as a public road pursuant to the laws of the jurisdiction in which it is located." Subdivision (b)(2) specifies that the road must be "maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction." Subdivision (b)(3) provides that the road must have a "substantial (more than incidental) public use." Finally, subdivision (b)(4) specifies that "the extent and the effect of mining-related uses of the road by the permittee must not warrant regulation as part of the surface coal mining and reclamation operations." Indiana added subsection (c) to require the director of the IDNR (director) to determine on a case-by-case basis whether a road satisfies the requirements of subdivision (b)(4) based on the mining related use of the road and consistent with Indiana's definition of "surface coal mining operation."

The language at subsection (b) and subdivisions (b)(1), (b)(2), and (b)(3) is substantively the same as language found in the counterpart Federal definition of "affected area" at 30 CFR 701.5. On November 20, 1986 (51 FR 41952), we suspended the definition of "affected area" at 30 CFR 701.5 insofar as it might limit jurisdiction over roads

covered by the definition of "surface coal mining operations." Our revised road rules were published on November 8, 1988 (53 FR 45192). In finalizing those rules, we declined to add a reference to "affected area" to the definition of road on the basis that the definition of "affected area" as partially suspended no longer provides additional guidance as to which roads are included in the definition of surface coal mining operations. At the same time, we declined to expressly exclude public roads from the definition of road. In the preamble, we stated that we are concerned that roads constructed to serve mining operations should not avoid compliance with performance standards by being deeded to public entities, but it was not our intent to automatically extend jurisdiction into the existing public road network. Instead, jurisdiction decisions are to be made by the regulatory authorities on a case-by-case basis. Indiana intends to continue to use the definition of "affected area" in determining which roads are subject to jurisdiction. The provisions at 312 IAC 25-1-8(b)(4) and (c) clarify when a public road will be regulated and adequately address the concerns we expressed in the November 8, 1988, preamble (53 FR 45192) regarding public roads. Therefore, we find that Indiana's definition of "affected area" is no less effective than the Federal regulations concerning jurisdiction over public roads and is consistent with the Federal definition of "affected area." Based on this finding, we are approving 312 IAC 25-1-8(b) and (c).

D. Recodification Corrections

Indiana's August 21, 2001, amendment concerned the recodification of its rules to comply with formatting guidelines set forth by the Indiana Legislative Services Agency (Administrative Record No. IND-1712). In recodifying some of its rules, Indiana inadvertently removed previously-approved language. In its May 19, 2004, amendment, Indiana made corrections to the following rules, which were recodified (Administrative Record No. IND-1726).

1. 312 IAC 25-4-17 Surface Mining Permit Applications; Identification of Interests

Indiana's rule at 312 IAC 25-4-17 specifies the information that must be included in a surface mining permit application for identification of interests. In recodifying 312 IAC 25-4-17(d), (e), and (f), Indiana inadvertently removed language that required an applicant to submit the specified

information with an application. Therefore, in our approval of Indiana's recodified rule on November 16, 2001 (66 FR 57655), we required Indiana to submit an amendment or otherwise modify its program to clarify that the information specified in 312 IAC 25-4-17(d), (e), and (f) must be submitted with the permit application. We codified this requirement at 30 CFR 914.16(jj). In its May 19, 2004, amendment, Indiana revised 312 IAC 25-4-17 by adding the language "shall be submitted with the application" to the end of subsections (d), (e), and (f).

With the addition of the language that requires the information specified in the subsections to be submitted with the application, we find that Indiana's rules at 312 IAC 25-4-17(d), (e), and (f) are no less effective than the counterpart Federal regulations at 30 CFR 778.13(a), (b), and (d), respectively. Therefore, we are approving the revisions. We further find that Indiana's revisions satisfy the required amendment at 30 CFR 914.16(jj), and we are removing it.

2. 312 IAC 25-4-45 Surface Mining Permit Applications; General Requirements for Reclamation Plans

Indiana's rule at 312 IAC 25-4-45 specifies the information that must be included in the reclamation plan for a surface mining permit. In recodifying 312 IAC 25-4-45(b)(4), Indiana inadvertently removed "total depth" as one of the factors that the operator is to analyze to demonstrate the suitability of topsoil substitutes or supplements. We consider "total depth" to be one of the factors that must be evaluated to demonstrate the suitability of topsoil substitutes or supplements. Therefore, in our approval of Indiana's recodified rule on November 16, 2001 (66 FR 57655), we required Indiana to submit an amendment or otherwise modify its program to require the demonstration of the suitability of topsoil substitutes or supplements to also be based upon analysis of the "total depth" of the different kinds of soils. We codified this requirement at 30 CFR 914.16(ll). In its May 19, 2004, amendment, Indiana restructured 312 IAC 25-4-45(b)(4) and added "total depth" to the list of factors that must be analyzed to demonstrate the suitability of topsoil substitutes or supplements.

With the addition of "total depth" to the list of factors to be analyzed for the different kinds of soils proposed for topsoil substitutes or supplements, we find that Indiana's rule at 312 IAC 25-4-45(b)(4) is no less effective than the counterpart Federal regulation at 30 CFR 780.18(b)(4). Therefore, we are approving the revision. We further find

that Indiana's revision satisfies the required amendment at 30 CFR 914.16(ll), and we are removing it.

3. 312 IAC 25-4-113 Public Availability of Permit Application Information

Indiana's rule at 312 IAC 25-4-113 provides the exceptions to public availability of permit application information. In recodifying 312 IAC 25-4-113, Indiana inadvertently removed its previously-approved provision that allowed a person to oppose or seek disclosure of confidential information. Indiana also inadvertently removed its previously-approved provision concerning the confidentiality of information on the nature and location of archaeological resources on public and Indian land. Therefore, in our approval of Indiana's recodified rule on November 16, 2001 (66 FR 57655), we required Indiana to revise 312 IAC 25-4-113 or otherwise modify the Indiana program to allow a person to oppose or seek disclosure of confidential information. We also required Indiana to revise 312 IAC 25-4-113 or otherwise modify the Indiana program to add a provision that classifies information on the nature and location of archeological resources on public land and Indian land as qualified confidential information. We codified these requirements at 30 CFR 914.16(mm)(1) and (2). In its May 19, 2004, amendment, Indiana revised 312 IAC 25-4-113 by adding new subsection (f) to specify that information on the nature and location of archaeological resources on public and Indian land is confidential. Indiana also redesignated existing subsection (f) as subsection (g) and revised the first sentence to allow a person who opposes or seeks disclosure of confidential information to submit a request under 312 IAC 25-4-110.

With the addition of new subsection (f) and the revisions to subsection (g), we find that Indiana's rules at 312 IAC 25-4-113(f) and (g) are no less effective than the counterpart Federal regulations at 30 CFR 773.6(d)(3) and (d)(3)(iii), and we are approving them. We further find that Indiana's revisions satisfy the required amendments at 30 CFR 914.16(mm)(1) and (2), and we are removing them.

E. Permit Applications; Reclamation Plan for Siltation Structures, Impoundments, Dams, Embankments, and Refuse Piles

On October 20, 1994 (59 FR 53022), we revised the Federal regulations at 30 CFR 780.25 (Surface Mining) and 784.16 (Underground Mining) concerning

reclamation plan requirements for siltation structures, impoundments, banks, dams, and embankments. On June 17, 1997, we sent Indiana a letter (Administrative Record No. IND-1575) in accordance with 30 CFR 732.17(c). We notified Indiana that it must amend its rules to be no less effective than the revised Federal regulations. Also, in our October 29, 1996 (61 FR 55743), approval of Indiana's September 26, 1994, amendment, as revised on August 16, 1995, we required Indiana to amend 310 IAC 12-3-49 (Surface Mining) and 310 IAC 12-3-83 (Underground Mining) [currently 312 IAC 25-4-49 and 312 IAC 25-4-87, respectively] to add the requirement concerning stability analysis of each structure as is required by 30 CFR 780.25(f) and 784.16(f). We codified this requirement at 30 CFR 914.16(ii)(1). In response to our June 17, 1997, letter and the required amendment at 30 CFR 914.16(ii)(1), Indiana proposed the following revisions to its rules.

1. *312 IAC 25-4-49(a) and 25-4-87(a)*. Indiana revised the first sentence of subsection (a) by requiring an application to include "a general plan and a detailed design plan" instead of "a plan" for each proposed structure within the proposed permit area. Indiana also added "refuse pile" to the list of coal processing waste structures for which a general plan and a detailed design plan were needed.

The counterpart Federal regulations at 30 CFR 780.25(a) and 784.16(a) also require that a permit application include "a general plan and detailed design plan" for each proposed structure. Although the Federal regulations do not include the term "coal processing refuse pile," Indiana's use of the term is equivalent to the Federal term "coal processing waste bank." Therefore, we find that 312 IAC 25-4-49(a) and 25-4-87(a), as revised, are no less effective than the counterpart Federal regulations, and we are approving the revisions.

2. *312 IAC 25-4-49(c) and 25-4-87(c)*. Indiana revised 312 IAC 25-4-49(c) by requiring that permanent and temporary impoundments be designed to comply with the requirements of 312 IAC 25-6-20 and the requirements of the Mine Safety and Health Administration at 30 CFR 77.216-1 and 30 CFR 77.216-2. Indiana revised 312 IAC 25-4-87(c) by requiring that permanent and temporary impoundments be designed to comply with the requirements of 312 IAC 25-6-84 and the requirements of the Mine Safety and Health Administration at 30 CFR 77.216-1 and 30 CFR 77.216-2.

The Federal regulations at 30 CFR 780.25(c) and 784.16(c) contain

substantively the same requirements. Therefore, we find that 312 IAC 25-4-49(c) and 25-4-87(c), as revised, are no less effective than the counterpart Federal regulations, and we are approving the revisions.

3. *312 IAC 25-4-49(d) and 25-4-87(d)*. Indiana added a new subsection (d) to 312 IAC 25-4-49 that requires refuse piles to be designed to comply with 312 IAC 25-6-36 through 312 IAC 25-6-39. Indiana added a new subsection (d) to 312 IAC 25-4-87 that requires refuse piles to be designed to comply with 312 IAC 25-6-98 through 312 IAC 25-6-102. For both rules, Indiana redesignated existing subsection (d) as subsection (e).

The Federal regulations at 30 CFR 780.25(d) and 784.16(d) contain substantively the same requirements. Therefore, we find that Indiana's new rules at 312 IAC 25-4-49(d) and 25-4-87(d) are no less effective than the counterpart Federal regulations, and we are approving them.

4. *312 IAC 25-4-49(f) and 25-4-87(f)*. In response to the required amendment at 30 CFR 914.16(ii)(1), Indiana added new subsection (f). For structures that meet the Class B or C criteria for dams in Technical Release 60 (TR-60) or that meet the size and other criteria of 30 CFR 77.216(a), each reclamation plan under subsections (b), (c), and (e) must include a stability analysis of the structure. The stability analysis must include strength parameters, pore pressures, and long term seepage conditions. The plan must also include a description of each engineering design assumption and calculation.

We find that Indiana's rules at 312 IAC 25-4-49(f) and 25-4-87(f) contain requirements that are substantively the same as the counterpart Federal regulation requirements at 30 CFR 780.25(f) and 784.16(f). Therefore, we are approving them. We further find that Indiana's rules at 312 IAC 25-4-49(f) and 25-4-87(f) satisfy the required amendment at 30 CFR 914.16(ii)(1), and we are removing it.

5. *312 IAC 25-4-49(g) and 25-4-87(g)*. Indiana's rule at subsection (g) requires that applications for specified types of proposed permanent structures that impound water and meet specified criteria must be submitted to the Department of Natural Resources, Division of Water for approval before construction of the structure begins. Indiana redesignated existing subsection (e) as subsection (g) and added introductory language to clarify the types of structures for which applications must be submitted. These structures include proposed permanent siltation structures, water

impoundments, coal processing waste dams, or embankments. Indiana also removed the last sentence from subdivision (g)(3).

There are no Federal counterparts to Indiana's rules at 312 IAC 25-4-49(g) and 25-4-87(g). However, we find that the revisions made to these previously-approved rules will not make the Indiana rules less effective than the Federal regulations or SMCRA.

F. Lands Eligible for Remining

On September 11, 1995, Indiana submitted an amendment concerning statutory requirements for lands eligible for remining (Administrative Record No. IND-1509). After reviewing the amendment, we determined that Indiana's amendment did not include all of the necessary requirements of section 510(e) of SMCRA and the implementing Federal regulations for lands eligible for remining. Therefore, in our approval of Indiana's amendment on April 10, 1996 (61 FR 15891), we required Indiana to amend its program to provide implementing regulations for the statutory requirements. We codified this requirement at 30 CFR 914.16(hh). In response to this requirement, Indiana proposed the following revisions to its rules.

1. 312 IAC 25-4-105.5 Special Categories of Mining; Lands Eligible for Remining

At 312 IAC 25-4-105.5, Indiana added the permitting requirements for lands eligible for remining. An application for a permit must contain an identification of potential environmental and safety problems related to prior mining activity at the site that could be reasonably anticipated to occur. The identification is based on an investigation that includes visual observations, record reviews of past mining, and environmental sampling tailored to the site conditions. An application must also contain descriptions of the mitigative measures that will be taken to ensure the applicable reclamation requirements of the regulatory program can be met. Indiana also provided that the requirements of 312 IAC 25-4-105.5 do not apply after September 30, 2004.

Indiana's September 11, 1995, proposed statute at IC 14-34-4-10.5 did not contain the proviso that the permitting requirements for lands eligible for remining will not apply after September 30, 2004. This proviso is required by section 510(e) of SMCRA and the implementing Federal regulation at 30 CFR 785.25. See 60 FR 58480, November 27, 1995. In our April 10, 1996, approval of Indiana's statute,

we required Indiana to amend its program by adding a counterpart to 30 CFR 785.25 to implement IC 14–34–4–10.5. Indiana added this counterpart at 312 IAC 25–4–105.5 for lands eligible for remining. Indiana’s proposed rule contains requirements that are substantively the same as the counterpart Federal regulation, including the proviso that the requirements do not apply after September 30, 2004. The effective date of our decision in this final rule is after the September 30, 2004, expiration date for these requirements. However, Indiana established the September 30, 2004, date in its rule to clarify that its statute at IC 14–34–4–10.5 and its implementing rule at 312 IAC 25–4–105.5 only apply to permits issued before September 30, 2004. Therefore, we find that 312 IAC 25–4–105.5 is no less effective than the counterpart Federal regulation, and we are approving it.

2. 312 IAC 25–4–114 Review of Permit Applications

At 312 IAC 25–4–114, Indiana added new subsection (d) to require that the prohibitions on the issuance of a permit at subsection (b) do not apply to a violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the applicant. The violation must have occurred after October 24, 1992, and be a result of an unanticipated event or condition on a permit. The permit must have been issued before September 30, 2004, including subsequent renewals, and held by the person making application for a new permit. For a permit issued under 312 IAC 25–4–105.5, concerning lands eligible for remining, an event or condition is presumed to be unanticipated if the event or condition arose after permit issuance, was related to prior mining, and was not identified in the permit.

Indiana’s rule at 312 IAC 25–4–114(d) contains substantively the same requirements as the counterpart Federal regulation at 30 CFR 773.13 concerning unanticipated events or conditions at remining sites. Therefore, we find that 312 IAC 25–4–114(d) is no less effective than the counterpart Federal regulation, and we are approving it.

3. 312 IAC 25–4–115 Permit Approval or Denial—Written Findings

At 312 IAC 25–4–115(a)(13), Indiana added a requirement that the director make a written finding for permits to be issued for lands eligible for remining. For these permits, the director must find

that the permit applications contain: (1) Lands eligible for remining; (2) an identification of any potential environmental and safety problems related to prior mining activity; and (3) mitigation plans to address potential environmental and safety problems.

Indiana’s rule at 312 IAC 25–4–115(a)(13) is substantively the same as the counterpart Federal regulation at 30 CFR 773.15(m), concerning written findings for permits to be issued for lands eligible for remining. Therefore, we find that Indiana’s rule at 312 IAC 25–4–115(a)(13) is no less effective than the counterpart Federal regulation, and we are approving it.

4. 312 IAC 25–5–7 Period of Liability

At 312 IAC 25–5–7(b), Indiana added a provision that allows lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof, to have a liability period of two years. To the extent that success standards are established by 312 IAC 25–6–59(c)(1) or 25–6–120(c)(1), the lands must equal or exceed the standards during the growing season of the last year of the responsibility period.

Indiana’s new provision at 312 IAC 25–5–7(b) is substantively the same as the counterpart Federal regulation at 30 CFR 816.116(c)(2)(ii), concerning the period of liability for lands eligible for remining. Therefore, we find that the new provision at 312 IAC 25–5–7(b) is no less effective than the counterpart Federal regulation, and we are approving it.

5. Based on the above findings, Indiana’s revisions at 312 IAC 25–4–105.5, 25–4–114, 25–4–115, and 25–5–7(b) satisfy the required amendment at 30 CFR 914.16(hh), and we are removing it.

G. 312 IAC 25–4–118 Permit Conditions

On August 21, 2001 (Administrative Record No. IND–1712), Indiana’s recodified rules included a rule at 312 IAC 25–4–118 that we had not previously approved. This rule specified the conditions under which a permit is issued. In our approval of Indiana’s rule on November 16, 2001 (66 FR 57655), we required Indiana to revise 312 IAC 25–4–118(4) or otherwise modify its program to require permittees to allow authorized representatives of the Secretary of the Interior to have right of entry to surface coal mining and reclamation operations for purposes of inspections, monitoring, and enforcement and to be accompanied by private persons under specified conditions. We codified this requirement at 30 CFR 914.16(kk). In its

May 19, 2004, amendment, Indiana revised 312 IAC 25–4–118(4) by changing the phrase “authorized representatives of the director” to “authorized representatives of the director and the Secretary of the Interior.” With this revision, the permittee must allow the authorized representatives of the director and the Secretary of the Interior, rather than just the director, to have the right of entry to a mine site for the purpose of conducting inspections and to be accompanied by private persons when the inspection is in response to an alleged violation.

Based on the above discussion, we find that Indiana’s rule at 312 IAC 25–4–118(4) is no less effective than the counterpart Federal regulation at 30 CFR 773.17(d), and we are approving it. We further find that Indiana’s revision satisfies the required amendment at 30 CFR 914.16(kk), and we are removing it.

H. 312 IAC 25–6–23 Surface Mining; Hydrologic Balance; Surface and Ground Water Monitoring

On March 26, 1992, as clarified on November 5, 1992, February 1, 1993, and May 19, 1993, Indiana submitted an amendment that included revisions to 310 IAC 12–5–27(a) [currently 312 IAC 25–6–23(a)]. In our August 16, 1993, approval of the revisions (58 FR 43248), we required Indiana to amend 310 IAC 12–5–27(a)(4) [currently 312 IAC 25–6–23(a)(4)] or otherwise amend the Indiana program to be no less effective than 30 CFR 816.41(c)(2), which references and requires compliance with 30 CFR 773.17(e). We codified the required amendment at 30 CFR 914.16(s). In response to this requirement, Indiana proposed to add 312 IAC 25–6–23(a)(4)(C) to require that if the analysis of a ground water sample indicates noncompliance with a permit condition, the permittee must minimize any adverse impact to the environment or public health and safety resulting from the noncompliance, including: (1) Accelerated or additional monitoring to determine the nature and extent of the noncompliance and the results of the noncompliance; (2) immediate implementation of measures necessary to mitigate the noncompliance; and (3) as soon as practicable issue warning to any person whose health and safety is in imminent danger due to the noncompliance.

The counterpart Federal regulation at 30 CFR 816.41(c)(2) references the Federal regulation at 30 CFR 773.17(e), rather than restating its requirements. However, we find that Indiana’s addition of the substantive requirements of 30 CFR 773.17(e) at 312 IAC 25–6–

23(a)(4)(C), rather than referencing its counterpart to 30 CFR 773.17(e), is no less effective than the counterpart Federal regulation at 30 CFR 816.41(c)(2). Therefore, we are approving 312 IAC 25–6–23(a)(4)(C) and removing the required amendment at 30 CFR 914.16(s).

I. 312 IAC 25–6–25 Hydrologic Balance; Water Rights and Replacement

In our August 2, 1991 (56 FR 37013), approval of Indiana's amendment concerning water rights and replacement, we required Indiana to amend 310 IAC 12–5–29 (currently 312 IAC 25–6–25) or otherwise amend the Indiana program to clearly require the replacement of water supplies that are affected by contamination, diminution, or interruption proximately resulting from surface mining activities which do not involve a legitimate water use by a person conducting these surface mining activities. We codified this requirement at 30 CFR 914.16(f). In response to this requirement, Indiana revised 312 IAC 25–6–25 by removing the language "pursuant to a lawful order of an agency or court under IC 14–25–4 or another state water rights law" from the first sentence. Indiana also removed the existing second sentence, which stated that water replacement rights are not determined by the Indiana program. Indiana added a provision that requires the use of baseline hydrologic information to determine the extent of the impact of mining on ground water and surface water, as well as other relevant information.

Indiana's proposed revisions make 312 IAC 25–6–25 substantively identical to the counterpart Federal regulation at 30 CFR 816.41(h). Therefore, we find that 312 IAC 25–6–25 is no less effective than the counterpart Federal regulation, and we are approving the revisions. We further find that Indiana's revisions satisfy the required amendment at 30 CFR 914.16(f), and we are removing it.

J. 312 IAC 25–6–66 (Surface Mining) and 312 IAC 25–6–130 (Underground Mining); Primary Roads

1. On September 26, 1994 (Administrative Record No. IND–1401), as revised on August 16, 1995 (Administrative Record No. IND–1506), Indiana submitted an amendment that included revisions to 310 IAC 12–5–69.5(2) and 12–5–137.5(2) [currently 312 IAC 25–6–66(2) and 25–6–130(2)] concerning primary roads. On October 29, 1996, we approved Indiana's revisions except to the extent that the provisions allowed the use of a maximum slope of 3h:1v without providing engineering design standards

that ensure compliance with the minimum static safety factor of 1.3 (61 FR 55743). We required Indiana to remove the language that we did not approve and notify us when the removal was complete or propose engineering design standards for a slope of 3h:1v that ensures compliance with the 1.3 minimum static safety factor requirements. In response to this requirement, Indiana revised 312 IAC 25–6–66 and 25–6–130 by removing the language that allowed the use of a maximum slope of 3h:1v. We find that with the removal of this language, 312 IAC 25–6–66(2) and 25–6–130(2) are no less effective than the counterpart Federal regulations at 30 CFR 816.151(b) and 817.151(b) for primary roads, and we are approving them.

2. In its May 19, 2004, amendment, Indiana also proposed engineering design standards at 312 IAC 25–6–130(2)(A) through (H) for underground mining primary roads. The design standards allow the use of a maximum slope of 2h:1v as an alternative to the 1.3 static safety factor requirement for primary road embankments.

The Federal regulations at 30 CFR 780.37(c) and 784.24(c) allow regulatory authorities to establish engineering design standards for primary roads in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 for primary road embankments. In its September 26, 1994, amendment, Indiana had proposed substantively identical design standards for surface mining primary roads. We conducted a technical review of Indiana's surface mining design standards, found them to be acceptable, and approved them on October 29, 1996. Therefore, we find that Indiana's proposed design standards for underground mining primary roads meet the requirement at 30 CFR 784.24(c), and we are approving them.

K. 312 IAC 25–7–1 Inspections of Sites

On November 28, 1994 (59 FR 60876), we revised the Federal regulations at 30 CFR 840.11 concerning inspection procedures. On June 17, 1997, we sent Indiana a letter (Administrative Record No. IND–1575) in accordance with 30 CFR 732.17(c). We notified Indiana that it must amend its rules to be no less effective than the revised Federal regulations. In response to this requirement, Indiana proposed revisions to its rule at 312 IAC 25–7–1. Indiana removed existing subdivision (a)(2) and redesignated existing subdivisions (a)(3) and (4) as subdivisions (a)(2) and (3). Indiana also redesignated existing subsection (f) as subsection (h) and added new subsections (f) and (g).

1. New subsection (f) provides that in lieu of the inspection frequency established in subsection (a), the regulatory authority must inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case will the inspection frequency be set at less than one complete inspection per calendar year. Subdivisions (f)(1) through (3) provide the procedures that the regulatory authority must follow to establish an alternative inspection frequency for abandoned sites.

The requirements of Indiana's new rule at 312 IAC 25–7–1(f) are substantively identical to the counterpart Federal regulation at 30 CFR 840.11(h)(1). Therefore, we find that 312 IAC 25–7–1(f) is no less effective than the counterpart Federal regulation, and we are approving it.

2. New subdivision (g)(1) provides the procedures for publishing a public notice and offering the public an opportunity to comment on the alternative inspection frequency for an abandoned site. New subdivision (g)(2) provides information on the content of a public notice.

The requirements of Indiana's new rule at 312 IAC 25–7–1(g) are substantively identical to the counterpart Federal regulation at 30 CFR 840.11(h)(2). Therefore, we find that 312 IAC 25–7–1(g) is no less effective than the counterpart Federal regulation, and we are approving it.

3. In our June 17, 1997, letter, we notified Indiana that we had revised 30 CFR 840.11(g)(4) to allow a site to be classified as abandoned only in cases where a permit has either expired or been revoked. Previously, 30 CFR 840.11(g)(4) allowed a site to be classified as abandoned on the basis that the permit has expired or been revoked or permit revocation proceedings have been initiated and are being pursued diligently. Indiana did not revise its rule at 312 IAC 25–7–1 to reflect this new requirement of the revised Federal regulation. Therefore, we are requiring Indiana to revise 312 IAC 25–7–1(h)(2)(D)(i) to allow a site to be classified as abandoned only in cases where a permit has expired or been revoked. We are codifying this requirement at 30 CFR 914.16.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On June 10, 2004, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND-1729).

The U.S. Fish and Wildlife Service (FWS) responded on July 12, 2004 (Administrative Record No. IND-1731), that the amendment contains some items of interest to the FWS related to language concerning prime farmland soils. FWS commented that for conservation of wildlife resources, it is important that pre-mining forest on prime farmland soils can continue to be restored as forest. FWS then stated that it understood from discussions with the IDNR staff that the proposed changes will not adversely affect forest restoration; therefore, it had no specific comments on the amendment.

We agree that the proposed changes to Indiana's prime farmland rule will not adversely affect forest restoration.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On June 10, 2004, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IND-1729). EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 10, 2004, we requested comments on Indiana's amendment (Administrative Record No. IND-1729), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve with an additional requirement the amendment Indiana sent us on May 19, 2004. As discussed in Finding III.K.3, we are requiring Indiana to revise its rule at 312 IAC 25-7-

1(h)(2)(D)(i) to allow a site to be classified as abandoned only in cases where a permit has expired or been revoked.

We approve the rules proposed by Indiana with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 914, which codify decisions concerning the Indiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations*Executive Order 12630—Takings*

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments

submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Indiana program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that a portion of the provisions in 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.*) because they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this part of the rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations 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.*). This determination is based upon the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or

tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulations did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 14, 2004.

Charles E. Sandberg,

Regional Director, Mid-Continent Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

PART 914—INDIANA

■ 1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 914.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
May 19, 2004	November 29, 2004	312 IAC 25-1-8; 25-1-75.5; 25-1-155.5; 25-4-17(a)(1), (d), (e), and (f); 25-4-45(b)(4); 25-4-49(a), (c), (d), (f), and (g); 25-4-87(a), (c), (d), (f), and (g); 25-4-102(d)(1), (e), and (f); 25-4-105.5; 25-4-113(f) and (g); 25-4-114(d); 25-4-115(a)(3) and (13); 25-4-118(4) and (8); 25-5-7(b); 25-5-16(b) and (c); 25-6-17(a)(3), (b)(2), (d)(2), and (d)(3); 25-6-20(a) and (c); 25-6-23(a)(2) and (4)(C); 25-6-25; 25-6-66(2); 25-6-81(a)(3), (d)(2) and (3); 25-6-84(a) and (c); 25-6-130(2); 25-7-1(a), (d)(2), (f), and (g); 25-7-20.

■ 3. Section 914.16 is amended by removing and reserving paragraphs (f), (s), (hh), (ii), (jj), (kk), (ll), and (mm) and by adding paragraph (ff) to read as follows:

§ 914.16 Required program amendments.

* * * * *

(ff) By February 28, 2005. Indiana must submit either an amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to 312 IAC 25-7-1(h)(2)(D)(i) to allow a site to be classified as abandoned only in cases where a permit has expired or been revoked.

§ 914.25 [Amended]

■ 4. Section 914.25 is amended by:

■ a. Removing the designation "(a)" from paragraph (a); and

■ b. Removing paragraph (b).

[FR Doc. 04-26196 Filed 11-26-04; 8:45 am]

BILLING CODE 4310-05-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 259

[Docket No. 2004-7 CARP]

Filing of Claims for DART Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: The Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the DART royalty funds for the year 2004 while it completes the transition to a permanent system for the electronic filing of claims. In order to ensure that claims are timely received, claimants are encouraged to file their DART claims on-line or by fax, utilizing the special procedures described in this Notice. Claims filed on-line must be received by the Office no later than 5 p.m. E.S.T. on February 28, 2005.

DATES: Effective January 1, 2005.

ADDRESSES: Claims may be filed on-line through the Copyright Office website at <http://www.copyright.gov/carp/dart/index.html>. Submissions by facsimile should be sent to (202) 252-3423. If hand delivered by a private party, an original and two copies of each claim should be brought to Room LM-401 of the James Madison Memorial Building and the envelope should be addressed as follows: Office of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000 between 8:30 a.m. and 5 p.m. If delivered by a commercial courier, an original and two copies of each claim must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, N.E. between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel/CARP, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Claims may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries. See **SUPPLEMENTARY INFORMATION** for

information about on-line electronic filing through the Copyright Office website.

FOR FURTHER INFORMATION CONTACT: Gina Giuffreda, Attorney-Advisor, or Abioye Oyewole, CARP Specialist. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:**Background**

Chapter 10 of the Copyright Act, 17 U.S.C., places a statutory obligation on manufacturers and importers of digital audio recording devices and media ("DART") who distribute the products in the United States to submit royalty fees to the Copyright Office. 17 U.S.C. 1003. Distribution of these royalty fees may be made to any interested copyright owner who has filed a claim and (1) whose sound recording was distributed in the form of digital musical recordings or analog musical recordings and (2) whose musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions. 17 U.S.C. 1006.

Section 1007 provides that claims to these royalty fees must be filed "[d]uring the first 2 months of each calendar year" with the Librarian of Congress "in such form and manner as the Librarian of Congress shall prescribe by regulation." 17 U.S.C. 1007. Part 259 of title 37 of the Code of Federal Regulations sets forth the procedures for the filing of claims to the DART royalty funds. Section 259.5 states that in order for a claim to be considered timely filed with the Copyright Office, the claims either have to be hand delivered to the Office by the last day in February or if sent by mail, received by the Office by the last day in February or bear a January or February United States Postal Service postmark. 37 CFR 259.5(a). Claims received after the last day in February will be accepted as timely filed only upon proof that the claim was placed within the United States Postal Service during the months of January or February. 37 CFR 259.5(e). A January or February postmark of the United States Postal Service on the envelope containing the claim or, if sent by certified mail return receipt requested, on the certified mail receipt constitutes sufficient proof that the claim was timely filed. 37 CFR 259.5(e). The regulations do not provide for the filing of DART claims by alternative methods such as on-line submission or facsimile transmission.

Prior to 2002, claims to DART royalties generally were considered timely filed with the Copyright Office

only if they were hand delivered to the correct location within the Copyright Office or mailed to the correct address and bore a January or February U.S. Postal Service postmark. However, in October 2001, concerns about possible anthrax contamination of mail addressed to facilities in the District of Columbia caused severe disruptions of postal service to the Copyright Office. See 66 FR 62942 (December 4, 2001) and 66 FR 63267 (December 5, 2001). Although mail delivery to the Copyright Office resumed, the Office continued to experience delays in the receipt of mail due in part to the diversion of all incoming mail to an off-site location for screening. As a result, the Copyright Office announced alternative methods for the filing of DART claim for the claim years 2001 through 2003. See 67 FR 5213 (February 5, 2002), 67 FR 71477 (December 2, 2002), and 68 FR 74481 (December 24, 2003). Specifically, the Office waived its regulations requiring that claims bear the original signature of the claimant or of a duly authorized representative of the claimant, 37 CFR 259.3(b), to allow the electronic submission of claims, and prohibiting the filing of claims by facsimile transmission, 37 CFR 259.5(d), to allow the submission of claims by facsimile. See 67 FR 5213 (February 5, 2002), 67 FR 71477 (December 2, 2002), and 68 FR 74481 (December 24, 2003).

The electronic submission of claims proved to be popular with claimants and administratively efficient for the Office. This coupled with the fact that the Office's mail will continue to be diverted to an off-site location for screening led the Office to conclude that establishing a permanent system for the electronic filing of claims would be beneficial to claimants and to the Office. Subsequently, the Office announced its intention to issue such regulations in time for the filing of DART claims in January and February 2005. See 69 FR 630577 (May 28, 2004).

Accordingly, the Office proposed and solicited comments on rules establishing a permanent system for the electronic filing of claims, 69 FR 61325 (October 18, 2004), including the use of a Personal Identification Number ("PIN") as a proxy for a signature on claims submitted on-line through the Office's website. See 69 FR 61325, 61326-27 (October 18, 2004). The comments received by the Office raised several issues concerning the proposed PIN system which the Office will not be able to resolve in time to issue final regulations prior to the submission of 2004 DART claims starting in January 2005.

Consequently, the Office is waiving, for the final time, §§259.3(b) and 259.5(d) and allowing the on-line and facsimile submission of DART claims to the 2004 DART royalty funds. On-line forms will be available starting on January 1, 2005, and may be submitted via the Office's website.

This Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR part 259.

Acceptable Methods of Filing DART Claims for the Year 2004

Claims to the 2004 DART royalty funds may be submitted as follows:

a. On-line Submission

In order to best ensure the timely receipt by the Copyright Office of DART claims, the Office strongly encourages claimants to file their claims on-line by February 25, 2005, via the Copyright Office website. The Office has devised on-line electronic forms for filing both single and joint DART claims. Claimants will be able to access and complete the forms via the Copyright Office website and may submit the forms on-line as provided in the instructions accompanying the forms. DART forms will be posted on the Office website at <http://www.copyright.gov/carp/dart/index.html>. Claimants filing a joint claim may list each of their joint claimants directly on the Office's on-line joint claim form or may submit the list of joint claimants as a file attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document ("PDF") format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or in ASCII text. There will be a browse button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the list of names of joint claimants. Joint claims with attachments containing information other than the joint claimants' names will be rejected.

The DART forms will be available for use during the months of January and February 2005. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted on-line using forms or formats other than those specified in this Notice will not be accepted by the Office. During the past three years, claims submitted on-line had to be received by the Office no later than 11:59 p.m. E.S.T. on the last day of February. However, some claimants who filed their 2003 cable and satellite

claims on-line experienced technical difficulties near the end of the filing period. Because the Office was made aware of these difficulties during its normal business hours, the technical problems were rectified quickly. Therefore, to better ensure the swift resolution of technical difficulties in the unlikely event they occur, claims filed on-line must be received by the Office no later than 5 p.m. E.S.T. on February 28, 2005. Specifically, the completed electronic forms must be received in the Office's server by that time. Any claim received after that time will be considered untimely filed. As such, claimants submitting their claims on-line are strongly encouraged to submit their claim no later than February 25, 2005, in order to avoid any unforeseen delays in receipt of claims by the Office.

Claimants filing their claims on-line can ascertain the timeliness of their claim by the receipt of two confirmations. First, immediately after submitting the claim, a confirmation page will appear showing a copy of the claim submitted, noting the attachment of a file, when applicable, and displaying the time and date the claim was submitted. Second, the claimant will receive shortly thereafter an electronic mail message stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address. The electronic mail message will show a copy of the claim filed, will contain a copy of the attachment listing the names of joint claimants to a joint claim, when applicable, and will note the time and date of submission. Either confirmation will constitute sufficient proof of a timely filed on-line claim should a question arise regarding timeliness. Therefore, claimants should not consider their claims successfully submitted to the Office until they receive at least one of the two aforementioned forms of official confirmation. If for some reason neither confirmation is received and the claimant is unable to complete the electronic filing process, the claimant should immediately notify the Office of the problem and be prepared to submit a claim by other means such as by hand delivery or by mail in accordance with §259.5.

When filing claims on-line, all provisions set forth in 37 CFR part 259 apply except §259.3(b), which requires the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

b. Facsimile

Claims may be filed with the Office via facsimile transmission and such filings must be sent to (202) 252-3423. Claims filed in this manner must be received in the Office no later than 5 p.m. E.S.T. on February 28, 2005. The fax machine will be disconnected at that time. Claims sent to any other fax number will not be accepted by the Office.

When filing claims via facsimile transmission, claimants must follow all provisions set forth in 37 CFR part 259 with the exception of §259.5(d), which prohibits the filing of claims by facsimile transmission. The Office is waiving this provision at this time in order to assist claimants in the timely filing of their claims.

c. Hand Delivery by Private Party

The Office encourages claimants who do not file their claims electronically or by facsimile to deliver their claims personally by 5 p.m. E.S.T. on any business day, during the months of January and February 2005 and no later than February 28, 2005. Claimants are reminded that on June 30, 2004, the Office amended its regulations to reflect the new procedures for delivering items to the Copyright Office, including the filing of claims. 69 FR 39331 (June 30, 2004). Therefore, claimants personally delivering their claims should deliver their claims to the Copyright Office's Public Information Office located at LM-401 of the James Madison Memorial Building. To ensure that the claims are directed to the Office of the General Counsel, an original and two copies of each claim should be placed in an envelope addressed in the following manner: Office of the General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, LM-401, First and Independence Avenue, S.E., Washington, D.C. 20559-6000. The Public Information Office is open Monday-Friday, 8:30 a.m. to 5 p.m., except federal holidays. 37 CFR 259.5(a)(1).

If a claimant does not address the envelope in accordance with the instructions herein and the envelope is misdirected and consequently does not reach the Public Information Office by 5 p.m. on Monday, February 28, 2005, such claims will be considered as untimely filed and will be rejected. Claimants should also note that the Public Information Office closes promptly at 5 p.m. The Copyright Office will not accept any claim that a claimant attempts to deliver after the Public Information Office has closed.

In addition, claimants hand delivering their claims should note that they must

follow all provisions set forth in 37 CFR part 259.

d. Hand Delivery by Commercial Courier

Section 259.5(a)(2) directs that claims delivered by a commercial courier must be delivered directly to the Congressional Courier Acceptance Site ("CCAS") located at 2nd and D Streets, N.E. The CCAS will accept items from couriers with proper identification, e.g., a valid driver's license, Monday through Friday, between 8:30 a.m. and 4 p.m. The envelope containing an original and two copies of each claim should be addressed as follows: Office of the General Counsel/CARP, Room LM-403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. The date of receipt as documented by CCAS will be considered the date of receipt by the Copyright Office for purposes of timely filing. Any claim received by CCAS which does not have a date stamp of February 28, 2005, or earlier, will be considered untimely for this filing period and will be rejected by the Copyright Office.

Claimants delivering their claims by commercial courier should note that they must follow all provisions set forth in 37 CFR part 259.

e. By Mail

Section 259.5(a)(3) directs claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, should the claim reach the Office after February 28, 2005. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the months of January or February, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date. 37 CFR 259.5(e). Claims received after February 28, 2005, dated with only a business meter mark will be rejected as untimely unless the claimant is able to produce the certified mail receipt. See *Universal Studios LLLP v. Peters*, 308 F.Supp.2d 1 (D.D.C. 2004); *Metro-Goldwyn-Mayer Studios, Inc. v. Peters*, 309 F.Supp.2d 48 (D.D.C. 2004).

Claimants should also note that §259.5(a)(4) prohibits the filing of claims by overnight delivery services

such as Federal Express, United Parcel Service, etc. Claimants opting to file their claims by means of overnight delivery must use the Express Mail service provided by the U.S. Postal Service and address the envelope as instructed in this section. Using this service will better ensure the procurement of a January or February postmark and the receipt of the claim by the Office in a timely manner.

However, as noted above, disruption of the mail service and delivery of incoming mail to an off-site screening center have reduced the timeliness of receipt of mail by the Copyright Office. Therefore, the Office suggests that claimants use the mail only if none of the other methods outlined above are feasible.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 259.

Waiver of Regulation

The regulations governing the filing of DART claims require "the original signature of the claimant or of a duly authorized representative of the claimant," 37 CFR 259.3(b), and do not allow claims to be filed by "facsimile transmission," 37 CFR 259.5(d). This Notice, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2004 DART royalties. The Office is not waiving the statutory deadline for the filing of DART claims, a deadline the Office has no power to waive. See, *United States v. Locke*, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by February 28, 2005.

Waiver of an agency's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also, *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, due to the continuing delays in the delivery of mail and the transition to an electronic filing system, the Office believes under these special circumstances the public interest will best be served by waiving, for this filing period, for the final time the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed on-line through the Office's website. See 67 FR at 5214.

Since the Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after

February 25, 2005, see *Locke*, supra, the Office believes the public interest will be served by providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in order to assist them in timely filing their claims. By allowing claims to be filed on-line and by facsimile transmission, the Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Dated: November 22, 2004.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 04-26266 Filed 11-26-04; 8:45 am]

BILLING CODE 1410-33-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-7840-7]

RIN 2060-AK37

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). This revision would add four compounds to the list of compounds excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation. This revision will modify the definition of VOC to say that: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C₃F₇OCH₃) (known as HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (known as HFE-7500, HFE-s702, T-7145, and L-15381); 1,1,1,2,3,3,3-heptafluoropropane (known as HFC 227ea); and methyl formate (HCOOCH₃) will be considered to be negligibly reactive. If you use or produce any of these four compounds and are subject to EPA regulations limiting the use of VOCs in your product, limiting the VOC emissions from your facility, or otherwise controlling your use of VOCs, then you will not count these four compounds as a VOC in determining whether you meet these regulatory obligations. This action may also affect whether these four compounds are considered to be VOCs

for State regulatory purposes, depending on whether the State relies on EPA's definition of VOC. As a result, if States and States' industries are subject to certain Federal regulations limiting emissions of VOCs, *i.e.*, emissions of 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane, or 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane, or 1,1,1,2,3,3,3-heptafluoropropane, or methyl formate, these emissions may not be regulated for some purposes according to the rules governing States' enforceability of the measures.

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

In addition to granting the four new exemptions described above, we are making a nomenclature clarification to two previously-exempted compounds. We will thus add the nomenclature designations "HFE-7100" to 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane (C₄F₉OCH₃) and "HFE-7200" to 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅).

DATES: This rule is effective December 29, 2004.

ADDRESSES:

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

1. *Docket.* The EPA has established a public docket for this action, OAR-2003-0086, which consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The public docket is the collection of materials that is available for public viewing at the Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Docket is (202) 566 . A reasonable fee may be charged for copying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listing at <http://www.epa.gov/fedrgstr/>. An electronic version of the public docket is available through EPA's electronic

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

FOR FURTHER INFORMATION CONTACT:

David Sanders, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C539-02), Research Triangle Park, NC 27711, phone (919) 541-3356.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

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

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

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

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

Three of the compounds, 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane, 1,1,1,2,3,3,3-heptafluoropropane, and methyl formate are approved by EPA's Significant New Alternatives Policy (SNAP) program (CAA section 612; 40 CFR part 82, subpart G) as acceptable substitutes for ozone-depleting

compounds. The fourth compound, 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane, has not been reviewed under SNAP because it was submitted for use in secondary loop refrigeration systems. Fluids used in these systems are not covered by the SNAP program (62 FR 10700 March 10, 1997). However, this compound is a member of a larger class of compounds known as hydrofluoroethers (HFEs), and other HFEs have been recognized by SNAP as substitutes for ozone-depleting substances.

Also, we are making a nomenclature clarification to two previously exempted compounds. We have added the designations "HFE-7100" to 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane (C₄F₉OCH₃) and "HFE-7200" to 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅). These names are widely accepted alternative

designations for the two compounds and can be found in the book titled, *Handbook for Critical Cleaning* by Barbara Kanegsberg and Edward Kanegsberg, CRC Press, 2001, p. 77.

The EPA is now in the process of assessing its VOC policy in general. As part of this process, we intend to publish a future notice inviting public comment on the VOC exemption policy and the concept of negligible reactivity as part of a broader review of overall policy. One of the issues we will address in this notice is the extent to which compounds that are exempt from the VOC definition should still be subject to recordkeeping, emissions reporting, and inventory requirements which apply to VOC. The Agency wants to investigate whether substantial emissions of "negligibly reactive" compounds may contribute to ozone formation under certain conditions. This effort will require additional

modeling, and it may be necessary to have a more accurate inventory of such compounds in order to obtain accurate modeling results. However, instead of addressing this issue in this rule, which applies to only four compounds, we intend to address it more broadly in our upcoming notice dealing with our overall VOC policy.

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

Outline

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 - 2. 1,1,1,2,3,3,3-Heptafluoropropane
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I. Background

A. Reactivity Policy

Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO_x) react in the atmosphere. Because of the harmful health effects of ozone, EPA and State governments limit the amount of VOCs and NO_x that can be released into the atmosphere. Volatile organic compounds are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) which form ozone through atmospheric photochemical reactions. Compounds of carbon (also known as organic compounds) have different levels of reactivity—that is, they do not

react to form ozone at the same speed or do not form ozone to the same extent. It has been EPA's policy that organic compounds with a negligible level of reactivity need not be regulated to reduce ozone. The EPA determines whether a given organic compound has "negligible" reactivity by comparing the compound's reactivity to the reactivity of ethane. The EPA lists these compounds in its regulations (at 40 CFR 51.100(s)) and excludes them from the definition of VOCs. The chemicals on this list are often called "negligibly reactive" organic compounds.

In 1977, EPA published the "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977) which established the basic policy that EPA has used regarding organic chemical photochemical reactivity since that time. In that statement, EPA identified the following four compounds as being of negligible photochemical reactivity and said these should be exempt from regulation as VOCs under SIPs: methane; ethane; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113). That policy statement said that as new information becomes available, EPA may periodically revise the list of negligibly reactive compounds to add compounds to or delete them from the list.

The EPA's decision to exempt certain organic compounds in its 1977 policy was heavily influenced by experimental smog chamber experiments performed by EPA's Office of Research and Development earlier in the 1970's. In this experimental work, various compounds were injected into a smog chamber at a molar concentration that was typical of the total molar concentration of VOC in Los Angeles ambient air (4 parts per million by volume (ppmV)). As the compound was allowed to react with NO_x at concentrations of 0.2 parts per million (ppm), the maximum ozone formed in the chamber was measured. If the compound in the smog chamber did not result in ozone formation of 0.08 ppm (0.08 ppm was the NAAQS for oxidants at that time), it was assumed that emissions of the compound would not cause an exceedance of the NAAQS. Following this reasoning, EPA concluded that the compound was negligibly reactive. Ethane was the most reactive compound tested that did not cause the 0.08 ozone level in the smog chamber to be met or exceeded. Based on those findings and judgments, EPA therefore designated ethane as negligibly reactive, and ethane became the benchmark VOC species for

separating reactive from negligibly reactive compounds under the assumed conditions.

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

In 1994, in response to a petition to exempt volatile methyl siloxanes, EPA, used another type of comparison to ethane based on incremental reactivity (IR) metrics (59 FR 50693, October 5, 1994). The use of IR metrics allowed EPA to take into consideration the ozone forming potential of other reactions of the compound in addition to the initial reaction with the hydroxyl radical. Volatile methyl siloxanes proved to be less reactive than ethane on a per mole basis. In 1995, EPA considered another compound, acetone, using IR metrics. Because acetone breaks down to form ozone by the process of photolysis rather than by the normal OH reaction scheme, EPA considered the IR metrics instead of *k*_{OH} values, and exempted acetone based on the fact that acetone was less reactive than ethane on the basis of grams of ozone formed per grams of VOC emitted (60 FR 31635, June 16, 1995). Prior to 1994, EPA had only granted VOC exemptions based on *k*_{OH} values. Since 1995, EPA has exempted one additional compound, methyl acetate, reinforced by comparisons of IR metrics. Besides a lower *k*_{OH} value than ethane, EPA found that the reactivity of methyl acetate was comparable to or less than that for ethane, under a per mole basis.

B. Current Exemption Petitions

1. 1,1,1,2,2,3,3-Heptafluoro-3-Methoxypropane and 3-Ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-Dodecafluoro-2-(Trifluoromethyl) Hexane

On February 5, 1999, the Performance Chemicals and Fluid Division of the 3M Company submitted to EPA a petition requesting that the compound 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane be added to the list of compounds which are negligibly reactive and therefore exempt from the definition of VOC at 40 CFR 51.100(s).

The next year, on August 21, 2000, the Performance Chemicals and Fluid Division of the 3M Company submitted to EPA a petition requesting that the compound 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-

(trifluoromethyl) hexane be added to the same list.

Potential uses for these two compounds (and other compounds for consideration under this proposal) are shown in Table 1. In its first petition, 3M points out that it has requested the

compound 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane be listed as an acceptable substitute for CFCs and HCFCs in certain uses and; as such, use of this substance may help mitigate the depletion of stratospheric ozone.

TABLE 1.—POTENTIAL USES OF COMPOUNDS

Compound	Potential use
1,1,1,2,2,3,3-Heptafluoro-3-methoxy-propane	Refrigerant; aerosol propellant.
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane	Refrigerant.
1,1,1,2,3,3,3-Heptafluoropropane	Fire suppressant; aerosol propellant.
Methyl formate	Blowing agent.

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

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

Other information submitted by 3M Company consists mainly of a peer-reviewed article entitled "Atmospheric Chemistry of Some Fluoroethers," Guschin, Molina, Molina: Massachusetts Institute of Technology, May 1998. This article discusses a study in which the rate constant for the reaction of HFE-7000 (and several other individual compounds) with the hydroxyl (OH) radical is shown to be less than the rate constant for ethane but slightly more than the rate constant for methane on a mole basis. This rate constant (k_{OH} value) is commonly used as one measure of the photochemical reactivity of compounds. The petitioner compared the rate constants with that of ethane which has already been listed as photochemically negligibly reactive (ethane is the compound with the highest k_{OH} value which is currently regarded as negligibly reactive). The two compounds under consideration for exemption are listed with their reported k_{OH} rate constants in Table 2 along with ethane (and compounds for consideration under this proposal). 3M

Company has also included Material Safety Data Sheets, together with 5-day and 28-day inhalation toxicity studies, indicating both their compounds as having very low toxicity. The scientific information which the petitioner has submitted in support of the petition has been added to the docket for this rulemaking. This information includes references for the journal articles where the rate constant values are published.

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

Compound	cm ³ /molecule/sec (k_{OH})
Ethane	2.4×10^{-13}
n-C ₃ F ₇ OCH ₃	1.2×10^{-14}
HFE-7500	2.2×10^{-14}
HFC-227ea	1.09×10^{-15}
Methyl formate	2.27×10^{-13}

2. 1,1,1,2,3,3,3-Heptafluoropropane

On February 18, 1998, the Great Lakes Chemical Corporation ("Great Lakes") petitioned EPA for the exemption of 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea) from the definition of VOC. The rate constant for the reaction of HFC-227ea with the OH radical was based on studies performed at the laboratories of Aerodyne Research, Inc. and reported by Nelson, Zahniser, and Kolb in the *Geophysical Research Letters*, Vol. 20, No. 2, pages 197–200. The rate constant for HFC-227ea as reported in this paper (Table 2) is 1.09×10^{-15} cm³/molecule/sec at 277K (0°C) which places it well under two orders of magnitude below ethane's reactivity.

Great Lakes also claims that HFC-227ea is not an ozone-depleting substance. The EPA has approved this compound already under the SNAP program as an acceptable substitute for Halon 1301 and Halon 1211 in various fire suppression applications. Also, EPA has determined HFC-227ea to have a

GWP at 3800 times that of carbon dioxide, making it a probable substitute for its competitor fire suppressants which have even higher GWPs. The GWP is a number that refers to the amount of global warming caused by a substance. The GWP is the ratio of the warming caused by a substance to the warming caused by a similar mass of carbon dioxide. Thus, the GWP of CO₂ is defined to be 1.0. CFC-12 has a GWP of 8,500, while CFC-11 has a GWP of 5,000. Various HCFCs and HFCs have GWPs ranging from 93 to 12,100. Water, a substitute in numerous end-uses, has a GWP of 0.

3. Methyl Formate

On February 12, 2002, Foam Supplies, Inc. submitted a petition to exclude methyl formate from the definition of VOC. Also submitted were journal articles detailing three separate studies with hydroxyl radicals in which methyl formate's rate constants are measured against that of ethane on a mole basis (cm³/molecule/sec). Of the three studies, the highest value tested for methyl formate was that of 2.27×10^{-13} cm³/molecule/sec which is slightly below that for ethane at 2.4×10^{-13} cm³/molecule/sec (shown in Table 2).

Foam Supplies, Inc. also notes that methyl formate has a zero ODP and a very low or zero GWP. In addition, Foam Supplies, Inc. notes that EPA has approved this compound under SNAP as an acceptable alternative to HCFC-141b and HCFC-22 in various blowing agent applications.

Because of the closeness in rate constant values attributed to methyl formate and ethane, in addition to the information on k_{OH} value submitted by the petitioner, EPA has examined further evidence of low reactivity for methyl formate. This evidence, which is desirable when rate constant values are so close (as in the case of methyl formate and ethane), increases the confidence level with which EPA can

make a final decision on whether to approve or disapprove of a petition to exempt a compound from the VOC definition. Dr. William P. L. Carter of the University of California at Riverside has published "The SAPRC-99 Chemical Mechanism and Updated VOC Reactivity Scales," (revised 11/29/2000) on his Web site at: <http://ftp.cert.ucr.edu/pub/carter/SAPRC99/appndxc.doc>. Appendix C of his report gives maximum incremental reactivity (MIR) values which are another accepted measure of photochemical reactivity. Dr. Carter's MIR values are calculated in grams ozone per gram of organic compound. These same MIR values can be calculated on the basis of grams of ozone per mole of organic compound as discussed in the above section concerning differences between gram-basis and mole-basis reactivity rates. Methyl formate has negligible reactivity rates at less than half that of ethane. Sections of the Carter report showing ethane and methyl formate

values have been added to the docket. Also, this same data may be seen on Dr. Carter's website as stated above.

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

II. The EPA Response to the Petitions

For the petitions submitted by the 3M Company, Great Lakes Chemical

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

The EPA is responding to the petitions by adding the compounds in Table 3 to the list of compounds exempt from the definition of VOC appearing in 40 CFR 51.100(s). Also, EPA is adding the following nomenclature designations "HFE-7100" to 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane (C₄F₉OCH₃) and "HFE-7200" to 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅).

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

Compound	Chemical name or formula
n-C ₃ F ₇ OCH ₃	1,1,1,2,2,3,3-Heptafluoro-3-methoxy-propane.
HFE-7500	3-Ethoxy-1,1,1,2,3,4,4,5,5,6,6-dodecafluoro-2-(trifluoromethyl) hexane.
HFC-227ea	1,1,1,2,3,3,3-Heptafluoropropane.
Methyl formate	HCOOCH ₃ .

III. The EPA Response to Comments

In the proposal for the exemption of 4 compounds, EPA indicated that interested persons could request that EPA hold a public hearing on the proposed action (*see* section 307(d)(5)(ii) of the CAA). EPA received no requests for a public hearing.

The EPA also provided for a public comment period in the proposal. The EPA received 13 comments on the proposal. The comments fell into three general categories: (1) Comments in favor of the exemptions, (2) comments of concern about toxicity and stratospheric ozone depletion, and (3) comments that object to the reporting and recordkeeping requirements. All comment letters are in the docket for this action. In today's final action, we have summarized what EPA views as the significant comments and provided the Agency's responses. We provide no responses to favorable comments because they referred to industry's desire for suitable negligibly-reactive compounds that would serve as substitutes for higher-reacting ozone precursor compounds.

While EPA concurs that encouraging use of lower reactivity compounds is the

policy basis for the VOC exemption approach, today's action focuses on the technical basis and appropriateness of exempting these four specific compounds.

Comment(s) With Respect to Toxicity and Stratospheric Ozone Depletion

Comment: One comment asserted that EPA should not encourage the production of any chemical that will enlarge the hole in the stratosphere above the Antarctic or (in the same letter with reference to methyl formate) have properties that make it toxic, flammable, or cause pulmonary damage.

Response: Section 612 of 40 CFR part 82 subpart G of the EPA SNAP rule, requires EPA to establish a method to identify alternatives to Class I (CFCs, halons, carbon tetrachloride, methylchloroform, methyl bromide, and hydrobromofluorocarbons) and Class II (HCFCs) ozone-depleting substances and to publish lists of acceptable and unacceptable substitutes. Pursuant to SNAP's rule, it is illegal to replace a Class I or Class II substance with any substitute which the Administrator determines may present adverse effects to human health or the environment

where other substitutes have been identified that reduce overall risk and are currently or potentially available. In addition, all of the compounds affected by this action, may be used as an alternative to ozone-depleting substances such as CFCs and HCFCs.

Three of the compounds, 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane, 1,1,1,2,3,3,3-heptafluoropropane, and methyl formate are already approved by the SNAP program as acceptable substitutes for ozone-depleting compounds. The fourth compound, 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6-dodecafluoro-2-(trifluoromethyl) hexane, has not been reviewed by EPA under SNAP because it was submitted for use in secondary loop refrigeration systems. Fluids used in these systems are not covered by the SNAP program (62 FR 10700, March 10, 1997). However, this fourth compound is a member of a larger class of compounds known as HFEs, and other HFEs have been recognized by SNAP as ODS substitutes.

The EPA uses the SNAP program to identify substitutes for ozone-depleting compounds, to evaluate the acceptability of these substitutes, to

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

In its VOC exemption petition, 3M points out that it has requested EPA list the compound 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane as an acceptable substitute for CFCs and HCFCs in certain uses and; as such, use of this substance may mitigate depletion of stratospheric ozone. Although 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane has not been identified as a substitute, specifically, the SNAP program has identified HFEs, as a class, as replacement substitutes for CFCs.

Great Lakes also claims in its VOC exemption petition that HFC-227ea is not an ozone-depleting substance. EPA has approved this compound under the SNAP program as an acceptable substitute for Halon 1301 and Halon 1211 in various fire suppression applications. As stated in the background section above, EPA has determined HFC-227ea to have a GWP at 3800 times that of carbon dioxide, making it a probable substitute for its competitor fire suppressants which have even higher GWPs.

In approving methyl formate as an acceptable substitute for CFC's and HCFC's, EPA's SNAP Program noted that methyl formate is toxic and flammable and should be handled by users with proper precautions. Methyl formate causes irritation to the eyes, skin, and lungs, and at high levels may cause pulmonary damage. However, EPA believes that use of methyl formate is well regulated by other programs; therefore, exposures to this compound will be below levels of concern. The Occupational Safety and Health Administration (OSHA) has established an enforceable occupational exposure limit of 100 ppm as an 8-hour time-weighted average. The National Institute for Occupational Safety and Health (NIOSH) has also established a short-term exposure limit (averaged over 15 minutes) of 150 ppm. There is only one supplier of methyl formate in the U.S.,

and its total production is less than 10 million pounds per year. We estimate that use of methyl formate as an HCFC replacement in the foam sector will be relatively small, reaching 2.5 million pounds between years 2008 and 2010. Although we do not have information on all the possible exposure scenarios for methyl formate, based on information provided by industry, the air concentration levels reached in testing methyl formate as a foam blowing agent have been less than 10 ppm (without ventilation), a concentration well below the occupational exposure limits set by other agencies.

Comment(s) With Respect to Recordkeeping and Reporting

Comment: The EPA received a number of comments opposing the implementation of recordkeeping and reporting requirements. According to the commenters, this requirement would cause some inequity in marketability and in cost-burden for their chemicals, resulting in a competitive advantage to companies producing the chemicals that EPA had previously exempted. Client companies and States' environmental agencies would bear the burden of additional recordkeeping and reporting costs. Could the same information be gotten from manufacturers? Could EPA employ purchase and use records as inventories? Also, there is concern that EPA will impose daily recordkeeping and reporting in order to follow multi-day ozone events and ozone transport phenomena. Another point for discussion questions how adequate atmospheric modeling can be done without data to represent the total of over forty compounds that have been exempted already. Can EPA find an optional method to atmospheric modeling? The EPA may be wiser to defer recordkeeping and reporting considerations until after development of the forthcoming reactivity policy reassessment.

Response: The EPA agrees that it would be more appropriate to address this issue as part of the reassessment of our overall reactivity policy. We have therefore decided not to include recordkeeping and reporting requirements in today's rule.

We recognize that most organic compounds that EPA has exempted as "negligibly reactive" do have some photochemical reactivity, albeit small. At some future point during the reassessment of our reactivity policy, in order to develop an accurate assessment of the atmospheric chemistry, EPA may need to begin incorporating at least

some of the widely used exempt VOCs into a model that determines a significant, or insignificant, or possibly even a beneficial environmental impact. An assessment toward this end has begun already under the aegis of an ongoing Reactivity Research Working Group (RRWG) investigation of the current scientific findings.

This type of modeling effort may require better speciated inventories of organic compounds, including compounds that we have exempted from the VOC definition. Thus, it may be necessary to develop some sort of system for gathering more accurate information about these compounds—at least those that are widely used. (In this regard, we note that the four compounds we are excluding from the VOC definition today are expected to be used in relatively small amounts.) Rather than addressing this issue in today's rule, which applies to only four compounds, we intend to address it more broadly in our upcoming notice dealing with our overall VOC policy.

Again, with this action, the EPA is not finalizing a decision on how future petitions will be evaluated. As noted above, the Agency is currently in the process of assessing its overall policy toward regulating VOCs with the inclusion of multi-day ozone and ozone transport events, as well as toxicity and stratospheric ozone depletion and global warming potential concerns. We intend to publish in the near future a notice inviting public comment on the VOC exemption policy and the concept of negligible reactivity as part of a broader review of overall policy.

IV. Final Action

Today's final action is based on EPA's review of the material in Docket No. OAR-2003-0086. The EPA hereby amends its definition of VOC at 40 CFR 51.100(s) to exclude the compounds in Table 3 from the term "VOC" for ozone SIP and ozone control purposes. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, as this action is made final, States may not include reductions in emissions of these compounds in their calculations for determining reasonable further progress under the CAA (e.g., section 182(b)(1)) and may not take credit for controlling these compounds in their ozone control strategy.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not “significant” because none of the listed criteria apply to this action. Consequently, this action is not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It does not contain any recordkeeping or reporting requirement burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply, with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

An Agency does not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The control numbers for EPA’s regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a RFA analysis in those instances where the regulation would impose a substantial impact on a significant number of small entities. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impacts of today’s final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. Today’s rule concerns only the definition of VOC and does not directly regulate any entities. The RFA analysis does not consider impacts on entities which the action in question does not regulate. *See Motor & Equipment Manufacturers Ass’n v. Nichols*, 142 F. 3d 449, 467 (D.C. Cir. 1998); *United Distribution Cos. v. FERC*, 88 F. 3d 1105, 1170 (D.C. Cir. 1996), cert. denied, 520 U.S. 1224 (1997). Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the rule will not have an impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written

statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Since this rule is deregulatory in nature and does not impose a mandate upon any source, this rule is not estimated to result in the expenditure by State, local and Tribal governments or the private sector of \$100 million in any 1 year. Therefore, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include

regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This action addressing the exemption of four chemical compounds from the VOC definition does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action does not impose any new mandates on State or local governments. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule for this final rule from State and local officials.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Today's action does not have any direct effects on Indian Tribes. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA solicited comment on the proposed rule for this final rule from Tribal officials.

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

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, EPA has reason to believe that ozone has a disproportionate effect on active children who play outdoors (62 FR 38856; 38859, July 18, 1997). The EPA has not identified any specific studies on whether or to what extent the four above listed chemical compounds affect children's health. The EPA has placed the available data regarding the health effects of these four chemical compounds in docket no. OAR-2003-0086. The EPA invites the public to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assess results of early life exposure to any of the four above listed chemical compounds.

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

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, section 12(d), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and

business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this 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). This rule will be effective upon publication in the **Federal Register**. This final rule is a deregulatory action and, therefore, does not result in expenditures by State, local, and Tribal governments, in the aggregate, or to the private sector of \$100 million or more in any 1 year. Also, this final rule will not have a significant economic impact on a substantial number of small entities. The deregulatory nature of this final rule will result in a cost benefit for industries using or manufacturing these chemical compounds.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 18, 2004.

Michael Leavitt,
Administrator.

■ For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C.; 42 U.S.C. 7401–7641q.

■ 2. Section 51.100 is amended by revising paragraph (s)(1) as follows:

Subpart F—[Amended]

§ 51.100 Definitions.

* * * * *

(s) * * *

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (HCFC–22); trifluoromethane (HFC–23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC–123); 1,1,1,2-tetrafluoroethane (HFC–134a); 1,1-dichloro 1-fluoroethane (HCFC–141b); 1-chloro 1,1-difluoroethane (HCFC–142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2-tetrafluoroethane (HFC–134); 1,1,1-trifluoroethane (HFC–143a); 1,1-difluoroethane (HFC–152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC–225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC–225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43–10mee); difluoromethane (HFC–32); ethylfluoride (HFC–161); 1,1,1,3,3,3-hexafluoropropane (HFC–236fa); 1,1,2,2,3-pentafluoropropane (HFC–245ca); 1,1,2,3,3-pentafluoropropane (HFC–245ea); 1,1,1,2,3-pentafluoropropane (HFC–245eb); 1,1,1,3,3-pentafluoropropane (HFC–245fa); 1,1,1,2,3,3-hexafluoropropane (HFC–236ea); 1,1,1,3,3-pentafluorobutane (HFC–365mfc); chlorofluoromethane (HCFC–31); 1-chloro-1-fluoroethane (HCFC–151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC–123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃ or HFE–7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅ or HFE–7200); 2-(ethoxydifluoromethyl)-1,1,1,2,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅); methyl acetate, 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C₃F₇OCH₃, HFE–7000), 3-

ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE–7500), 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea), and methyl formate (HCOOCH₃), and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

* * * * *

[FR Doc. 04–26070 Filed 11–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[OAR–2003–0084; FRL–7840–8]

RIN 2060–AI45

Revision to Definition of Volatile Organic Compounds—Exclusion of t-Butyl Acetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises EPA's definition of volatile organic compounds (VOC) for purposes of Federal regulations related to attaining the National Ambient Air Quality Standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). This revision modifies the definition of VOC to say that t-butyl acetate (also known as tertiary butyl acetate or informally as TBAC or TBAC) will not be VOC for purposes of VOC emissions limitations or VOC content requirements, but will continue to be VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements which apply to VOC. This revision is made on the basis that this compound has negligible contribution to tropospheric ozone formation. As a result, if you are subject to certain Federal regulations limiting emissions of VOCs, your emissions of TBAC may not be regulated for some purposes.

DATES: This final rule is effective on December 29, 2004.

ADDRESSES: The EPA has established a docket for this action under Docket ID

No. OAR–2003–0084 (legacy docket number A–99–02). All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: William Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C539–02), Environmental Protection Agency, Research Triangle Park, NC 27711; (919)541–5245; e-mail: johnson.williaml@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Does This Rule Fit Into Existing Regulations?

The EPA is revising the definition of VOC to say that TBAC will not be a VOC for purposes of VOC emissions limitations or VOC content requirements, but will continue to be a VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements which apply to VOC. If you use or produce TBAC and are subject to EPA regulations limiting the use of VOCs in your product, limiting the VOC emissions from your facility, or otherwise controlling your use of VOCs for purposes related to attaining the ozone NAAQS, then you will not count TBAC as a VOC in determining whether you meet these regulatory obligations. However, TBAC emissions will still be subject to reporting requirements that exist for other VOC emissions. This action may also affect whether TBAC is considered a VOC for State regulatory purposes, depending on whether the State relies on EPA's definition of VOC. This decision responds to a petition submitted by the Lyondell Chemical Company¹ and is based on information

¹ The petition was submitted on January 17, 1997, by ARCO Chemical Company. Lyondell is the successor to ARCO for this petition, and EPA will refer to the petitioner as Lyondell throughout this final rule.

included in the petition and other information submitted to the docket for this rule (OAR-2003-0084). The EPA proposed the VOC exemption of TBAC on September 30, 1999 (64 FR 52731), and provided a 60-day comment period.

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

B. What Evidence Does the Petitioner Present To Support Classifying TBAC as Negligibly Reactive?

On January 17, 1997, Lyondell submitted a petition to EPA which requested that EPA add TBAC to the list of compounds that are designated negligibly reactive in the definition of VOC at 40 CFR 51.100(s). The petitioner subsequently submitted supplemental materials to EPA in support of its petition. These materials are contained in docket OAR-2003-0084. The petitioner based the request on a comparison of the reactivity of TBAC to that of ethane, the latter having already been listed, since 1977, as negligibly reactive. In the past, EPA has determined that ethane and compounds with lower reactivity than ethane are negligibly reactive and therefore exempted them from the definition of VOC. Reactivity data presented by Lyondell in support of the petition included both k_{OH} values and incremental reactivity values. The k_{OH} values are values of the rate constant for the $\text{VOC} + \text{OH}$ (hydroxyl radical) reaction. The incremental reactivity

values, which support the petition and reflect TBAC's potential for producing ozone in the atmosphere, are based on atmospheric photochemical modeling.

Lyondell's primary case for TBAC being less reactive than ethane is based on the use of incremental reactivity data set forth in a report titled "Investigation of the Atmospheric Ozone Formation Potential of T-Butyl Acetate" by W.P.L. Carter, et al. In that study, Carter compared the incremental ozone formed per-gram of TBAC under urban atmosphere conditions to that formed, under the same conditions, per-gram of ethane. The study repeated these comparisons for 39 condition scenarios, that is, sets of ambient conditions intended to represent 39 urban areas across the United States. Carter concluded that, on average, TBAC formed 0.4 times as much ozone as an equal mass of ethane under the conditions assumed in the study.

Comparing the reactivity of TBAC to ethane on a per mole basis, as opposed to a per gram basis, calculations based on Carter's results show that a mole of TBAC forms 1.5 times the ozone formed by a mole of ethane under the conditions assumed in the study. The difference in reactivity results between the "per gram" and "per mole" comparisons is due to the fact that a molecule of TBAC is almost four times heavier than a molecule of ethane. Along with other reasons stated below, this "closeness" to EPA's reactivity exemption line requires the Agency to retain certain emission reporting requirements for TBAC.

C. How Does EPA Determine Whether an Organic Compound Is Negligibly Reactive?

In 1977, EPA published the "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977) which established the basic policy that EPA has used regarding organic chemical photochemical reactivity since that time. In that statement, EPA identified the following four compounds as being of negligible photochemical reactivity and said these should be exempt from regulation under State Implementation Plans: methane; ethane; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113). That policy statement provides that as new information becomes available, EPA may periodically revise the list of negligibly reactive compounds to add compounds to or delete them from the list.

The EPA's decision to exempt certain compounds in its 1977 policy was heavily influenced by experimental

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

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

In 1994, in response to a petition to exempt volatile methyl siloxanes, EPA, for the first time, considered a comparison to ethane based on Incremental Reactivity (IR) metrics (59 FR 50693, October 5, 1994). The use of IR metrics allowed EPA to take into consideration the ozone forming potential of other reactions of the compound in addition to the initial reaction with the hydroxyl radical. Volatile methyl siloxanes proved to be less reactive than ethane on a per mole basis. In 1995, EPA considered another compound, acetone, using IR metrics. Because acetone breaks down to form ozone by the process of photolysis rather than by the normal OH reaction scheme, EPA considered the IR metrics instead of k_{OH} values, and exempted acetone based on the fact that acetone was less reactive than ethane on the basis of grams of ozone formed per grams of VOC emitted (60 FR 31635, June 16, 1995). Prior to 1994, all

exemptions had been based on K_{OH} values compared on the basis of a mole of ozone formed per mole of VOC emitted. Since 1995, EPA has exempted one additional compound, methyl acetate, based on comparisons of IR metrics. The reactivity of methyl acetate was found to be comparable to or less than that for ethane under a per mole basis.

In the proposal for this rule (64 FR 52731), EPA announced two things: (1) Our intent to grant Lyondell's petition for exemption of TBAC based on a comparison of IR metrics for TBAC as compared to ethane in units of grams of ozone formed per gram of VOC emitted, and (2) our intent to base decisions on future petitions for VOC exemptions only on an equi-molar comparison of K_{OH} and IR values for the compound in question to the K_{OH} and IR values for ethane. In the proposal, EPA indicated that it might grant the TBAC exemption on the theory that the petitioner had detrimentally relied on earlier EPA statements and actions concerning the use of a gram-based comparison rather than a molar comparison of the reactivity of compounds.

D. What Comments Did EPA Receive on the Proposal?

In the proposal for the TBAC exemption, EPA indicated that interested persons could request that EPA hold a public hearing on the proposed action (see section 307(d)(5)(ii) of the CAA). There were no requests for a public hearing.

In the proposal action, EPA provided for a public comment period. The EPA received 30 comment letters. The comments received were divided into two general categories: comments concerned with EPA VOC exemption policy in general and comments focused specifically on the exemption of TBAC. Several commented on EPA VOC exemption policy, in general, as well as supporting the TBAC exemption. The comments received are too numerous to list each one in this final rule. All of the comment letters have been placed in the docket for this action. A summary of the comments received and EPA responses are given in a technical support document, titled "Responses to Significant Comments on the Proposed Revision to the Definition of Volatile Organic Compounds—Exclusion of t-Butyl Acetate (64 FR 52731, September 30, 1999)," which is in the docket. In today's final rule, we have summarized what EPA views as the most significant comments and our responses.

II. Comments Dealing With EPA's VOC Exemption Policy Comment

A number of commenters asserted that the primary purpose of a VOC exemption policy should be to encourage replacement of current emissions of highly reactive compounds with emissions of lower reactive compounds. This would ostensibly result in lower ozone formation and lower adverse environmental impact. The commenters stated that one way of doing this would be to exempt more low reactivity compounds. The use of a "reactivity per gram" basis for comparing reactivities for exemption purposes would be less strict than a "per mole" basis, and would permit more exemptions, and thus more solvent substitution.

Response

The intent of EPA's current VOC exemption policy is to avoid placing an undue regulatory burden on the use of compounds that do not significantly contribute to the formation of harmful concentrations of ozone. Once a compound is exempted, emissions of the compound may increase significantly due to substitution and new uses of the compound. Because these potential increases are exempt from control, it is important that the compounds be negligibly reactive and not simply marginally less reactive than compounds that they may replace. If by exempting negligibly reactive compounds EPA encourages the substitution of negligibly reactive compounds for highly reactive compounds, this is an added benefit.

EPA is currently evaluating a variety of scientific, legal, and practical issues associated with the design and implementation of a policy to encourage further substitution, such as the use of VOC reactivity scales. To address these issues, EPA is working with the State of California and the Reactivity Research Working Group, a government/industry/academic working group established under NARSTO (formerly the North American Research Strategy for Tropospheric Ozone) to identify research priorities related to VOC reactivity. The results of these efforts will be considered by EPA as part of a multi-year review of our current VOC policy and addressed through future rulemakings.

Comment

Many commenters opposed EPA's announcement that reactivity petitions will be evaluated on a "reactivity per mole" basis for petitions submitted after the TBAC proposal notice date. These

commenters supported the "per gram" basis and questioned the use of the smog chamber experiments that were reported in 1977 as the basis for the molar comparison with ethane.

Response

The EPA believes that a "reactivity per mole" comparison is more consistent with the smog chamber experiments underlying the 1977 policy, is more consistent with the historical use of K_{OH} values as a basis of comparison, and is arguably more environmentally protective than a "reactivity per mass" comparison. However, EPA believes that the issues raised by commenters warrant a more extensive review of the overall exemption policy and its scientific bases. Consequently, EPA is not revising its current VOC exemption policy with this final rule. As noted in the proposal, EPA has commenced a multi-year review of its policy, which will hopefully be informed by the research activities being identified by the RRWG mentioned above. The EPA believes that it would be desirable for this review to be completed before reaching a decision on how to address future petitions. Parties submitting petitions for VOC exemptions should expect their petitions to be reviewed under a new policy.

III. Comments Specific to the TBAC Exemption Proposal Comment

Commenters opposed to the TBAC exemption said that because EPA intended to change its exemption policy to a "per mole" comparison, EPA should apply that test to this petition and not grandfather it under the "per gram" policy. The petitioner argued that it relied on past EPA statements regarding the acceptability to EPA of using a per gram basis in the acetone exemption proposal (59 FR 49877, September 30, 1994) and final rule (60 FR 31633, June 16, 1995) and in the 1995 Report to Congress "Study of Volatile Organic Compound Emissions from Consumer and Commercial Products." The petitioner argued that in reliance on these statements it had expended significant resources in research and planning to develop its petition for the exemption of TBAC on the per gram basis.

Response

As discussed above, in today's action, EPA is not finalizing a change to the existing VOC exemption policy. Therefore, our decision to grant the TBAC petition does not involve grandfathering this pre-existing petition from the application of a new policy. In

any event, we do not believe that the petitioner's investment of significant resources in research and planning would be, in itself, a sufficient justification for such grandfathering. First, an important consideration for grandfathering is the statutory interest in applying the new policy. If we were to adopt a policy today permitting only a per mole comparison, retaining ethane as the benchmark, we might conclude that granting the TBAC petition would not further the statutory interest in reducing ozone, because on a per-mole basis TBAC is more reactive than ethane. A second consideration for grandfathering is whether the new policy represents an abrupt departure from well-established practice. We would not necessarily characterize use of a per-mole basis in evaluating VOC exemption petitions as such a departure. Most VOC exemptions to date have been granted using k_{OH} values, which is consistent with using a per-mole basis.

The remaining considerations for grandfathering relate to the petitioner's reliance on the old policy and the burden to the petitioner imposed by the new policy. Although the petitioner stated that it expended significant resources in reliance on the per-gram policy, the petitioner competes in a regulated marketplace in which regulations can be expected to evolve with both scientific understanding and market conditions. In addition, because the petitioner claimed that it undertook only preliminary activities, such as research and planning, it would be difficult to identify concrete effects of the petitioner's alleged reliance. Furthermore, changes in EPA's VOC exemption policy would likely affect both the petitioner and its competitors. As commenters pointed out, EPA previously exempted acetone despite the argument that another company had developed a low VOC industrial cleaner as an alternative to acetone in reliance on acetone's status as a VOC. In summary, if we were to apply a grandfathering analysis to a VOC exemption petition such as the TBAC petition, we would consider not only investment of resources in research and planning, but also the other factors discussed here.

Comment

Some commenters questioned the exemption of TBAC before further study of the compound's toxicity. According to the commenters: (i) The health effects data available for TBAC are limited; (ii) no chronic, developmental, or reproductive toxicity data are available for TBAC; and (iii) no genetic toxicity or carcinogenicity data are available for

TBAC. Due to the lack of information on TBAC, the commenters contended that it is not possible to assess the potential for adverse effects from prolonged exposure. However, the commenters point to evidence that TBAC metabolizes to t-butyl alcohol, for which some animal testing data suggests that it may be carcinogenic. This information was emphasized in a letter to EPA from the California Environmental Protection Agency (signed by Air Resources Board, Office of Environmental Health Hazard Assessment, and State Water Resources Control Board). Other commenters urged EPA to deny the exclusion of TBAC from the VOC definition because of concerns about toxicity.

Since the close of the comment period, the California Air Resources Board, in conjunction with California's Office of Environmental Health Hazard Assessment, has completed a draft assessment of a VOC exemption for TBAC. The assessment quantifies (1) the potential benefits associated with decreased ozone formation as a result of TBAC substituting for more reactive compounds, and (2) the potential cancer risks associated with increased exposure to TBAC. A copy of this draft assessment is included in the docket.

As part of their original submission, Lyondell had provided EPA with information on the acute toxicity of TBAC. As input into California's assessment, Lyondell submitted to EPA and California a variety of additional information about chronic toxicity. Copies of this information, as well as a copy of Lyondell's critique of California's assessment, are included in the docket.

Response

The EPA has carefully reviewed the limited data that is available on the chronic toxicity of TBAC, including California's risk assessment, and has reviewed the data available about the potential health benefits due to reduced ozone exposure from the use of TBAC as a substitute for more reactive substances. The EPA has concluded that (1) there is insufficient evidence of a significant toxic risk to justify not granting the exemption petition, and (2) granting the exemption will provide a net improvement in public health and environmental quality. However, given the potential for increased use of TBAC, EPA does believe that further toxicity testing is warranted to resolve the uncertainty associated with the limited evidence that is currently available.

In response to these concerns, Lyondell has agreed to work with EPA to perform the toxicity testing needed to resolve the current uncertainty. As part

of this effort, Lyondell will conduct a tiered series of tests designed to confirm and elucidate the mechanisms of potential toxicity observed in the limited data available. Lyondell will submit the testing results to an independent scientific peer consultation panel that will make recommendations to EPA and Lyondell as to whether further testing is warranted. Based on the information currently available and experience with similar compounds, EPA believes that the first tier of testing is likely to be sufficient to resolve much of the current uncertainty. Until the testing program is completed and evaluated, Lyondell has agreed to limit their annual production of TBAC to ensure that significant chronic ambient exposures will not occur. If the testing program indicates that TBAC does pose a potentially significant public health risk, EPA will take appropriate regulatory action to address the risk.

The EPA believes that moving forward with the exemption and simultaneously pursuing additional toxicity testing is a responsible risk management approach that allows society to benefit from lower ozone exposures while protecting against other potential chronic risks.

Comment

The petitioner claimed that TBAC will be used to substitute for the common industrial solvents toluene and xylene which are classified by EPA as Hazardous Air Pollutants (HAPs) and which are much more photochemically reactive than TBAC. The petitioner claimed that this will be a great environmental benefit from the TBAC exemption. Other commenters asserted that TBAC will not be substituted to any great degree for toluene and xylene as the petitioner claims. These commenters claimed that TBAC is more expensive than toluene and xylene and may be added on top of the legal VOC limit of these chemicals in a product to increase the solvent content of product without increasing VOC content.

Response

The EPA acknowledges that the properties of TBAC make it technically suitable to be substituted for toluene and xylene in many products. The extent to which TBAC will be used as a substitute will depend on costs. Currently, TBAC is relatively expensive compared to toluene and xylene. However, if exempted, demand for TBAC is expected to increase, increasing production and driving down costs. There is a possibility that companies will use relatively cheap solvents like toluene and xylene up to

the legal limit and then use TBAC to add solvent above the applicable VOC content limits. Ultimately, EPA expects that substitution of TBAC for more reactive and harmful solvents will outweigh increases in solvent use, resulting in a net improvement in environmental quality. However, this is not the reason that EPA is granting this exemption from VOC emission limitations. The action is based on photochemical reactivity relative to ethane.

After reviewing these comments and the other material in the docket, EPA is acting in accordance with our existing policy by modifying the definition of VOC to say that TBAC is not a VOC for purposes of VOC emission limitations or content requirements because TBAC is less reactive than ethane on a per gram basis.

III. Why Is EPA Asking That Emissions of TBAC Continue To Be Reported?

In prior VOC exemption decisions, EPA has not required continued recordkeeping and reporting on the use and emissions of the exempt compounds. However, EPA has proposed to retain recordkeeping and reporting requirements for TBAC and other future exempt compounds based on our understanding that even "negligibly reactive" compounds may contribute significantly to ozone formation if present in sufficient quantities and the need to represent these emissions accurately in photochemical modeling analyses.

In addition to these general concerns about the potential cumulative impacts of negligibly reactive compounds, the need to maintain recordkeeping and reporting requirements for TBAC is further justified by the potential for widespread use of TBAC, the fact that its relative reactivity falls close to the borderline of what has been considered negligibly reactive, and the continuing efforts to assess long-term health risks. Therefore, in today's rule, EPA is excluding TBAC from the definition of VOC for purposes of control requirements, but EPA is requiring that emissions information for TBAC continue to be recorded and reported.

The EPA does not believe that a requirement to collect and report emissions data on TBAC is a new recordkeeping burden on industry, because users of TBAC are currently required to collect and report this information on TBAC as a VOC. However, industry will now be required to track and report TBAC emissions as a distinct class of emissions, separate from non-exempt VOCs.

Similarly, EPA does not believe that a requirement for continued reporting of TBAC emissions is a new burden on States, since States are already collecting information and reporting on these emissions.

The EPA is now in the process of assessing its VOC policy in general, and its VOC exemption policy in particular. EPA intends to address the issue of whether recordkeeping and reporting requirements should apply to other exempt compounds as part of a future rulemaking addressing possible changes to EPA's overall VOC policy. Today's rule requiring record keeping and reporting for TBAC does not necessarily indicate the content of a future overall policy.

IV. What Is Today's Final Action?

Today's final action is based on EPA's review of the material in Docket No. OAR-2003-0084. The EPA hereby amends its definition of VOC at 40 CFR 51.100(s) to say that TBAC is not VOC for purposes of VOC emissions limitations or VOC content requirements, but will continue to be VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements which apply to VOC. You should not count TBAC as a VOC for purposes of EPA regulations related to attaining the ozone NAAQS, including regulations limiting your use of VOCs or your emissions of VOCs; but you must record and report the use and emissions of TBAC. Your recordkeeping and reporting of TBAC must conform to those requirements that would apply to you for non-exempt VOCs used in the same manner or in the same application as TBAC, except that TBAC emissions shall be broken out from other VOC and reported as a distinct class of emissions. You should check with your State to determine whether you should count TBAC as a VOC for State regulations. However, your State should not include TBAC in its VOC emissions inventories for determining reasonable further progress under the CAA (*e.g.*, section 182(b)(1)) or take credit for controlling this compound in its ozone control strategy. However, States must include TBAC in inventories used for ozone modeling to assure that such emissions are not having a significant effect on ambient ozone levels. States are encouraged to include other already exempt compounds in such inventories, and should anticipate that future VOC exemptions will not eliminate inventory requirements.

The EPA is not finalizing a decision on how future petitions will be evaluated. We intend to publish a future notice inviting public comment on the

VOC exemption policy and the concept of negligible reactivity as part of a broader review of overall policy. Given the existence of this policy review, parties submitting petitions for VOC exemptions should expect their petitions to be reviewed under a new policy.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive order 12866 and is therefore not subject to OMB review.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action revises the definition of "Volatile Organic Compounds" for purposes of federal regulations related to attaining the National Ambient Air Quality Standards (NAAQS), for ozone, and makes no changes to recordkeeping or reporting burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose

or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency 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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Today's rule concerns only the definition of VOC and does not directly regulate any entities. The RFA analysis does not consider impacts on entities which the action in question does not regulate. See *Motor & Equipment Manufacturers Ass'n v. Nichols*, 142 F. 3d 449, 467 (D.C. Cir., 1998); *United Distribution Cos. v. FERC*, 88 F. 3d 1105, 1170 (D.C. Cir., 1996), cert. denied, 520 U.S. 1224 (1997).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgation of an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule, unless EPA publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments including Tribal governments, it must have developed under section 203 of the UMRA a small government plan which informs, educates and advises small governments on compliance with the regulatory requirements. Finally, section 204 provides that for any rule that imposes a mandate on a State, local or Tribal government of \$100 million or more in any 1 year, the Agency must provide an opportunity for such governmental entities to provide input in development of the rule.

Since today's rulemaking is deregulatory in nature and does not impose any mandate on governmental entities or the private sector, EPA has determined that sections 202, 203, 204 and 205 of the UMRA do not apply to this action.

E. Executive Order 13132: Federalism

Executive order 13132, entitled "federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's final rule does not impose any new mandates on State or local governments, but simply retains the existing requirement

to include TBAC in inventories used for ozone modeling. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Orders 13084 and 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive order 13175 took effect on January 6, 2001, and revokes Executive order 13084 (Tribal Consultation) as of that date. The EPA developed this final rule, however, during the period when Executive order 13084 was in effect; thus, EPA addressed Tribal considerations under Executive order 13084.

Under Executive order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Indian Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not impose substantial direct compliance costs on the communities of Indian Tribal governments. This rule is deregulatory in nature and does not impose any direct compliance costs. Accordingly, the requirements of section 3(b) of Executive order 13084 do not apply to this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive

order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this rule is not subject to the Executive order because it is not economically significant as defined in Executive order 12866, EPA has reason to believe that ozone has a disproportionate effect on active children who play outdoors. (See 62 FR 38856 and 38859, July 18, 1997). The EPA has not identified any specific studies on whether or to what extent t-butyl acetate directly affects children's health. The EPA has placed the available data regarding the health effects of t-butyl acetate in docket no. OAR-2003-0084.

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

This rule is not subject to Executive order 13211, "Actions that Significantly Affect Energy Supply, distribution, or Use," (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive order 12866. Information on the methodology and data regarding the assessment of potential energy impacts is found in chapter 6 of the U.S. EPA 1002, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104-113. Section 12(d), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to

provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

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

The 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). This rule will be effective December 29, 2004.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 18, 2004.

Michael O. Leavitt,
Administrator.

■ For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS.

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401-7671q.

Subpart F—[Amended]

■ 2. Section 51.100 is amended by adding paragraph (s)(5) to read as follows:

§ 51.100 Definitions.

* * * * *

(s) * * *

(5) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

* * * * *

[FR Doc. 04-26069 Filed 11-26-04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD100-3100; FRL-7835-7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revised Format of 40 CFR Part 52 for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format for materials submitted by Maryland that are incorporated by reference (IBR) into its State implementation plan (SIP). The regulations affected by this format change have all been previously submitted by Maryland and approved by EPA. This format revision will primarily affect the "Identification of plan" section, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office. EPA is also adding a table in the "Identification of plan" section which summarizes the approval actions that EPA has taken on the non-regulatory and quasi-regulatory portions of the Maryland SIP.

DATES: *Effective Date:* This final rule is effective on November 29, 2004.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room B108, Washington, DC 20460; or the National Archives and Records Administration (NARA). For

information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT:

Harold A. Frankford, (215) 814-2108 or by e-mail at frankford.harold@epa.gov.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

- I. Background
 - What a SIP is
 - How EPA enforces SIPs
 - How the State and EPA updates the SIP
 - How EPA compiles the SIPs
 - How EPA organizes the SIP compilation
 - Where you can find a copy of the SIP compilation
 - The format of the new Identification of Plan section
 - When a SIP revision becomes Federally enforceable
 - The historical record of SIP revision approvals
- II. What EPA Is Doing in This Action
- III. Statutory and Executive Order Reviews

I. Background

What a SIP is—Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

How EPA enforces SIPs—Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions upon which EPA must formally act.

Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the Federally approved SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), title 40 of the Code of Federal Regulations (40 CFR part 52). The actual state regulations approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are “incorporated by reference” (IBR’d) which means that EPA has approved a given state regulation with a specific effective date. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the state is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a state not enforce its SIP-approved regulations.

How the State and EPA updates the SIP—The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA must, from time to time, take action on SIP revisions containing new and/or revised regulations in order to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for IBR’ing Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR).

EPA began the process of developing: (1) A revised SIP document for each state that would be IBR’d under the provisions of title 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the “Identification of Plan” sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and “Identification of Plan” format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA compiles the SIPs—The Federally-approved regulations, source-specific permits, and nonregulatory provisions (entirely or portions of) submitted by each state agency have been compiled by EPA into a “SIP compilation.” The SIP compilation contains the updated regulations, source-specific permits, and nonregulatory provisions approved by EPA through previous rulemaking actions in the **Federal Register**.

How EPA organizes the SIP compilation—Each compilation contains three parts. Part one contains the regulations, part two contains the source-specific requirements that have been approved as part of the SIP, and part three contains nonregulatory provisions that have been EPA approved. Each part consists of a table of identifying information for each SIP-approved regulation, each SIP-approved source-specific permit, and each nonregulatory SIP provision. In this action, EPA is publishing the tables summarizing the applicable SIP requirements for Maryland. The EPA Regional Offices have the primary responsibility for updating the compilations and ensuring their accuracy.

Where you can find a copy of the SIP compilation—EPA Region III developed and will maintain the compilation for Maryland. A copy of the full text of Maryland’s regulatory and source-specific SIP compilation will also be

maintained at NARA and EPA’s Air Docket and Information Center.

The format of the new Identification of Plan section—In order to better serve the public, EPA revised the organization of the “Identification of Plan” section and included additional information to clarify the enforceable elements of the SIP. The revised Identification of Plan section contains five subsections:

1. Purpose and scope.
2. Incorporation by reference.
3. EPA-approved regulations.
4. EPA-approved source-specific permits.
5. EPA-approved nonregulatory and quasi-regulatory provisions such as air quality attainment plans, rate of progress plans, maintenance plans, monitoring networks, and small business assistance programs.

When a SIP revision becomes Federally enforceable—All revisions to the applicable SIP become Federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of Plan section found in each subpart of 40 CFR part 52.

The historical record of SIP revision approvals—To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of Plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two-year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures and will decide whether or not to retain the Identification of Plan appendices for some further period.

II. What EPA Is Doing in This Action

Today’s rule constitutes a “housekeeping” exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today’s rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today’s rule simply codifies

provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a “good cause” finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (63 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA’s compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State’s rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today’s action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 29, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this

action. Prior EPA rulemaking actions for each individual component of the Maryland SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these “Identification of plan” reorganization actions for Maryland.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 1, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart V—Maryland

■ 2. Section 52.1070 is redesignated as § 52.1100 and the heading and paragraph (a) are revised to read as follows:

§ 52.1100 Original identification of plan section.

(a) This section identifies the original “Air Implementation Plan for the State of Maryland” and all revisions submitted by Maryland that were federally approved prior to November 1, 2004.

* * * * *

■ 3. A new § 52.1070 is added to read as follows:

§ 52.1070 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State implementation plan for Maryland under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.*

(1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material incorporated as it exists on the date of the approval, and

notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after November 1, 2004, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the

officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of November 1, 2004.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103; the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 1301 Constitution

Avenue, NW., Room B108, Washington, DC 20460; 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.

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.01	General Administrative Provisions			
26.11.01.01A., .01B Exceptions: .01B(3), (13), (21) through (23), (25)	Definitions	10/10/01	5/28/02 67 FR 36810	(c)(171); Additional EPA approvals are codified at §§ 52.1100(c)(119)(c)(122), (c)(143), (c)(148), (c)(158), (c)(159), and (c)(164).
26.11.01.02	Relationship of Provisions in this Subtitle.	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(1)
26.11.01.03	Delineation of Areas	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(1)
26.11.01.04	Testing and Monitoring	2/17/92	9/7/01 66 FR 46727	(c)(153)
26.11.01.05	Records and Information	6/30/97 and 12/10/01	5/28/02 67 FR 36810	(c)(172)
26.11.01.05-1	Emission Statements	12/7/92	10/12/94 59 FR 51517	(c)(109)
26.11.01.06	Circumvention	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(1)
26.11.01.07	Malfunctions and Other Temporary Increases in Emissions.	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(1);
26.11.01.08	Determination of Ground Level Concentrations—Acceptable Techniques.	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(5)
26.11.01.09	Vapor Pressure of Gasoline	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(5)
26.11.01.10	Continuous Emission Monitoring (CEM) Requirements.	7/22/91	2/28/96 61 FR 7418	(c)(106); TM90-01 was approved as "additional material", but not IBR'd.
26.11.02	Permits, Approvals, and Registration			
26.11.02.01	Definitions	5/8/95	2/27/03 68 FR 9012	(c)(182); Exceptions: 26.11.02.01B(1), (1-1), (4)-(6), (10), (15), (16), (22), (29)-(33), (37), (39), (42), (46), (49), (50), (54).
26.11.02.02	General Provisions	5/8/95	2/27/03 68 FR 9012	(c)(182); Exceptions: .02D.
26.11.02.03	Federally Enforceable Permits to Construct and State Permits to Operate.	5/8/95	2/27/03 68 FR 9012	(c)(182)
26.11.02.04	Duration of Permits	5/8/95	2/27/03 68 FR 9012	(c)(182); Exception: .04C(2).
26.11.02.05	Violation of Permits and Approvals	5/8/95	2/27/03 68 FR 9012	(c)(182)
26.11.02.06	Denial of Applications for State Permits and Approvals.	5/8/95, 6/16/97	2/27/03 68 FR 9012	(c)(182)
26.11.02.07	Procedures for Denying, Revoking, or Reopening and Revising a Permit or Approval.	5/8/95	2/27/03 68 FR 9012	(c)(182)
26.11.02.08	Late Applications and Delays in Acting on Applications.	5/8/95	2/27/03 68 FR 9012	(c)(182)
26.11.02.09	Sources Subject to Permits to Construct and Approvals.	5/8/95, 5/4/98	2/27/03 68 FR 9012	(c)(182)

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100.
26.11.02.10	Sources Exempt from Permits to Construct and Approvals.	5/8/95, 6/16/97, 9/22/97, 3/22/99	2/27/03 68 FR 9012	(c)(182)
26.11.02.11	Procedures for Obtaining Permits to Construct Certain Significant Sources.	5/8/95, 6/16/97	2/27/03 68 FR 9012	(c)(182); Exception: .11C.
26.11.02.12	Procedures for Obtaining Approvals of PSD Sources and NSR Sources, Permits to Construct, Permits to Construct MACT Determinations on a Case-by-Case Basis in Accordance with 40 CFR Part 63, Subpart B, and Certain 100-Ton Sources.	5/8/95	2/27/03 68 FR 9012	(c)(182)
26.11.02.13	Sources Subject to State Permits to Operate.	5/8/95	2/27/03 68 FR 9012	(c)(182)
26.11.02.14	Procedures for Obtaining State Permits to Operate and Permits to Construct Certain Sources and Permits to Construct Control Equipment on Existing Sources.	5/8/95, 6/16/97	2/27/03 68 FR 9012	(c)(182)
26.11.04	State Adopted Ambient Air Quality Standards and Guidelines			
26.11.04.02	State-Adopted National Ambient Air Quality Standards.	5/8/95	8/20/01 66 FR 43485	(c)(165)
26.11.04.03	Definitions, Reference Conditions, and Methods of Measurement.	2/21/89	2/24/94 59 FR 8865	(c)(99)
26.11.04.04	Particulate Matter	2/21/89	2/24/94 59 FR 8865	(c)(99)
26.11.04.05	Sulfur Oxides	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(3)
26.11.04.06	Carbon Monoxide	1/5/88; recodified 8/1/88	4/7/93 58 FR 18010	(c)(92)
26.11.04.07	Ozone	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(3)
26.11.04.08	Nitrogen Dioxide	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(3)
26.11.04.09	Lead	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(3)
26.11.05	Air Quality Episode System			
26.11.05.01	Definitions	6/18/90	4/14/94 59 FR 17698	(c)(100)
26.11.05.02	General Requirements	6/18/90	4/14/94 59 FR 17698	(c)(100)
26.11.05.03	Air Pollution Episode Criteria	6/18/90	4/14/94 59 FR 17698	(c)(100)
26.11.05.04	Standby Emissions Reduction Plan	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(4)
26.11.05.05	Control Requirements and Standby Orders.	6/18/90	4/14/94 59 FR 17698	(c)(100)
26.11.05.06	Tables	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(4)
26.11.06	General Emissions Standards, Prohibitions, and Restrictions			
26.11.06.01	Definitions	5/8/91	11/29/94 59 FR 60908	(c)(102)(i)(B)(14)
26.11.06.02	Visible Emissions	11/11/02	8/6/03 68 FR 46487	(c)(181)
[Except: .02A(1)(e), (1)(g), (1)(h), (1)(i)] 26.11.06.03	Particulate Matter	11/11/02	8/6/03 68 FR 46487	(c)(181)
26.11.06.04	Carbon Monoxide in Areas III and IV.	1/5/88; recodified 8/1/88	4/7/93 58 FR 18010	(c)(92)
26.11.06.05	Sulfur Compounds from Other than Fuel Burning Equipment.	11/11/02	8/6/03 68 FR 46487	(c)(181)

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.06.06	Volatile Organic Compounds	9/22/97	5/7/01 66 FR 22924	(c)(156) Note: On 2/27/03 (68 FR 9012), EPA approved a revised rule citation with a State effective date of 5/8/95 [(c)(182)(i)(C)]
26.11.06.10	Refuse Burning Prohibited in Certain Installations.	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(5)
26.11.06.14	Control of PSD sources	10/10/01	5/28/02 67 FR 36810	(c)(171)
26.11.06.15	Nitrogen Oxides from Nitric Acid Plants.	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(5)
26.11.06.16	Tables	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(5)
26.11.07	Open Fires			
26.11.07.01	Definitions	5/22/95	6/11/02 67 FR 39856	(c)(173)
26.11.07.02	General	5/22/95	2/25/97 62 FR 8380	(c)(120)
26.11.07.03	Control Officer May Authorize Certain Open Fires.	8/11/97	6/11/02 67 FR 39856	(c)(173)
26.11.07.04	Public Officers May Authorize Certain Fires.	5/22/95	2/25/97 62 FR 8380	(c)(120)
26.11.07.05	Open Fires Allowed Without Authorization of Control Officer or Public Officer.	5/22/95	2/25/97 62 FR 8380	(c)(120) .05A(3) & (4), and .05B(3) are State-enforceable only.
26.11.07.06	Safety Determinations at Federal Facilities.	8/11/97	6/11/02 67 FR 39856	(c)(173)
10.18.08	Control of Incinerators			
10.18.08.01	Definitions	3/25/84	7/2/85 50 FR 27245	(c)(82)
10.18.08.02	Applicability	7/18/80	8/5/81 46 FR 39818	(c)(45)
10.18.08.03	Prohibition of Certain Incinerators in Areas III and IV.	6/8/81	5/11/82 47 FR 20126	(c)(58)
10.18.08.04	Visible Emissions	3/25/84	7/2/85 50 FR 27245	(c)(82)
10.18.08.05	Particulate Matter	3/25/84	7/2/85 50 FR 27245	(c)(82)
10.18.08.06	Prohibition of Unapproved Hazardous Waste Incinerators.	3/25/84	7/2/85 50 FR 27245	(c)(82)
26.11.09	Control of Fuel Burning Equipment and Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations			
26.11.09.01	Definitions	11/11/02	5/1/03 68 FR 23206	(c)(183)
26.11.09.02	Applicability	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(7)
26.11.09.03	General Conditions for Fuel Burning Equipment.	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(7)
26.11.09.04	Prohibition of Certain New Fuel Burning Equipment.	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(7)
26.11.09.05	Visible Emissions	11/11/02	5/1/03 68 FR 23206	(c)(183)
26.11.09.06	Control of Particulate Matter	11/11/02	5/1/03 68 FR 23206	(c)(183)
26.11.09.07	Control of Sulfur Oxides from Fuel Burning Equipment.	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(7)
26.11.09.08	Control of NO _x Emissions for Major Stationary Sources.	11/24/03	9/20/04 69 FR 56170	(c)(191); SIP effective date is 10/20/04
26.11.09.09	Tables and Diagrams	11/11/02	5/1/03 68 FR 23206	(c)(183); Revised Table 1
26.11.10	Control of Iron and Steel Production Installations			
26.11.10.01	Definitions	12/25/00	11/7/01 66 FR 56222	(c)(163)

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.10.02	Applicability	11/2/98	9/7/01 66 FR 46727	(c)(153)
26.11.10.03	Visible Emissions	11/2/98	9/7/01 66 FR 46727	(c)(153)
26.11.10.04	Control of Particulate Matter	11/2/98	9/7/01 66 FR 46727	(c)(153)
26.11.10.05	Sulfur Content Limitations for Coke Oven Gas.	11/2/98	9/7/01 66 FR 46727	(c)(153)
26.11.10.06[1]	Control of Volatile Organic Compounds from Iron and Steel Production Installations.	12/25/00	11/7/01 66 FR 56222	(c)(163)
26.11.10.06[2]	Carbon Monoxide	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(8)
26.11.10.07	Testing and Observation Procedures.	12/25/00	11/7/01 66 FR 56222	(c)(163)
26.11.11	Control of Petroleum Products Installations, Including Asphalt Paving, Asphalt Concrete Plants, and Use of Waste Oils			
26.11.11.01	Applicability	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(9)
26.11.11.02	Asphalt Paving	4/26/93	1/6/95 60 FR 2018	(c)(113)(i)(B)(1)
26.11.11.03	Asphalt Concrete Plants in Areas I, II, V, and VI.	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(9)
26.11.11.06	Use of Waste Oils as Fuel	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(9);
26.11.12	Control of Batch Type Hot-Dip Galvanizing Installations			
26.11.12.01	Definitions	5/8/95	7/25/00 64 FR 45743	(c)(149)
26.11.12.02	Applicability	5/8/95	7/25/00 64 FR 45743	(c)(149)
26.11.12.03	Prohibitions and Exemptions	5/8/95	7/25/00 64 FR 45743	(c)(149)
26.11.12.04	Visible Emissions	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(10)
26.11.12.05	Particulate Matter	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(10)
26.11.12.06	Reporting Requirements	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(10)
26.11.13	Control of Gasoline and Other Volatile Organic Compound Storage and Handling			
26.11.13.01	Definitions	8/11/97	12/22/98 63 FR 70667	(c)(130)
26.11.13.02	Applicability and Exemption	4/26/93	1/6/95 60 FR 2018	(c)(113)(i)(B)(3)
26.11.13.03	Large Storage Tanks	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(12)
26.11.13.04	Loading Operations	8/11/97	12/22/98 63 FR 70667	(c)(132)
26.11.13.05	Gasoline Leaks from Tank Trucks	2/15/93	1/6/95 60 FR 2018	(c)(112)
26.11.13.06	Plans for Compliance	4/26/93	1/6/95 60 FR 2018	(c)(113)(i)(B)(5)
26.11.13.07	Control of VOC Emissions from Portable Fuel Containers.	1/21/02	6/29/04 69 FR 38848	(c)(184)
26.11.14	Control of Emissions From Kraft Pulp Mills			
26.11.14.01	Definitions	1/8/01, 10/15/01	11/7/01 66 FR 56220	(c)(170)
26.11.14.02	Applicability	1/8/01	11/7/01 66 FR 56220	(c)(170)
26.11.14.06	Control of Volatile Organic Compounds.	1/8/01, 10/15/01	11/7/01 66 FR 56220	(c)(170)

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100.
26.11.17	Requirements for Major New Sources and Modifications			
26.11.17.01	Definitions	11/24/03	9/20/04 69 FR 56170	52.1070(191); SIP 56170 effective date is 10/20/04.
26.11.17.02	Applicability	4/26/93, 10/2/00	2/12/01 66 FR 9766	52.1070(c)(148)
26.11.17.03	General Conditions	4/26/93, 10/2/00	2/12/01 66 FR 9766	52.1070(191); SIP effective date is 10/20/04.
26.11.17.04	Baseline for Determining Credit for Emission and Air Quality Offsets.	4/26/93, 10/2/00	2/12/01 66 FR 9766	52.1070(c)(148)
26.11.17.05	Administrative Procedures	4/26/93, 10/2/00	2/12/01 66 FR 9766	52.1070(c)(148)
26.11.19	Volatile Organic Compounds from Specific Processes			
26.11.19.01	Definitions	6/5/95	9/2/97 62 FR 46199	(c)(126) Note: On 5/13/1998 (63 FR 26462), EPA approved the revised definition of "major stationary source of VOC" with a State effective date of 5/8/1995 [(c)(128)]
26.11.19.02	Applicability, Determining Compliance, Reporting, and General Requirements.	5/4/98, 12/10/01	2/3/03 68 FR 5228	(c)(174), (c)(175) 1. Limited approval of paragraph .02G (9/4/98, 63 FR 47174) [(c)(131)–(c)(133)] 2. On 2/27/03 (68 FR 9012), EPA approved a revised rule citation with a State effective date of 5/8/95 [(c)(182)(i)(D)]
26.11.19.03	Automotive and Light-Duty Truck Coating.	9/22/97	11/5/98 63 FR 59720	(c)(140)
26.11.19.04	Can Coating	8/1/88	11/3/92 57 FR 49651	(C)(90)(i)(B)(12)
26.11.19.05	Coil Coating	8/1/88	11/3/92 57 FR 49651	(C)(90)(i)(B)(12)
26.11.19.06	Large Appliance Coating	8/1/88	11/3/92 57 FR 49651	(C)(90)(i)(B)(12)
26.11.19.07	Paper, Fabric, Vinyl and Other Plastic Parts Coating.	8/24/98	1/14/2000 64 FR 2334	(c)(147)
26.11.19.07–1	Control of VOC Emissions from Solid Resin Decorative Surface Manufacturing.	6/15/98	6/17/99 64 FR 32415	(c)(142)
26.11.19.08	Metal Furniture Coating	8/1/88	11/3/92 57 FR 49651	(C)(90)(i)(B)(12)
26.11.19.09	Control of Volatile Organic Compounds (VOC) Emissions from Cold and Vapor Degreasing.	6/5/95	8/4/97 62 FR 41853	(c)(123)
26.11.19.10	Flexographic and Rotogravure Printing.	6/5/95	9/2/97 62 FR 46199	(c)(126)
26.11.19.11	Control of Volatile Organic Compounds (VOC) Emissions from Sheet-Fed and Web Lithographic Printing.	6/5/95	9/2/97 62 FR 46199	(c)(126)
26.11.19.12	Dry Cleaning Installations	9/22/97	9/2/98 63 FR 46662	(c)(131)
26.11.19.13	Miscellaneous Metal Coating	5/8/91	11/29/94 59 FR 60908	(c)(102)(i)(B)(6)
26.11.19.13–1	Aerospace Coating Operations	10/2/00, 10/15/01	11/7/01 66 FR 56220	(c)(169)
26.11.19.13–2	Control of VOC Emissions from Brake Shoe Coating Operations.	8/24/98	6/17/99 64 FR 32415	(c)(142)
26.11.19.13–3	Control of VOC Emissions from Structural Steel Coating Operations.	6/29/98	6/17/99 64 FR 32415	(c)(142)
26.11.19.14	Manufacture of Synthesized Pharmaceutical Products.	5/8/91	11/29/94 59 FR 60908	(c)(102)(i)(B)(14)
26.11.19.15	Paint, Resin, and Adhesive Manufacturing and Adhesive Application.	5/4/98, 3/22/99	10/28/99 64 FR 57989	(c)(145)
26.11.19.16	Control of VOC Equipment Leaks	8/19/91	9/7/94 59 FR 46180	(c)(103)(i)(B)(9)

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Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.19.17	Control of Volatile Organic Compounds (VOC) Emissions from Yeast Manufacturing.	11/7/94, 6/5/95	10/15/97 64 FR 53544	(c)(125)(i)(B)(1); revised 10/27/04 (69 FR 62589)
26.11.19.18	Control of Volatile Organic Compounds (VOC) Emissions from Screen Printing and Digital Imaging.	6/10/02	1/15/03 68 FR 1972	(c)(177)
26.11.19.19	Control of Volatile Organic Compounds (VOC) Emissions from Expandable Polystyrene Operations.	10/2/00	5/7/01 68 FR 22924	(c)(156)
26.11.19.21	Control of Volatile Organic Compounds (VOC) Emissions from Commercial Bakery Ovens.	7/3/95	10/15/97 62FR 53544	(c)(125)(i)(B)(4)
26.11.19.22	Control of Volatile Organic Compounds (VOC) Emissions from Vinegar Generators.	8/11/97	9/23/99 64 FR 41445	(c)(137)
26.11.19.23	Control of Volatile Organic Compounds (VOC) Emissions from Vehicle Refinishing.	5/22/95	8/4/97 62 FR 41853	(c)(124)
26.11.19.24	Control of Volatile Organic Compounds (VOC) Emissions from Leather Coating Operations.	8/11/97	9/23/99 64 FR 41445	(c)(137)
26.11.19.25	Control of Volatile Organic Compounds from Explosives and 3852 Propellant Manufacturing.	8/11/97	1/26/99 64 FR 3852	(c)(141)
26.11.19.26	Control of Volatile Organic Compound Emissions from Reinforced Plastic Manufacturing.	8/11/97	8/19/99 64 FR 45182	(c)(139)
26.11.19.27	Control of Volatile Organic Compounds from Marine Vessel Coating Operations.	10/20/97	9/5/01 66 FR 46379	(c)(166)
26.11.19.28	Control of Volatile Organic Compounds from Bread and Snack Food Drying Operations..	10/2/00	5/7/01 66 FR 22924	(c)(157)
26.11.19.29	Control of Volatile Organic Compounds from Distilled Spirits Facilities.	10/2/00, 10/15/01	11/7/01 66 FR 56220	(c)(160)
26.11.19.30	Control of Volatile Organic Compounds from Organic Chemical Production and Polytetrafluoroethylene Installations.	12/10/01, 11/11/02	6/3/03 68 FR 33000	(c)(176)
26.11.20	Mobile Sources			
26.11.20.02	Motor Vehicle Emission Control as Devices.	8/1/88	11/3/92 57 FR 49651	(c)(90)(i)(B)(13) [as 26.11.20.06]
26.11.20.03	Motor Vehicle Fuel Specifications	10/126/92	6/10/94 58 FR 29957	(c)(101)(i)(B)(3)
26.11.20.04	National Low Emission Vehicle Program.	3/22/99	12/28/99 64 FR 72564	(c)(146)
26.11.24	Stage II Vapor Recovery at Gasoline Dispensing Facilities			
26.11.24.01	Definitions	4/15/02	5/7/03 68 FR 24363	(c)(178)
26.11.24.01–1	Incorporation by Reference	4/15/02	5/7/03 68 FR 24363	(c)(178)
26.11.24.02	Applicability, Exemptions, and Effective Date.	4/15/02	5/7/03 68 FR 24363	(c)(178)
26.11.24.03	General Requirements	4/15/02	5/7/03 68 FR 24363	(c)(178)
26.11.24.04	Testing Requirements	4/15/02	5/7/03 68 FR 24363	(c)(178)
26.11.24.05	Inspection Requirements	2/15/93	6/9/94 59 FR 29730	(c)(107)
26.11.24.06	Training Requirements for Operation and Maintenance of Approved Systems.	2/15/93	6/9/94 59 FR 29730	(c)(107)

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100.
26.11.24.07	Record-Keeping and Reporting Requirements.	4/15/02	5/7/03 68 FR 24363	(c)(178)
26.11.24.08	Instructional Signs	2/15/93	6/9/94 59 FR 29730	(c)(107)
26.11.24.09	Sanctions	2/15/93	6/9/94 59 FR 29730	(c)(107)
26.11.26	Conformity			
26.11.26.01	Definitions	5/15/95, 6/5/95	12/9/98 63 FR 67782	(c)(136); definitions of Applicable implementation plan, Governor, State, and State air agency.
26.11.26.03	General Conformity	5/15/95, 6/5/95	12/9/98 63 FR 67782	(c)(136); current COMAR citation is 26.11.26.04.
26.11.27	Post RACT Requirements for NO_x Sources (NO_x Budget Program)			
26.11.27.01	Definitions	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.27.02	Incorporation by Reference	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.27.03	Applicability	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.27.04	General Requirements	10/10/99	12/15/00 65 FR 78416	(c)(151)(i)(E)
26.11.27.05	Allowance Allocations	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.27.06	Identification of Authorized Account Representatives.	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.27.07	Allowance Banking	10/10/99	12/15/00 65 FR 78416	(c)(151)(i)(E)
26.11.27.08	Emission Monitoring	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.27.09	Reporting	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.27.10	Record Keeping	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.27.11	End-of-Season Reconciliation	10/10/99	12/15/00 65 FR 78416	(c)(151)(i)(E)
26.11.27.12	Compliance Certification	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.27.13	Penalties	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.27.14	Audit	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28	Policies and Procedures Relating to Maryland's NO_x Budget Program			
26.11.28.01	Scope	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28.02	Definitions	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28.03	Procedures Relating Compliance to Accounts.	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28.04	Procedures Relating to General Accounts.	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28.05	Allowance Banking	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28.06	Allowance Transfers	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28.07	Emissions Monitoring	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28.09	Opt-In Procedures	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28.10	Audit Provisions	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28.11	Allocations to Units in Operation in 1990.	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100.
26.11.28.12	Allocations to Budget Sources Beginning Operation or for Which a Permit Was Issued After 1990 and Before January 1, 1998.	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.28.13	Percent Contribution of Budget by Company.	6/1/98	12/15/00 65 FR 78416	(c)(151)(i)(D)
26.11.29	NO_x Reduction and Trading Program			
26.11.29.01	Definitions	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.02	Incorporation by Reference	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.03	Scope and Applicability	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.04	General Requirements for Affected Trading Sources.	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.05	NO _x Allowance Allocations	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.06	Compliance Supplement Pool	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.07	Allowance Banking	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.08	Emission Monitoring	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.09	Requirements for New-Sources and Set-Aside Pool.	11/24/03	3/22/04 69 FR 13236	(c)(184)(i)(C)(1)(5)
26.11.29.10	Reporting	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.11	Record Keeping	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.12	End-of-Season Reconciliation	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.13	Compliance Certification	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.14	Penalties	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.29.15	Requirements for Affected Non-trading Sources.	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(1)
26.11.30	Policies and Procedures Relating to Maryland's NO_x Reduction and Trading Program			
26.11.30.01	Scope and Applicability	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(2)
26.11.30.02	Definitions	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(2)
26.11.30.03	Procedures Relating to Compliance Accounts and Overdraft Accounts.	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(2)
26.11.30.04	Procedures Relating to General Accounts.	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(2)
26.11.30.05	Allowance Banking	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(2)
26.11.30.06	Allowance Transfers	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(2)
26.11.30.07	Early Reductions	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(2)
26.11.30.08	Opt-In Procedures	5/1/00	1/10/01 66 FR 1866	(c)(154)(i)(B)(2)
26.11.30.09	Allocation of Allowances	11/24/03	3/22/04 69 FR 13236	(c)(184)(i)(A)(1)–(3)
26.11.32	Control of Emissions of Volatile Organic Compounds from Consumer Products			
26.11.32.01	Applicability and Exemptions	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.02	Incorporation by Reference	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.03	Definitions	8/18/03	12/9/03 68 FR 68523	(c)(185)

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.32.04	Standards—General	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.05	Standards—Requirements for Charcoal Lighter Materials.	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.06	Standards—Requirements for Aerosol Adhesives.	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.07	Standards—Requirements for Floor Wax Strippers.	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.08	Innovative Products—CARB Exemption.	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.09	Innovative Products—Department Exemption.	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.10	Administrative Requirements	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.11	Reporting Requirements	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.12	Variances	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.13	Test Methods	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.14	Alternative Control Plan (ACP)	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.15	Approval of an ACP Application	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.16	Record Keeping and Availability of Requested Information.	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.17	Violations	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.18	Surplus Reductions and Surplus Trading.	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.19	Limited-Use Surplus Reduction Credits for Early Reformulations of ACP Products.	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.20	Reconciliation of Shortfalls	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.21	Modifications to an ACP	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.22	Cancellation of an ACP	8/18/03	12/9/03 68 FR 68523	(c)(185)
26.11.32.23	Transfer of an ACP	8/18/03	12/9/03 68 FR 68523	(c)(185)
11.14.08	Vehicle Emissions Inspection Program			
11.14.08.01	Title	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.02	Definitions	1/02/95, 10/19/98	10/29/99 64 FR 58340	(c)(144)
11.14.08.03	Applicability	6/10/02	1/16/03 68 FR 2208	(c)(179)
11.14.08.04	Exemptions	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.05	Schedule of the Program	1/02/95, 12/16/96	10/29/99 64 FR 58340	(c)(144)
11.14.08.06	Certificates	6/10/02	1/16/03 68 FR 2208	(c)(179)
11.14.08.07	Extensions	1/02/95, 10/19/98	10/29/99 64 FR 58340	(c)(144)
11.14.08.08	Enforcement	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.09	Inspection Standards	6/10/02	1/16/03 68 FR 2208	(c)(179)
11.14.08.10	General Requirements for Inspection and Preparation for Inspection.	1/02/95, 12/16/96, 10/19/98	10/29/99 64 FR 58340	(c)(144)
11.14.08.11	Idle Exhaust Emissions Test and Equipment Checks.	10/18/98	10/29/99 64 FR 58340	(c)(144)
11.14.08.11–1	Transient Exhaust Emissions Test and Evaporative Purge Test Sequence.	12/16/96, 10/19/98	10/29/99 64 FR 58340	(c)(144)

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100.
11.14.08.12	Evaporative Integrity Test, Gas Cap Leak Test, and On-Board Diagnostics Interrogation Procedures.	6/10/02	1/16/03 68 FR 2208	(c)(179)
11.14.08.13	Failed Vehicle and Reinspection Procedures.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.14	Dynamometer System Specifications.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.15	Constant Volume Sampler, Analysis System, and Inspector Control Specifications.	1/02/95, 10/19/98	10/29/99 64 FR 58340	(c)(144)
11.14.08.16	Evaporative Test Equipment, Gas Cap Leak Test Equipment, and on-Board Diagnostics Interrogation Equipment Specifications.	6/10/02	1/16/03 68 FR 2208	(c)(179)
11.14.08.17	Quality Assurance and Maintenance—General Requirements.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.18	Test Assurance Procedures	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.19	Dynamometer Periodic Quality Assurance Checks.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.20	Constant Volume Sampler Periodic Quality Assurance Checks.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.21	Analysis System Periodic Quality Assurance Checks.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.22	Evaporative Test Equipment and On-board Diagnostics Interrogation Equipment Periodic Quality Assurance Checks.	1/02/95, 10/19/98	10/29/99 64 FR 58340	(c)(144)
11.14.08.23	Overall System Performance Quality Assurance.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.24	Control Charts	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.25	Gas Specifications	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.26	Vehicle Emissions Inspection Station.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.27	Technician's Vehicle Report	1/02/95, 10/19/98	10/29/99 64 FR 58340	(c)(144)
11.14.08.28	Feedback Reports	1/02/95, 10/19/98	10/29/99 64 FR 58340	(c)(144)
11.14.08.29	Certified Emissions Technicians	1/02/95, 12/16/96	10/29/99 64 FR 58340	(c)(144)
11.14.08.30	Certified Emissions Repair Facility	1/02/95, 12/16/96	10/29/99 64 FR 58340	(c)(144)
11.14.08.31	On-Highway Emissions Test	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.32	Fleet Inspection Station	1/02/95, 12/16/96, 10/19/98	10/29/99 64 FR 58340	(c)(144)
11.14.08.33	Fleet Inspection Standards	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.34	Fleet Inspection and Reinspection Methods.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.35	Fleet Equipment and Quality Assurance Requirements.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.36	Fleet Personnel Requirements	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.37	Fleet Calibration Gas Specifications and Standard Reference Methods.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.38	Fleet Record-Keeping Requirements.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.39	Fleet Fees	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.40	Fleet License Suspension and Revocation.	1/02/95	10/29/99 64 FR 58340	(c)(144)
11.14.08.41	Audits	1/02/95	10/29/99 64 FR 58340	(c)(144)

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100.
11.14.08.42	Fleet Inspection After 1998	1/02/95, 2/16/96, 10/19/98	10/29/99 64 FR 58340	(c)(144)
03.03.05	Motor Fuel Inspection [Contingency SIP Measure]			
03.03.05.01	Definitions	12/18/95	1/30/96 61 FR 2982	(c)(101)(i)(B)(4); Approved as a contingency SIP measure as part of the CO Maintenance Plans for Baltimore and DC. [(c)(117) and (c)(118)]
03.03.05.01–1	Standard Specifications for Gasoline.	12/18/95	1/30/96 61 FR 2982	
03.03.05.02–1	Other Motor Vehicle Fuels	10/26/92	6/10/94 58 FR 29957	
03.03.05.05	Labeling of Pumps	12/18/95	1/30/96 61 FR 2982	
03.03.05.08	Samples and Test Tolerance	10/26/92	6/10/94 58 FR 29957	
03.03.05.15	Commingled Products	10/26/92	6/10/94 58 FR 29957	
03.03.06	Emissions Control Compliance [Contingency SIP Measure]			
03.03.06.01	Definitions	12/18/95	1/30/96 61 FR 2982	(c)(101)(i)(B)(5); Approved as a contingency SIP measure as part of the CO Maintenance Plans for Baltimore and DC. [(c)(117) and (c)(118)]
03.03.06.02	Vapor Pressure Determination	10/26/92	6/10/94 58 FR 29957	
03.03.06.03	Oxygen Content Determination	12/18/95	1/30/96 61 FR 2982	
03.03.06.04	Registration	10/26/92	6/10/94 58 FR 29957	
03.03.06.05	Recordkeeping	10/26/92	6/10/94 58 FR 29957	
03.03.06.06	Transfer Documentation	12/18/95	1/30/96 61 FR 2982	
TM	Technical Memoranda			
TM81–04	Procedures for Observing and Evaluating Visible Emissions from Stationary Sources.	5/1/81	6/18/82 47 FR 26381	(c)(67)
TM83–05	Stack Test Methods for Stationary Sources.	6/1/83	2/23/85 50 FR 7595	(c)(80)
TM91–01 [Except Methods 1004, 1004A through I, 1010].	Test Methods and Equipment Specifications for Stationary Sources.	2/15/93	9/7/94 59 FR 46105	(c)(105)(i)(B)(1)

(d) EPA approved state source-specific requirements.

EPA-APPROVED MARYLAND SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No./type	State effective date	EPA approval date	Additional explanation
(PEPCO)—Chalk Point Units #1 and #2.	#49352 Amended Consent Order ..	1/27/78	4/12/79 44 FR 19192	52.1100(c)(22); FRN republished 5/3/79 (44 FR 25840)
Beall Jr./Sr. High School ..	Consent Order	1/30/79	3/18/80 45 FR 17144	52.1100(c)(26)
Mt. Saint Mary's College ..	Consent Order	3/8/79	3/18/80 45 FR 17144	52.1100(c)(26)
Potomac Electric Power Company (PEPCO)—Chalk Point.	Secretarial Order	7/19/79	9/3/80 40 FR 58340	52.1100(c)(34)

EPA-APPROVED MARYLAND SOURCE-SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No./type	State effective date	EPA approval date	Additional explanation
Maryland Slag Co.	Consent Agreement (Order)	10/31/80	9/8/81 41 FR 44757	52.1100(c)(49)
Northeast Maryland Waste Disposal Authority.	Secretarial Order	11/20/81	7/7/82 47 FR 29531	52.1100(c)(65) (Wheelabrator-Frye, Inc.)
Northeast Maryland Waste Disposal Authority and Wheelabrator-Frye, Inc. and the Mayor and City Council of Baltimore and BEDCO Development Corp.	Secretarial Order	2/25/83	8/24/83 45 FR 55179	52.1100(c)(70) (Shutdown of land-fill for offsets)
Westvaco Corp	Consent Order	9/6/83 Rev. 1/26/84	12/20/84 49 FR 49457	52.1100(c)(74)
American Cyanamid Co ...	Secretarial Order (bubble)	8/2/84	5/16/90 55 FR 20269	52.1100(c)(87) [later renumbered as 52.1100(c)(91)]
Potomac Electric Power Company (PEPCO).	Administrative Consent Order	9/13/99	12/15/00 65 FR 78416	52.1100(c)(151)
Thomas Manufacturing Corp.	Consent Decree	2/15/01	11/15/01 66 FR 57395	52.1100(c)(167)
Constellation Power Source Generation, Inc.—Brandon Shores Units #1 & 2; Gould Street Unit #3; H.A. Wagner Units #1, 2, 3 & 4; C.P. Crane Units #1 & 3; and Riverside Unit #4.	Consent Order and NO _x RACT Averaging Plan Proposal.	4/25/01	2/27/02 67 FR 8897	52.1100(c)(168)
Kaydon Ring and Seal, Inc.	Consent Order	3/5/04	8/31/04 69 FR 53002	(c)(190); SIP effective date is 11/1/04

(e) EPA-approved nonregulatory and quasi-regulatory material.

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
1990 Base Year Emissions Inventory.	Metropolitan Baltimore Ozone Nonattainment Area.	9/20/95	10/30/95 60 FR 55321	52.1075(a) CO
1990 Base Year Emissions Inventory.	Metropolitan Washington Ozone Nonattainment Area.	3/21/94, 10/12/95	1/30/96 61 FR 2931	52.1075(b) CO
1990 Base Year Emissions Inventory.	All ozone nonattainment areas	3/21/94	9/27/96 61 FR 50715	52.1075(c) VOC, NO _x , CO
1990 Base Year Emissions Inventory.	Kent and Queen Anne's Counties	3/21/94	4/23/97 62 FR 19676	52.1075(d) VOC, NO _x , CO
1990 Base Year Emissions Inventory.	Metropolitan Washington Ozone Nonattainment Area.	3/21/94	4/23/97 62 FR 19676	52.1075(e) VOC, NO _x , CO
1990 Base Year Emissions Inventory.	Metropolitan Washington Ozone Nonattainment Area.	12/24/97	7/8/98 63 FR 36854	52.1075(f) VOC, NO _x
1990 Base Year Emissions Inventory.	Metropolitan Baltimore Ozone Nonattainment Area.	12/24/97	2/3/00 63 FR 5245	52.1075(g) VOC, NO _x
1990 Base Year Emissions Inventory.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area. (Cecil County)	12/24/97, 4/29/98, 12/21/99 12/28/00	2/3/00 63 FR 5252 9/19/01 66 FR 44809	52.1075(h) VOC, NO _x
15% Rate of Progress Plan.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	7/12/95, #95–20	7/29/97 62 FR 40457	52.1076(a)
Stage II Vapor Recovery Comparability Plan.	Western Maryland and Eastern Shore Counties.	11/5/97	12/9/98 63 FR 67780	52.1076(b)
15% Rate of Progress Plan.	Metropolitan Baltimore Ozone Nonattainment Area.	10/7/98	2/3/00 65 FR 5245	52.1076(c)
15% Rate of Progress Plan.	Metropolitan Washington Ozone Nonattainment Area.	5/5/98	7/19/00 65 FR 44686	52.1076(d)
Post-1996 Rate of Progress Plan and contingency measures.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	12/24/97, 4/24/98, 8/18/98 12/21/99, 12/28/00	2/3/00 63 FR 5252 9/19/01 66 FR 44809	52.1076(f)

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Ozone Attainment Plan	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	3/8/04 4/29/98, 8/18/98, 12/21/99, 12/28/00, 8/31/01 9/2/03	4/15/04 69 FR 19939 10/29/01 66 FR 54578 10/27/03 68 FR 61103	52.1076(f)(3) 52.1076(h)
Transportation Conformity Budgets.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	4/29/98, 8/18/98, 12/21/99, 12/28/00	10/29/01 66 FR 54578	52.1076(i)
Post-1996 Rate of Progress Plan and contingency measures.	Metropolitan Baltimore Ozone Nonattainment Area.	12/24/97, 4/24/98, 8/18/98, 12/21/99, 12/28/00	9/26/01 66 FR 49108	52.1076(j)
Ozone Attainment Plan	Metropolitan Baltimore Ozone Nonattainment Area.	4/29/98, 8/18/98, 12/21/99, 12/28/00, 8/31/01 9/2/03	10/30/01 66 FR 54666 10/27/03 68 FR 61103	52.1076(k) 52.1076(k)
Mobile budgets	Metropolitan Baltimore Ozone Nonattainment Area.	8/31/01 9/2/03	10/30/01 66 FR 54666 10/27/03 68 FR 61103	52.1076(l)
Mobile budgets (2005)	Metropolitan Baltimore Ozone Nonattainment Area. Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	9/2/03	10/27/03 68 FR 61103	52.1076(m)
Extension for incorporation of the on-board diagnostics (OBD) testing program into the Maryland I/M SIP.	All ozone nonattainment areas	7/9/02	1/16/03 68 FR 2208	52.1078(b)
Photochemical Assessment Monitoring Stations (PAMS) Program.	Metropolitan Baltimore and Metropolitan Ozone Nonattainment Areas.	3/24/94	9/11/95 60 FR 47081	52.1080
Consultation with Local Officials (CAA Sections 121 and 127).	All nonattainment and PSD areas	10/8/81	4/8/82 47 FR 15140	52.1100(c)(63)
Lead (Pb) SIP	City of Baltimore	10/23/80	2/23/82 47 FR 7835	52.1100(c)(60), (61)
TM#90-01—"Continuous Emission Monitoring Policies and Procedures"—October 1990.	Statewide	9/18/91	2/28/96 61 FR 7418	52.1100(c)(106); approved into SIP as "additional material", but not IBR'd
Carbon Monoxide Maintenance Plan.	City of Baltimore-Regional Planning District 118.	9/20/95	10/31/95 60 FR 55321	52.1100(c)(117)
Carbon Monoxide Maintenance Plan.	Montgomery County Election Districts 4, 7, and 13; Prince Georges County Election Districts 2, 6, 16, 16, 17 and 18.	10/12/95	1/30/96 61 FR 2931	52.1100(c)(118)
Ozone Maintenance Plan	Kent and Queen Anne's Counties	2/4/04	10/21/04 69 FR 61766	52.1100(c)(187); SIP effective date is 11/22/04

[FR Doc. 04-26291 Filed 11-26-04; 8:45 am]

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**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 63**

[OAR-2003-0188; FRL-7841-8]

RIN 2060-AL87

**List of Hazardous Air Pollutants,
Petition Process, Lesser Quantity
Designations, Source Category List;
Petition To Delist of Ethylene Glycol
Monobutyl Ether**AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is amending the list of hazardous air pollutants (HAP) contained in section 112(b)(1) of the Clean Air Act (CAA) by removing the compound ethylene glycol monobutyl ether (EGBE) (2-Butoxyethanol) (Chemical Abstract Service (CAS) No. 111-76-2) from the group of glycol ethers. This action is being taken in response to a petition to delete EGBE from the HAP list submitted by the Ethylene Glycol Ethers Panel of the American Chemistry Council (ACC) (formerly the Chemical Manufacturers Association) on behalf of EGBE producers and consumers. Petitions to delete a substance from the HAP list are permitted under section 112(b)(3) of the CAA.

Based on the available information concerning the potential hazards of and projected exposures to EGBE, EPA has made a determination pursuant to CAA section 112(b)(3)(C) that there are "adequate data on the health and environmental effects [of EGBE] to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause adverse effects to human health or adverse environmental effects."

DATES: Effective November 29, 2004.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR-2003-0188 and A-99-24. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket

materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B-102, 1301 Constitution Avenue, NW, Washington, DC 10460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Rimer, Office of Air Quality Planning and Standards, Emission Standards Division, C404-01, U. S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-2962; fax number: 919-541-0840; e-mail address: rimer.kelly@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially affected by this action are those industrial facilities that manufacture or use EGBE. The final rule amends the list of HAP contained in section 112(b)(1) of the CAA by removing the compound EGBE. The decision to issue a final rule to delist EGBE removes EGBE from regulatory consideration under section 112(d) of the CAA.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by 60 days from publication in the **Federal Register**. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

- I. Introduction
 - A. The Delisting Process
 - B. The Present Petition and Rulemaking
- II. Peer Review of New Data on EGBE Metabolite, Butoxyacetaldehyde
- III. Public Comments on Proposed Rule to Delist EGBE
- IV. Final Rule
 - A. Rationale for Action
 - B. Effective Date
- V. References
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Analysis
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism

- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Congressional Review Act

I. Introduction*A. The Delisting Process*

Section 112 of the CAA contains a mandate for EPA to evaluate and control emissions of HAP. Section 112(b)(1) includes an initial list of HAPs that are composed of specific chemical compounds and compound classes to be used by EPA to identify source categories for which EPA will subsequently promulgate emissions standards.

Section 112(b)(2) of the CAA requires EPA to make periodic revisions to the initial list of HAPs set forth in section 112(b)(1) and outlines criteria to be applied in deciding whether to add or delete particular substances. Section 112(b)(2) identifies pollutants that should be listed as: "* * * pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise. * * *"

To assist EPA in making judgements about whether a pollutant causes an adverse environmental effect, section 112(a)(7) defines an "adverse environmental effect" as: "* * * any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

Section 112(b)(3) establishes general requirements for petitioning EPA to modify the HAP list by adding or deleting a substance. Although the Administrator may add or delete a substance on his or her own initiative, the burden is on a petitioner to include sufficient information to support the

requested addition or deletion under the substantive criteria set forth in CAA section 112(b)(3)(B) and (C). The Administrator must either grant or deny a petition within 18 months of receipt of a complete petition. If the Administrator decides to grant a petition, the Agency publishes a written explanation of the Administrator's decision, along with a proposed rule to add or delete the substance. If the Administrator decides to deny the petition, the Agency publishes a written explanation of the basis for denial. A decision to deny a petition is final Agency action subject to review in the D.C. Circuit Court of Appeals under CAA section 307(b).

To promulgate a final rule deleting a substance from the HAP list, CAA section 112(b)(3)(C) provides that the Administrator must determine that there are: " * * * adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects."

The EPA will grant a petition to delete a substance and publish a proposed rule to delete that substance, if it makes an initial determination that these criteria have been met. After affording an opportunity for comment and for a hearing, EPA will make a final determination whether the criteria have been met.

The EPA does not interpret CAA section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects on human health or the environment before it may be deleted from the list. The use of the terms "adequate" and "reasonably" indicate that the Agency must weigh the potential uncertainties and their likely significance. Uncertainties concerning the risk of adverse health or environmental effects may be mitigated if EPA can determine that projected exposures are sufficiently low to provide reasonable assurance that such adverse effects will not occur. Similarly, uncertainties concerning the magnitude of projected exposure may be mitigated if EPA can determine that the levels which might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels. However, the burden remains on a petitioner to resolve any critical uncertainties associated with missing information. The EPA will not grant a petition to delete a substance if there are major uncertainties which need to be

addressed before EPA would have sufficient information to make the requisite determination.

B. The Present Petition and Rulemaking

On August 29, 1997, the ACC's Glycol Ethers Panel submitted a petition to delete EGBE (CAS No. 111-76-2) from the HAP list in CAA section 112(b)(1), 42 U.S.C. 7412(b)(1). Following the receipt of the petition, we conducted a preliminary evaluation to determine whether the petition was complete according to Agency criteria. To be deemed complete, a petition must consider all available health and environmental effects data. A petition must also provide comprehensive emissions data, including peak and annual average emissions for each source or for a representative selection of sources, and must estimate the resulting exposures of people living in the vicinity of the sources.

In addition, a petition must address the environmental impacts associated with emissions to the ambient air and impacts associated with the subsequent cross-media transport of those emissions. After receiving additional submittals through December 21, 1998, we determined the petition to delete EGBE to be complete. We published a notice of receipt of a complete petition in the **Federal Register** on August 3, 1999 and requested information to assist us in technically reviewing the petition.

We received eight submissions in response to our request for comment and information which would aid our technical review of the petition. The comments made general statements encouraging EPA to delist EGBE. None of the comments included technical information.

On November 4, 2003, based on a comprehensive review of the data provided in the petition and otherwise provided to EPA, the Agency made an initial determination that the statutory criteria for deletion of EGBE from the HAP list had been met. The EPA, therefore, granted the petition by the ACC's Glycol Ethers Panel and issued a proposed rule to delist EGBE (68 FR 65648, November 21, 2003).

The EPA received a total of 18 comments on the November 21, 2003 proposed rule. While three of the commenters opposed deleting EGBE from the HAP list, they provided no substantive arguments to support this position. There was no request for a public hearing.

The EPA's decision to remove EGBE from the list of HAP is based on the results of a risk assessment demonstrating that emissions of EGBE may not reasonably be anticipated to

result in adverse human health or environmental effects. In addition to the risk assessment, we have considered public comments, as well as other information related to EGBE in making this decision, namely the transformation of EGBE into other HAP as it decomposes in the ambient air. We conclude that ambient concentrations of the transformed HAP are very small, and that they decompose rapidly. Therefore, we do not anticipate that EGBE transformation will be significant enough to have an adverse impact on human health.

We also considered the fact that EGBE is reported to the Toxics Release Inventory (TRI) as part of the group of glycol ethers. The 2000 TRI shows the air emissions of the class of chemicals "Certain Glycol Ethers" to be ranked number 12 by volume. Under the final rule, it will no longer be regulated as a HAP, but it will continue to be reported in the TRI, as part of the group "Certain Glycol Ethers" and regulated under EPA's criteria pollutant (ozone) program.

The EPA has made a final determination, after careful consideration of the petition and after completing additional analyses, that there are adequate data on the health and environmental effects of EGBE to determine that emissions, ambient concentrations, bioaccumulation, or deposition of EGBE may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

II. Peer Review of New Data on EGBE Metabolite, Butoxyacetaldehyde

In the preamble to the proposed rule, we stated that the Agency believes EGBE is not genotoxic and that two distinctly different nonlinear modes of action are principally responsible for the increased forestomach and liver tumors reported by NTP (2000a). These modes of action are discussed in detail in the Interim Final position paper, "An Evaluation of the Human Carcinogenic Potential of Ethylene Glycol Butyl Ether," available from the Docket for the final rule. We also stated that there are reports of weak positive effects by EGBE at high concentrations in some in vitro assays which may indicate the potential for genotoxicity by butoxyacetaldehyde (BAL), an EGBE metabolite known to cause clastogenic changes at high in vitro concentrations (see the section on "Other Possible Modes of Action for Forestomach Tumor Development in Female Mice" in the Agency's position paper). However, available evidence from a published EGBE physiologically based pharmacokinetic model that had

been modified to include kinetics for the metabolism of the BAL intermediate (Corley, 2003) suggested that the concentrations of BAL metabolite predicted to occur in vivo would be much lower than the concentrations used in the in vitro assays. Based on this, it appears that genotoxicity is not a factor in tumor development in female mice. This increases our confidence that a nonlinear mechanism is involved in tumor formation (versus a linear mechanism which would be suggested if genotoxicity was involved). As we discussed in the preamble to the proposed rule, additional research (e.g., verification of these PBPK modeling results and further genotoxicity research using more appropriate assays and currently accepted test protocols) would be beneficial to provide a more definitive determination regarding the role of BAL in the formation of forestomach tumors in female mice.

Since the publication of the proposed rule, additional research has been completed and submitted to EPA. Subsequently, we commissioned a peer review panel to evaluate the new data submitted and EPA's conclusions of the proposed ruling and interim final position paper in light of the recent research and literature that has been submitted to the Agency in response to the Agency's proposed EGBE ruling. The peer review was conducted on May 19, 2004 by an external review panel of seven experts. A report on the results of this peer review is included in the docket for the final rule. In summary, the peer review panel was unanimous in agreeing that there is enough information to support an informed decision concerning the significance of BAL genotoxicity to the formation of EGBE induced liver and forestomach tumors. The available information support a nonlinear mode of action, not a linear mode of action (e.g., genotoxicity) for the male mouse liver tumors and female mouse forestomach tumors observed following EGBE exposure. That is, the reviewers concluded that genotoxicity is not important in the development of these tumors.

The panel also concluded that it is reasonable to expect that a lack of hemolytic effects in humans would preclude the formation of liver tumors in humans and that a lack of hyperplastic effects in the region of the gastroesophageal junction in humans would preclude the formation of gastrointestinal tumors in humans. That is, the data support the finding that we would not expect to find these tumors in humans following environmental exposures. The RfC and RfD values for

EGBE have been set at levels that prevent both the precursor events that would lead to tumors and other noncancer effects, and the Agency has determined that exposures to EGBE are at levels well below the RfC and RfD. We can therefore conclude with confidence that emissions, ambient concentrations, bioaccumulation, or deposition of EGBE may not reasonably be anticipated to cause any adverse effects to the human health.

III. Public Comments on Proposed Rule To Delist EGBE

Of the 18 written comments we received pertaining to the proposed delisting of EGBE, 15 were supportive of the decision to delist and 3 opposed the decision to delist.

The EPA has considered carefully all the comments both supporting and opposing the proposed delisting. A summary of the comments and EPA responses to them has been included in the docket for this proceeding. We received substantive comments with regard to the BAL issue, which we discussed in detail above. We received no substantive negative comments. Two of the comments in support of the delisting also asked specific policy questions. We respond to those questions below.

Comment: One commenter asked if the rule also applies to diethylene glycol monobutyl ether (DEGBE). The commenter expressed support for delisting both chemicals in the rule.

Response: The final rule applies only to EGBE, one of the compounds included in the group of glycol ethers listed in the section 112(b)(1) HAP list. The petition requested that one single compound, EGBE, be delisted; it did not request EPA to consider removing any other compounds in the group of glycol ethers. Therefore this action pertains only to EGBE.

Comment: One commenter urged EPA to address the "Once In, Always In" policy in the final rulemaking for facilities that will no longer be major sources for MACT standards once EGBE is delisted. This commenter requested that the "Once In, Always In" policy not apply to delistings in general, since a facility that was only over the major source threshold due to emissions of a subsequently delisted HAP may never have been a "major source" from a health perspective, and therefore never really "in". The commenter argued that the purpose of the policy that sources not be allowed to backslide from MACT standards, is not applicable to delistings because in such cases the health and environmental protection of a standard is not undermined since the delisted

chemical has been determined not to be a health and environmental threat.

Response: This action addresses a request to remove a specific pollutant from the HAP list. Any questions about the "Once In Always In Policy" are beyond the scope of today's action. The EPA will address the "Once In Always In Policy" in the future.

IV. Final Rule

A. Rationale for Action

The detailed factual rationale for supporting the Agency's initial determination that the criteria in Clean Air Act section 112(b)(3)(C) had been met is set forth in the proposed rule published in the **Federal Register** on November 21, 2003 (68 FR 65648). However, as described above, EPA received additional data during the public comment period and had those data peer reviewed. The results of the peer review strengthen the case for delisting. The EPA also received 18 public comments on the proposed rule, none of which caused EPA to revise the scientific basis upon which the initial determination to delist EGBE was predicated. The EPA hereby incorporates into its rationale for the final rule the substantive assessment of potential hazards, projected exposures, human risk, and environmental effects set forth in the proposed rule to delist EGBE. Based on that assessment, the Agency's evaluation of the comments, and additional information submitted during the rulemaking (as summarized above), EPA has made a determination that there are adequate data on the health and environmental effects of EGBE to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the compound may not reasonably be anticipated to cause adverse human health or environmental effects.

B. Effective Date

The final rule will be effective on November 29, 2004, the date it is published in the **Federal Register**. Although Section 553(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), provides that substantive rules must be published at least 30 days prior to their effective date, this requirement does not apply to this action. First, the rule was promulgated pursuant to CAA section 307(d), and that provision expressly states that the provisions of section 553 do not apply to this action. Second, even under section 553, the requirement that a rule be published 30 days prior to its effective date does not apply to a rule, "which grants or

recognizes an exemption or relieves a restriction.”

V. References

References cited in the preamble can be viewed in the docket for the final rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

- (1) Have an annual effect on the economy of \$100 million or more or adverse affect in a material way the economy, a sector to the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final action does not constitute a “significant regulatory action” and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The final action will remove EGBE from the CAA section 112 (b)(1) HAP list and, therefore, eliminate the need for information collection under the CAA. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of today’s final rule on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this final action, can include manufacturing (NAICS 3999–03) and air transportation (NAICS 4522–98 and 4512–98) operations that employ less 1,000 people and engineering services (NAICS 8711–98) operations that earn less than \$20 million annually; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today’s final rule on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives “which minimize any significant economic impact of the final rule on small entities.” (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant

economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The final rule will eliminate the burden of additional controls necessary to reduce EGBE emissions and the associated operating, monitoring and reporting requirements. We have, therefore, concluded that today’s final rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the final rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 1044, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for final and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today’s final rule contains no Federal mandates for State, local, or tribal

governments or the private sector. The final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Because the final rule removes a compound previously labeled in the CAA as a HAP, it actually reduces the burden established under the CAA. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the final regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the final regulation.

Today's final rule removes the substance EGBE from the list of HAP contained under section 112(b)(1) of the CAA. It does not impose any additional requirements on the States and does not affect the balance of power between the States and the Federal government. Thus, the requirements of section 6 of the Executive Order do not apply to the final rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR

67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. The final rule will eliminate control requirements for EGBE and, therefore, reduces control costs and reporting requirements for any tribal entity operating a EGBE source subject to control under the CAA. Thus, Executive Order 13175 does not apply to the final rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This determination is based on the fact that the RFC is determined to be protective of sensitive sub-populations, including children.

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

Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as "significant

energy actions." The final rule is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) 915 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. The final rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the 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**. However, this action is not a major rule as defined by 5 U.S.C. 804(2). The final rule will be effective November 29, 2004.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous

substances, Reporting and recordkeeping requirements.

Dated: November 18, 2004.

Michael O. Leavitt,
Administrator.

■ For the reasons set out in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart C—[AMENDED]

■ 2. Subpart C is amended by adding § 63.63 to read as follows:

§ 63.63 Deletion of ethylene glycol monobutyl ether from the list of hazardous air pollutants.

The substance ethylene glycol monobutyl ether (EGBE, 2-Butoxyethanol) (CAS Number 111-76-2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1).

[FR Doc. 04-26071 Filed 11-26-04; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 03-185; FCC 04-220]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules for digital low power television (LPTV) and television translator stations, and resolves issues related to digital television booster stations. This proceeding marks the beginning of the digital television conversion for these services. The rules and policies provide the framework for this conversion.

DATES: Effective January 28, 2005, except §§ 73.6027, 74.703, 74.705, 74.707, 74.710, 74.786 through 74.788, 74.790, and 74.793 through 74.796 of the Commission's rules, which contain information collection requirements under the Paperwork Reduction Act (PRA) and are not effective until approved by the Office of Management and Budget (OMB). Written comments by the public on the new and modified

information collections are due January 28, 2005. The Commission will publish a document in the **Federal Register** announcing the effective date for these rules.

FOR FURTHER INFORMATION CONTACT:

Shaun Maher, Shaun.Maher@fcc.gov, (202) 418-1600. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Leslie Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Shaun Maher, Media Bureau (202) 418-1600. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith at 202-418-0217, or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order (R&O)* in MB Docket No. 03-185, FCC 04-220, adopted September 9, 2004, and released September 30, 2004. This proceeding was initiated by the *Notice of Proposed Rule Making*, 68 FR 55566, September 26, 2003. The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW, CY-B402, Washington, DC 20554. The R&O is also available on the Internet at the Commission's Web site: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at Brian.Millin@fcc.gov

Paperwork Reduction Act

This document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding.

Summary of the Report and Order

1. The R&O adopts definitions and permissible use provisions for digital TV translator and LPTV stations to

mirror the analog operation of these stations. Digital translators will rebroadcast DTV broadcast signals. Whenever operating, a digital LPTV station must use some of its channel capacity to provide a free video programming service to the public. Upon meeting this requirement, LPTV stations may offer ancillary and supplementary services on the same basis as DTV broadcast licensees.

2. As to the timing of the digital transition for these stations, LPTV, TV translator, and Class A stations are required to convert to digital operation, but the Commission has discretion to set the date by which analog operations of these stations must cease. The R&O states that the Commission will seek to hasten their transition to digital service and will work toward the goal of achieving an end-date at, or soon after, the end date of the full-power transition. Although the Commission intends to hasten their transition to digital service, certain issues regarding the transition of full service stations must be resolved before a low-power transition deadline can be set. The final transition date of these stations will be considered in the Commission's Third DTV periodic review proceeding.

3. Existing LPTV and TV translator stations may convert to digital operations ("flash cut") on their current channel. Applications for this purpose will be accepted on a first-come, first serve basis. Mutually exclusive applicants will be resolved by auction. In addition, to facilitate their digital transition, licensees and permittees of LPTV, TV translator, and Class A stations will be allowed to seek a digital companion channel for their analog station operations. A filing window for this purpose will be announced at a later date. The Commission will determine the deadline and process for stations' obtaining a digital companion channel to return of one of their channels. At a later date, the Commission will institute a separate first-come-first-served filing procedure not limited to incumbent low power stations.

4. Due to limited spectrum availability, the R&O makes available VHF channels 2-13, inclusive, and UHF channels 14-51, inclusive (except channel 37) for digital LPTV and TV translator operations. The R&O also permits the use of channels 52-69 on a limited basis. Existing LPTV and TV translator stations on channels 52-69 may flash-cut to digital operations. The use of channels 52-59 for digital companion channels is limited to those stations that can certify the unavailability of any in-core channel

(channels 2–51). The use of channels 60–69 for companion channels is prohibited. Applicants for operations on channels 52–69 must notify potentially affected commercial wireless and public safety licensees before filing their applications. Additionally, applicants proposing to flash-cut to digital on channels allocated for public safety use (channels 63, 64, 68 and 69) are required to coordinate with regional and state entities representing potentially affected public safety licensees.

5. All digital LPTV and TV translator stations will operate on a secondary, non-interfering basis with respect to primary services, including the commercial wireless and public safety services. The R&O adopts for digital stations in the LPTV service the protected contour values for digital Class A stations. For digital stations in the LPTV and Class A services, the R&O replaces the current contour protection methodology with the DTV interference prediction methodology.

Procedural Matters

6. Paperwork Reduction Act of 1995 Analysis. This R&O contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

7. Written comments by the public on the proposed information collection(s) are due January 28, 2005. Written comments must be submitted by the public, Office of Management and Budget and other interested parties on the proposed information collection(s) on or before January 28, 2005. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to Kristy.L.LaLonde@omb.eop.gov, or via fax at 202–395–5167.

Final Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the

Notice of Proposed Rule Making (NPRM), 68 FR 55566, September 26, 2003. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. One comment was received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for and Objectives of the Report and Order

9. The R&O establishes a regulatory framework that will hasten the transition of LPTV and TV translator stations to digital operations while minimizing disruption of existing service to consumers served by analog LPTV and TV translator stations. These stations are a valuable component of the nation's television system, delivering over-the-air TV service, including locally produced service, to millions of viewers in rural and discrete urban communities. The Commission desires to facilitate, wherever possible, the digital transition of these stations, thereby enabling their viewers to realize the many benefits of digital broadcast television (DTV) technology. The rules and policies adopted in the R&O provide flexible and affordable opportunities for low power digital television service, both through the conversion of existing analog service and, where spectrum is available, new digital stations.

10. The R&O provides additional flexibility for existing broadcasters to transition to digital. The R&O declines to apply the full-service deadline for stations to cease analog operations finding that low power television broadcasters and their viewers do not have the resources to “flash-cut” from analog to digital and need additional time to identify available channels for digital use. Setting a transition deadline at some fixed time after the full-service transition would be less disruptive and minimize potential loss of service.

11. The R&O allows existing broadcasters the first opportunity to either immediately convert from analog to digital (“flash-cut”) on their existing analog channel or to apply for a digital companion channel. This will provide existing broadcasters the flexibility to identify a workable digital channel for operation before new broadcasters are allowed to apply for channels. These applications will be filed as “minor changes,” thus reducing the overall time and processing burden on the stations.

12. While the R&O concludes that digital flash-cut and companion channel applications filed by low power broadcasters are subject to auction (except Class A flash-cut applications), an opportunity is provided for

applicants to find settlements or engineering solutions to avoid having to go to auction. This will facilitate the processing of applications and permit applicants to avoid having to use limited resources to bid for their digital channels.

13. Applicants that choose to flash-cut or file for digital companion channels will have greater flexibility to seek channels between 52–69 (with restrictions). This will enable numerous stations that otherwise could not find a digital channel with the opportunity to participate in the digital transition.

14. Stations will have the flexibility to choose the types of service to provide for their viewers. Translators will be limited to rebroadcasting programs and signals of full-service DTV stations without alteration to content or video format but may insert the types of local messages permitted for analog translators and may rebroadcast a DTV signal as an analog signal. LPTV stations must provide a free over-the-air video program service but have the freedom to use the remainder of their spectrum to offer ancillary services on the same basis as full-service DTV stations (including a 5% fee on gross revenues of feeable services).

15. The interference rules and methodology in the R&O provide the needed flexibility for stations to engineer new digital operations without undermining established interference protection rights of existing broadcasters. The equipment rules will enable stations to use much of their existing equipment, thus reducing the overall cost of digital implementation.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

16. There were no comments filed in response to the Initial Regulatory Flexibility Analysis.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

17. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation;

and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

18. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and therefore might be over-inclusive.

19. An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses might therefore be over inclusive.

20. Class A TV, LPTV, and TV translator stations. The rules and policies apply to licensees of LPTV and TV translator, and to potential licensees in these television services. Certain rules and policies also apply to licensees of Class A TV stations. The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this category are establishments primarily engaged in television broadcasting and which produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

21. Currently, there are approximately 2,100 licensed LPTV stations, 600 licensed Class A stations, 4,700 licensed TV translators and 11 TV booster stations. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, virtually all LPTV broadcast stations, including LPTV stations that have converted to Class A status, have revenues of less than \$12 million. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the

revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$12 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

22. Cable and Other Program Distribution. Cable systems often receive the television service transmitted over the cable system from a TV translator or LPTV station. Thus, cable systems may also be affected by the rules in the R&O. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite (DBS) services, home satellite dish (HSD) services, multipoint distribution services (MDS), multichannel multipoint distribution service (MMDS), Instructional Television Fixed Service (ITFS), local multipoint distribution service (LMDS), satellite master antenna television (SMATV) systems, and open video systems (OVS). According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

23. Cable Operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Notice.

24. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate less than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 68,500,000

subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

25. Direct Broadcast Satellite (DBS) Service. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution services. This definition provides that a small entity is one with \$12.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated \$12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated. Therefore, we will assume all four licensees are small, for the purpose of this analysis.

26. Home Satellite Dish (HSD) Service. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution services. This definition provides that a small entity is one with \$12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled

channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion. As noted, *supra*, for the category Cable and Other Program Distribution, most of providers of these services are considered small.

27. Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS) Instructional Television Fixed Service (ITFS) and Local Multipoint Distribution Service (LMDS). MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS services. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

28. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than \$40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. In addition, MDS includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$12.5 million annually. Therefore, using the SBA small business size standard, we find

that there are approximately 850 small MDS providers.

29. The SBA definition of small entities for Cable and Other Distribution services, which includes such companies generating \$12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

30. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

31. Satellite Master Antenna Television (SMATV) Systems. The SBA definition of small entities for Cable and Other Program Distribution services includes SMATV services and, thus, small entities are defined as all such companies generating \$12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and

55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. As noted, *supra*, for the category Cable and Other Program Distribution, most of providers of these services are considered small.

32. Open Video Systems (OVS). Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

33. Electronics Equipment Manufacturers. Rules adopted in this proceeding could affect manufacturers of digital transmitting and receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer

equipment. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

34. Computer Manufacturers. The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

35. The R&O contains additional reporting and recordkeeping requirements. For example, stations must file an application to either flash-cut to digital or for a companion digital channel. Applicants proposing digital channels 52–69 must make a

certification in their application that no suitable channel 2–51 is available. In addition, applicants proposing to use digital channel 60–69 must certify that they have coordinated the use of their facilities with public safety entities. In addition, applicants in mutually exclusive groups may file settlements or engineering solutions with the Commission to avoid having to go to auction. Without these filings, stations cannot participate in the digital television transition. Factors that could make the digital transition time consuming are not likely to be related to whether the entity is small or large. These requirements will serve to promote the overall DTV transition and represent a temporary burden on stations. We expect that stations will be able to recoup the cost of these filings with advance DTV operation.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

37. The Commission is aware that many low power licensees, including smaller entities, operate with limited budgets. Accordingly, every effort was taken to craft rules that impose the least possible burden on all licensees, including smaller licensed entities.

38. The R&O allows low power broadcasters additional time (as compared to full-service broadcasters) to transition from analog to digital service. The amount of additional time has not yet been determined. Allowing additional time for the low power DTV transition is less disruptive to low power broadcasters and will minimize potential loss of service. The Commission considered making low power broadcasters cease operating their analog facilities at the deadline applicable to full-service broadcasters but we found that this would result in many low power stations being unable to obtain the spectrum they needed to accomplish the digital transition. The Commission rejected this approach in

order to prevent low power broadcasters from prematurely flash-cutting to digital and the loss of service that would result.

39. The R&O allows existing broadcasters the first opportunity to either flash-cut on their existing analog channel or to apply for a digital companion channel. This will provide existing broadcasters the flexibility to identify a workable digital channel for operation before new broadcasters are allowed to apply for channels. The Commission considered allowing applicants to seek new channels at the same time that incumbent stations seek companion channels but rejected this approach because new channels would use valuable spectrum that must be used by incumbent stations to successfully transition to digital.

40. The R&O concludes that digital flash-cut and companion channel applications filed by low power broadcasters are subject to auction (except Class A flash-cut applications). The Commission concluded that the statute provides the discretion in this case. At the same time, the Commission sought to alleviate the burden on all stations by allowing all applicants an opportunity to find settlements or engineering solutions to avoid having to go to auction. The Commission concluded that the settlement opportunity will facilitate the processing of applications and permit applicants to avoid having to use limited resources to bid for their digital channels.

41. The R&O allows applicants to seek digital channels between 52–69 on a limited secondary basis. The Commission found that this approach will provide stations with greater flexibility to seek channels where a core channel (between 2 and 51) cannot be identified. The Commission considered not allowing any additional licensing on these channels because of concerns of interference to new wireless and public safety users. This approach was rejected because it was found that limited use of channels 52–69 was necessary for the successful DTV transition of many LPTV and TV translator stations. This will enable numerous stations that otherwise could not find a digital channel with the opportunity to participate in the digital transition.

42. The R&O provides stations with the flexibility to choose the types of service to provide for their viewers. Translators will be limited to rebroadcasting programs and signals of full-service DTV stations without alteration to content or video format but may insert the types of local messages permitted for analog translators and may rebroadcast a DTV signal as an analog

signal. LPTV stations must provide a free over-the-air video program service but have the freedom to use the remainder of their spectrum to offer ancillary services on the same basis as full-service DTV stations (including 5% fee on gross revenues of feeable services). We considered allowing LPTV and TV translator stations to operate without restrictions but that proposal was rejected because it would interfere with the Commission's overall DTV goals and the rules and policies adopted for full-service stations.

43. The R&O adopts interference rules and methodology to provide the needed flexibility for stations to engineer new digital operations without undermining established interference protection rights of existing broadcasters. The equipment rules will enable stations to use much of their existing equipment, thus reducing the overall cost of digital implementation. The Commission considered adoption of stricter rules but concluded that such rules would interfere with low power stations being able to successfully propose and construct new DTV facilities and to afford to convert their analog facilities.

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals

44. None.

G. Report to Congress

45. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

46. *It is ordered* that pursuant to the authority contained in sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303(f), 303(r), 303(u), 303(w), 303(x), 307, 308, 309, 316, 319, 324, 336(c), 336(f), 337, 330(b), 330(c), 332(c) of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 155(c)(1), 157, 301, 302, 303(f), 303(r), 303(u), 303(w), 303(x), 307, 308, 309, 316, 319, 324, 336(c), 336(f), 337, 330(b), 330(c), 332(c) that the Commission's rules *are hereby amended* as set forth in the rules changes and shall become effective January 28, 2005 except §§ 73.6027, 74.703, 74.705, 74.707, 74.710, 74.786 through 74.788, 74.790, and 74.793 through 74.796 of the Commission's rules, which contain information

collection requirements under the Paperwork Reduction Act (PRA) that are not effective until approved by the Office of Management and Budget (OMB). Written comments by the public on the new and modified information collections are due January 28, 2005. The Commission will publish a document in the **Federal Register** announcing the effective date for these rules.

47. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

48. *It is further ordered*, that the Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 73 and 74

Communications equipment, Reporting and recordkeeping requirements, and Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

Subpart J—Class A Television Broadcast Stations

■ 2. Section 73.6000 is amended by redesignating paragraph (2) as paragraph (3) and adding a new paragraph (2) to read as follows:

§ 73.6000 Definitions.

* * * * *

(2) Produced within the predicted DTV noise-limited contour (*see* § 73.622(e) of this part) of a digital Class A station broadcasting the program or within the contiguous predicted DTV noise-limited contours of any of the digital Class A stations in a commonly owned group; or

* * * * *

■ 3. Section 73.6016 is revised to read as follows:

§ 73.6016 Digital Class A TV station protection of TV broadcast stations.

Digital Class A TV stations must protect authorized TV broadcast stations, applications for minor changes in authorized TV broadcast stations filed on or before November 29, 1999, and applications for new TV broadcast stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant in a group of mutually-exclusive applications for which a settlement agreement was on file as of that date. This protection must be based on meeting the requirements of § 74.793 (b)–(d) and (f) of this chapter. An application for DTV operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect these TV broadcast stations and applications pursuant to these requirements.

■ 4. Section 73.6017 is revised to read as follows:

§ 73.6017 Digital Class A TV station protection of Class A TV and digital Class A TV stations.

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect authorized Class A and digital Class A stations in accordance with the requirements of § 74.793 (b) through (d) and § 74.793(g) of this chapter. This protection must be afforded to applications for changes in other authorized Class A and digital Class A stations filed prior to the date the digital Class A application is filed.

■ 5. Section 73.6018 is revised to read as follows:

§ 73.6018 Digital Class A TV station protection of DTV stations.

Digital Class A TV stations must protect the DTV service that would be provided by the facilities specified in the DTV Table of Allotments in § 73.622, by authorized DTV stations and by applications that propose to expand DTV stations' allotted or authorized coverage contour in any direction, if such applications either were filed before December 31, 1999 or were filed between December 31, 1999 and May 1, 2000 by a DTV station licensee or permittee that had notified the Commission of its intent to "maximize" by December 31, 1999. Protection of these allotments, stations

and applications must be based on meeting the requirements of § 74.793 (b) through (e) of this chapter. An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect these DTV allotments, stations and applications in accordance with this section.

■ 6. Section 73.6019 is revised to read as follows:

§ 73.6019 Digital Class A TV station protection of low power TV, TV translator, digital low power TV and digital TV translator stations.

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect authorized low power TV, TV translator, digital low power TV and digital TV translator stations in accordance with the requirements of § 74.793 (b) through (d) and (h) of this chapter. This protection must be afforded to applications for changes filed prior to the date the digital Class A station is filed.

■ 7. Section 73.6020 is revised to read as follows:

§ 73.6020 Protection of stations in the land mobile radio service.

An application for digital operation of an existing Class A TV station or to change the facilities of an existing Class A TV or digital Class A TV station will not be accepted if it fails to protect stations in the land mobile radio service pursuant to the requirements specified in § 74.709 of this chapter. In addition to the protection requirements specified in § 74.709(a) of this chapter, Class A TV and digital Class A TV stations must not cause interference to land mobile stations operating on channel 16 in New York, NY.

* * * * *

■ 8. Section 73.6024 is amended by adding paragraph (d) to read as follows:

§ 73.6024 Transmission standards and system requirements.

* * * * *

(d) A digital Class A station must meet the emission requirements of § 74.794 of this chapter.

■ 9. Section 73.6027 is added to subpart J to read as follows:

§ 73.6027 Class A TV notifications concerning interference to radio astronomy, research and receiving installations.

An applicant for digital operation of an existing Class A TV station or to change the facilities of an existing Class A TV or digital Class A TV station shall

be subject to the requirements of § 73.1030—Notifications concerning interference to radio astronomy, research and receiving installations.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 10. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 11. Section 74.701 is revised by adding paragraphs (j) through (p) to read as follows:

§ 74.701 Definitions.

* * * * *

(j) *Digital television broadcast translator station* (“*digital TV translator station*”). A station operated for the purpose of retransmitting the programs and signals of a digital television (DTV) broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing DTV reception to the general public.

(k) *Digital low power TV station* (“*digital LPTV station*”). A station authorized under the provisions of this subpart that may retransmit the programs and signals of a DTV broadcast station, may originate programming in any amount greater than 30 seconds per hour for the purpose of providing digital television (DTV) reception to the general public and, subject to a minimum video program service requirement, may offer services of an ancillary or supplementary nature, including subscription-based services. (See § 74.790).

(l) *Digital program origination*. For purposes of this part, digital program origination shall be any transmissions other than the simultaneous retransmission of the programs and signals of a TV or DTV broadcast station or transmissions related to service offerings of an ancillary or supplementary nature. Origination shall include locally generated television program signals and program signals obtained via video recordings (tapes and discs), microwave, common carrier circuits, or other sources.

(m) *Existing low power television or television translator station*. When used in subpart G of this part, the terms existing low power television and existing television translator station refer to an analog or digital low power television station or television translator station that is either licensed or has a valid construction permit.

(n) *Suitable in core channel*. When used in subpart G of this part, the term “suitable in core channel” refers to a channel that would enable a digital low power television or television translator station to produce a protected service area comparable to that of its associated analog LPTV or TV translator station.

(o) *Companion digital channel*. When used in subpart G of this part, the term “companion digital channel” refers to a digital channel authorized to an existing low power television or television translator station to be associated with the station’s analog channel.

(p) *Digital conversion channel*. When used in subpart G of this part, the term “digital conversion channel” refers to a channel previously authorized to an existing low power television or television translator station that has been converted to digital operation.

■ 12. Section 74.703 is revised by redesignating paragraphs (f) and (g) as paragraphs (h) and (i) and adding new paragraphs (f) and (g) to read as follows:

§ 74.703 Interference.

* * * * *

(f) It shall be the responsibility of a digital low power TV or TV translator station operating on a channel from channel 52–69 to eliminate at its expense any condition of interference caused to the operation of or services provided by existing and future commercial or public safety wireless licensees in the 700 MHz bands. The offending digital LPTV or translator station must cease operations immediately upon notification by any primary wireless licensee, once it has been established that the digital low power TV or translator station is causing the interference.

(g) An existing or future wireless licensee in the 700 MHz bands may notify (certified mail, return receipt requested), a digital low power TV or TV translator operating on the same channel or first adjacent channel of its intention to initiate or change wireless operations and the likelihood of interference from the low power TV or translator station within its licensed geographic service area. The notice should describe the facilities, associated service area and operations of the wireless licensee with sufficient detail to permit an evaluation of the likelihood of interference. Upon receipt of such notice, the digital LPTV or TV translator licensee must cease operation within 120 days unless:

(1) It obtains the agreement of the wireless licensee to continue operations;

(2) The commencement or modification of wireless service is

delayed beyond that period (in which case the period will be extended); or

(3) The Commission stays the effect of the interference notification, upon request.

* * * * *

■ 13. Section 74.705 is amended by revising paragraph (e) to read as follows:

§ 74.705 TV broadcast analog station protection.

* * * * *

(e) As an alternative to the preceding paragraphs of 74.705, an applicant for a low power TV, TV translator or TV booster may make full use of terrain shielding and Longley-Rice terrain dependent propagation prediction methods to demonstrate that the proposed facility would not be likely to cause interference to TV broadcast stations. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69* (but also see § 74.793(d)). Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, CY-C203, 445 12th Street, SW., Reference Information Center, Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at <http://www.fcc.gov>.

■ 14. Section 74.707 is amended by revising paragraph (e) to read as follows:

§ 74.707 Low power TV and TV translator station protection.

* * * * *

(e) As an alternative to the preceding paragraphs of § 74.707, an applicant for a low power TV or TV translator station may make full use of terrain shielding and Longley-Rice terrain dependent propagation prediction methods to demonstrate that the proposed facility would not be likely to cause interference to low power TV, TV translator and TV booster stations. Guidance on using the Longley-Rice methodology is provided in *OET Bulletin No. 69* (but also see § 74.793(d)). Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, Room CY-C203, 445 12th Street, SW., Reference Information Center, Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at <http://www.fcc.gov>.

■ 15. Section 74.710 is added to subpart G to read as follows:

§ 74.710 Digital low power TV and TV translator station protection.

(a) An application to construct a new low power TV, TV translator, or TV

booster station or change the facilities of an existing station will not be accepted if it fails to protect an authorized digital low power TV or TV translator station or an application for such station filed prior to the date the low power TV, TV translator, or TV booster application is filed.

(b) Applications for low power TV, TV translator and TV booster stations shall protect digital low power TV and TV translator stations pursuant to the following requirements:

(1) An application must not specify an antenna site within the protected contour of a co-channel or adjacent channel digital low power TV or TV translator station, as defined in § 74.792.

(2) The ratio in dB of the field strength of the low power TV, TV translator or TV booster station at the protected contour of a co-channel digital TV or TV translator station must meet the requirements specified in § 74.706(d)(1).

(3) The ratio in dB of the field strength of the low power TV, TV translator or TV booster station at the protected contour of a digital low power TV or TV translator station on the lower and upper adjacent channels must not exceed 49 dB and 48 dB, respectively.

(4) The analysis used in 74.710 should use the propagation methods specified in § 74.706(c).

(c) As an alternative to the requirements of paragraph (b) of this section, an applicant for a low power TV, TV translator or TV booster may make full use of terrain shielding and Longley-Rice terrain dependent propagation prediction methods to demonstrate that the proposed facility would not be likely to cause interference to digital low power TV or TV translator stations, as described in § 74.707(e) (i.e., reduce the service population by no more than 0.5% within the station's protected contour based on the interference thresholds of § 73.623(c) of this chapter).

■ 16. Section 74.786 is added to read as follows:

§ 74.786 Digital channel assignments.

(a) An applicant for a new low power television or television translator digital station or for changes in the facilities of an authorized digital station shall endeavor to select a channel on which its operation is not likely to cause interference. The applications must be specific with regard to the channel requested. Only one channel will be assigned each station.

(b) Any one of the 12 standard VHF Channels (2 to 13 inclusive) may be assigned to a VHF digital low power television or television translator

station. Channels 5 and 6 assigned in Alaska shall not cause harmful interference to and must accept interference from non-Government fixed operation authorized prior to January 1, 1982.

(c) UHF channels 14 to 36 and 38 to 51 may be assigned to a UHF digital low power television or television translator station. In accordance with § 73.603(c) of this chapter, Channel 37 will not be assigned to such stations.

(d) UHF Channels 52–59 may be assigned to a digital low power television or television translator station for use as a *digital conversion channel*. These channels may also be assigned as a *companion digital channel* if the applicant is able to demonstrate that a *suitable in core channel* is not available. Stations proposing use of such channels shall notify all potentially affected 700 MHz wireless licensees not later than 30 days prior to the submission of their application (FCC Form 346). Applicants shall notify wireless licensees of the 700 MHz spectrum comprising the same TV channel and the adjacent channel within whose licensed geographic boundaries the digital LPTV or translator station is proposed to be located, and also notify licensees of co-channel and adjacent channel spectrum whose service boundaries lie within 75 miles and 50 miles, respectively, of their proposed station location. Specific information for this purpose can be obtained from the Commission's auction Web site at <http://www.fcc.gov/auctions>.

(e) UHF Channels 60–69 may be assigned to a digital low power television or television translator station for use as a *digital conversion channel* only. Stations proposing use of such channels shall notify all potentially affect 700 MHz commercial licensees not later than 30 days prior to the submission of their application (FCC Form 346) in the manner provided in paragraph of this section. Stations proposing use of channels 63, 64, 68 and 69 must secure a coordinated spectrum use agreement with the pertinent 700 MHz public safety regional planning committee and state administrator prior to the submission of their application (FCC Form 346). Coordination shall be undertaken with regional planning committee and state administrator of the region and state within which the digital LPTV or translator station is proposed to be located, and those of adjoining regions and states with boundaries within 75 miles of the proposed station location. Stations proposing use of channels 62, 65, and 67 must notify the pertinent regional planning committee and state administrator not later than 30 days

prior to the submission of their application (FCC Form 346). Notification shall be made to the regional and state administrators of region and state within which the digital LPTV or translator station is proposed to be located, and those of adjoining regions and states with boundaries within 50 miles of the proposed station location. Information for this purpose is available at the above web site and also at the following internet sites: <http://wireless.fcc.gov/publicsafety700MHzregional.html>, <http://wireless.fcc.gov/publicsafety/700MHz/state.html>, and <http://wireless.fcc.gov/publicsafety/700MHz/interop-contacts.html>.

(f) Application for new analog low power television or television translator stations specifying operation above Channel 51 will not be accepted for filing. Applications for displacement relief on channels above 51 will continue to be accepted.

■ 17. Section 74.787 is added to read as follows:

§ 74.787 Digital licensing.

(a) *Applications for digital low power television and television translator stations*—(1) *Applications for digital conversion channels* may be filed at any time. Such applications shall be filed on FCC Form 346 and will be treated as a minor change application. There will be no application fee.

(2) *Applications for companion digital channel*. (i) A public notice will specify a time period or “window” for filing applications for companion digital channels. During this window, only existing low power television or television translator stations or licensees and permittees of Class A TV stations may submit applications for companion digital channels. Applications submitted prior to the initial window identified in the public notice will be returned as premature. At a subsequent time, a public notice will announcement the commencement of a filing procedure in which applications will accepted on a first-come, first-served basis not restricted to existing station licensees and permittees;

(ii) Applications for companion digital channels filed during the initial window shall be filed in accordance with the provisions of §§ 1.2105 and 73.5002 of this chapter regarding the submission of the short-form application, FCC Form 175, and all appropriate certifications, information and exhibits contained therein. To determine which applicants are mutually exclusive, applicants must submit the engineering data contained

in FCC Form 346 as a supplement to its short-form application. Such engineering data will not be studied for technical acceptability, but will be protected from subsequently filed applications as of the close of the initial window period. Determinations as to the acceptability or grantability of an applicant's proposal will not be made prior to an auction;

(iii) After the close of the initial window, a public notice will identify the short-form applications received during the window filing period which are found to be mutually exclusive. Such short-form applications will be resolved via the Commission's Part 1 and broadcast competitive bidding rules, §§ 1.2100 *et seq.*, and §§ 73.5000 *et seq.* of this chapter. Such applicants shall be afforded an opportunity to submit settlements and engineering solutions to resolve mutual exclusivity pursuant to § 73.5002(d) of this chapter;

(iv) After the close of the window, a public notice will identify short-form applications received that are found to be non-mutually exclusive. All non-mutually exclusive applicants will be required to submit an FCC Form 346 pursuant to § 73.5005 of this chapter. Such applications shall be processed pursuant to § 73.5006 of this chapter; and

(v) With regard to fees, an application (FCC Form 346) for companion digital channels shall be treated as a minor change application and there will be no application fee.

(3) *Construction permit applications for new stations, major changes to existing stations in the low power television service*. A public notice will specify the date upon which interested parties may begin to file applications for new stations and major facilities changes to existing stations in the low power television service. It will specify parameters for any applications that may be filed. Applications submitted prior to date announced by the public notice will be returned as premature. Such applications shall be accepted on a first-come, first-served basis, and shall be filed on FCC Form 346. Applications for new or major change shall be subject to the appropriate application fee. Mutually exclusive applications shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, § 1.2100 *et seq.*, and § 73.5000 *et seq.* of this chapter. Such applicants shall be afforded an opportunity to submit settlements and engineering solutions to resolve mutual exclusivity pursuant to § 73.5002(d) of this chapter.

(4) *Displacement applications*. A digital low power television or television translator station which is

causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station, DTV station or allotment or other protected station or service, may at any time file a displacement relief application for change in channel, together with technical modifications that are necessary to avoid interference or continue serving the station's protected service area, provided the proposed transmitter site is not located more than 30 miles from the reference coordinates of the existing station's community of license. See § 76.53 of this chapter. A displacement relief application shall be filed on FCC Form 346 and will be considered a minor change and will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny. These applications will not be subject to the filing of competing applications. Where a displacement relief application for a digital low power television or television translator station becomes mutually exclusive the application(s) for new analog or digital low power television or television translator stations, with a displacement relief application for an analog low power television or television translator station, or with other non-displacement relief applications for facilities modifications of analog or digital low power television or television translator stations, priority will be afforded to the displacement application for the digital low power television or television translator station to the exclusion of other applications. Mutually exclusive displacement relief applications for digital low power television and television translator stations shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, § 1.2100 *et seq.*, and § 73.5000 *et seq.* of this chapter. Such applicants shall be afforded an opportunity to submit settlements and engineering solutions to resolve mutual exclusivity pursuant to § 73.5002(d) of this chapter.

(b) *Definitions of “major” and “minor” changes to digital low power television and television translator stations*. (1) Applications for major changes in digital low power television and television translator stations include any change in the frequency (output channel) not related to displacement relief or transmitting antenna location where the protected contour resulting from the change does not overlap some portion of the protected contour of the authorized facilities of the existing station.

(2) Other facilities changes will be considered minor.

■ 18. Section 74.788 is added to read as follows:

§ 74.788 Digital construction period.

(a) Each original construction permit for the construction of a new digital low power television or television translator station shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

(b) Any construction permit for which construction has not been completed and for which an application for license or extension of time has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.

(c) *Authority delegated.* (1) Authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond the relevant construction period for each original construction permit upon demonstration by the digital licensee or permittee that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

(2) Such circumstances shall include, but shall not be limited to:

(i) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints;

(ii) The lack of equipment necessary to obtain a digital television signal; or

(iii) Where the cost of construction exceeds the station's financial resources.

(3) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may deny extension requests upon delegated authority.

(4) Applications for extension of time shall be filed no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.

■ 19. Section 74.789 is added to read as follows:

§ 74.789 Broadcast regulations applicable to digital low power television and television translator stations.

The following sections are applicable to digital low power television and television translator stations:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

§ 74.600 Eligibility for license.

§ 74.703 Interference.

§ 74.709 Land mobile station protection.

§ 74.732 Eligibility and licensing requirements.

§ 74.734 Attended and unattended operation.

§ 74.735 Power limitations.

§ 74.751 Modification of transmission systems.

§ 74.763 Time of operation.

§ 74.765 Posting of station and operator licenses.

§ 74.769 Copies of rules.

§ 74.780 Broadcast regulations applicable to translators, low power, and booster stations (except § 73.653—Operation of TV aural and visual transmitters and § 73.1201—Station identification).

§ 74.781 Station records.

§ 74.784 Rebroadcasts.

■ 20. Section 74.790 is added to read as follows:

§ 74.790 Permissible service of digital TV translator and LPTV stations.

(a) Digital TV translator stations provide a means whereby the signals of DTV broadcast stations may be retransmitted to areas in which direct reception of such DTV stations is unsatisfactory due to distance or intervening terrain barriers.

(b) Except as provided in paragraph (f) of this section, a digital TV translator station may be used only to receive the signals of a TV broadcast or DTV broadcast station, another digital TV translator station, a TV translator relay station, a television intercity relay station, a television STL station, or other suitable sources such as a CARS or common carrier microwave station, for the simultaneous retransmission of the programs and signals of a TV or DTV broadcast station. Such transmissions may be accomplished by any of the following means:

(1) Reception of TV broadcast or DTV broadcast station programs and signals directly through space and conversion to a different channel by one of the following transmission modes:

(i) Heterodyne frequency conversion and suitable amplification, subject to a digital output power limit of 30 watts for transmitters operating on channels 14–69 and 3 watts for transmitters operating on channels 2–13; or

(ii) Digital signal regeneration (*i.e.*, DTV signal demodulation, decoding, error processing, encoding, remodulation, and frequency upconversion) and suitable amplification; or,

(2) Demodulation, remodulation and amplification of TV broadcast or DTV broadcast station programs and signals received through a microwave transport.

(c) The transmissions of each digital TV translator station shall be intended for direct reception by the general public, and any other use shall be incidental thereto. A digital TV translator station shall not be operated solely for the purpose of relaying signals to one or more fixed receiving points for retransmission, distribution, or further relaying.

(d) Except as provided in (e) and (f) of this section, the technical characteristics of the retransmitted signals shall not be deliberately altered so as to hinder reception on consumer DTV broadcast receiving equipment.

(e) A digital TV translator station shall not retransmit the programs and signals of any TV broadcast or DTV broadcast station(s) without the prior written consent of such station(s). A digital TV translator may multiplex on its output channel the video program services of two or more TV broadcast and/or DTV broadcast stations, pursuant to arrangements with all affected stations, and for this limited purpose, is permitted to alter a TV broadcast and/or DTV broadcast signal.

(f) A digital TV translator station may transmit locally originated visual and/or aural messages limited to emergency warnings of imminent danger, to local public service announcements (PSAs) and to seeking or acknowledging financial support deemed necessary to the continued operation of the station. Acknowledgments of financial support may include identification of the contributors, the size and nature of the contribution and the advertising messages of the contributors. The originations concerning financial support and PSAs are limited to 30 seconds each, no more than once per hour. Emergency transmissions shall be no longer or more frequent than necessary to protect life and property. Such originations may be accomplished by any technical means agreed upon between the TV translator and DTV station whose signal is being retransmitted, but must be capable of being received on consumer DTV broadcast reception equipment. A digital TV translator shall modify, as necessary to avoid DTV reception tuning conflicts, the Program System and Information Protocol (PSIP) information in the DTV broadcast signal being retransmitted.

(g) A digital LPTV station may operate under the following modes of service:

(1) For the retransmission of programming of a TV broadcast or DTV

broadcast station, subject to the prior written consent of the station whose signal is being retransmitted;

(2) For the origination of programming and commercial matter as defined in § 74.701(l).

(3) Whenever operating, a digital LPTV station must transmit an over-the-air video program signal at no direct charge to viewers at least comparable in resolution to that of its associated analog (NTSC) LPTV station or, in the case of an on-channel digital conversion, that of its former analog LPTV station.

(4) A digital LPTV station may dynamically alter the bit stream of its signal to transmit one or more video program services in any established DTV video format.

(h) A digital LPTV station is not subject to minimum required hours of operation and may operate in either of the two modes described in paragraph (g) of this section for any number of hours.

(i) Upon transmitting a signal that meets the requirements of paragraph (g)(3) of this section, a digital LPTV station may offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis in accordance with the provisions of § 73.624(c) and (g) of this chapter.

(j) A digital LPTV station may not be operated solely for the purpose of relaying signals to one or more fixed receiving points for retransmission, distribution or relaying.

(k) A digital LPTV station may receive input signals for transmission or retransmission by any technical means, including those specified in paragraph (b) of this section.

■ 21. Section 74.791 is added to read as follows:

§ 74.791 Digital call signs.

(a) *Digital low power stations.* Call signs for digital low power stations will be made up of a prefix consisting of the initial letter K or W followed by the channel number assigned to the station and two additional letters and a suffix consisting of the letters – D.

(b) *Digital television translator stations.* Call signs for digital television translator stations will be made up of a prefix consisting of the initial letter K or W followed by the channel number assigned to the station and two additional letters and a suffix consisting of the letter – D.

(c) *Digital low power television stations and Class A television stations.* Digital low power television and Class A television stations may be assigned a call sign with a four-letter prefix

pursuant to § 73.3550 of the Commission's rules. Digital low power stations with four-letter prefixes will be assigned the suffix – LD and digital Class A stations with four-letter prefixes will be assigned the suffix – CD.

■ 22. Section 74.792 is added to read as follows:

§ 74.792 Digital low power TV and TV translator station protected contour.

(a) A digital low power TV or TV translator will be protected from interference from other low power TV, TV translator, Class A TV or TV booster stations or digital low power TV, TV translator or Class A TV stations within the following predicted contours:

(1) 43 dBu for stations on Channels 2 through 6;

(2) 48 dBu for stations on Channels 7 through 13; and

(3) 51 dBu for stations on Channels 14 through 69.

(b) The digital low power TV or TV translator protected contour is calculated from the authorized effective radiated power and antenna height above average terrain, using the F(50,90) signal propagation method specified in § 73.625(b)(1) of this chapter.

■ 23. Section 74.793 is added to read as follows:

§ 74.793 Digital low power TV and TV translator station protection of broadcast stations.

(a) An application to construct a new digital low power TV or TV translator station or change the facilities of an existing station will not be accepted if it fails to meet the interference protection requirements in this section.

(b) Except as provided in this section, interference prediction analysis is based on the interference thresholds (D/U signal strength ratios) and other criteria and methods specified in § 73.623(c)(2) through (c)(4) of this chapter.

Predictions of interference to co-channel DTV broadcast, digital Class A TV, digital LPTV and digital TV translator stations will be based on the interference thresholds specified therein for “DTV-into-DTV.” Predictions of interference to co-channel TV broadcast, Class A TV, LPTV and TV translator stations will be based on the interference threshold specified for “DTV-into-analog TV.” Predictions of interference to TV broadcast, Class A TV, LPTV and TV translator stations with the following channel relationships to a digital channel will be based on the threshold values specified for “Other Adjacent Channels (Channels 14–69 only),” where N is the analog channel: N–2, N+2, N–3, N+3, N–4,

N+4, N–7, N+7, N–8, N+8, N+14, and N+15.

(c) The following D/U signal strength ratios (dB) shall apply to the protection of stations on the first adjacent channel. The D/U ratios for “Digital TV-into-analog TV” shall apply to the protection of TV broadcast, Class A TV, LPTV and TV translator stations. The D/U ratios for “Digital TV-into-digital TV” shall apply to the protection of DTV, digital Class A TV, digital LPTV and digital TV translator stations. The D/U ratios correspond to the digital LPTV or TV translator station's specified out-of-channel emission mask.

	Simple mask	Stringent mask
Digital TV-into-analog TV	10	0
Digital TV-into-digital TV	–7	–12

(d) For analysis of predicted interference from digital low power TV and TV translator stations, the relative field strength values of the assumed antenna vertical radiation pattern in Table 8 in OET Bulletin 69 shall be doubled up to a value of 1.0.

(e) Protection to the authorized facilities of DTV broadcast stations shall be based on not causing predicted interference to the population within the service area defined and described in § 73.622(e) of this chapter, except that a digital low power TV or TV translator station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the authorized DTV facilities.

(f) Protection to the authorized facilities of TV broadcast stations shall be based on not causing predicted interference to the population within the Grade B field strength contours defined and described in § 73.683 of this chapter, except that a digital low power TV or TV translator station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the authorized TV broadcast facilities.

(g) Protection to the authorized facilities of Class A and digital Class A TV stations shall be based on not causing predicted interference to the population within the service area defined and described in § 73.6010 (a) through (d) of this chapter, respectively, except that a digital low power TV or TV translator station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the authorized Class A TV or digital Class A TV facilities.

(h) Protection to the authorized facilities of low power TV and TV

translator stations and digital low power TV and TV translator stations shall be based on not causing predicted interference to the population within the service area defined and described in §§ 74.707(a) and 74.792, respectively, except that a digital low power TV or TV translator station must not cause a loss of service to 2.0 percent or more of the population predicted to receive service from the authorized low power TV, TV translator, digital low power TV or digital TV translator station.

■ 24. Section 74.794 is added to read as follows:

§ 74.794 Digital emissions.

(a)(1) An applicant for a digital LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: simple or stringent.

(2) The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than following amounts below the average transmitted power within the authorized 6 MHz channel. In the mask specifications listed in § 74.794(a)(2) and (a)(3), A is the attenuation in dB and Δf is the frequency difference in MHz from the edge of the channel.

(i) *Simple mask.* At the channel edges, emissions must be attenuated no less than 46 dB. More than 6 MHz from the channel edges, emissions must be attenuated no less than 71 dB. At any frequency between 0 and 6 MHz from the channel edges, emissions must be attenuated no less than the value determined by the following formula: $A(\text{dB}) = 46 + (\Delta f^2 / 1.44)$

(ii) *Stringent mask.* In the first 500 kHz from the channel edges, emissions must be attenuated no less than 47 dB. More than 3 MHz from the channel edges, emissions must be attenuated no less than 76 dB. At any frequency between 0.5 and 3 MHz from the channel edges, emissions must be attenuated no less than the value determined by the following formula: $A(\text{dB}) = 47 + 11.5 (\Delta f - 0.5)$

(3) The attenuation values for the simple and stringent emission masks are based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used and converted to the reference 500 kHz value by the following formula:

$$A(\text{dB}) = A_{\text{alternate}} + 10 \log (BW_{\text{alternate}} / 500)$$

where $A(\text{dB})$ is the measured or calculated attenuation value for the reference 500 kHz bandwidth, and

$A_{\text{alternate}}$ is the measured or calculated attenuation for a bandwidth $BW_{\text{alternate}}$. Emissions include sidebands, spurious emissions and radio harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service by out-of-channel emissions, greater attenuation may be required.

(b) In addition to meeting the emission attenuation requirements of the simple or stringent mask (including attenuation of radio frequency harmonics), digital low power TV and TV translator stations authorized to operate on TV channels 22–24, (518–536 MHz), 32–36 (578–608 MHz), 38 (614–620 MHz), and 65–69 (776–806 MHz) must provide specific “out of band” protection to Radio Navigation Satellite Services in the bands: L5 (1164–1215 MHz); L2 (1215–1240 MHz) and L1 (1559–1610 MHz).

(1) An FCC-certificated transmitter specifically certified for use on one or more of the above channels must include filtering with an attenuation of not less than 85 dB in the GPS bands, which will have the effect of reducing harmonics in the GPS bands from what is produced by the digital transmitter, and this attenuation must be demonstrated as part of the certification application to the Commission.

(2) For an installation on one of the above channels with a digital transmitter not specifically FCC-certificated for the channel, a low pass filter or equivalent device rated by its manufacturer to have an attenuation of at least 85 dB in the GPS bands, which will have the effect of reducing harmonics in the GPS bands from what is produced by the digital transmitter, and must be installed in a manner that will prevent the harmonic emission content from reaching the antenna. A description of the low pass filter or equivalent device with the manufacturer's rating or a report of measurements by a qualified individual shall be retained with the station license. Field measurements of the second or third harmonic output of a transmitter so equipped are not required.

■ 25. Section 74.795 is added to read as follows:

§ 74.795 Digital low power TV and TV translator transmission system facilities.

(a) A digital low power TV or TV translator station shall operate with a transmitter that is either certificated for licensing based on the following provisions or has been modified for digital operation pursuant to § 74.796.

(b) The following requirements must be met before digital low power TV and TV translator transmitter will be certificated by the FCC:

(1) The transmitter shall be designed to produce digital television signals that can be satisfactorily viewed on consumer receiving equipment based on the digital broadcast television transmission standard in § 73.682(d) of this chapter;

(2) Emissions on frequencies outside the authorized channel, measured at the output terminals of the transmitter (including any filters that may be employed), shall meet the requirements of § 74.794, as applicable;

(3) The transmitter shall be equipped to display the digital power output (*i.e.*, average power over a 6 MHz channel) and shall be designed to prevent the power output from exceeding the maximum rated power output under any condition;

(4) When subjected to variations in ambient temperature between 0 and 40 degrees Centigrade and variations in power main voltage between 85% and 115% of the rated power supply voltage, the frequency stability of the local oscillator in the RF channel upconverter shall be maintained within 10 kHz of the nominal value; and

(5) The transmitter shall be equipped with suitable meters and jacks so that appropriate voltage and current measurements may be made while the transmitter is in operation.

(c) The following additional requirements apply to digital heterodyne translators:

(1) The maximum rated power output (digital average power over a 6 MHz channel) shall not exceed 30 watts for transmitters operating on channels 14–69 and 3 watts for transmitters operating on channels 2–13; and

(2) The transmitter shall contain circuits which will maintain the digital average power output constant within 1 dB when the strength of the input signal is varied over a range of 30 dB.

(d) Certification will be granted only upon a satisfactory showing that the transmitter is capable of meeting the requirements of paragraph (b) of this section, pursuant to the procedures described in § 74.750(e).

■ 26. Section 74.796 is added to read as follows:

§ 74.796 Modification of digital transmission systems and analog transmission systems for digital operation.

(a) The provisions of § 74.751 shall apply to the modification of digital low power TV and TV translator transmission systems and the modification of existing analog

transmission systems for digital operation.

(b) The following additional provisions shall apply to the modification of existing analog transmissions systems for digital operation, including installation of manufacturers' certificated equipment ("field modification kits") and custom modifications.

(1) The modifications and related performance-testing shall be undertaken by a person or persons qualified to perform such work.

(2) The final amplifier stage of an analog transmitter modified for digital operation shall not have an "average digital power" output greater than 25 percent of its previous NTSC peak sync power output, unless the amplifier has been specifically refitted or replaced to operate at a higher power.

(3) Analog heterodyne translators, when modified for digital operation, will produce a power output (digital average power over the 6 MHz channel) not exceeding 30 watts for transmitters operating on channels 14–69 and 3 watts for transmitters operating on channels 2–13.

(4) After completion of the modification, suitable tests and measurements shall be made to demonstrate compliance with the applicable requirements in this section including those in § 74.795. Upon installation of a field modification kit, the transmitter shall be performance-tested in accordance with the manufacturer's instructions.

(5) The station licensee shall notify the Commission upon completion of the transmitter modifications. In the case of custom modifications (those not related to installation of manufacturer-supplied and FCC-certificated equipment), the licensee shall certify compliance with all applicable transmission system requirements.

(6) The licensee shall maintain with the station's records for a period of not less than two years the following information and make this information to the Commission upon request:

(i) A description of the modifications performed and performance tests or, in the case of installation of a manufacturer-supplied modification kit, a description of the nature of the modifications, installation and test instructions and other material provided by the manufacturer;

(ii) Results of performance-tests and measurements on the modified transmitter; and

(iii) Copies of related correspondence with the Commission.

(c) In connection with the on-channel conversion of existing analog transmitters for digital operation, a limited allowance is made for transmitters with final amplifiers that do not meet the attenuation of the Simple emission mask at the channel edges. Station licensees may obtain equivalent compliance with this attenuation requirement in the following manner:

(1) Measure the level of attenuation of emissions below the average digital

power output at the channel edges in a 500 kHz bandwidth; measurements made over a different measurement bandwidth should be corrected to the equivalent attenuation level for a 500 kHz bandwidth using the formula given in § 74.794;

(2) Calculate the difference in dB between the 46 dB channel-edge attenuation requirement of the Simple mask;

(3) Subtract the value determined in the previous step from the authorized effective radiated power ("ERP") of the analog station being converted to digital operation. Then subtract an additional 6 dB to account for the approximate difference between analog peak and digital average power. For this purpose, the ERP must be expressed in decibels above one kilowatt: $ERP(dBk) = 10 \log ERP(kW)$;

(4) Convert the ERP calculated in the previous step to units of kilowatts; and

(5) The ERP value determined through the above procedure will produce equivalent compliance with the attenuation requirement of the simple emission mask at the channel edges and should be specified as the digital ERP in the minor change application for an on-channel digital conversion. The transmitter may not be operated to produce a higher digital ERP than this value.

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Proposed Rules

Federal Register

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: WA-04-005; FRL-7842-8]

Approval and Promulgation of State Implementation Plans and Designation: Washington; Yakima County Nonattainment Area Boundary Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to correct an error in the initial delineation of the boundary of the Yakima County nonattainment area (Yakima NAA) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers. This correction would revise the boundary of the Yakima NAA to exclude a small portion that lies within the exterior boundary of the Yakama Indian Reservation. The excluded area would revert to an unclassifiable designation, consistent with the original and current designation of the Yakama Indian Reservation.

DATES: Written comments must be received by December 29, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. WA-04-005, by one of the following methods:

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

B. E-mail: r10.aircom@epa.gov.

C. Fax: (206) 553-0110.

D. Mail: Office of Air Waste and Toxics, Environmental Protection Agency, Attn: Gina Bonifacino, Mailcode: OAWT-107, 1200 Sixth Avenue, Seattle, WA 98101.

E. Hand Delivery: Environmental Protection Agency Region 10, Attn: Gina Bonifacino (OAWT-107), 1200 Sixth Avenue, Seattle, WA 98101, 9th floor. Such deliveries are only accepted during EPA's normal hours of operation,

and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. WA-04-005. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Publicly available docket materials are available in hard copy at EPA Region 10, Office of Air Waste, and Toxics, Mail Code OAWT-107, 1200 Sixth Avenue, Seattle, Washington 98101. EPA is open Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you wish to schedule an appointment to review materials in the publicly available docket.

FOR FURTHER INFORMATION CONTACT: Gina Bonifacino, Office of Air, Waste and Toxics, Region 10, OAWT-107, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101; phone: (206) 553-2970; fax number: (206) 553-0110; e-mail address: bonifacino.gina@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we", "us" or "our" are used, we mean EPA.

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I. Background

A. What Is the General Background of This Proposed Action?

Section 107(d)(4)(B) of the Clean Air Act (CAA) sets out the general process by which areas were to be designated nonattainment for the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10) upon enactment of the 1990 Clean Air Act Amendments (1990 CAA Amendments). Section 107(d)(4)(B)(i) of the CAA states that each area that had been identified by EPA as a PM-10 Group I area¹ prior to the 1990 CAA Amendments is designated nonattainment for PM-10 by operation of the law upon enactment of the 1990 CAA Amendments. Although EPA believes that, in general, the language of this section would appear to preclude any exercise of EPA discretion to modify these initial nonattainment area designations, EPA also believes that explicit reliance of section 107(d)(4)(B)(i) of the CAA on EPA's prior Group I determinations provides the basis for an exception to the general rule. By requiring that all Group I areas be among the initial areas designated nonattainment upon enactment of the 1990 CAA Amendments, Congress

¹ Group I areas were areas that, at the time the particulate matter indicator was changed from total suspended particulate (TSP) to PM-10, were estimated to have a high probability of exceeding the PM-10 NAAQS.

relied on EPA's expertise and judgment in determining, based on an analysis of relevant air quality information, those areas for which a PM-10 nonattainment status was merited. EPA does not believe that Congress intended initial PM-10 areas to be based on a clearly erroneous Group I determination. Thus, one exception to the principle that EPA lacks authority to modify these initial nonattainment area designations is where, prior to enactment of the 1990 CAA Amendments, EPA mistakenly construed then-existing air quality data and, as a consequence, incorrectly identified an area as being among the Group I areas that were subsequently referenced in section 107(d)(4)(B)(i) of the CAA. See 56 FR 37654, 37656 (August 8, 1991); see also 61 FR 29667, 29668 (June 12, 1996).

As discussed below, EPA believes that such a clear identification error occurred in the case of the Yakima NAA. That is, EPA believes that it erred by including a portion of the Yakama Indian Reservation as part of the Yakima NAA. Accordingly, under the authority of section 110(k)(6) of the CAA, EPA is revising the boundary of the Yakima NAA to exclude the portion within the exterior boundary of the Yakama Indian Reservation.

B. What Is the Background of the Designation of the Yakima NAA?

On July 1, 1987, the EPA promulgated national ambient air quality standards, implementation policies, and regulations for PM-10. See 52 FR 24634. In accordance with these policies, on August 7, 1987, EPA categorized areas of the United States into three groups based on the likelihood that the existing State Implementation Plan (SIP) must be revised to protect the PM-10 NAAQS. See 52 FR 29383. Areas with a strong likelihood of violating the PM-10 NAAQS and requiring substantial SIP revisions were placed in Group I; areas where attainment of the PM-10 NAAQS was uncertain and where the SIP required only slight adjustment were placed in Group II; and areas with a strong likelihood of attaining the PM-10 NAAQS were placed in Group III.

The Group I areas were generally identified by a county, township or other planning area. These descriptions were only an initial definition of an area. In the process of monitoring and modeling PM-10 concentrations and determining the extent of sources of PM-10 emissions that impact the areas, the states were to better define the boundaries of the area that were or may have been violating the standards. Based on monitoring data from monitors located in the city of Yakima, Yakima

County was included among the Group I areas. See 52 FR at 29385.

In March 1989, the Washington Department of Ecology submitted a State Implementation Plan for PM-10 for the Yakima County Group I area. This submittal addressed CAA requirements to meet the new federal standards for PM-10 within nine months after the effective date of the standard. The State chose a rectangular shaped area covering approximately 75 square miles for in-depth study of PM-10 in the Yakima area based on knowledge of the emission sources (primarily area sources consisting of wood stoves and vehicle-related emissions), and all areas shown by initial dispersion modeling to experience levels above the standard. Washington's plan describes this study area as three cities in close proximity, Yakima, Selah and Union Gap, and the surrounding areas in Yakima County.

Washington's 1989 plan describes land use within the city limits as primarily residential and commercial, with residences extending at a lesser density beyond the incorporated city limits. The rest of the plan's study area consists of agricultural land and open land. The plan indicates that the Yakima Indian Reservation is on the southern portion of the study area. At the time of the study, Washington conducted dispersion modeling of the area based on 1985 emissions. These modeling results indicate an expected exceedence of the PM-10 NAAQS in the city of Yakima, but did not indicate an expected exceedence of the PM-10 NAAQS within the Yakama tribal area south of the city of Yakima (see the Technical Support Document for a detailed description of dispersion modeling results and study area description from the 1989 plan).

On October 31, 1990, EPA published technical corrections clarifying the boundaries of concern for some of the areas previously identified as Groups I and II areas. See 55 FR 45799. The area for Yakima County Group I was revised to correspond to Washington's rectangular study area and was described as follows:

The area bounded on the south by a line from Universal Transmercater (UTM) coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN thence north along a line to coordinate 681000mN, 5172000mN, thence east to 694000mW, 5172000mN, thence south to the beginning coordinate 694000mW, 5157000mN.²

This area includes approximately six square miles of fee land within the

² Though UTM coordinates are not explicitly given in the 1989 plan, figures in the 1989 plan area appear to correspond to the UTM coordinates in 55 FR 45799.

exterior boundaries of the Yakama Indian Reservation. There was nothing in the State's 1989 plan to indicate that the study area included lands within the Yakima Indian Reservation. (See Technical Support Document for a detailed discussion of the study area described in the State's 1989 plan.)

The 1990 Amendments to the Clean Air Act provided the PM-10 grouping scheme as the starting point for designating areas nonattainment or unclassifiable for PM-10. Group I areas identified in the August 7, 1987, **Federal Register** (52 FR 29383), and subsequently clarified on October 1, 1990 (55 FR 45799), were designated nonattainment for PM-10 by operation of law pursuant to section 107(d)(4)(B)(i) of the CAA. See 56 FR 11101 (March 15, 1991). Any other area (i.e., Group II or III areas) containing a monitoring site for which air quality monitoring data showed a violation of the NAAQS for PM-10 prior to January 1, 1989 was also designated nonattainment. All other areas were designated unclassifiable for PM-10. The Yakima Group I area was designated nonattainment with this action and became the Yakima NAA. 56 FR at 11105. The Yakama Indian Reservation, with the exception of the portion within the Yakima Group I area, was designated unclassifiable.

C. What Is the Current Description of the Yakima NAA?

As discussed above, the Yakima NAA is a rectangular shaped area covering approximately 75 square miles. Within the Yakima NAA, the cities of Yakima, Selah and Union Gap form an urban area. The cities lie in the Yakima river valley at an elevation of 1000 feet and are surrounded by mountains and ridges rising to between 3000 and 3500 feet above the valley floor. One major stationary source (Boise Cascade sawmill³) and several small stationary sources lie within the NAA. All point sources are on located on state lands within the NAA. The rest of the NAA consists of commercial, residential, agricultural, and open land. The northeast corner of the nonattainment area contains a small part of the Yakima Training Center Military Reservation and the southern boundary of the NAA extends into the Yakama Indian Reservation. The portion of the Yakama Indian Reservation within the NAA is roughly six square miles of agricultural land and rangeland which contains

³ Boise Cascade will be operated as Yakima Resources, LLC in the future.

several residences and a few small commercial properties.

II. This Action

A. What Boundary Change Is EPA Proposing?

EPA is proposing to correct the boundary of the Yakima NAA to exclude the portion within the exterior boundary of the Yakama Indian Reservation. This proposal would change the boundary of the Yakima NAA to read as follows:

The area bounded on the south by a line from UTM coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN, thence north along a line to coordinate 681000mN, 5172000mN, thence east to 694000mW, 5172000mN, thence south to the beginning coordinate 694000mW, 5157000mN, excluding the area within the exterior boundary of the Yakama Indian Reservation.

B. What Is the Basis for This Action?

Under section 110(k)(6) of the CAA, whenever EPA determines that its action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state. Such determination and the basis thereof shall be provided to the state and public.

Pursuant to section 110(k)(6), EPA is proposing a revision to the boundary of the Yakima NAA to correct an error in EPA's initial delineation of the Yakima County Group I area, which included land within the exterior boundaries of the Yakama Indian Reservation as part of the Yakima County Group I area. Although this boundary correction is not subject to the legal requirements for public notice and comment (51 FR at 11103), EPA is providing the public with an opportunity to comment on this action in order to foster public participation and avoid further error.

In the absence of technical information identifying particular sources contributing to violations of the NAAQS, EPA policy for determining the boundaries of PM-10 nonattainment areas is to use political boundaries associated with the area where the monitored violations occurred and in which it is reasonably expected that sources contributing to the violations are located. *See* 57 FR 43846, 43848 (September 22, 1992).⁴ As discussed

above, although the Yakima NAA is comprised mostly of state lands, it also includes lands within the exterior boundaries of the Yakama Indian Reservation. Under the CAA, the State of Washington Department of Ecology, along with the Yakama Regional Clean Air Authority (YRCAA),⁵ have primary planning responsibility for state land within the current Yakima NAA, whereas EPA and the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) have primary planning responsibility for the tribal land within the current Yakima NAA. *See* CAA section 301(a) and 301(d)(4); 64 FR 8247, 8251–8255 (February 19, 1999) ("Federal Operating Permits Program; Final Rule"); 63 FR 7254, 7254–7259, 7262 (February 12, 1998) ("Indian Tribes: Air Quality Planning and Management; Final Rule"); 59 FR 43956, 43958–43961 ("Indian Tribes: Air Quality Planning and Management; Proposed Rule"). Thus, when EPA delineated the boundary of the Yakima County Group I area through technical corrections in 1990, EPA policy called for drawing the boundary of the area based on political boundaries unless there was technical information identifying particular sources contributing to violations of the NAAQS that warranted a different approach. In other words, EPA policy called for not including land within the exterior boundaries of the Yakama Indian Reservation as part of the Yakima Group I area unless there was information showing that sources within the Yakama Indian Reservation contributed to the PM-10 violations recorded on state lands.

A review of the air quality data from Washington's 1989 plan for the Yakima County Group I area does not indicate that sources within the Yakama Indian Reservation contributed to the PM-10 violations recorded on state lands at the time the boundary was determined. There were two monitors recording exceedences of the PM-10 NAAQS that were used in EPA's delineation of the Yakima Group I area in 1990. Both of these monitors, which were predicted to be representative of the areas of highest concentration of PM-10 in the Group I area, were located in the city of Yakima.

Modeling and emissions inventory data from the 1989 state plan indicates that sources within the Yakama Indian Reservation did not contribute to an exceedence of the PM-10 NAAQS in Yakima, Selah, Union Gap and surrounding areas. The emissions

inventory from Washington's 1989 plan showed that 95% of the PM-10 for high pollution days in 1985 was attributable to residential wood heating and point sources (*see* Technical Support Document for a description of the emissions inventory used in the 1989 plan). As discussed above, the Reservation land included within the Yakima NAA is largely desert and agricultural land. According to aerial photos, there were fewer than 300 residences on the portion of the Yakama Indian Reservation that was included within the Yakima Group I area. This compares to more than 25,000 residences in the cities of Yakima, Selah and Union Gap. There were no major point sources and only a few small commercial properties are located within the tribal portion of the NAA. Thus, the number of residences in the tribal portion of the Yakima Group I area comprised less than 1.5% of the households in the Yakima Group I area and less than 1.5% of total PM-10 on days with elevated PM-10 levels.

That sources on the tribal portion of the Yakima Group I area did not contribute to the violations of the PM-10 standard at the time the Yakima Group I area was delineated is supported by modeling data from Washington's 1989 implementation plan for area. Concentration isopleths from the 1989 plan predicted that the PM-10 concentrations in southern range of the study area (near or on the Yakama Indian Reservation) were far below the NAAQS (30–70 ug/m³ 24 hour NAAQS), while the areas to the north towards the cities of Yakima and Selah and to the east toward Union Gap were predicted to exceed the NAAQS.

In short, at the time of determination of the boundaries of the Yakima Group I area, which by operation of the law became the Yakima NAA, there was no technical information provided by Washington indicating that sources on the Yakama Indian Reservation contributed to the violations of the PM-10 NAAQS that had been recorded on monitors in the city of Yakima. EPA policy therefore called for using political boundaries to delineate the nonattainment area. As such, EPA erred in including a portion of the Yakama Indian Reservation in the Yakima NAA.

We note that correcting the boundary to exclude Reservation lands from the Yakima NAA is consistent with EPA's past actions with respect to the Yakima NAA. In approving the Yakima PM-10 nonattainment area as part of the Washington SIP in 1998, EPA made clear that the approved SIP does not extend to lands within the boundaries of the Yakama Indian Reservation. *See* 63

⁴ Guidance on this issue is also provided in the PM-10 SIP Development Guideline (EPA-450/2-86-001).

⁵ YRCAA is the local air pollution control authority with the primary planning responsibilities for state lands within Yakima County.

FR 5269, 5270 (February 2, 1998). EPA further noted that it was not including any reference to authority of YRCAA over activities or air resources located within the exterior boundaries of the Yakama Indian Reservation. 63 FR at 5270.

C. How Will the Excluded Area Be Classified?

If EPA finalizes the decision to exclude land within the exterior boundary of the Yakama Indian Reservation from the Yakima NAA, this six-square mile area would revert to an unclassifiable designation, consistent with the original designation of the Yakama Indian Reservation. Under section 107(d)(4) of the CAA, each area not identified as a Group I area in 52 **Federal Register** 29383 (August 7, 1987) or not identified as an area containing a site for which air quality monitoring data showed a violation of the NAAQS for PM-10 before January 1, 1989, was to be designated unclassifiable for PM-10. At the time the city of Yakima was designated as a Group I area in 1987, there was no monitoring data showing a violation of the PM-10 NAAQS in the tribal portion of the Yakima Group I area. Monitors currently installed on the Yakama Indian Reservation also do not indicate violations of the PM-10 NAAQS.⁶

D. Can I Comment on This Action?

By this notice, EPA is notifying the State of Washington, YRCAA, the Yakama Nation, and the public that EPA proposes to correct the boundary of the Yakima NAA to exclude the six-square mile area that lies within the exterior boundaries of the Yakama Indian Reservation. Although neither the Administrative Procedures Act nor the Clean Air Act legally obligate EPA to provide the public an opportunity to comment on this correction (56 FR at 1103), EPA is soliciting public comment to foster public participation and avoid any further errors. EPA will consider all comments on this action that are received by December 29, 2004. After consideration of all timely comments received, EPA will make any adjustments to this proposed correction that are appropriate in light of the comments.

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

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

2. Tips for preparing your comments. When submitting comments, remember to: i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

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

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

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

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

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

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

III. Statutory and Executive Order Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This proposed

action merely corrects the description of a nonattainment area to exclude land that did not contribute to the nonattainment problem and was under a different regulatory jurisdiction and does not impose any additional requirements on state, local or tribal governments or the private sector. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation. EPA has concluded that this proposed rule may have tribal implications. EPA’s action will remove a portion of the Yakama Indian Reservation from the Yakima NAA. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do

⁶ Although EPA is basing its decision on information existing at the time the nonattainment area boundaries were initially established, EPA would be reluctant to revise through a correction action the description of the nonattainment area based on information available before EPA’s initial erroneous boundary description if data collected since that time indicated that the areas was not in attainment of, or would be expected to violate, the NAAQS.

not apply to this rule. Consistent with EPA policy, EPA nonetheless consulted with representatives of tribal governments early in the process of developing this proposal to permit them to have meaningful and timely input into its development. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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 proposed action merely corrects the description of a nonattainment area to exclude land that did not contribute to the nonattainment problem and was under a different regulatory jurisdiction and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 16, 2004.

Michael F. Gearheard,

Acting Regional Administrator, Region 10.

[FR Doc. 04-26295 Filed 11-26-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: WA-04-006; FRL-7842-7]

Approval and Promulgation of State Implementation Plans and Designation: Washington; Yakima PM-10 Nonattainment Area Limited Maintenance Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On June 15, 2004, the State of Washington submitted a Limited Maintenance Plan (LMP) for the Yakima nonattainment area (NAA) for approval and concurrently requested that EPA redesignate the Yakima nonattainment area to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). In this action, the EPA proposes to approve the LMP for the Yakima NAA in Washington and grant a request by the State to redesignate the area from nonattainment to attainment. In a concurrent notice of proposed rulemaking published today, EPA is proposing to correct the boundary of the Yakima NAA to exclude a small portion that lies within the exterior boundary of the Yakama Indian Reservation. The State Implementation Plan (SIP) that we are proposing to approve with this action does not extend to lands which are within the boundaries of the Yakama Indian Nation.

DATES: Written comments must be received by December 29, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. WA-04-006, by one of the following methods:

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

B. E-mail: r10.aircom@epa.gov.

C. Fax: (206) 553-0110.

D. Mail: Office of Air Waste and Toxics, Environmental Protection Agency, Attn: Gina Bonifacino,

Mailcode: OAWT-107, 1200 Sixth Avenue, Seattle, WA 98101.

E. Hand Delivery: Environmental Protection Agency Region 10, Attn: Gina Bonifacino (OAWT-107), 1200 Sixth Avenue, Seattle, WA 98101, 9th floor. Such deliveries are only accepted during EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket WA No. WA-04-006. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Publicly available docket materials are available in hard copy at EPA Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the file, as it exists on the date of proposal, is also available for public viewing at EPA's Washington Operations Office at EPA Region 10, 300 Desmond Dr. SE., Suite 102, Lacey, WA 98503.

EPA is open Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your review of records.

FOR FURTHER INFORMATION CONTACT: Gina Bonifacino, Office of Air, Waste and

Toxics, Region 10, OAWT-107,
Environmental Protection Agency, 1200
Sixth Avenue, Seattle, WA 98101;
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SUPPLEMENTARY INFORMATION:

Throughout this document whenever
“we”, “us”, or “our” are used, we mean
EPA.

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III. Statutory and Executive Order Reviews

I. Background

A. What National Ambient Air Quality Standards (NAAQS) Are Considered in Today's Rulemaking?

Particulate matter with an aerodynamic diameter less than or equal to a nominal ten microns (PM-10) is the pollutant subject to this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. PM-10 is among the ambient air pollutants for which we have established such a health-based standard. PM-10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable. On July 1, 1987, (52 FR 24634) we revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. See 40 CFR 50.6. The annual primary PM-10 standard is 50 $\mu\text{g}/\text{m}^3$ as an annual arithmetic mean. The 24-hour primary PM-10 standard is 150 $\mu\text{g}/\text{m}^3$ with no more than one expected exceedance per year. The secondary PM-10 standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

B. What Is a State Implementation Plan (SIP)?

The Clean Air Act (the Act) requires states to attain and maintain ambient air quality equal to or better than the NAAQS. Section 107(d)(1)(A)(i) of the Clean Air Act defines nonattainment area as any area that does not meet (or that contributes to ambient air quality in the nearby area that does not meet) the national primary or secondary ambient air quality standard for that pollutant.

The states' plans for attaining and maintaining the NAAQS are outlined in the State Implementation Plan (SIP). The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each state currently has a SIP in place, and the Act requires that states make SIP revisions periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) A current, accurate and comprehensive inventory of emission sources; (2) statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area

fails to attain the standard or make reasonable progress toward attainment by the required date.

The state must make the SIP and subsequent revisions available for public review and comment through a public hearing, it must be adopted by the state, and submitted to EPA by the Governor or her designee. EPA takes federal action on the SIP thus rendering the rules and regulations federally enforceable. The approved SIP is the state's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

C. What Is the Background of the SIP for the Yakima Area?

On August 7, 1987 (52 FR 29383), EPA identified the Yakima area as a PM-10 “Group I” area of concern, *i.e.*, an area with a 95% or greater likelihood of violating the PM-10 NAAQS and requiring substantial SIP revisions. The Yakima area was subsequently designated as a moderate PM-10 nonattainment area upon enactment of the Clean Air Act Amendments of 1990 by operation of law (November 15, 1990).

States containing initial moderate PM-10 nonattainment areas were required to submit, by November 15, 1991, a nonattainment area SIP that implemented reasonably available control measures (RACM) by December 10, 1993, and demonstrate whether it was practicable to attain the PM-10 NAAQS by December 31, 1994.

On November 7, 1995, EPA published a **Federal Register** notice proposing limited approval and limited disapproval of the nonattainment area SIP submitted by the State of Washington for the Yakima nonattainment area (NAA) (60 FR 56129). The purpose of this nonattainment area SIP was to bring about attainment of the PM-10 NAAQS in Yakima. The November 7, 1995 **Federal Register** proposal provided information on requirements for PM-10 nonattainment area SIPs and the history of this rulemaking action.

The State submitted additional SIP revisions on November 3, 1995¹, and December 27, 1995 that addressed EPA concerns identified in the November 7, 1995 proposal. The submittals included a demonstration of attainment, a maintenance demonstration and quantitative milestone report, the implementation of RACM through an

¹ The timing of this submittal did not permit EPA action prior to the November 7, 1995 **Federal Register** notice.

amended set of YRCAA regulations, and the enforceability of the local regulations. On February 2, 1998 (63 FR 5270), EPA fully approved the Yakima NAA SIP. In the final approval, EPA clarified that the SIP, as approved, did not extend to lands which are within the boundaries of the Yakama Indian Nation.

On June 15, 2004, the State submitted a Limited Maintenance Plan for the Yakima area for approval and requested that EPA redesignate the Yakima nonattainment area to attainment for the National Ambient Air Quality Standards (NAAQS) for PM-10. In today's action, EPA proposes to approve the Limited Maintenance Plan (LMP) for the Yakima area in Washington and approve the request by the State to redesignate the area from nonattainment to attainment for PM-10. In a concurrent notice of proposed rulemaking published today, EPA is proposing to correct the boundary of the Yakima NAA to exclude a small portion that lies within the exterior boundary of the Yakama Indian Reservation. Therefore, the SIP that we are proposing to approve with this action does not extend to lands which are within the boundaries of the Yakama Indian Nation.

D. What Are the Air Quality Characteristics of the Yakima NAA?

The Yakima NAA is a rectangular shaped area covering approximately 70 square miles. For a legal description of the boundaries see 40 CFR 81.348, as proposed to be amended in today's notice of proposed rulemaking. The Yakima NAA includes the three cities of Yakima, Selah and Union Gap, which form a single developed area. The cities are in the generally flat area of the river valleys and are surrounded by heights and ridges. One major stationary source (Boise Cascade sawmill) and several small stationary sources lie within the nonattainment area. The rest of the nonattainment area consists of agricultural lands, mainly orchards and open land. The northeast corner of the nonattainment area includes a small part of the Yakima Training Center Military Reservation.

An analysis of PM-10 monitoring data indicates that the highest PM-10 levels generally occur during weekdays from November through January. The primary emission sources are wood stoves used for home heating and re-suspended road dust from either paved or unpaved roads.

E. How Can a Nonattainment Area Be Redesignated to Attainment?

Nonattainment areas can be redesignated to attainment after the area

has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the Clean Air Act (the Act), and the General Preamble to Title I (57 FR 13498) provide the criteria for redesignation. These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment*. The criteria for redesignation are:

(1) The Administrator determines that the area has attained the applicable NAAQS;

(2) The Administrator has fully approved the applicable SIP for the area under section 110(k) of the Act;

(3) The State containing the area has met all requirements applicable to the area under section 110 and part D of the Act;

(4) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions; and

(5) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Act.

F. What Is the Limited Maintenance Plan (LMP) Option for PM-10 Nonattainment Areas Seeking Redesignation to Attainment and How Can an Area Qualify for This Option?

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM-10 nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled "Limited Maintenance Plan Option for Moderate PM-10 Nonattainment Areas", hereafter the Wegman memo). This policy contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. Thus, EPA has already provided the maintenance demonstration for areas that meet the air quality criteria outlined in the policy. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP are no longer necessary.

To qualify for the LMP option, the area should have attained the PM-10 NAAQS, and the average annual PM-10 design value for the area, based upon the most recent 5 years of air quality data at all monitors in the area, should be at or below 40 $\mu\text{g}/\text{m}^3$, and the 24 hour design value should be at or below 98 $\mu\text{g}/\text{m}^3$. In addition, the area should expect only limited growth in on-road motor vehicle PM-10 emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test.

The Wegman memo also identifies core provisions that must be included the LMP. These provisions include an attainment year emission inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

G. How Is Conformity Treated Under the LMP Option?

The transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While EPA's Limited Maintenance Plan policy does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the Limited Maintenance Plan policy, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM-10 NAAQS would result. For transportation conformity purposes, EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158 (a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

II. Review of the Washington State Submittal Addressing the Requirements for Redesignation and Limited Maintenance Plans

A. Has the State Demonstrated That the Yakima NAA Has Attained the Applicable NAAQS?

States must demonstrate that an area has attained the PM-10 NAAQS through analysis of ambient air quality data from an ambient air monitoring network representing peak PM-10 concentrations. The data should be stored in the EPA Air Quality System (AQS) database.

The 24-hour PM-10 NAAQS is 150 $\mu\text{g}/\text{m}^3$. An area has attained the 24-hour standard when the average number of expected exceedences per year is less than or equal to one, when averaged over a three-year period (40 CFR 50.6). To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with federal requirements (40 CFR part 58, including appendices).

Based on data that has been quality assured by the Washington Department of Ecology and stored in the AQS database, there have been no exceedences of the 24-hour PM-10 NAAQS in the Yakima NAA since 1991 and the number of days exceeding the annual PM-10 standard over the three year period 2000–2003 is zero. Thus, the expected number of days exceeding the 24 standard is zero, and the Yakima NAA has attained the 24-hour PM-10 NAAQS.

The annual PM-10 NAAQS is 50 $\mu\text{g}/\text{m}^3$. To determine attainment, the standard is compared to the expected annual mean, which is the average of the weighted annual mean for three consecutive years. Appendix G of the Yakima Limited Maintenance Plan lists annual weighted means for each year between 2000 through 2003. The weighted annual mean for each year is below 50 $\mu\text{g}/\text{m}^3$ at all monitoring sites (range: 22.7–26.0 $\mu\text{g}/\text{m}^3$). Thus, the three year weighted annual mean is below 50 $\mu\text{g}/\text{m}^3$. The Yakima NAA has attained the annual PM-10 NAAQS.

B. Does the Yakima NAA Have a Fully Approved SIP Under Section 110(k) of the Clean Air Act (The Act)?

In order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area.

EPA approved Washington's nonattainment plan for the Yakima area on February 2, 1998 (63 FR 5270). Thus, the area has a fully approved

nonattainment area SIP under section 110(k) of the Act.

C. Has the State Met All Applicable Requirements Under Section 110 and Part D of the Act?

Section 107(d)(3)(E)(v) of the Act requires that a state containing a nonattainment area must meet all applicable requirements under section 110 and Part D of the Act. EPA interprets this to mean the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. The following is a summary of how Washington meets these requirements.

(1) Clean Air Act Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling; and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements. 57 FR 13498 (April 16, 1992).

For purposes of redesignation, EPA review of the Washington SIP shows that the state has satisfied all requirements under section 110(a)(2) of the Act. Further, in 40 CFR 52.2473, EPA has approved Washington's plan for the attainment and maintenance of the national standards under Section 110.

(2) Part D Requirements

Part D contains general requirements applicable to all areas designated nonattainment.

The general requirements are followed by a series of subparts specific to each pollutant. All PM-10 nonattainment areas must meet the general provisions of Subpart 1 and the specific PM-10 provisions in Subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas." The following paragraphs discuss these requirements as they apply to the Yakima area.

(3) Subpart 1, Section 172(c)

Subpart 1, section 172(c) contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the General Preamble. See 57 FR 13538 (April 16, 1992). The requirements for reasonable further progress, identification of certain emissions increases and other measures needed for attainment were satisfied with the approved PM-10 nonattainment plan for the Yakima area. See 63 FR 5271 (February 2, 1998).

(4) Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the Act requires a comprehensive, accurate, current inventory of actual emissions from all sources in the Yakima PM-10 nonattainment area. Washington included an emissions inventory for the calendar year 2000 with its submittal of the LMP for the Yakima area. The requirement for a current, accurate and comprehensive emission inventory is satisfied by the inventory contained in the LMP.

(5) Section 172(c)(5)—New Source Review (NSR)

The Clean Air Act Amendments of 1990 contained revisions to the new source review (NSR) program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act requires states to amend their SIPs to reflect these revisions, but does not require submittal of this element along with the other SIP elements. The Act established June 30, 1992 as the submittal date for the revised NSR programs (Section 189 of the Act). In the Yakima Area, the requirements of the Part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program and the maintenance area NSR program upon effective date of redesignation. The Part D NSR rules for PM₁₀ nonattainment areas in Washington were approved by EPA on June 2, 1995. See 60 FR 28726. The federal PSD regulations found at 40 CFR 52.21 are the PSD rules in effect for Washington. See 40 CFR 52.2497.

(6) Section 172(c)(7) Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accord with 40 CFR part 58 to verify attainment status of the area. The State of Washington currently operates two PM-10 federal reference monitors and a real

time tapered element oscillating microbalance (TEOM) PM-10 monitor on the roof of the Central Washington Comprehensive Mental Health Building. These monitors are operating in accord with 40 CFR part 58. The State has committed to continued operation of the monitoring network.

(7) Section 172 (c)(9) Contingency Measures

The Clean Air Act requires that contingency measures take effect if the area fails to meet reasonable further progress requirements or fails to attain the NAAQS by the applicable attainment date. Since the Yakima area attained the NAAQS for PM-10 by the applicable attainment date of December 31, 1994, contingency measures are no longer required under Section 172(c)(9) of the Act. However, contingency provisions are required for maintenance plans under Section 175(a)(d). Washington provided contingency measures in their Limited Maintenance Plan. These measures are described in section II H of this notice.

(8) Part D Subpart 4

Part D Subpart 4, Section 189(a), (c) and (e) requirements apply to any moderate nonattainment area before the area can be redesignated to attainment. The requirements which were applicable prior to the submission of the request to redesignate the area must be fully approved into the SIP before redesignating the area to attainment. These requirements include:

(a) Provisions to assure that RACM was implemented by December 10, 1993;

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(c) Quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determined that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area.

These provisions were fully approved into the SIP upon EPA approval of the PM-10 nonattainment area plan for the Yakima area on February 2, 1998 (63 FR 5270).

D. Has the State Demonstrated That the Air Quality Improvement Is Due to Permanent and Enforceable Reductions?

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

EPA believes that areas that qualify for the LMP will meet the NAAQS, even under worst case meteorological conditions. Under the Limited Maintenance Plan policy, the maintenance demonstration is presumed to be satisfied if an area meets the qualifying criteria.

Thus, Washington has demonstrated that the air quality improvements in the Yakima area are the result of permanent emission reductions and not a result of either economic trends or meteorology by qualifying for the Limited Maintenance Plan. A description of the LMP qualifying criteria and how the Yakima area meets these criteria is provided in the following section.

E. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

In this action, we are proposing to fully approve the maintenance plan as allowed by the LMP guidance described in section F. below.

F. Has the State Demonstrated That the Yakima NAA Qualifies for the LMP Option?

The Wegman memo explains the requirements for an area to qualify for the LMP option. First, the area should be attaining the NAAQS. Appendix G and sections 2.3 and 2.5 of the plan summarize quality assured ambient monitoring data showing that the Yakima area has continued to meet both the 24-hour and annual PM-10 NAAQS for the period 2000–2003. As stated in Section IV A, EPA has determined that the Yakima area is in attainment of the PM-10 NAAQS.

Second, the design values for the past 5 years must be at or below the margin of safety levels identified in the LMP option. EPA review of AQS data confirms that design values at Yakima monitors for the years 1998–2003 fall below 98 $\mu\text{g}/\text{m}^3$ (daily) and 40 $\mu\text{g}/\text{m}^3$ (annual).

Third, the area must meet the motor vehicle regional emissions analysis test in the LMP option. Appendix B of the plan demonstrates that when adjusted for future on-road mobile emissions, Yakima passes a motor vehicle emissions analysis test with a design value of 95 $\mu\text{g}/\text{m}^3$. This value is less than the margin of safety value 98 $\mu\text{g}/\text{m}^3$.

The State has shown that the area qualifies for the Limited Maintenance Plan policy as described in the Wegman memo. For the reasons explained below, we are proposing to approve the LMP.

G. Does the State Have an Approved Attainment Plan That Includes an Emissions Inventory Which Can Be Used To Demonstrate Attainment of the NAAQS?

The attainment plan for the Yakima area that was approved in 1998 includes an emissions inventory which was used to demonstrate attainment of the NAAQS (63 FR 5270).

H. Does the LMP Include an Assurance of Continued Operation of an Appropriate EPA-Approved Air Quality Monitoring Network in Accordance With 40 CFR Part 58?

In section 5.3 of the LMP, the Yakima Regional Clean Area Authority states that it will continue to operate its monitoring network to meet EPA requirements.

I. Does the Plan Meet the Clean Air Act Requirements for Contingency Provisions?

Section 175A of the Act states that a maintenance plan must include contingency measures, as necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the Wegman memo, these contingency measures do not have to be fully adopted at the time of redesignation.

The Yakima PM-10 Limited Maintenance Plan contains a three-part contingency strategy. The first part is the activation event, the second is evaluation and reporting of the cause of the event and course of action, and the third part consists of mitigation measures. This strategy is described below.

(1) Activation Event

Contingency measures will be activated in the event of a violation of the PM-10 NAAQS, a quality assured PM-10 federal reference monitor value of 120 $\mu\text{g}/\text{m}^3$ or greater in any October 15th to March 1st season or, an annual LMP average PM-10 design value that

exceeds 40 µg/m³ for the annual and 98 µg/m³ for the 24 hour PM-10 NAAQS.

(2) Evaluation and Reporting

Upon activation, the Yakima Regional Clean Air Authority will convene a meeting of the representatives from the agencies which prepared the LMP (see Appendix I of the LMP) to evaluate the following:

- (a) Air quality trends before and during the event(s);
- (b) Weather conditions that caused or aggravated the event(s);
- (c) Normal and unusual emissions occurring prior to and during the event(s);
- (d) The effectiveness of the existing controls in reducing the magnitude and/or duration of the event(s);
- (e) Any changes in the LMP, monitoring network, and/or public information strategies to provide early notice to the public about possible future high monitor values; and
- (f) The need for additional voluntary or regulatory controls to reduce future emissions.

In addition, if the assessment team recommends additional control strategies or rules, the team will evaluate and rank the following possible additional strategies:

- (a) Early burn bans based on monitor values, weather forecasts and atmospheric models;
- (b) Additional public education or voluntary control programs;
- (c) Increased compliance assistance patrols during 1st stage burn bans; and
- (d) Any other strategy which will reduce late fall and winter smoke and road dust emissions.

The assessment report will be submitted to the Authority Board within 120 days of the high value monitor event or the LMP design value recalculation. The local actions that result from this report will be the discretion of the Board.

(3) Mitigation Measures

Mitigation measures will reduce PM-10 levels in addition to existing and planned control and contingency measures. These measures, in Section 5.71 of the LMP, include area source mitigation measures such as unpaved road and dust abatement programs, mobile source and transportation system mitigation measures such as voluntary diesel exhaust system retrofit programs, and public information mitigation measures such as using news releases through print or radio media to inform the public of rising CO and or PM-10 levels and to request voluntary reductions in outdoor and agricultural burning, wood stove use and trip

reductions. We conclude that these measures and commitments meet the requirement for contingency provisions of CAA Section 175A(d).

J. Has the State Met Conformity Requirements?

(1) Transportation Conformity

Under the Limited Maintenance Plan policy, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result.

While areas with maintenance plans approved under the Limited Maintenance Plan option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State will still need to document and ensure that: (a) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113; (b) transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108; (c) the MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105; (d) conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (e) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (6) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and (7) project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

(2) General Conformity

For Federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that "the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency

primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP." 40 CFR 93.158(a)(5)(i)(A).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the State and local air quality agencies. These emissions budgets are unlike and are not to be confused with those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. Washington has not chosen to include specific emissions allocations for federal projects that would be subject to the provisions of general conformity.

III. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 16, 2004.

Michael F. Gearheard,

Acting Regional Administrator, Region 10.

[FR Doc. 04-26296 Filed 11-26-04; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870 and 872

RIN 1029-AC47

Coal Production Fees and Fee Allocation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to a request from the trustees of the United Mine Workers of America Combined Benefit Fund, we are extending the comment period for the proposed rule published in the September 17, 2004, **Federal Register** concerning fees and fee allocations under the abandoned mine reclamation program provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act).

DATES: *Electronic or written comments:* We will accept written comments on the proposed rule until 4:30 p.m., Eastern time, on December 16, 2004.

ADDRESSES: If you wish to comment on the proposed rule, you may submit your comments by any of the following methods to the address indicated:

- *E-mail:* osmregs@osmre.gov. Please include docket number 1029-AC47 in the subject line of the message.

- *Mail/Hand-Delivery/Courier:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 210, 1951 Constitution Avenue, NW., Washington, DC 20240. Please identify the comments as pertaining to docket number 1029-AC47.

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions provided at <http://www.regulations.gov> under the "How to Comment" heading for this rule.

FOR FURTHER INFORMATION CONTACT:

Dennis Rice, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone: (202) 208-2829. E-mail address: drice@osmre.gov. You will find additional information concerning OSM, fees on coal production, and Abandoned Mine Reclamation Fund, and abandoned mine

reclamation in general on our home page at <http://www.osmre.gov>.

SUPPLEMENTARY INFORMATION: On September 17, 2004, we published a proposed rule setting forth procedures and criteria for the establishment of fees under section 402(b) of SMCRA. That section of the Act provides that, when the rates set forth in section 402(a) of the Act expire, the fee for coal produced after that date "shall be established at a rate to continue to provide for the deposit referred to in subsection (h) [of section 402 of SMCRA]." Section 402(h) requires the annual transfer of certain estimated Abandoned Mine Reclamation Fund earnings to the United Mine Workers of America Combined Benefit Fund. The proposed rule also contained revisions to the regulations governing allocation and disposition of fee collections and other Abandoned Mine Reclamation Fund income. For a full explanation of the proposed rule, please refer to the rule text and preamble published at 69 FR 56132-56144.

At the time the rule was published, the fee rates set forth in section 402(a) of the Act would have expired on September 30, 2004. However, a continuing resolution enacted on September 30, 2004, extended those rates through November 20, 2004. See section 125 of Public Law 108-309. Further continuing resolutions or appropriations legislation may provide for additional extensions of the statutory rates or revisions thereof.

The comment period on the proposed rule was originally scheduled to close on November 16, 2004. However, by letter dated November 10, 2004, the trustees of the United Mine Workers of America Combined Benefit Fund requested a 30-day extension of that deadline. We are granting that request, which means that all interested persons may submit electronic or written comments until December 16, 2004, in accordance with the instructions provided in **DATES** and **ADDRESSES** above and in Part X of the preamble to the September 17, 2004, rule (see 69 FR 56140).

Dated: November 18, 2004.

Jeffrey D. Jarrett,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 04-26195 Filed 11-26-04; 8:45 am]

BILLING CODE 4310-05-M

Notices

Federal Register

Vol. 69, No. 228

Monday, November 29, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Public Meetings of the Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) will hold meetings to become informed about Black Hills National Forest issues and to consider those issues so as to make management recommendations to the forest supervisor. The meetings are open, and the public may attend any part of the meetings.

Dates and Agenda Issues:

- Wednesday, December 8, 2004 from 1 to 5 p.m.—Phase II Amendment/Board Bylaw Changes.
- Wednesday, January 5, 2005 from 1 to 5 p.m.—Phase II Amendment.
- Wednesday, February 16, 2005 from 1 to 5 p.m.—To be announced through local news media.
- Wednesday, March 16, 2005 from 1 to 5 p.m.—To be announced through local news media.
- Wednesday, April 20, 2005 from 1 to 5 p.m.—To be announced through local news media.
- Wednesday, May 18, 2005 from 1 to 5 p.m.—To be announced through local news media.

ADDRESSES: SDSU West River Ag Center, 1905 Plaza Boulevard, Rapid City, SD.

FOR FURTHER INFORMATION CONTACT: Frank Carroll, Black Hills National Forest, 25041 North Highway 16, Custer, SD 57730, (605) 673-9200.

Dated: November 22, 2004.

Dorothy FireCloud,

Black Hills National Forest Acting Deputy Forest Supervisor.

[FR Doc. 04-26317 Filed 11-26-04; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Appointees to the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of appointees.

SUMMARY: The Secretary of Agriculture has renewed the Agricultural Air Quality Task Force (AAQTF), and has appointed qualified individuals to serve as members.

DATES: The effective date of the appointment is September 17, 2004.

FOR FURTHER INFORMATION CONTACT:

Elvis Graves, Acting Designated Federal Official; telephone: (336) 370-3331, extension 421; fax: (202) 720-2646, e-mail: elvis.graves@gnb.usda.gov.

SUPPLEMENTARY INFORMATION: On October 22, 2004, Agriculture Secretary Ann M. Veneman announced the selection of individuals to serve as members of AAQTF through September 17, 2006.

The Task Force is chaired by the Chief of the Natural Resources Conservation Service (NRCS) and made up of the Department of Agriculture (USDA) employees, industry representatives, and other experts in the fields of agriculture and air quality. The AAQTF charter is renewed every 2 years to address agricultural air quality issues.

Service as a Task Force member shall not constitute employment by, or the holding of an office of, the United States for the purpose of any Federal law. A Task Force member shall serve for a term of 2 years. AAQTF members shall receive no compensation from NRCS for their service as Task Force members except as described below. While away from home, or regular place of business, as a member of the Task Force, the member will be eligible for travel expenses paid by NRCS, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the Government service under Section 5703 of Title 5, United States Code.

Task Force Purpose

As required by Section 391 of the Federal Agriculture Improvement and Reform Act of 1996, the Chief of NRCS shall establish a Task Force to address

agricultural air quality issues and advise the Secretary of Agriculture on oversight and coordination functions. The Task Force provides recommendations and guidance on the development and implementation of air quality policy. The Task Force also serves as an advisory committee and will operate under the terms of the Federal Advisory Committee Act.

The Task Force will:

1. Review research on agricultural air quality supported by Federal agencies;
2. Provide recommendations to the Secretary of Agriculture regarding air quality and its relation to agriculture based upon sound scientific findings;
3. Work to ensure intergovernmental (Federal, State and local) coordination in establishing policy for agricultural air quality, and to avoid duplication of efforts;
4. Assist, to the extent possible, Federal agencies in correcting their erroneous data with respect to agricultural air quality; and
5. Ensure that air quality research related to agriculture receives adequate peer review and considers economic feasibility.

An announcement of the first meeting of this Task Force will be published in the **Federal Register**. Additional information regarding the AAQTF may be found on the World Wide Web at <http://aaqtf.tamu.edu>.

2004-2006 USDA Agricultural Air Quality Task Force Members

Arizona

Kevin G. Rogers, Producer.

California

Cynthia Cory, California Farm Bureau.
Manuel F. Cunha, Jr., Nisei Farmers League.

Robert G. Flocchini, University of California-Davis.

Roger Isom, California Cotton Ginners & Growers.

Hawaii

Janet Ashman, Hawaii Agricultural Research Center.

Idaho

Dave Roper, Producer.

Patrick A. Takasugi, Idaho Department of Agriculture.

Indiana

Robert N. Jackman, Veterinarian, State Senator.

Rita Sharma, Producer.

Maryland

Phillip J. Wakelyn, National Cotton Council of America.

Nevada

Marc Lynn Pitchford, National Oceanographic and Atmospheric Administration.

New York

Douglas Shelmidine, Producer.

North Carolina

Viney P. Aneja, North Carolina State University.

Garth W. Boyd, Smithfield Foods, Incorporated.

Joseph Rudek, Environmental Defense. Sally L. Shaver, U.S. Environmental Protection Agency.

Oklahoma

Annette H. Sharp, Central States Air Resources Agencies (CenSARA).

Texas

Robert V. Avant, Jr., Texas Food and Fibers Commission.

Calvin B. Parnell, Jr., Texas A&M University.

Bryan W. Shaw, Texas A&M University.

Utah

Nan Bunker, Producer.

Virginia

Gary Baise, Attorney.

Washington

Liam F. Schillinger, Washington State University.

Wisconsin

Steven R. Kirkhorn, M.D., Marshfield Clinic.

Signed in Washington, DC on November 12, 2004.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 04-26302 Filed 11-26-04; 8:45 am]

BILLING CODE 3410-16-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 1:30 p.m. on December 10, 2004, at the Inter-Continental Hotel, 100 Chopin Plaza, Miami, FL 33131.

The purpose of the meeting is to determine what Civil Rights issues will be reviewed as a project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ivy Davis, Chief of the Regional Programs Coordination Unit, (202) 376-7700 (TDD (202) 376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 13, 2004.

Aonghas St. Hillarie,

Acting Chief Managing Officer.

[FR Doc. 04-26264 Filed 11-26-04; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a conference call of the Rhode Island Advisory Committee will convene at 11 a.m. and adjourn at 11:30 a.m., Tuesday, November 30, 2004. The purpose of the conference call is to plan the Committee's next project.

This conference call is available to the public through the following call-in number: 1-800-659-1081, access code: 31144293. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Barbara de La Viez of the Eastern Regional Office at 202-376-7533 by 4 p.m. on Monday, November 29, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04-26300 Filed 11-26-04; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-863]

Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review.

SUMMARY: In response to requests from Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui), Eurasia Bee's Products Co., Ltd. (Eurasia), Inner Mongolia Youth Trade Development Co., Ltd. (Inner Mongolia Youth), and Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu Kanghong), the U.S. Department of Commerce (the Department) is conducting new shipper reviews of the antidumping duty order on honey from the People's Republic of China (PRC). The period of review (POR) is December 1, 2002, through November 30, 2003. The preliminary results are listed below in the section titled "Preliminary Results of Review." Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 29, 2004.

FOR FURTHER INFORMATION CONTACT:

Kristina Boughton (for Anhui Honghui and Eurasia) at (202) 482-8173 or Anya Naschak (for Inner Mongolia Youth and Jiangsu Kanghong) at (202) 482-6375; Office of Antidumping and Countervailing Operations, China/NME Group, Office Nine, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published in the **Federal Register** an antidumping duty order on honey from the PRC. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR

63670 (December 10, 2001). The Department received timely requests from Anhui Honghui, Eurasia, Foodworld International Club Limited (Foodworld), Inner Mongolia Youth, Jiangsu Kanghong, and Shanghai Shinomiel International Trade Corporation (Shanghai Shinomiel), in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the PRC, which has a December annual anniversary month and a June semi-annual anniversary month. On January 30, 2004, the Department found that the requests for review with respect to Anhui Honghui, Eurasia, Inner Mongolia Youth, and Jiangsu Kanghong met all the regulatory requirements set forth in 19 CFR 351.214(b) and initiated these new shipper antidumping duty reviews. The Department did not initiate a new shipper review for Foodworld because its shipment had not entered the United States by the date of initiation, nor for Shanghai Shinomiel because the Department determined that it was not a new shipper. See *Honey From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 69 FR 5835 (February 6, 2004).

On February 4, 2004, we issued antidumping duty questionnaires to Anhui Honghui, Eurasia, Inner Mongolia Youth, and Jiangsu Kanghong. On February 13, 2004, we issued supplemental questionnaires to Anhui Honghui and Jiangsu Kanghong. On February 27, 2004, we received information from Anhui Honghui and Jiangsu Kanghong regarding intra-company sales. On March 16, 2004, we received a response to Section A of our antidumping duty questionnaire from Inner Mongolia Youth. On March 17, 2004, we received responses to Section A of our antidumping duty questionnaire from Anhui Honghui, Eurasia, and Jiangsu Kanghong.

On March 25, 2004, we invited interested parties to comment on the Department's surrogate country selection and/or significant production in the potential countries and to submit publicly available information to value the factors of production.

On March 30, 2004, we received a response to Sections C and D of our antidumping duty questionnaire from Inner Mongolia Youth. On March 31, 2004, we received responses to Sections C and D of our antidumping duty questionnaire from Anhui Honghui, Eurasia, and Jiangsu Kanghong and, where applicable, from their U.S. affiliates and/or the respective importers.

On March 30 and April 1 and 13, 2004, the American Honey Producers Association and the Sioux Honey Association (collectively, the petitioners) submitted comments on the respondents' questionnaire responses.

On April 15, 2004, the petitioners submitted comments on the selection of the proper surrogate country.

On April 16, 2004, we issued a supplemental questionnaire to Inner Mongolia Youth. On April 16 and 23, 2004, we issued supplemental questionnaires to Anhui Honghui and Jiangsu Kanghong. On April 19 and 23, 2004, we issued supplemental questionnaires to Eurasia. We also issued questionnaires to the respondents' U.S. customers on April 28, 2004. On April 30, 2004, we received a response to our supplemental questionnaire from Inner Mongolia Youth. On May 3, 2004, we received responses to our supplemental questionnaires from Anhui Honghui and Jiangsu Kanghong. On May 6 and 7, 2004, we received a response to our supplemental questionnaire from Eurasia. We received responses to our questionnaires to U.S. customers on May 7, 2004.

On May 10, 2004, the petitioners and respondents submitted comments on surrogate information with which to value the factors of production in this proceeding.

On May 12, 2004, the petitioners submitted comments on the respondents' supplemental questionnaire responses. On May 14, 2004, we issued a second supplemental questionnaire to Eurasia. On May 17, 2004, we issued a second supplemental questionnaire to Inner Mongolia Youth.

On May 20, 2004, the respondents commented on the petitioners' surrogate value submission.

On May 21, 2004, we issued a third supplemental questionnaire to Eurasia. On May 21, 2004, we issued a second supplemental questionnaire to Jiangsu Kanghong. On May 24, 2004, we received a second supplemental questionnaire response from Inner Mongolia Youth. On May 26, 2004, we issued a second supplemental questionnaire to Anhui Honghui.

On May 28, 2004, the petitioners submitted rebuttal comments to the respondents' arguments on surrogate values. Also on May 28, 2004, we received a response to our supplemental questionnaire from Jiangsu Kanghong.

On June 1, 2004, the Department published in the **Federal Register** a notice of extension of the preliminary results until no later than September 27, 2004. See *Notice of Extension of Preliminary Results of New Shipper*

Antidumping Duty Reviews: Honey from the People's Republic of China, 69 FR 30881 (June 1, 2004).

On June 2 through 15, 2004, we notified the respondents of our intent to conduct verification of their responses and provided each company with a verification outline for purposes of familiarizing the companies with the verification process.

On June 14 through 18, 2004, the Department conducted verification of the information submitted by Inner Mongolia Youth and its unaffiliated producer, Qinhuangdao Municipal Dafeng Industrial Co., Ltd. (QDI).

On June 14, 2004, we issued a third supplemental questionnaire to Anhui Honghui and Jiangsu Kanghong. We received a response to these questionnaires on June 17, 2004.

On June 21 through 25, 2004, the Department conducted verification of the information submitted by Jiangsu Kanghong and Anhui Honghui.

On June 22, 2004, Jiangsu Kanghong submitted for the record minor corrections to its responses presented to the Department at the start of verification. On June 24, 2004, Anhui Honghui submitted minor corrections to its responses presented to the Department at the start of verification.

On June 28, through July 2, 2004, the Department conducted verification of the information submitted by Eurasia and its unaffiliated producer, Chuzhou Huadi Foodstuffs Co., Ltd. (Chuzhou Huadi).

On June 29, 2004, Eurasia submitted minor corrections to its responses which it presented to the Department's verifiers at the start of verification.

On July 1 and 6, 2004, we notified the U.S. affiliates of Jiangsu Kanghong and Anhui Honghui, respectively, of our intent to conduct verification of their responses and provided each company with a verification outline for purposes of familiarizing the companies with the verification process. On July 8 and 9, 2004, the Department conducted verification of the information submitted by Jiangsu Kanghong's U.S. affiliate, B. Master, Inc. (B. Master). On July 14 through 16, 2004, the Department conducted verification of the information submitted by Anhui Honghui's U.S. affiliate, Hong Hui Group (USA) Corp.

On July 26, 2004, we issued the verification report for Inner Mongolia Youth and its unaffiliated producer. See Memorandum to the File from Anya Naschak and Rachel Kreissl, dated July 26, 2004, entitled "Verification of Factors of Production for Qinhuangdao Municipal Dafeng Industrial Co., Ltd. ("QDI") and Sales of Inner Mongolia

Youth Trade Development Co., Ltd. ("IMY") in the New Shipper Review of Honey from the People's Republic of China ("PRC") (Inner Mongolia Youth Verification Report).

On August 12, 2004, we issued the verification report for Jiangsu Kanghong and its U.S. affiliate. See Memorandum to the File from Salim Bhabrawala and Anya Naschak, dated August 12, 2004, entitled "Verification of Sales and Factors of Production Data Submitted by Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu) and its affiliate B. Master, Inc. (B. Master)" (Jiangsu Kanghong Verification Report).

On August 25, 2004, we issued the verification reports for Anhui Honghui and its U.S. affiliate. See Memoranda to the File from Jim Nunno and Kristina Boughton, dated August 25, 2004, entitled "Verification of U.S. Sales and Factors of Production for Respondent Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui)" (Anhui Honghui Verification Report) and "Sales Verification of Questionnaire Responses Submitted by Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui) on behalf of its U.S. affiliate, Hong Hui Group (USA) Corp. (Hong Hui USA)" (Hong Hui USA Verification report).

On August 26, 2004, we issued the verification reports for Eurasia and its unaffiliated producer. See Memoranda to the File from Jim Nunno and Kristina Boughton, dated August 26, 2004, entitled "Verification of U.S. Sales and Factors of Production for Respondent Eurasia Bee's Products Co., Ltd. (Eurasia)" (Eurasia Verification Report) and "Verification of Factors of Production for Respondent Chuzhou Huadi Foodstuffs Co., Ltd. (Chuzhou Huadi)" (Chuzhou Huadi verification report).

On September 24, 2004, the Department extended the time limits to complete the Preliminary Results of this new shipper review until November 19, 2004. See *Notice of Extension of Preliminary Results of New Shipper Antidumping Duty Reviews: Honey from the People's Republic of China*, 69 FR 58893 (October 1, 2004).

Scope of the Order

The products covered by these reviews are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise subject

to these reviews are currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and the customs purposes, the Department's written description of the merchandise under order is dispositive.

Verification

As provided in section 782(i)(3) of the Act and section 351.307 of the Department's regulations and as stated above, we conducted verification of the questionnaire responses of Anhui Honghui, Eurasia, Inner Mongolia Youth, and Jiangsu Kanghong during June and July 2004. We used standard verification procedures, including on-site inspections of the production facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports, public versions of which are on file in the Central Records Unit (CRU) located in room B-099 of the Main Commerce Building.

New Shipper Status

Consistent with our practice, we investigated the bona fide nature of the sales made by Anhui Honghui, Eurasia, Inner Mongolia Youth, and Jiangsu Kanghong for these new shipper reviews. We found no evidence that the sales in question are not bona fide sales. Based on our investigation into the bona fide nature of the sales, the questionnaire responses submitted by each company, and our verification thereof, we preliminarily determine that each of the respondents has met the requirements to qualify as a new shipper during the POR. We have determined that each respondent made its first sale and/or shipment of subject merchandise to the United States during the POR, and that it was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States. Therefore, for purposes of these preliminary results of review, we are treating the respondents' sales of honey to the United States as appropriate transactions for these new shipper reviews.

Separate Rates

In proceedings involving nonmarket economy (NME) countries, the Department begins with a presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate (i.e., a PRC-wide entity rate) unless an exporter can affirmatively demonstrate an absence of

government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-22587 (May 2, 1994) (*Silicon Carbide*).

In these reviews, Anhui Honghui, Eurasia, Inner Mongolia Youth, and Jiangsu Kanghong requested a separate company-specific rate, and provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether each producer/exporter is independent from government control. See *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 56570 (April 30, 1996).

De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR 20588, 20589.

Each respondent has placed on the record a number of documents to demonstrate absence of *de jure* control, including the "Company Law of the People's Republic of China" (December 29, 1993), the "Foreign Trade Law of the People's Republic of China" (May 12, 1994), and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" (June 3, 1988). The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). At verification, we found that each respondent's business license and "Certificate of Approval" for enterprises with foreign trade rights in

the PRC were granted in accordance with these laws. Moreover, the results of verification support the information provided regarding these PRC laws. For further information, see the company-specific verification reports. Therefore, we preliminarily determine that there is an absence of *de jure* control over each respondent's export activities.

De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Anhui Honghui has asserted the following: (1) It is a privately owned company; (2) there is no government participation in its setting of export prices; (3) its chief executive officers and authorized employees have the authority to bind sales contracts; (4) it does not have to notify any government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) it is responsible for financing its own losses. Anhui Honghui's questionnaire responses do not suggest that pricing is coordinated among exporters of PRC honey.

Eurasia has asserted the following: (1) It is a privately owned limited liability company; (2) there is no government participation in its setting of export prices; (3) its general manager has the authority to bind sales contracts; (4) it does not have to notify any government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) it is responsible for financing its own losses.

Eurasia's questionnaire responses do not suggest that pricing is coordinated among exporters of PRC honey.

Inner Mongolia Youth has asserted the following: (1) It is a privately owned company; (2) there is no government participation in its setting of export prices; (3) its chief executive officers and authorized employees have the authority to bind sales contracts; (4) it does not have to notify any government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) it is responsible for financing its own losses. Inner Mongolia Youth's questionnaire responses do not suggest that pricing is coordinated among exporters of PRC honey.

Jiangsu Kanghong has asserted the following: (1) It is a privately owned limited liability company (2) there is no government participation in its setting of export prices; (3) its general manager has the authority to bind sales contracts; (4) it does not have to notify any government authorities of its management selection; (5) there are no restrictions on the use of foreign currency earned; and (6) its executive director decides how profits will be used. Jiangsu Kanghong's questionnaire responses do not suggest that pricing is coordinated among exporters of PRC honey.

Furthermore, our analysis of the responses during verification reveal no other information indicating the existence of government control. See the company-specific verification reports for further information. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over each respondent's export activities, we preliminarily determine that each respondent has met the criteria for the application of a separate rate.

Normal Value Comparisons

To determine whether the respondents' sales of the subject merchandise to the United States were made at prices below normal value, we compared their U.S. price to normal value, as described in the "U.S. Price" and "Normal Value" sections of this notice.

U.S. Price

Export Price

For Eurasia, Inner Mongolia Youth, and certain sales made by Jiangsu Kanghong, we based the U.S. price on export price (EP), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and

constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States.

For Eurasia, we deducted foreign inland freight, foreign brokerage and handling expenses, international ocean freight, marine insurance, U.S. brokerage and handling, U.S. import duties, U.S. inland freight expenses, and commission expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act. For Inner Mongolia Youth, we deducted foreign inland freight and foreign brokerage and handling expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act. For Jiangsu Kanghong, where applicable, we deducted foreign inland freight, foreign brokerage and handling expenses, international ocean freight, U.S. brokerage and handling, and U.S. import duties from the starting price (gross unit price), in accordance with section 772(c) of the Act.

As all foreign inland freight, foreign brokerage and handling, and marine insurance expenses (where applicable) were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (see "Factors of Production" section below for further discussion). For international freight (where applicable) we used the reported expense because the respondents used market-economy freight carriers and paid for those expenses in a market-economy currency.

Constructed Export Price

For Anhui Honghui, we calculated CEP in accordance with section 772(b) of the Act, because the sales were made on behalf of Anhui Honghui by its U.S. affiliate to unaffiliated purchasers. We based CEP on packed, delivered or ex-warehouse prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling charges, international ocean freight, marine insurance, U.S. brokerage and handling, U.S. import duties, and U.S. inland freight expenses. As all foreign inland freight, foreign brokerage and handling, and marine insurance expenses were provided by PRC service providers and/or paid for in renminbi, we valued these services using Indian surrogate values. For international freight, we used the reported expense because the

respondent used market-economy freight carriers and paid for those expenses in a market-economy currency.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit expenses) and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

For Jiangsu Kanghong, we also calculated CEP in accordance with section 772(b) of the Act. We found that some of Jiangsu Kanghong's sales during the POR were CEP sales because the sales were made on behalf of Jiangsu Kanghong by its U.S. affiliate to unaffiliated purchasers. We based CEP on packed, delivered or ex-warehouse prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight and foreign brokerage and handling charges, international ocean freight, U.S. brokerage and handling fees, U.S. import duties, and U.S. inland freight expenses. As all foreign inland freight and foreign brokerage and handling expenses were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (see "Factors of Production" section below for further discussion). For international freight, we used the reported expense because the respondent used market-economy freight carriers and paid for those expenses in a market-economy currency.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit expenses and lab test expenses) and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

For a more detailed explanation of the company-specific adjustments that we made in the calculation of the dumping margins for these preliminary results, see the company-specific preliminary results analysis memoranda dated November 19, 2004. Public versions of these memoranda are on file in the CRU.

Normal Value

A. Non-Market-Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to these reviews have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development, as identified in the February 24, 2004, Memorandum from the Office of Policy to Abdelali Elouaradia.¹ In addition, based on publicly available information placed on the record (e.g., world production data), India is a significant producer of the subject merchandise. Accordingly, we considered India the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate-country selection. See Memorandum to the file from Anya Naschak through James Doyle entitled, "Selection of a Surrogate Country," dated November 19, 2004.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) Hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used factors of production reported by the producer or exporter for materials, energy, labor, and packing. To calculate NV, we

multiplied the reported unit factor quantities by publicly available Indian values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. When we used publicly available import data from the Ministry of Commerce of India (Indian Import Statistics), for December 2002 through November 2003 to value inputs sourced domestically by PRC suppliers, we added to the Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. In instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (i.e., Indonesia, South Korea, and Thailand) from our surrogate value calculations. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. See, also, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 68 FR 66800, 66808 (November 28, 2003), unchanged in the Department's final results at 69 FR 20594 (April 16, 2004). Also consistent with our policy, we excluded, in a few instances, import data that appeared to be aberrational when compared to the average import value of all countries not excluded. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594, April 16, 2004, and accompanying Issues and Decision Memorandum at Comment 5. See

¹ This memorandum is attached to the letters sent to interested parties to this proceeding requesting comments on surrogate country and surrogate value information, dated March 25, 2004.

Memorandum to the File, through James Doyle, Office Director, entitled, "Factors of Production Valuation Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China," dated November 19, 2004 (Factor Valuation Memo), for a complete discussion of the import data that we excluded from our calculation of surrogate values. This memorandum is on file in the CRU located in room B-099 of the Main Commerce Building.

Where we could not obtain publicly available information contemporaneous with the POR to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index (WPI) as published in the *International Financial Statistics* (IFS) of the International Monetary Fund (IMF), for those surrogate values in Indian rupees. We converted all surrogate values denominated in foreign currencies to U.S. dollars using the applicable average exchange rate for the POR. We based the average exchange rates on exchange rate data from the Import Administration Web site at <http://ia.ita.doc.gov/exchange/index.html>. See Factor Valuation Memo.

We valued the factors of production as follows:

To value raw honey, we used the average of two raw honey prices, provided in an article published in *The Tribune (of India)* on December 15, 2003, entitled, "Honey sweet despite price fall." A copy of the original article, which was submitted by the petitioners, is attached at Attachment 3 of the Factor Valuation Memo. The respondents in this review submitted other news articles to be used as potential sources for the surrogate value data for raw honey, including an article from the *Hindu Business Line* dated April 2003 and an article from IndiaInfoline.com dated September 2003. We have not used either of these alternate sources proposed by respondents in the preliminary results, as discussed in the Factor Valuation Memo.

In selecting the raw honey values from *The Tribune (of India)* article as the best available information with which to value raw honey in this proceeding, we note that the Department has conducted extensive research on potential raw honey surrogate values for these new shipper reviews. The relevant research is included as Attachment 17 of the Factor Valuation Memo. Additionally, the Department contacted U.S. Foreign Agriculture Service (FAS) officers in India to conduct research on its behalf (see Memorandum to the File from Anya Naschak, dated November 19, 2004).

The information obtained from these FAS officers included price quotes from the North India Beekeepers Society (NIBS). The Department also evaluated the reasonableness of using Mahabaleshwar Honey Producers Cooperative Society, Ltd.'s (MHPC) cost of raw honey from its financial statements. None of these other sources of information are as reliable as the raw honey values appearing in *The Tribune (of India)* article. Specifically, the Department cannot confirm the quality or reliability of the NIBS values, and the MHPC price is that of a single producer. In addition, we note that "the Department's preference is to use industry-wide values, rather than the values of a single producer, wherever possible, because industry-wide values are more representative of prices/costs of all producers in the surrogate country." See *Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001), and accompanying Issues and Decision Memorandum at Comment 2 (*Final Determination*). See also *Final Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China*, 69 FR 25060 (May 5, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

The use of *The Tribune (of India)* article is also consistent with the Department's recent decision in the third new shipper review of this order. See *Honey from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review and Final Rescission, In Part, of Antidumping Duty New Shipper Review*, 69 FR 64029 (November 3, 2004) (*NSR Chengdu Final Results*), and accompanying Issues and Decision Memorandum at Comment 4. For a further discussion of this issue, see Factor Valuation Memo.

To value water, we used the water tariff rate, as reported on the Municipal Corporation of Greater Mumbai's website. See <http://www.mcgm.gov.in/Stat%20&%20Fig/Revenue.htm>. Because this data is not contemporaneous with the POR, an adjustment has been made for inflation using WPI data.

To value diesel fuel for autos, we used the rate published in *International Energy Agency, Energy Prices and Taxes—Quarterly Statistics (Fourth Quarter 2003)*, under "Automotive Diesel for Commercial Use." We also adjusted the surrogate values to include freight costs incurred between the shorter of the two reported distances

from either (1) the closest PRC seaport to the location producing the subject merchandise, or from (2) the PRC domestic materials supplier to the location producing the subject merchandise. See Factor Valuation Memo.

To value beeswax, coal, paint, and labels we used Indian Import Statistics, contemporaneous with the POR, removing data from certain countries as discussed in the Factor Valuation Memo. We also adjusted the surrogate values to include freight costs incurred between the shorter of the two reported distances from either (1) the closest PRC seaport to the location producing the subject merchandise, or from (2) the PRC domestic materials supplier to the location producing the subject merchandise. See Factor Valuation Memo.

We valued electricity using the Annual Report (2001–2002) on *The Working of State Electricity Boards & Electricity Departments of the Planning Commission (Power and Energy Division) of the Government of India (May 2002)*, as submitted by respondents in their May 10, 2004, submission at Exhibit 5. We inflated the value for electricity using the POR average WPI rate. See Factor Valuation Memo.

To value drums, we relied upon a price quote from an Indian steel drum manufacturer from September 2000, as provided by Petitioners in their May 10, 2004, submission at Exhibit 9. We inflated the value for drums using the POR average WPI rate, and adjusted the surrogate values to include freight costs incurred between the shorter of the two reported distances from either (1) the closest PRC seaport to the location producing the subject merchandise, or from (2) the PRC domestic materials supplier to the location producing the subject merchandise. See Factor Valuation Memo.

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied upon publicly available information in the 2002–2003 annual report of MHPC, a producer of the subject merchandise in India. We applied the resulting ratios to the calculated cost of manufacture and cost of production using the same methodology established in *NSR Chengdu Final Results* and accompanying Issues and Decision Memorandum at Comment 5.

Because of the variability of wage rates in countries with similar levels of per capita gross domestic product, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate.

Therefore, to value the labor input, we used the PRC's regression-based wage rate published by Import Administration on its Web site. The source of the wage rate data on the Import Administration Web site is the *Yearbook of Labour Statistics 2002*, International Labour Organization (ILO), (Geneva: 2002), and GNI data as reported in *World Development Indicators*, The World Bank, (Washington, DC: 2003 and 2004). See Factor Valuation Memo.

To value truck freight, we used an average truck freight cost based on Indian truck freight rates on a per metric ton basis published in the *Iron and Steel Newsletter*, April 2002, which we adjusted for inflation. See Factor Valuation Memo.

We valued marine insurance, where necessary, based on publicly available price quotes from a marine insurance provider at <http://www.rjgconsultants.com/insurance.html>. We also valued brokerage and handling using the source, dated November 12, 1999, that petitioners provided in their May 10, 2004, submission. Since the brokerage rate was not contemporaneous with the POR, we adjusted the rate for inflation. See Factor Valuation Memo.

In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results of these new shipper reviews, interested parties may submit publicly available information to value the factors of production until 20 days following the

date of publication of these preliminary results.

Currency Conversion

We made currency conversions, where necessary, pursuant to section 351.415 of the Department's regulations to U.S. dollars using the applicable average exchange rate for the POR. We based the average exchange rates on exchange rate data from the Import Administration Web site at <http://ia.ita.doc.gov/exchange/index.html>.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist for the period December 1, 2002, through November 30, 2003:

Exporter	Producer(s)	Margin (percent)
Anhui Honghui Foodstuff (Group) Co., Ltd	Anhui Honghui Foodstuff (Group) Co., Ltd	10.73
Eurasia Bee's Products Co., Ltd	Eurasia Bee's Products Co., Ltd. or Chuzhou Huadi Foodstuffs Co., Ltd.	31.47
Inner Mongolia Youth Trade Development Co., Ltd	Qinhuangdao Municipal Dafeng Industrial Co., Ltd	32.61
Jiangsu Kanghong Natural Healthfoods Co., Ltd	Jiangsu Kanghong Natural Healthfoods Co., Ltd	29.91

The Department will disclose calculations performed in connection with the preliminary results of these reviews within five days of the date of publication of this notice in accordance with section 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. A hearing would normally be held 37 days after the publication of this notice, or the first business day thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not

to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess and liquidate, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the companies subject to these reviews directly to CBP within 15 days of publication of the final results of these reviews. Pursuant to section 351.212(b)(1) of the Department's regulations, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total

amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by these reviews if any importer-specific assessment rate calculated in the final results of these reviews are above *de minimis*.

Cash-Deposit Requirements

Anhui Honghui, Eurasia, Inner Mongolia Youth, or Jiangsu Kanghong may continue to post a bond or other security in lieu of cash deposits for certain entries of subject merchandise. As Anhui Honghui and Jiangsu Kanghong have certified that they both produced and exported the subject merchandise, their bonding option is limited to such merchandise for which they are both the producer and exporter. For Eurasia, which has identified itself and Chuzhou Huadi as the producers of subject merchandise for the sales under review, Eurasia's bonding option is limited only to entries of subject merchandise exported by Eurasia that were produced by itself or Chuzhou Huadi. For Inner Mongolia Youth, which has identified QDI as the producer of subject merchandise for the sale under review, Inner Mongolia Youth's bonding option is limited to entries of subject merchandise exported by Inner Mongolia Youth that were produced by QDI. Bonding will no longer be permitted to fulfill security

requirements for shipments of the subject merchandise from the PRC produced and exported by Anhui Honghui; produced by Eurasia or Chuzhou Huadi and exported by Eurasia; produced by QDI and exported by Inner Mongolia Youth; or produced and exported by Jiangsu Kanghong after publication of the final results of these new shipper reviews.

The following cash-deposit rates will be effective upon publication of the final results of these new shipper reviews for all shipments of honey from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Anhui Honghui; produced by Eurasia or Chuzhou Huadi and exported by QDI and exported by Inner Mongolia Youth; or produced and exported by Jiangsu Kanghong, the cash-deposit rate will be that established in the final results of this review; (2) for all other subject merchandise exported by Anhui Honghui, Eurasia, Inner Mongolia Youth, and Jiangsu Kanghong, the cash-deposit rate will be the PRC country-wide rate (*i.e.*, 183.80 percent); (3) for subject merchandise produced by Anhui Honghui but not exported by Anhui Honghui; produced by Chuzhou Huadi or Eurasia but not exported by Eurasia; produced by QDI but not exported by Inner Mongolia Youth; or produced by Jiangsu Kanghong but not exported by Jiangsu Kanghong, the cash deposit rate will be the rate applicable to the exporter; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These new shipper reviews and this notice are published in accordance with

sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: November 19, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4-3360 Filed 11-26-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-814]

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the 2002–2003 antidumping duty administrative review of the antidumping order on stainless steel sheet and strip in coils (SSSS) from France from December 4, 2004, until no later than February 2, 2005. The period of review (POR) is July 1, 2002, through June 30, 2003. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Act).

EFFECTIVE DATE: November 29, 2004.

FOR FURTHER INFORMATION CONTACT: Joshua Reitze or Sean Carey, AD/CVD Operations, Office VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-0666 and (202) 482-3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published the amended final determination and antidumping duty order on SSSS from France in the **Federal Register**. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from France*, 64 FR 40562 (July 27, 1999) (*Antidumping Duty Order*). On July 30, 2003, Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization (collectively, the Petitioners) requested

that the Department conduct a review of Ugine and ALZ France S.A.'s sales or entries of merchandise subject to the Department's antidumping duty order on SSSS from France. On July 31, 2003, Ugine and ALZ France S.A. (U&A France) (the Respondent), a producer and exporter of subject merchandise, also requested that the Department conduct a review of U&A France's sales or entries of subject merchandise for the POR.

On August 22, 2003, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period July 1, 2002, through June 30, 2003. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003). On February 26, 2004, the Department published in the **Federal Register** an extension of time limits for the preliminary results. See *Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 8936 (February 26, 2004). On August 6, 2004, the Department published the preliminary results of the administrative review. See *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 69 FR 47892 (August 6, 2004).

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The Department recently received case briefs and rebuttal briefs from the interested parties involved in this administrative review. In the instant review, the Department has determined that it is not practicable to complete the review within the statutory time limit due to the need for analysis of certain complex issues, including the treatment of constructed export price offsets, the treatment of downstream sales and of various expenses claimed by U&A France. Therefore, in accordance with section 751(a)(3)(A) of the Act, the

Department is extending the time limit for the final results to no later than February 2, 2005, which is 180 days from the date of publication of the *Preliminary Results*. This notice is issued and published in accordance with section 751(a)(1) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: November 22, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E4-3356 Filed 11-26-04; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-475-825]

Stainless Steel Sheet & Strip in Coils From Italy; Extension of Preliminary and Final Results of Full Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for the Preliminary and Final Results of Full Sunset Review of Countervailing Duty Order: Stainless Steel Sheet & Strip in Coils from Italy.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for its preliminary and final results in the full sunset review of the countervailing duty order on stainless steel sheet & strip in coils ("SSSS") from Italy.¹ The Department intends to issue preliminary results of this sunset review on or about December 20, 2004. In addition, the Department intends to issue its final results of this review on or about April 27, 2005 (120 days after the date of publication in the **Federal Register** of the preliminary results).

EFFECTIVE DATE: November 29, 2004.

FOR FURTHER INFORMATION CONTACT:

Hilary E. Sadler, Esq., Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4340.

¹ The Department normally will issue its preliminary results in a full sunset review not later than 110 days after the date of publication in the **Federal Register** of the notice of initiation. However, if the Secretary determines that a full sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Tariff Act of 1930 ("the Act"), as amended, the Secretary may extend the period for issuing final results by not more than 90 days. See section 751(c)(5)(B) of the Act.

Extension of Preliminary and Final Determinations

In accordance with section 751(c)(5)(C)(ii) of the Tariff Act of 1930 ("Act"), the Department may treat sunset reviews as extraordinarily complicated if the issues are complex in order to extend the period of time under section 751(c)(5)(B) of the Act for making a sunset determination. As discussed below, the Department has determined that these reviews are extraordinarily complicated. On June 1, 2004, the Department initiated a sunset review of the countervailing duty order on SSSS from Italy. See *Initiation of Five-Year (Sunset) Reviews*, 69 FR 30874 (June 1, 2004). The Department, in this proceeding, determined that it would conduct a full (240-day) sunset review of this order based on responses from the domestic and respondent interested parties to the notice of initiation. The Department's preliminary results of this review were scheduled for November 22, 2004. However, several complicated issues have arisen regarding issues raised by the parties and the effect of the recent section 129 determination on this sunset review. See *Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act: Countervailing Measures Concerning Certain Steel Products from the European Communities*, 68 FR 64858 (November 17, 2003).

Because of the numerous, complex issues in this proceeding, the Department will extend the deadlines. Thus, the Department intends to issue the preliminary results on or about December 20, 2004, and the final results on or about April 27, 2005, in accordance with section 751(c)(5)(B) and (C)(ii) of the Act.

Dated: November 22, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4-3359 Filed 11-26-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review (Certificate). This notice

summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or by e-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal Government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by e-mail at oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 97-8A003."

The original Certificate for the Association for the Administration of Rice Quotas, Inc., was issued on January 21, 1998 (63 FR 4220, January 28, 1998).

The Certificate has been amended seven times. The last amendment was issued on March 3, 2004 (69 FR 12831, March 18, 2004). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Association for the Administration of Rice Quotas, Inc. (AARQ), c/o Dickie Hollier of The Connell Company, One Connell Drive, Berkeley Heights, New Jersey 07922.

Contact: M. Jean Anderson, Esq., Counsel to Applicant, Telephone: (202) 682-7217.

Application No.: 97-8A003.

Date Deemed Submitted: November 17, 2004.

Proposed Amendment: AARQ seeks to amend its Certificate to reflect the following name, address, corporate changes and deletions of Members:

1. "American Rice, Inc., Houston, Texas" should be amended to read "American Rice, Inc., Houston Texas (a subsidiary of SOS Cuetara USA, Inc.)" due to a corporate acquisition. "Kitoku America, Inc., Davis, California (a subsidiary of Kitoku Shinryo Co., Ltd.)" should be amended to read "Kitoku America, Inc., Burlingame, California (a subsidiary of Kitoku Shinryo Co., Ltd. (Japan))" due to an address change. "Mermentau Rice, Inc., Mermentau, Louisiana" should be amended to read "Louisiana Rice Mill, LLC, Mermentau, Louisiana" due to a corporate name change. "Newfieldrice, Inc., Miami, Florida" should be amended to read "Newfieldrice, Inc., Miramar, Florida" due to an address change. "Nishimoto Trading Company, Ltd., Los Angeles, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan))" should be amended to read "Nishimoto Trading Co., Ltd., Santa Fe Springs, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan))" due to an address change. "Riviana Foods, Inc. Houston, Texas" should be amended to read "Riviana Foods Inc., Houston, Texas (a subsidiary of Ebro Puleva, S.A. (Spain))" due to a corporate acquisition.

2. Delete the following companies as Members of the Certificate: "ACH Food Companies, Inc., Cordova, Tennessee," and "KD International Trading, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprises, Inc.)."

Dated: November 22, 2004.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.
[FR Doc. E4-3351 Filed 11-26-04; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112304A]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's Habitat Advisory Panel (HAP), and the Scientific and Statistical Committee (SSC) will hold meetings.

DATES: The HAP/SSC meeting will be held on December 17, 2004, from 10 a.m. until 4 p.m. approximately.

ADDRESSES: The meetings will be held at the Best Western San Juan Airport Hotel, at the Luis Muñoz Marín International Airport, Carolina, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-1920, telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The HAP, and the SSC will meet to discuss the items contained in the following agenda:

1. Call to order
2. Ecopath Presentation—Ronald L. Hill
3. Sustainable Fisheries Act (SFA) Document
4. Other Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language

interpretation and/or other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-1920; telephone: (787) 766-5926, at least 5 days prior to the meeting date.

Dated: November 23, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4-3358 Filed 11-26-04; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112304B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (NEFMC) is scheduling a public meeting of its Research Steering Committee in November, 2004. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, December 14, 2004 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Boston Marriott Burlington, Route 128, Burlington, MA 01803; telephone: (781) 229-6565.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: At this meeting the committee will receive a presentation on the NMFS process to consider experimental fishery permit requests and develop related comments for consideration by the NEFMC and Regional Administrator. They will continue discussions on 2005 research priorities, particularly in relation to the long-term programs currently underway in the Northeast such as the cod tagging, study fleet and industry-based survey initiatives. They will also coordinate comments on final reports that have been funded through NMFS'

cooperative research program and begin to develop a consistent process for the various research set-aside programs provided for in the NEFMC fishery management plans.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the NEFMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 23, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4-3357 Filed 11-26-04; 8:45 am]

BILLING CODE 3510-22-S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled the Financial Management Survey (FMS) form 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). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mrs. Peg Rosenberry at (202) 606-5000, ext. 124. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565-2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory

Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

- (1) By fax to: (202) 395-6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and
- (2) Electronically by e-mail to: Katherine_T._Astrich@omb.eop.gov.

SUPPLEMENTARY INFORMATION: 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 Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, *e.g.*, permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on February 10, 2004. This comment period ended April 12, 2004. No public comments were received from this notice.

Description: The Corporation is seeking approval of the Financial Management Survey form which will be used by the Grants Management Specialist in the Office of Grants Management in order to assess the capacity of potential grantees to manage federal funds.

The Financial Management Survey form must be completed as pre-award assessment tool for potential grantees to address questions about its organization type, financial systems, how it manages funds, and internal controls to proper administer federal funds. This form is used to determine the specific areas of its financial management to manage federal funds and become the basis for determining the areas of the organization's financial systems that may warrant technical assistance.

Type of Review: New Information collection.

Agency: Corporation for National and Community Service.

Title: Financial Management Survey Form.

OMB Number: None.

Agency Number: None.

Affected Public: First-time grantees or current grantees re-competing for funding.

Total Respondents: 35 annually.

Frequency: One (1) time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 17.5 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: November 19, 2004.

Douglas Gerry,

Acting Director of the Office of Grants Management.

[FR Doc. 04-26326 Filed 11-26-04; 8:45 am]

BILLING CODE 6050--\$S-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0027]

Federal Acquisition Regulation; Submission for OMB Review; Value Engineering Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000-0027).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning value engineering requirements. A request for public comments was published in the Federal Register at 69 FR 53686 on September 2, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the

public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 29, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000-0027, Value Engineering Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT Cecelia Davis, Contract Policy Division, GSA, (202) 219-0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Value engineering is the technique by which contractors (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) are required to establish a program to identify and submit to the Government methods for performing more economically. These recommendations are submitted to the Government as value engineering change proposals (VECP's) and they must include specific information. This information is needed to enable the Government to evaluate the VECP and, if accepted, to arrange for an equitable sharing plan.

B. Annual Reporting Burden

Respondents: 400.

Responses Per Respondent: 4.

Total Responses: 1,600.

Hours Per Response: 30.

Total Burden Hours: 48,000.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0027, Value Engineering Requirements, in all correspondence.

Dated: November 19, 2004.

Laura Auletta,

Director, Contract Policy Division.

[FR Doc. 04-26276 Filed 11-26-04; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000-0113]

**Federal Acquisition Regulation;
Submission for OMB Review;
Acquisition of Helium**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000-0113).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning acquisition of helium. A request for public comments was published at 69 FR 54655 on September 9, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 29, 2004.

ADDRESSES: Submit comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000-0113, Acquisition of Helium, in all correspondence.

FOR FURTHER INFORMATION CONTACT Linda Nelson, Contract Policy Division, GSA (202) 501-1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Helium Act (Pub. L. 86-777) (50 U.S.C. 167a, *et seq.*) and the Department of the Interior's implementing regulations (30 CFR parts 601 and 602) require Federal agencies to procure all major helium requirements from the Bureau of Land Management, Department of the Interior.

The FAR requires offerors responding to contract solicitations to provide information as to their forecast of helium required for performance of the contract. Such information will facilitate enforcement of the requirements of the Helium Act and the contractual provisions requiring the use of Government helium by agency contractors, in that it will permit corrective action to be taken if the Bureau of Land Management, after comparing helium sales data against helium requirement forecasts, discovers apparent serious discrepancies.

The information is used in administration of certain Federal contracts to ensure contractor compliance with contract clauses. Without the information, the required use of Government helium cannot be monitored and enforced effectively.

B. Annual Reporting Burden

Respondents: 26.

Responses Per Respondent: 1.

Total Responses: 26.

Hours Per Response: 1.

Total Burden Hours: 26.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0113, Acquisition of Helium, in all correspondence.

Dated: November 19, 2004.

Laura Auletta,

Director, Contract Policy Division.

[FR Doc. 04-26277 Filed 11-26-04; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

**Department of the Army; Corps of
Engineers**

**Intent To Prepare an Integrated
Feasibility Report/Environmental
Impact Statement—James River
Feasibility Study, South Dakota**

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act and implementing regulations, an Environmental Impact Statement (EIS) will be prepared and incorporated into the James River, South Dakota Feasibility Study once alternative actions are identified that meet the project objectives described below. The James River Water Development District (JRWD) is the non-Federal sponsor for this study. The JRWD encompasses portions of Brown, Marshall, Spink, Davison, Yankton, Beadle, Sanborn, Hutchinson and Hanson Counties in South Dakota.

Based on the authorizing legislation and previous studies, this Feasibility Study will address the need for enhancement of ecological resources and ecosystem management and flood damage reduction, both independently and in combination. The study will evaluate pertinent information and identify problems and opportunities that exist in the study area. Various alternatives (*i.e.*, potential projects) will be evaluated to determine whether or not they are technically feasible and economically cost effective or economically justified depending on their purpose (*e.g.*, ecosystem enhancement/restoration and/or flood damage reduction).

FOR FURTHER INFORMATION CONTACT: For additional information on the NEPA process, or to be added to the mailing list, contact Eric Laux, CENWO-PM-AE, U.S. Army Corps of Engineers, 106 South 15th Street, Omaha, Nebraska 68102, telephone at (402) 221-7186, or Fax (402) 221-4886. For additional information on the Feasibility Study, contact Richard Taylor, CENWO-PM-AP, U.S. Army Corps of Engineers, 106 South 15th Street, Omaha, Nebraska 68102, telephone (402) 221-3772, or Fax (402) 221-4890.

SUPPLEMENTARY INFORMATION: a. This Feasibility Study is authorized under Section 401(b) of the Water Resources Development Act of 1986. The Federal objective of water and related land resources planning is to contribute to national economic development consistent with protecting the nation's environment in accordance with national environmental statutes, applicable executive orders, and other Federal planning requirements.

b. The study area consists of the portion of the James River and adjacent areas that are located in eastern South Dakota. The James River flows generally southward for a distance of 747 river miles, 474 miles of which lie in the study area. This river has the flattest gradient of any river of its length in

North America, falling only about 135 feet along its South Dakota course. The James River basin occupies a total of 22,000 square miles, of which 14,000 square miles lie in South Dakota. The basin in South Dakota is bounded by the Missouri River drainage to the west and the Big Sioux and Vermillion River basins to the east and southeast. The Sand Lake Wildlife Refuge is located at the upper end of the study area. Land use in the basin is primarily agriculture and the larger communities located in the study area include Mitchell, Huron, and Aberdeen.

c. The intention of this Feasibility Study and EIS is to formulate and evaluate alternatives that help to restore or enhance ecological function and habitat and/or ameliorate flooding problems along the James River. Factors such as sediment deposits from tributaries, log jams, encroachment of vegetation into the channel, inadequate bridge capacity, low head dams in the channel, and the flat slope and meandering nature of the river are contributors to the flooding problems exhibited by the river. In 2000, the Corps completed a reconnaissance study evaluating potential solutions to limit flooding along the James River and to identify where flood control storage could supplement instream flows for fish and wildlife habitat. No structural flood control projects were found to be feasible. However, the study recommended future local study efforts focusing on long-term management and protection of the two- to five-year flood plain with emphasis on removing local channel obstructions. In addition, the report identified numerous opportunities to pursue environmental restoration projects that would also help alleviate agricultural flood damages.

d. Scoping and agency meetings will be held for this project. A public notice will be widely distributed inviting public participation in the scoping process. This process will be the key to preparing a concise EIS and clarifying the significant issues to be analyzed in depth. Public concerns on issues, studies needed, alternatives to be examined, procedures and other related matters will be addressed during scoping. Scoping meetings are tentatively planned to be held at Aberdeen, Huron, Mitchell and Yankton, South Dakota in the middle part of December. Upon setting exact locations, dates, and times for the meetings, the specific locations of the meetings will be provided in news releases and posted on the Omaha District Corps of Engineers and James River Water Development District Web-sites. The web addresses for the sites are

<http://www.nwo.usace.army.mil/html/pa/pahm/hottopics.htm> and <http://www.jrwdd.com>.

e. The estimated date when a Draft Environmental Impact Statement is expected to be available for public review is September 2006.

Candace M. Gorton,

Chief, Environmental, Economics, and Cultural Resources Section, Planning Branch.
[FR Doc. 04-26262 Filed 11-26-04; 8:45 am]

BILLING CODE 3710-62-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Regional Dredged Material Management Plan for San Francisco Bay and Estuary, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, San Francisco District (Corps) will prepare an Environmental Impact Statement (EIS) for the San Francisco Bay and Estuary Regional Dredged Material Management Plan (Regional DMMP). The Regional DMMP will identify specific measures to manage the dredged material from maintenance and construction dredging at Federal navigation projects over the next twenty years. The Corps will take into consideration the dredged sediment from non-Federal, permitted dredging projects with the Bay and Estuary in formulating the Regional DMMP to the extent that disposal of the material affects the capacity and availability of disposal options required for Federal projects.

DATES: A scoping meeting will be held Thursday, December 16, 2004 from 7 p.m. until 9 p.m.

ADDRESSES: The meeting will be at the Joseph P. Bort MetroCenter, 101 Eighth Street, Oakland, CA (510) 464-7700. TDD/TTY is (510) 464-7769. Public transit access includes BART (Lake Merritt Station on Fremont Line), AC Transit and Amtrak.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Environmental Impact Statement should be directed to Mr. Richard Stradford, either at (415) 977-8669 or richard.a.stradford@spd02.usace.army.mil. Written correspondence should be sent to Mr. Stradford, U.S. Army Corps of

Engineers, San Francisco District, 333 Market Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) and Pub. L. 102–484 Section 2834, as amended by Pub. L. 104–106 Section 2867, the Department of the Army hereby gives notice of intent to prepare an Environmental Impact Statement (EIS) for the subject Regional DMMP. The San Francisco District of the Corps will be the lead agency in preparing the EIS. The EIS will provide an analysis supporting the requirements of NEPA in addressing impacts to the environment that may result from the implementation of the Regional DMMP.

1. *Proposed Action.* The U.S. Army Corps of Engineers regulation (Engineer Regulation 1105–2–100) requires that a dredged material management plan be prepared for each Federal navigation project. Where there are groups of interrelated harbor projects, a regional plan may be developed, which is the approach proposed for the projects in the San Francisco Bay and Estuary. Such plans are intended to implement channel and harbor dredging and disposal in a cost effective and environmentally acceptable manner. The proposed Regional DMMP will focus on the management of dredged material from maintaining Federal navigation channels and constructing new navigation projects, and will take into consideration the non-Federal dredging projects permitted by the San Francisco District. The approved Regional DMMP will be consistent with sound engineering practices and meet all Federal environmental standards, including those established by Section 404 of the Clean Water Act (1972) and Section 103 of the Marine Protection Research and Sanctuaries Act (1972), as amended. In addition, the Regional DMMP will be consistent with State and local plans such as the California Regional Water Quality Control Board's "Basin Plan" and the San Francisco Bay Conservation and Development Commission's "Bay Plan" (locally approved plan of the Coastal Zone Management Act of 1972). As a partner in the Long Term Management Strategy (LTMS) to manage dredged material in the San Francisco Bay Region, the Corps is committed to incorporating into the Regional DMMP the goals that the multi-agency consortium has established. The Regional DMMP will work towards meeting the LTMS goal of reducing in-Bay disposal of dredged

material, eventually reaching the target of 40% ocean disposal, 40% beneficial reuse and 20% in-Bay disposal. In addition, in response to LTMS recommendations, the Regional DMMP will consider changes to the design parameters of navigation projects such as channel width, depth and configuration, in terms of changes that would reduce the volume of dredging necessary to meet the navigational needs of each project.

2. *Project Alternatives.* The alternatives for the Regional DMMP and EIS will consist of an array of disposal and beneficial reuse options for each of the Federal projects, which currently are the Napa River, Oakland Harbor, Petaluma River, Pinole Shoal Channel, Redwood City Harbor, Richmond Harbor, San Francisco Bar Channel, San Leandro Marina, San Rafael Creek and Suisun Bay Channel projects. There are approximately 70 non-Federal dredging projects, and the management of dredged material from them will be taken into account to the extent that it impacts the availability of disposal sites for the Federal dredged material.

The current beneficial reuse projects to be examined are predominantly wetlands restoration efforts, with the Hamilton Field & Bel Marin Keys Wetlands Restoration and Montezuma Wetlands being the two main plans. Additional beneficial-use initiatives are the disposal ponds at Mare Island, the Carneros River Ranch and Bair Island projects, as well as levee-rehabilitation projects on selected Sacramento/San Joaquin Delta islands (e.g., Sherman Island, Winter Island, and Van Sickle Island). The historically used in-Bay aquatic disposal sites to be carried forward in the Regional DMMP are the Carquinez Strait, San Pablo Bay, Alcatraz, and Suisun Bay sites. Ocean disposal sites for evaluation are the San Francisco Bar (actually a reuse site for dredged sand from the Bar Channel just outside the Golden Gate) and the San Francisco Deep Ocean Disposal site, located approximately 50 miles west of San Francisco.

3. *Scoping Process.* The Corps is requesting information as well as the views of interested Federal, State, and local agencies, Native American tribes, and other interested private organizations and parties through provision of this notice and holding of a scoping meeting (see **DATES**). The main purpose of this meeting is to solicit input regarding the environmental issues of concern and the alternatives that should be discussed in the Regional DMMP and EIS. The public comment period closes 30 days from the publication of this notice. Additional

public meetings are anticipated prior to the release of the draft EIS.

4. *Availability of EIS.* The public will have an additional opportunity to comment on the proposed alternatives after the draft EIS has been released, currently scheduled for January 2006.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–26261 Filed 11–26–04; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

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

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 31, 2005. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before January 28, 2005.

ADDRESSES: Written comments regarding the emergency review 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 10222, 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 Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory

obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: November 18, 2004.

Angela C. Arrington,

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

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Data Collection Instrument for the Assistive Technology (AT) Act Title III Alternative Financing Mechanism Program.

Abstract: This data collection will be conducted annually to obtain program and performance information from grantees funded under the Assistive Technology Act, Title III, Alternative Financing Mechanism Program. The AT Act requires that not later than December 31 of each year, the Secretary submit a report to the Congress describing the progress of each alternative financing program funded under Title III toward achieving the objectives of this title. The information collected will assist the National Institute on Disability and Rehabilitation Research (NIDRR) to comply with a statutory requirement and to respond to the Government Performance and Results Act (GPRA) requirement to provide outcomes data.

Data will primarily be collected via a web-based reporting mechanism (electronic data collection form).

Additional Information: The forms collect data on grantees' program activities. NIDRR staff will use this information to prepare the annual report to Congress required by the AT Act, meet the Education Department General Administrative Regulations (EDGAR) requirements, and facilitate program planning efforts to respond to reporting requirements under the GPRA of 1993 (Pub. L. 103-62).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,987.

Burden Hours: 1,067.

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 2644. 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, contact Sheila Carey at her e-mail address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 04-26230 Filed 11-26-04; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before December 29, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 22, 2004.

Angela C. Arrington,

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

Institute of Education Sciences

Type of Review: New.

Title: Impact Evaluation of Charter School Strategies-Baseline Intake and Administrative Records Forms.

Frequency: Annually.

Affected Public: Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 7,300.

Burden Hours: 1,900.

Abstract: The current OMB package requests clearance for the baseline intake and administrative records

instruments to be used in the Impact Evaluation of Charter School Strategies. The baseline intake instrument will collect information from parents of children applying for admission to the charter schools included in the study. The administrative records instruments will be used to collect information on student outcomes such as test scores and will be completed by school or district staff in these charter schools as well as in comparison schools that are attended by control group students. The study will examine the impacts of these charter schools on student outcomes over a two-year follow-up period.

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 2613. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202-245-6621. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E4-3344 Filed 11-26-04; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, 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 December 29, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New

Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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: November 19, 2004.

Jeanne Van Vlandren,

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

Office of Postsecondary Education

Type of Review: New.

Title: Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Application for State Grants.

Frequency: One-time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 35.

Burden Hours: 1,400.

Abstract: The purpose of this information collection is to allow states to apply for funding under the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. The information collected in the GEAR UP application package allows the Department to make determinations as to whether potential applicants are eligible for GEAR UP funding and to allow field readers to score and rank applications for the Department to make funding determinations.

This information collection is being submitted under the Streamlined

Clearance Process for Discretionary Grant Information Collections (1890-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 2642. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202-245-6621. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E4-3345 Filed 11-26-04; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

DOE Notification That an Additional 45-Days Is Needed To Develop Its Implementation Plan in Response to Recommendation 2004-1 of the Defense Nuclear Facilities Safety Board, Oversight of Complex, High-Hazard Nuclear Operations

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board Recommendation 2004-1, concerning oversight of complex, high-hazard nuclear operations was published in the **Federal Register** on June 7, 2004 (69 FR 31815). The Secretary accepted the Recommendation on July 21, 2004 (69 FR 48476). In accordance with section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), the Secretary informed the Defense Nuclear Facilities Safety Board that the Department requires an additional 45 days to complete its implementation plan. With the additional 45-days allowed to complete its implementation plan, the Department expects to approve

the 2004–1 implementation plan by December 23, 2004.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana

Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore D. Sherry, Deputy Manager, Department of Energy, NNSA Y–12 Site Office, 200 Administration Road, P.O. Box 2001, Oak Ridge, TN 37830.

Issued in Washington, DC on November 23, 2004.

Mark B. Whitaker, Jr.,
Departmental Representative to the Defense Nuclear Facilities Safety Board.

BILLING CODE 6450–01–P



The Secretary of Energy
Washington, DC 20585

October 25, 2004

The Honorable John T. Conway
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW, Suite 700
Washington, D.C. 20004

Dear Mr. Chairman:

Please be advised that, pursuant to 42 U.S.C. 2286d(e), the Department of Energy will require up to an additional 45 days to finalize and transmit our implementation plan for addressing the issues raised in the Defense Nuclear Facilities Safety Board's (Board's) Recommendation 2004-1, *Oversight of Complex, High-Hazard Nuclear Operations*. As you discussed by phone with Deputy Secretary Kyle E. McSlarrow, we need more time to finalize and fully articulate several key decisions and their implications. The Department remains committed to fully resolving the issues that are raised in your recommendation.

We appreciate the advice and feedback provided by you, other Board members, and the Board's staff during the development of this plan, and look forward to continued positive interactions as we finalize and implement the plan. Please contact me, or have your staff contact Mr. Ted Sherry at (865) 576-0752, if you have any questions regarding our path forward.

Sincerely,

A handwritten signature in black ink, reading "Spencer Abraham".

Spencer Abraham



Printed on recycled paper

[FR Doc. 04-26281 Filed 11-26-04; 8:45 am]

BILLING CODE 6450-01-C

ENVIRONMENTAL PROTECTION AGENCY

[SFUND-2000-0008; FRL-7843-4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Continuous Release Reporting Regulations (CRRR) Under CERCLA 1980 (Renewal), EPA ICR Number 1445.06, OMB Control Number 2050-0086

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. The ICR describes the nature of the information collection and estimated burden and cost.

DATES: Additional comments must be submitted on or before December 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number SFUND-2000-0008 to (1) EPA online using EDOCKET (our preferred method), by e-mail to superfund.docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Solid Waste and Emergency Response (5202T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Lynn M. Beasley, Office of Emergency Management (5204G), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 603-9086; fax number: (703) 603-9104; e-mail address: beasley.lynn@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for

review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 9, 2004 (69 FR 41472), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. SFUND-2000-0008, which is available for public viewing at the Office of Solid Waste and Emergency Response Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Office of Solid Waste and Emergency Response Docket is (202) 566-0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to <http://www.epa.gov/edocket>.

Title: Continuous Release Reporting Regulations (CRRR) under CERCLA 1980 (Renewal).

Abstract: Section 103(a) of CERCLA, as amended, requires the person in charge of a vessel or facility to

immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ). The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 103(f)(2) of CERCLA provides facilities relief from this per-occurrence notification requirement if the hazardous substance release at or above the RQ is continuous and stable in quantity and rate. Under the Continuous Release Reporting Requirements (CRRR), to report such a release as a continuous release you must make an initial telephone call to the NRC, an initial written report to the EPA Region, and, if the source and chemical composition of the continuous release do not change and the level of the continuous release does not significantly increase, a follow-up written report to the EPA Region one year after submission of the initial written report. If the source or chemical composition of the previously reported continuous release changes, notifying the NRC and EPA Region of a change in the source or composition of the release is required. Further, a significant increase in the level of the previously reported continuous release must be reported immediately to the NRC according to section 103(a) of CERCLA. Finally, any change in information submitted in support of a continuous release notification must be reported to the EPA Region.

The reporting of a hazardous substance release that is equal to or above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment.

The continuous release of hazardous substance information collected under CERCLA section 103(f)(2) is also available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. State and local government authorities and facilities subject to the CRRR use release information for purposes of local emergency response planning. Members of the public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to

protect public health and welfare and the environment.

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. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 9, 2004; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are facilities that manufacture, process, transport, or otherwise use certain specified hazardous substances.

Estimated Number of Respondents: 3,276.

Frequency of Response: After initially reporting the continuous release to the NRC and EPA Region, only a one-year follow-up report to the EPA Region is necessary unless there is a change in the source of the continuous release, a change in the chemical composition of the continuous release, or a significant increase in the level of the continuous release. In these cases the person in charge of the facility has to notify the NRC and the appropriate EPA Regional Office of the change in the continuous release.

Estimated Total Annual Hour Burden: 284,154.

Estimated Total Annual Cost: \$10,101,032 includes \$85,521 O&M costs, \$0 Capital expense, and \$10,015,511 Respondent Labor costs.

Changes in the Estimates: There is an increase of 34,703 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR

Burdens. This increase is primarily the result of adjustments to the estimates. Annual respondent burden hours are based on data from actual numbers of continuous release reports from several regions and the application of a growth rate consistent with prior years' reporting. The average annual percent increase in the number of facilities in the ICR is 7.5%.

Dated: November 16, 2004.

Oscar Morales, Director, Collection Strategies Division.

[FR Doc. 04-26297 Filed 11-26-04; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 13, 2004.

A. Federal Reserve Bank of Atlanta
(Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *Evan R. Marbin*, as trustee of the SEE Trust, Miami, Florida; to acquire additional voting shares of Transatlantic Bank, Miami, Florida.

Board of Governors of the Federal Reserve System, November 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04-26282 Filed 11-26-04; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 2004.

A. Federal Reserve Bank of Atlanta
(Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *Georgia Trust Bancshares, Inc.* Buford, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Georgia Trust Bank, Buford, Georgia.

2. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to acquire 100 percent of the voting shares of Union Bank of Florida, Lauderhill, Florida.

Board of Governors of the Federal Reserve System, November 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04-26283 Filed 11-26-04; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes

and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. *Community First Bancshares, Inc.*, Harrison, Arkansas; to acquire 20 percent of the voting shares of White River Bancshares Company, Fayetteville, Arkansas (in organization), and thereby indirectly acquire voting shares of Signature Bank of Arkansas, Fayetteville, Arkansas (formerly First Bank of South Arkansas, Camden, Arkansas).

2. *Home Bancshares, Inc.*, Conway, Arkansas; to acquire 20 percent of the voting shares of White River Bancshares Company, Fayetteville, Arkansas (in organization), and thereby indirectly acquire voting shares of Signature Bank of Arkansas, Fayetteville, Arkansas (formerly First Bank of South Arkansas, Camden, Arkansas).

3. *White River Bancshares Company*, Fayetteville, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Signature Bank of Arkansas, Fayetteville, Arkansas (formerly First Bank of South Arkansas, Camden, Arkansas).

Board of Governors of the Federal Reserve System, November 23, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–26327 Filed 11–26–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 2004.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. *The Bank of Tokyo–Mitsubishi, Ltd., and Mitsubishi Tokyo Financial Group, Inc.*, both of Tokyo, Japan; to acquire UFJ Futures, L.L.C., Chicago, Illinois, and Central Leasing (U.S.A.), Inc., Florence, Kentucky, and thereby engage in the finance leasing of equipment, pursuant to section 225.28(b)(3), the execution and clearance of futures and options contracts and other transactional services, pursuant to section 225.28(b)(7) of Regulation Y.

In addition, Mitsubishi Trust & Banking Corporation (U.S.A.), New York, New York, and Mitsubishi Tokyo Financial Group, Inc., Tokyo, Japan, has applied to acquire UFJ Trust Company of New York, New York, and thereby engage in providing trust services on a national and international basis, pursuant to section 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, November 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–26284 Filed 11–26–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 21, 2004

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 21, 2004.¹

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 1–3/4 percent.

By order of the Federal Open Market Committee, November 18, 2004.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 04–26285 Filed 11–26–04; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0246]

General Services Administration Regulation; Information Collection; Packing List Clause

AGENCY: Office of the Chief Acquisition Officer, GSA.

¹ Copies of the Minutes of the Federal Open Market Committee meeting on September 21, 2004, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding packing list clause.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: January 28, 2005.

FOR FURTHER INFORMATION CONTACT:

Michael O. Jackson, Procurement Analyst, Office of the Deputy Chief Acquisition Officer, Room 4032, by telephone (202) 208-4949 or via email at michael.o.jackson@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (V), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090-0246, Packing List Clause, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.211-77 requires a contractor to include a packing list that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder name, telephone number and the term "Credit Card" is required.

B. Annual Reporting Burden

Respondents: 4000

Responses Per Respondent: 233

Hours Per Response: .00833

Total Burden Hours: 7757

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control No. 3090-0246, Packing List Clause, in all correspondence.

Dated: November 22, 2004.

Laura Auletta,

Director, Contract Policy Division.

[FR Doc. 04-26325 Filed 11-26-04; 8:45 am]

BILLING CODE 6820-61-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-207]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from July through September 2004. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: William Cibulas, Jr., Ph.D., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E-32, Atlanta, Georgia 30333, telephone (404) 498-0140.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on August 13, 2004 [69 FR 50204]. This announcement is the responsibility of ATSDR under the regulation "Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities" [42 CFR part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1825 Century Boulevard, Atlanta, Georgia (not a mailing address),

between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553-6847. NTIS charges for copies of public health assessments. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between July 1, 2004, and September 30, 2004, public health assessments were issued for the sites listed below:

NPL and Proposed NPL Sites

California

Del Amo Superfund Site—(PB2004-106757).

Lawrence Livermore National Laboratory, Main Site (USDOE)—(PB2004-106383).

Minnesota

Baytown Township Groundwater Contamination Site (a/k/a Baytown Township Ground Water Plume)—(PB2005-100068).

Ohio

FEED Materials Production Center [(USDOE) a/k/a Fernald Environmental Management Project]—(PB2004-107099).

Oregon

Harbor Oil Incorporated—(PB2004-106759).

Virginia

Naval Weapons Station Yorktown, Cheatham Annex—(PB2004-100064).

Vermont

Elizabeth Copper Mine—(PB2005-100247).

Non-NPL Petitioned Sites

California

Abex/Remco Hydraulics Facility (a/k/a Abex Corporation Remco Hydraulics Plant)—(PB2004-106802).

Connecticut

Newhall Street Neighborhood (aliases: Bryden and Morse Streets Residential Properties; Rosem Site Residential Properties)—(PB2005-100062).

Georgia

Young Refining Corporation—(PB2004-106758).

Guam

Agana Power Plant—(PB2004–100066).

Illinois

Bordner Manufacturing Company—
(PB2005–100067).

**Northern Mariana Islands,
Commonwealth of the**

Saipan Capacitors [a/k/a Tanapag
Village (Saipan)]—(PB2005–100063).

Ohio

Gentile Air Force Station (a/k/a USDOD
Defense Electronics Supply Center)—
(PB2004–107098).

Tennessee

Volunteer Army Ammunition Plant—
(PB2005–100065).

Texas

Kelly Air Force Base—(PB2004–
106801).

Dated: November 19, 2004.

Georgi Jones,

*Director, Office of Policy, Planning, and
Evaluation, National Center for
Environmental Health, Agency for Toxic
Substances and Disease Registry.*

[FR Doc. 04–26318 Filed 11–26–04; 8:45 am]

BILLING CODE 4163–70–P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Centers for Disease Control and
Prevention**

[60Day–05AJ]

**Proposed Data Collections Submitted
for Public Comment and
Recommendations**

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call (404) 498–1210 or send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11,

Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Surveillance for Severe Adverse Events (Hospitalization or Death) Associated with Treatment of Latent Tuberculosis Infection (LTBI)—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

The Centers for Disease Control and Prevention proposes to collect data for the National Surveillance for Severe Adverse Events (Hospitalization or Death) Associated with Treatment of Latent Tuberculosis Infections. CDC is requesting OMB approval for three years for this proposed data collection.

As part of the national TB elimination strategy, the American Thoracic Society and CDC have published recommendations for targeted testing for TB and treatment for latent TB infection (LTBI). However, between October 2000 and September 2004, the CDC received reports of 50 patients with severe adverse events associated with the use of the two or three-month regimen of rifampin and pyrazinamide (RZ) for the treatment of LTBI; 12 (24%) patients died (Morbidity and Mortality Weekly Report 2003;52[31]:735–9). A severe adverse event is defined as hospitalization or death of a person receiving treatment for LTBI. On the basis of these data, the American Thoracic Society and CDC recommended that RZ should generally not be offered for treatment of persons with LTBI, regardless of HIV status.

Rifampin and pyrazinamide should continue to be administered in multidrug regimens for the treatment of persons with active TB disease.

Reports of severe adverse events related to RZ and other older LTBI regimens have prompted a need for this project—a national surveillance system of such events. The objective of the project is to determine the annual number and temporal trends of severe adverse events (hospitalization or death) associated with any treatment for LTBI in the United States. Surveillance of such events will provide data to support periodic evaluation of guidelines for treatment of persons with LTBI and revision, as needed.

This project will set up a passive reporting system for severe adverse events (death or hospitalization) to therapy for LTBI. The system will rely on medical chart review of already existing data by TB control staff.

Potential respondents are any of the 60 reporting areas for the national TB surveillance system (the 50 states, the District of Columbia, New York City, and 8 jurisdictions in the Pacific and Caribbean). Data will be collected using the data collection form for adverse events associated with LTBI treatment (AELT). Based on previous reporting, CDC anticipates receiving an average of 12 responses per year from the 60 reporting areas. The AELT form will be completed for each reported hospitalization or death related to treatment of LTBI and contains demographic, clinical, and laboratory information. CDC will analyze and periodically publish reports summarizing national LTBI treatment adverse events statistics and also will conduct special analyses for publication in peer-reviewed scientific journals to further describe and interpret these data.

The Food and Drug Administration (FDA) collects data on adverse events related to drugs through the FDA MedWatch Program. CDC is planning to collaborate with FDA in developing the national surveillance system for adverse events associated with LTBI. Reporting will be conducted through telephone, e-mail, or during CDC site visits. The only cost to respondents is their time to complete the form.

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Health Departments	12	1	1	12
Total .....	.....	.....	.....	12

Dated: November 19, 2004.

Alvin Hall,

*Director, Management Analysis and Services
Office, Centers for Disease Control and
Prevention.*

[FR Doc. 04-26319 Filed 11-26-04; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1997N-0484S]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/PS)" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 25, 2004 (69 FR 29786), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0543. The approval expires on May 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: November 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04-26235 Filed 11-26-04; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N-0204]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 19, 2004 (69 FR 51468), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0233. The approval expires on November 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: November 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04-26270 Filed 11-26-04; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004P-0141]

Determination That 7.5% and 8.4% Sodium Bicarbonate Injection in Polyethylene Terephthalate Abboject Vials Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that 7.5% and 8.4% sodium bicarbonate injection in polyethylene terephthalate (PET) Abboject vials were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for 7.5% and 8.4% sodium bicarbonate injection.

FOR FURTHER INFORMATION CONTACT: Nicole Mueller, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an abbreviated new drug application (ANDA) procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the

agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162) (21 CFR 314.162)).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

The drug products 7.5% and 8.4% sodium bicarbonate injection in PET Abboject vials are the subject of approved NDA 19-443 held by Abbott Laboratories. The drug products 7.5% and 8.4% sodium bicarbonate injection in PET Abboject vials are indicated for the treatment of metabolic acidosis, certain drug overdosage, and severe diarrhea. The holder of the application for 7.5% and 8.4% sodium bicarbonate injection in PET Abboject vials requested a voluntary withdrawal and the marketing of the drug products was discontinued (61 FR 40649, August 5, 1996). In a citizen petition dated March 18, 2004 (Docket No. 2004P-0141), submitted under 21 CFR 10.30 and 314.122, Abbott Laboratories requested that the agency determine whether 7.5% and 8.4% sodium bicarbonate injection in PET Abboject vials were withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that Abbott Laboratories' 7.5% and 8.4% sodium bicarbonate injection in PET Abboject vials were not withdrawn from sale for reasons of safety or effectiveness. FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports and has found no information that would indicate that these products were withdrawn for reasons of safety or effectiveness.

For the reasons outlined, FDA determines that Abbott Laboratories' 7.5% and 8.4% sodium bicarbonate injection in PET Abboject vials were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list 7.5% and 8.4% sodium bicarbonate injection in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to 7.5% and 8.4% sodium bicarbonate

injection may be approved by the agency.

Dated: November 18, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04-26271 Filed 11-26-04; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D-0484]

Draft Guidance for Industry on the Role of Human Immunodeficiency Virus Drug Resistance Testing in Antiretroviral Drug Development; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Role of HIV Drug Resistance Testing in Antiretroviral Drug Development." This draft guidance is intended to assist sponsors in the clinical development of drugs for the treatment of human immunodeficiency virus (HIV) infection. Specifically, the draft guidance addresses the role of HIV resistance testing during antiretroviral drug development and postmarketing. The draft guidance is also intended to serve as a focus for continued discussions among the Division of Antiviral Drug Product (DAVDP) in FDA's Center for Drug Evaluation and Research, pharmaceutical sponsors, the academic community, and the public.

DATES: Submit written or electronic comments on the draft guidance by February 28, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section

for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Jeffrey S. Murray, or Kimberly A. Struble Center for Drug Evaluation and Research (HFD-530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2330.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Role of HIV Drug Resistance Testing in Antiretroviral Drug Development." This draft guidance addresses the role of HIV resistance testing during antiretroviral drug development and postmarketing. The draft guidance is based on the following: (1) A 2-day session of the Antiviral Drug Product advisory committee convened November 2 and 3, 1999, to address issues relating to HIV resistance testing; (2) the DAVDP's experience with reviewing resistance data for antiretroviral drugs; and (3) input from pharmaceutical sponsors and the HIV community.

The draft guidance discusses the nonclinical studies (mechanism of action; antiviral activity in vitro; cytotoxicity/therapeutic index; and the effects of serum protein binding on antiviral activity) we recommend be completed prior to the initiation of phase 1 clinical studies in HIV-infected patients. In addition, the draft guidance addresses the use of resistance testing in the clinical phases of drug development and recommends the type of information that should be collected and the types of analyses that should be conducted to characterize an antiretroviral's resistance profile. The draft guidance also reviews the role of resistance testing in initial activity and dose-finding, for study enrollment criteria, for background regimen selection, and to establish an indication. Included in this draft guidance are two appendices: (1) A template for submitting HIV resistance data and (2) information on the genetic threshold for resistance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on the role of HIV resistance testing in antiretroviral drug development. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under the OMB control number 0910–0014 (until January 31, 2006).

IV. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: November 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26272 Filed 11–26–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Funding for the Pathways for Health Professions Program, HRSA–05–118

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of posting of availability of funds.

SUMMARY: This notice announces the posting of a funding opportunity (Guidance HRSA–05–118) for the Pathways to Health Professions Program (PHPP) on the Health Resources and Services Administration (HRSA) Guidance and Fedgrants.gov Web sites. Funding is being made available for a competitive grant program that supports the continuation and development of innovative, culturally competent approaches that encourage underrepresented minority and disadvantaged students in colleges and

universities, community colleges, elementary, middle, and high schools to pursue a career in a health or allied health field. This program consists of two distinct grants: (1) Primary Pathways—Promotes academic achievement and exposes students in grades K–12 to health and allied health professions through innovative, non-traditional methods, with an emphasis on health professions that are experiencing severe shortages across the country; and (2) Advanced Pathways—Promotes academic achievement and exposes and prepares high school and undergraduate students to pursue careers in health and allied health professions, including faculty membership and research.

Name of Grant Program: Pathways to Health Professions Program.

Program Authorization: Section 739 of the Public Health Service Act, 42 U.S.C. 293.

Amount of Funding Available: \$400,000. We expect that fiscal year 2005 funding for the Primary Pathways Program will be approximately \$200,000 and approximately \$200,000 for the Advanced Pathways grant program. It is anticipated that four awards will be made.

Eligible Applicants: Eligible applicants are elementary, middle, and high schools, community colleges, colleges and universities, and institutions of higher education, non-profit community-based organizations, including faith-based organizations, Tribes, Tribal organizations, and health or educational professional organizations. Eligible participants include underrepresented minorities, educationally and economically disadvantaged elementary, middle, high school, community college, and undergraduate students. They must be U.S. citizens, non-citizen nationals, or those foreign nationals who possess a visa permitting permanent residence in the U.S.

Guidance Availability: Guidance availability is currently posted on the HRSA Web site at: <http://www.hrsa.gov/grants/preview/guidanceprofessions/hrsa05118.htm> and on Fedgrants.gov at: <http://fedgrants.gov/Applicants/HHS/HRSA/GAC/HRSA-05-118/listing.html>.

Application Deadline: December 17, 2004.

Dated: November 22, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–26274 Filed 11–26–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Udall Center Review.

Date: December 2, 2004.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5324, mcconnej@ninds.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NINDS T32 Review.

Date: December 7, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5324, mcconnej@ninds.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Neural Control of Motor Systems.

Date: December 16, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892, (301) 496-0660, sawczuka@ninds.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26244 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Projects (P01).

Date: December 14, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Yan Z. Wang, PhD, MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594-4957.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26245 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: December 16-17, 2004.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter E. Lipsky, MD, Scientific Director, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Bldg. 10; Room 9N228, Bethesda, MD 20892, (301) 496-2612.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26246 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Large-Scale Collaborative Project Phase 1 Applications.

Date: December 1, 2004.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institute of General Medical Sciences/OSR, Natcher Building, 45 Center Drive, Room 3AN12F, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN12F, Bethesda, MD 20892, (301) 594-2881, sunshinh@nigms.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26247 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Allergy and Infectious Diseases Special Emphasis Panel, "Myeloid Progenitor Cell Therapy for Radiation Exposure".

Date: December 13, 2004.

Time: 9:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 311B, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/ NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, (301) 496-2550, qvos@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26248 Filed 11-26-04; 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, Program Project.

Date: December 8, 2004.

Time: 2 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Paul A. Coulis, 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) 443-2105.

(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)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26249 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Projects, P01's.

Date: December 16, 2004.

Time: 10:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yan Z. Wang, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594-4957, wangy1@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26252 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Projects (P01).

Date: December 17, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yan Z. Wang, PhD, MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594-4957.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26253 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Cognitive Neuroscience.

Date: November 30, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, (301) 594-0635, rc218u@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Muscular Dystrophy Meeting.

Date: December 9-10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Rual A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892-9529, (301) 496-9223, saavedrr@ninds.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, HD Therapeutics Development.

Date: December 13-14, 2004.

Time: 7:30 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, (301) 496-4056.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26254 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Scientist Development Award—Research & Training (K01's), Conference (R13's), and Institutional National Research Service Award (T32's).

Date: December 10, 2004.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Guo HE Zhang, PhD, MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20817, (301) 451-6524, zhanggu@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26255 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting the Recombinant DNA Advisory Committee, December 16, 2004, 8:30 a.m. to December 17, 2004, 6 p.m. Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on November 18, 2004, 69 FR 67597.

The meeting of the Recombinant DNA Advisory Committee has been changed to a one-day meeting on December 16, 2004, from 8:30 a.m. to 4:45 p.m. The meeting is open to the public.

Dated: November 19, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26257 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-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(9c)(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, SBSR Special Review.

Date: November 23, 2004.

Time: 12 p.m. to 2 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: Mehrdad M. Tondravi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301)-435-1173, tondravm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Smoking Cessation Intervention and Health.

Date: November 29, 2004.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301)-435-1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Caregiver Health.

Date: November 30, 2004.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, (301)-496-0726, lechterm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RPHB-B (07): Cancer and Mental Health.

Date: November 30, 2004.

Time: 12 p.m. to 1 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: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, (301)-496-0726, lechterm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Artemin, Nociceptors, Bacteriorhodopsin and Photodegradation.

Date: December 3, 2004.

Time: 10:30 a.m. to 11:30 a.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 Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301)-435-1224, husains@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDA A 90S: Cadmium Effects on Testicle Development.

Date: December 9, 2004.

Time: 4 p.m. to 6 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: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, (301)-435-1021, duperes@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Novel Therapy Against Glioma.

Date: December 15, 2004.

Time: 12 p.m. to 1:30 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: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301)-435-1779, riverase@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: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26250 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Amendment Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 15, 2004, 8:30 a.m. to November 16, 2004, 12 p.m., One Washington Circle Hotel, One Washington Circle, Washington, DC, 20037 which was published in the **Federal Register** on November 3, 2004, 69 FR 64078-64081.

The meeting will be held December 9, 2004 to December 10, 2004. The meeting time and location remain the same. The meeting is closed to the public.

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26251 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-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, Family Characteristics and Youth Problem Behaviors.

Date: November 22, 2004.

Time: 3:30 p.m. to 5:30 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: Gayle M. Boyd, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1014-3, MSC 7759, Bethesda, MD 20892, (301) 451-9956, gboyd@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review ADDT Member Conflicts.

Date: November 29, 2004.

Time: 1 p.m. to 5 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: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435-1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, School-based Diet/Exercise Intervention.

Date: November 29, 2004.

Time: 3:30 p.m. to 5 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: Michael Micklin, PhD, Chief, RPHB IRG Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435-1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Exercise, Weight Control, and Health Risk.

Date: November 29, 2004.

Time: 12 p.m. to 2 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: Michael Micklin, PhD, Chief, RPHB IRG Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435-1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chromosomal Aberrations in Prostate Tumors.

Date: November 30, 2004.

Time: 3 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: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435-1718, kelseym@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RPHB-B (05): Cancer Treatment.

Date: November 30, 2004.

Time: 4 p.m. to 5 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: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, (301) 496-0726, lechterm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RPHB-B (02): Factors in Heart Disease.

Date: December 1, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karen Lechter, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, (301) 496-0726, lechterm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RPHB-b (03): Functioning with Osteoarthritis.

Date: December 1, 2004.

Time: 12 p.m. to 1 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: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, (301) 496-0726, lechterm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Violence, Antisocial Behavior, Addiction and Risk Development.

Date: December 2, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Gayle M. Boyd, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1014-3, MSC 7759, Bethesda, MD 20892, (301) 451-9956, gboyd@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Odorant Receptors.

Date: December 2, 2004.

Time: 11 a.m. to 12 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: Joseph D. Mosca, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435-2344, moscajos@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Biophysics Conflict SEP.

Date: December 2, 2004.

Time: 12 p.m. to 1:30 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: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892, (301) 435-1220, chackoge@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Gene Therapy.

Date: December 6, 2004.

Time: 11:30 a.m. to 1 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: Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 451-0131, forryscs@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immunomodulation Trials.

Date: December 7, 2004.

Time: 1 p.m. to 2 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: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435-1152, edwardss@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemoprevention of Cancer.

Date: December 7, 2004.

Time: 2 p.m. to 5 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: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451-4467, choe@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reverse Site Visit Review for the Proposed Glycoproteomics Research Resource Center at Purdue University.

Date: December 8-10, 2004.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435-1789, smithvo@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bridges to the Future.

Date: December 9, 2004.

Time: 3:30 p.m. to 4:30 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: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435-3566, cooper@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroimmunology: Serotonin Receptors and Mesenchymal Stem Cells.

Date: December 10, 2004.

Time: 12 p.m. to 1 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: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435-1152, edwardss@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Innate Immune Response and Inflammation.

Date: December 14, 2004.

Time: 3 p.m. to 5 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: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435-3566, cooperc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bone Marrow Transplantation.

Date: December 15, 2004.

Time: 4 p.m. to 5 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: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435-1767, gubanics@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diagnostics and Therapeutics Technologies.

Date: December 16, 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: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, (301) 435-1779, riverase@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: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26256 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 18, 2004, 1:30 p.m. to November 18, 2004, 2:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on November 18, 2004, 69 FR 67597-67598.

The meeting will be held December 3, 2004, from 3 p.m. to 4 p.m. The location remains the same. The meeting is closed to the public

Dated: November 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26258 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, Cellular Mechanisms of Acute Brain Injury.

Date: November 29, 2004.

Time: 12 p.m. to 1 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: David M. Armstrong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 435-1253. armstrda@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Deafness and Cochlear Implants.

Date: December 6, 2004.

Time: 1 p.m. to 2 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: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892. (301) 435-0676. siroccok@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Science Education.

Date: December 6, 2004.

Time: 2:30 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. (Telephone conference call.)

Contact Person: Thomas A Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 594-6836. tathamt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BPC-Q(40)P Mechanism of Translational Control.

Date: December 7, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892. (301) 435-1220. chackoge@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Child Psychopathology.

Date: December 7, 2004.

Time: 2 p.m. to 3 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: Lynn T Nielsen-Bohlman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089F, MSC 7848, Bethesda, MD 20892. (301) 594-5287. nielsenl@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Structure and Function of NFkB.

Date: December 10, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892. (301) 435-1220. chackoge@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prenatal Exposure to PCB.

Date: December 10, 2004.

Time: 1 p.m. to 2 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: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892. (301) 435-0676. siroccok@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Taxane and Taxoid Chemotherapeutic Agents.

Date: December 10, 2004.

Time: 2:15 p.m. to 3:15 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: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892. (301) 435-1718. kelsey@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships.

Date: December 13, 2004.

Time: 8 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892. (301) 435-1159. ameros@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: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04-26259 Filed 11-26-04; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of a Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in December 2004.

The SAMHSA National Advisory Council will meet in an open session December 7 from 9 a.m. to 5:30 p.m. and on December 8 from 9 a.m. to 11:30 a.m. The meeting will include a SAMHSA Administrator's Report, as well as discussions on seclusion and restraint, SAMHSA's HIV/AIDS and hepatitis activities, criminal justice issues, and SAMHSA's American Indian and Alaska Native activities. There will also be updates on SAMHSA's disaster readiness and response activities and legislative issues.

Attendance by the public will be limited to space available. Public comments are welcome. Please

communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained either by accessing the SAMHSA Council Web site, <http://www.samhsa.gov/council/council> or by communicating with the contact whose name and telephone number is listed below. The transcript for the meeting will also be available on the SAMHSA Council Web site.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Tuesday, December 7, 2004, 9 a.m. to 5:30 p.m. (Open). Wednesday, December 8, 2004, 9 a.m. to 11:30 a.m. (Open).

Place: 1 Choke Cherry Road, Sugarloaf Room, Rockville, Maryland 20857.

Contact: Toian Vaughn, Executive Secretary, 1 Choke Cherry Road, Room 8-1089, Rockville, Maryland 20857, Telephone: (240) 276-2307; FAX: (240) 276-2252 and E-mail: toian.vaughn@samhsa.hhs.gov.

Dated: November 22, 2004.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 04-26320 Filed 11-26-04; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4922-N-05]

Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of the Chief Information Officer, (HUD).

ACTION: Notice of a computer matching program between HUD and the Department of Health and Human Services (HHS).

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, HUD is providing notice of a matching program involving comparisons of information provided by applicants or participants in any HUD rental housing assistance program authorized under the following statutes and independent sources of income information available through the National Directory of New Hires (NDNH) maintained by HHS:

- i. The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*);
- ii. Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

iii. Section 221(d)(3), 221(d)(5), or 236 of the National Housing Act (12 U.S.C. 17151(d) and 1715z-1);

iv. Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

v. Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

The matching program will be carried out only to the extent necessary to: (1) Verify the employment and income of individuals participating in the above identified programs to correctly determine the amount of their rent and assistance, and (2) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals participating in HUD's rental housing assistance programs. HUD will make the results of the computer match available to public housing agencies (PHAs) administering HUD rental assistance programs to enable them to verify employment and income and correctly determine the rent and assistance levels for individuals participating in those programs. This information also may be disclosed to the HUD Inspector General (HUD/IG), and the Attorney General in connection with the administration of the above named programs. Further, based on (1) an evaluation of the costs and benefits of disclosures made to PHAs, and (2) the adequacy of measures used to safeguard the security and confidentiality of information so disclosed, HUD may expand the use of this computer matching program to disclose employment and income information of tenants to private housing owners, management agents, and contract administrators that administer HUD rental assistance programs under agreements with HUD. HUD and its third party administrators will use this matching authority to reduce or eliminate improper assistance payments in the housing programs listed above.

DATES: *Effective Date:* Computer matching is expected to begin on December 29, 2004 unless comments are received which result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: December 29, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title.

Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: *For Privacy Act:* Jeanette Smith, Departmental Privacy Act Officer, Room P8001, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3000, telephone number (202) 708-2374. A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 800-877-8339 (Federal Information Relay Service). *For program information:* De W. Ritchie, Senior Advisor, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4228, Washington, DC 20410-5000, telephone number (202) 708-0614 ext. 2481.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act (CMPPA) of 1988, an amendment to the Privacy Act of 1974 (5 U.S.C. § 552a), OMB's guidance on this statute entitled "Final Guidance Interpreting the Provisions of Public Law 100-503," and OMB Circular No. A-130 requires publication of notices of computer matching programs.

Appendix I to OMB's Revision of Circular No. A-130, "Transmittal Memorandum No. 4, Management of Federal Information Resources," prescribes Federal agency responsibilities for maintaining records about individuals. In accordance with the CMPPA and Appendix I to OMB Circular No. A-130, copies of this notice are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

I. Authority

This matching program is being conducted pursuant to sections 3003 and 13403 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, approved August 10, 1993); section 542(b) of the 1998 Appropriations Act (Pub. L. 105-65); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701-1750g); the United States Housing Act of 1937 (42 U.S.C. 1437-1437z); section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing

Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437a(f)).

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their household six years of age and older) in HUD-administered programs involving rental housing assistance to disclose to HUD their social security numbers (SSNs) as a condition of initial or continuing eligibility for participation in the programs.

Section 217 of the Consolidated Appropriations Act of 2004 (Pub. L. 108-199) authorizes HUD to provide to HHS information on persons participating in any programs authorized by:

- (i) The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*);
- (ii) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);
- (iii) Section 221(d)(3), 221(d)(5) or 236 of the National Housing Act (12 U.S.C. 17151(d) and 1715z-1);
- (iv) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or
- (v) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

HHS shall then compare this information provided by HUD with data contained in the National Directory of New Hires and report the results of the data match to HUD. The Act gives HUD the authority to disclose this information to PHAs, the HUD/IG, and the Attorney General for the purpose of verifying the employment and income of individuals receiving benefits in the above programs. Further, based on (1) an evaluation of the costs and benefits of disclosures made to PHAs, and (2) the adequacy of measures used to safeguard the security and confidentiality of information so disclosed, HUD may expand the use of the computer matching program to disclose employment and income information of participating tenants to private owners, management agents, and contract administrators that administer HUD rental assistance programs under agreements with HUD. HUD shall not seek, use or disclose information relating to an individual without the prior written consent of that individual, and HUD has the authority to require consent as a condition of participating in these programs.

HHS's disclosure of data from the National Directory of New Hires is authorized by Section 217 of the Consolidated Appropriations Act of

2004. The disclosures from the HHS system of records, "Location and Collection System of Records," No. 09-90-0074, will be made pursuant to routine use (17) identified in the **Federal Register** on June 3, 2004 (69 FR 31399). This routine use authorizes HHS to "disclose to the Department of Housing and Urban Development information in the NDNH portion of this system for purposes of verifying employment and income of individuals participating in specified programs and, after removal of personal identifiers, to conduct analyses of the employment and income reporting of these individuals."

II. Objectives To Be Met by the Matching Program

HUD's primary objective in implementing the computer matching program is to verify the employment and income of individuals participating in the housing programs identified in paragraph I above to determine the appropriate level of rental assistance, and to deter and correct abuse in rental housing assistance programs. In meeting these objectives HUD also is carrying out a responsibility under 42 U.S.C. § 1437f(K) to ensure that income data provided to PHAs by household members is complete and accurate. HUD's various rental housing assistance programs require that applicants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report and recertify the amounts and sources of their income at least annually. However, under the QHWRA of 1998, PHAs operating Public Housing programs may now offer tenants the option to pay a flat rent, or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the changes to the Admissions and Occupancy final rule (March 29, 2000 (65 FR 16692)) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent.

Tribes and TDHEs set admission and eligibility requirements pursuant to the requirements contained in the Native American Housing Assistance and Self-Determination Act of 1996. They are not required to provide tenant data to the Department. Therefore, their participation in the computer match program is discretionary.

III. Program Description

In this computer matching program, tenant-provided information included in HUD's automated systems of records known as Tenant Housing Assistance

and Contract Verification Data (HUD/H-11) and Public and Indian Housing Information Center (HUD/PIH-4) will be compared to data from the NDNH database. The notices for these systems were published at 65 FR 52777 and 67 FR 20986 respectively. HUD will disclose to HHS only tenant personal identifiers, *i.e.*, full name, Social Security Number, and date of birth. HHS will match the HUD-provided personal identifiers to personal identifiers included in their systems of records known as "Location and Collection System of Records," No. 09-90-0074. HHS will provide income data to HUD only for individuals with matching personal identifiers.

A. Income Verification

Any match (*i.e.*, a "hit") will be further reviewed by HUD, the program administrator, or the HUD Office of Inspector General (OIG) to determine whether the income reported by tenants to the program administrator is correct and complies with HUD and program administrator requirements. Specifically, current or prior wage information and other data will be sought directly from employers.

B. Administrative or Legal Actions

Regarding the matching described in this notice, HUD anticipates that program administrators will take appropriate action in consultation with tenants to: (1) Resolve income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining housing rental assistance.

Program administrators must compute the rent in full compliance with all applicable occupancy regulations. Program administrators must ensure that they use the correct income and correctly compute the rent.

The program administrator may not suspend, terminate, reduce, or make a final denial of any housing assistance to any tenant as the result of information produced by this matching program until: (a) The tenant has received notice from the program administrators of its findings and informing the tenant of the opportunity to contest such findings and (b) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. In most cases, program administrators will resolve income discrepancies in consultation with tenants.

Additionally, serious violations, which program administrators, HUD Program staff, or HUD/IG verify, should be referred for full investigation and

appropriate civil and/or criminal proceedings.

IV. Records To Be Matched

HHS will conduct the matching of tenant SSNs and additional identifiers (such as surnames and dates of birth) to tenant data that HUD supplies from its Tenant Housing Assistance and Contract Verification Data (HUD/H-11) and Public and Indian Housing Information Center (HUD/PIH-4) Program administrators utilize the Form-50058 module within the PIC system and the Form 50059 module within the TRACS to provide HUD with the tenant data.

HHS will match the tenant records included in HUD/H-11 and HUD/PIH-4 to NDNH records contained in HHS's "Location and Collection System of Records," No. 09-90-0074. HUD will place matching data into its system of records known as the Tenant Eligibility Verification Files (HUD/REAC-1).

The tenant records (one record for each family member) include these data elements: full name, Social Security Number, and date of birth.

V. Period of the Match

The computer matching program will be conducted according to agreements between HUD and HHS. The computer matching agreement for the planned match will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the date the agreement is signed, whichever comes first.

The agreements may be extended for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within 3 months of the expiration date, all Data Integrity Boards review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and (2) All parties certify that the program has been conducted in compliance with the agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Dated: November 10, 2004.

Carolyn H. Cockrell,

Acting Chief Technology Officer.

[FR Doc. E4-3343 Filed 11-26-04; 8:45 am]

BILLING CODE 4210-72-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Office of Planning and Performance Management; Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Department of the Interior.

ACTION: Notice of extension/renewal of information collection survey.

SUMMARY: To comply with the requirements of the Paperwork Reduction Act (PRA) of 1995, we are submitting to the Office of Management and Budget (OMB) for its review and approval a request to extend/renew an information collection titled, "DOI Programmatic Clearance for Customer Satisfaction Surveys," OMB Control #1040-0001, originally approved by OMB in January 2002 and expiring January 31, 2005. We are also soliciting comments from the public regarding this request.

DATES: Please submit written comments by December 29, 2004.

ADDRESSES: You may submit comments via fax or e-mail to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1040-0001). The fax number is (202) 395-6566; e-mail address is OIRA_DOCKET@omb.eop.gov.

Mail or hand-carry a copy of your comments to the Department of the Interior; Office of Planning and Performance Management; Attention: Sheri Harris; Mail Stop 5258; 1849 C Street, NW., Washington, DC 20240. If you wish to e-mail comments, the e-mail address is sheri_harris@ios.doi.gov. Reference "DOI Programmatic Clearance for Customer Satisfaction Surveys" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Sheri L. Harris, Office of Planning and Performance Management, telephone (202) 208-7342. You may also contact Mrs. Harris to obtain a copy, at no cost, of the collection of information statement submitted to OMB.

SUPPLEMENTARY INFORMATION:

Title: Extension/Renewal of DOI Programmatic Clearance for Customer Satisfaction Surveys.

OMB Control Number: 1040-0001. Renewal/Extension.

Abstract: DOI is requesting an extension/renewal of its 3-year programmatic clearance for customer

satisfaction surveys, originally approved by the Office of Management and Budget (OMB) in January 2002 and expiring on January 31, 2005. The programmatic clearance enables Interior bureaus and offices to conduct customer research through external surveys such as questionnaires and comment cards. This information is being collected to improve the services and products that DOI provides to the public and thus better carry out part of its statutory mission. Information collected under the 3-year programmatic clearance has led to a number of improvements. For example, customer feedback has helped the Bureau of Land Management improve the timeliness of several of its permitting processes. A survey of visitors to Fish and Wildlife Refuges has identified key issues that will help improve visitor satisfaction. The data have also been used to help Interior assess organizational performance and accountability through GPRA strategic planning and performance measurement. DOI anticipates that the information obtained under a renewal of the programmatic clearance will continue to lead to revisions in certain agency processes and policies, development of guidance related to DOI's customer services, and additional improvements in the way we serve the Nation.

From Whom Will Data Be Collected: This proposal seeks to extend/renew an existing Programmatic Clearance for Customer Satisfaction Surveys that allows Interior and its organizational units to collect satisfaction information from its customers. Interior defines customers as anyone who uses DOI resources, products, or services. This includes internal customers (anyone within DOI) as well as external customers (e.g., the American public, representatives of the private sector, academia, and other government agencies). Depending upon their role in specific situations and interactions, citizens and DOI stakeholders and partners may also be considered customers. We define stakeholders to mean groups or individuals who have an expressed interest in and who seek to influence the present and future state of DOI's resources, products, and services. Partners are defined as those groups, individuals, and agencies who are formally engaged in helping DOI accomplish its mission, or with whom DOI has a joint responsibility or mission.

Rationale for Request for Renewal: Interior will request extension/renewal of its Programmatic Clearance for Customer Satisfaction Surveys so that we may better fulfill our Department or

program-specific statutory missions as well as our government-wide responsibilities to provide excellence in government by proactively consulting with those we serve to identify opportunities to improve our information, services, and products. In addition, customer information is needed to meet requirements of the Government Performance and Results Act (GPRA) of 1993 (P.L. 103–62), the Administration's Program Assessment Rating Tool (PART) recommendations, the President's Management Agenda (PMA), and Interior's Citizen-Centered Customer Service Policy.

How Data Will Be Used: The GPRA requires agencies to "improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction" (Section 2.b.3). In order to fulfill this responsibility, DOI's bureaus and offices must collect data from their respective user groups to (1) better understand the needs and desires of the public and (2) respond to those needs and desires accordingly. The renewal will provide us with the necessary authority to collect these data in the way that we do.

Renewal of the Programmatic Clearance for Customer Satisfaction Information is also critical to the Department's ability to collect data essential for assessing progress toward achieving the goals established in our GPRA Strategic Plan. That plan contains a number of performance measures that directly correspond to customer, partner, and stakeholder satisfaction with specific services of Interior and its bureaus and offices. To accurately report whether or not we met targets set for these performance measures, it is imperative for Interior's bureaus and offices to collect data from those we serve.

Interior's Department-wide Customer and Citizen-Centered Service Policy admonishes its bureaus and offices to consult and communicate with customers to integrate their feedback into our programs and business processes in order to improve our service to them. It specifically asks Interior bureaus and offices to obtain customer satisfaction data on an annual basis and to use these data to implement programmatic improvements. The renewal of our Programmatic Clearance will assist these organizations in complying with the Departmental policy.

Executive Order (E.O.) 12862 (September 11, 1993), aimed at "ensuring the Federal Government provides the highest quality service possible to the American people,"

fortifies our mandate by the Secretary of the Interior and the Administration to provide "citizen-centered government." The E.O. discusses surveys as a means for determining the kinds and qualities of service desired by the Federal Government's customers and for determining satisfaction levels for existing service. These voluntary customer surveys will be used to ascertain customer satisfaction with DOI's bureaus and offices in terms of services and products. Previous customer surveys have provided useful information to DOI's bureaus and offices for assessing how well we deliver our services and products, making improvements, and reporting on GPRA performance goals. The results are used internally, and summaries are provided to the OMB on an annual basis and are used to satisfy the requirements and spirit of E.O. 12862.

Which DOI Bureaus and Offices Are Covered by This Proposal: The proposed renewal/extension covers all of the organizational units and bureaus in DOI. It will enable participating DOI bureaus and offices to perform their customer surveys under one programmatic clearance. Under this proposed renewal/extension, DOI will request that OMB review the procedures and questions for these surveys as a program. Under the procedures proposed here, DOI will conduct the necessary quality control, including assurances that the individual survey comports with the guidelines of the programmatic clearance, and submit the particular survey instrument and methodology for expedited review to OMB as we are ready to deploy a specific information collection.

Types of Questions to be Asked: The participating bureaus and offices propose to obtain information voluntarily from their customers and stakeholders. No one survey will cover all the topic areas; rather, these topic areas serve as a guide within which the agencies will develop their questions. Questions may be asked in languages other than English, e.g., Spanish, where appropriate.

We protect information submitted by respondents that is considered confidential or proprietary under the Freedom of Information Act and in accordance with Privacy Act regulations on protecting these data. Respondents are informed of this assurance on the survey forms or during the course of the survey interview.

1. *Communication/information/education:* The range of questions envisioned for this topic area will focus on customer satisfaction with aspects of communication/information/products/education offered. Respondents may be

asked for feedback regarding the following attributes of the service provided:

- Timeliness.
- Consistency.
- Accuracy.
- Ease of Use and Usefulness.
- Ease of Information Access.
- Helpfulness and Effectiveness.
- Quality.
- Value for fee paid for information/product/service.

• Level of engagement in communications process (i.e., whether respondent feels he/she was asked for input and whether or not that input was considered).

2. *Disability accessibility:* This area will focus on customer satisfaction data related to disability access to Interior buildings, facilities, trails, electronic information, etc.

3. *Management practices:* This area covers questions relating to how well customers are satisfied with Interior management practices and processes, what improvements they might make to specific processes, and whether or not they feel specific issues were addressed and reconciled in a timely, courteous, responsive manner.

4. *Resource management:* Questions will ask customers and partners to provide satisfaction data related to Interior's ability to protect, conserve, provide access to, and preserve natural, cultural, and recreational resources that we manage.

5. *Other mission management:* Questions will ask customers and partners to provide responses related to Interior's ability to carry out those statutory missions that do not relate to resource management, such as serving communities and providing scientific data for decision-making.

6. *Rules, regulations, policies:* This area focuses on obtaining feedback from customers regarding fairness, adequacy, and consistency in enforcing rules, regulations, and policies for which Interior is responsible. It will also help us understand public awareness of rules and regulations and whether or not they are articulated in a clear and understandable manner.

7. *Service delivery:* Questions will seek feedback from customers regarding the manner in which services were delivered to them by Interior. Attributes will range from the courtesy of Interior staff to timeliness of service delivery and staff knowledge of the services being delivered.

8. *Technical assistance:* Questions developed within this topic area will focus on obtaining customer feedback regarding attributes of the content and presentation of technical assistance—

ranging from timeliness, to quality, to usefulness, to the medium used (*e.g.*, Web sites, publications, talks, videos), and the skill level of staff providing this assistance.

9. *Program-specific*: Questions for this area will reflect the specific details of a program that pertain to its customer respondents. The questions will be developed to address very specific and/or technical issues related to the program. The questions will be geared toward gaining a better understanding about how to provide specific products and services and the public's attitude toward their usefulness.

10. *General demographics*: Some general demographics may be used to augment satisfaction questions in order to better understand the customer so that we can improve how we serve that customer. Demographics data will range from asking customers how many times they have used an Interior service or visited an Interior facility within a specific timeframe to their ethnic group and race. Sensitivity will be used in developing and selecting questions under this topic area so that the customer does not perceive an intrusion upon his/her privacy. Additionally, these questions will ONLY be asked as long as they are critical to understanding customer satisfaction and the character of the customer base. Demographics may also be used as part of a non-response bias strategy to ensure responses are representative of the contact universe.

This effort does not duplicate any other survey being done by DOI or other Federal agencies. Other Federal agencies are conducting user surveys but are not soliciting comments on the delivery of DOI or DOI bureau/office products and services. As part of this effort, DOI consulted with other agencies, including the Department of Agriculture and the U.S. Environmental Protection Agency, who conduct surveys of similar customers, with academic experts in the field of statistics, and with professional consulting groups who design and conduct statistically valid surveys.

Anticipated Public Burden: We estimate approximately 60,000 respondents submit DOI customer satisfaction surveys and comment cards each annually. The average public burden to complete a customer survey is 15 minutes. We also estimate that there are approximately 60,000 respondents submitting comment cards annually, with the average public burden estimated at 3 minutes. Given these estimates, DOI anticipates a total time budget of 18,000 hours per year for the proposed renewal.

Respondent types include coal operators, contractors/vendors, environmental groups, other governments (State, local, foreign), grant recipients, American Indians/Alaska Natives, industry groups, insular governments, interested publics (including community and specific-interest groups), law enforcement, mining companies, public information centers, scientific data users, universities/educators, utility companies, and visitors/recreationists.

We estimate, based on a \$15 per hour valuation of volunteer time and the projected budget hours, an approximate aggregate cost to respondents of \$270,000. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information, including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for purposes of collecting, validating, verifying, processing, maintaining, disclosing, and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing information.

Estimated Annual Reporting and Recordkeeping "Non-Hours Cost"
Burden: Agencies must estimate both the "hour" burden and "non-hour cost" burden to respondents or record keepers resulting from the collection of information. We have not identified any non-hour cost burdens for the information collection aspects of the programmatic customer satisfaction survey. Therefore, if you have costs to generate, maintain, and disclose this information, you should comments and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period of which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (1) Before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide

information or keep records for the Government; or (4) as part of customary and usual business or private practices.

Methodology: All requests to collect information under the auspices of this proposed renewal will be carefully evaluated to ensure consistency with the intent, requirements, and boundaries of this programmatic clearance. Interior's Office of Planning and Performance Management will conduct an administrative review of each request and oversee technical reviews to ensure statistical validity and soundness. All information collection instruments will be designed and deployed based upon acceptable statistical practices and sampling methodologies, where appropriate, and will be used to obtain consistent, valid, data that are representative of the sample, account for non-response bias, and target response rates at or above levels needed to obtain statistically useful results.

All submissions under the program of expedited approval must include a description of the survey methodology. This description must be specific and describe each of the following: (a) Respondent universe, (b) the sampling plan and all sampling procedures, including how individual respondents will be selected, (c) how the information collection instrument will be administered, (d) expected response rate and confidence levels, and (e) strategies for dealing with potential non-response bias. A description of any pre-testing and peer review of the methods and/or instrument is also highly encouraged.

Improved information technology will be used, when possible, to reduce the burden on the public and to comply with requirements of the Government Paperwork Elimination Act (GPEA). Electronic mail may be used to introduce and distribute information collection instruments to a sample of customers. In some cases, the instruments may be web-enabled so that respondents can complete them online, enabling the response analysis to be automated. In all cases, appropriate non-response bias strategies will be used to ensure that responses are representative of the contact universe.

Public Disclosure Statement: The PRA provides that a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: PRA section 3506(c)(2)(A) requires each agency " * * * to provide notice * * * and otherwise consult

with members of the public and affected agencies concerning each proposed collection of information * * *. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Furthermore, we are interested in any comments you may have to increase response rates.

To comply with the public consultation process, on May 10, 2004, we published a **Federal Register** Notice (Volume 69, Number 90, page 25916–25918) announcing that we would submit this renewal/extension request to OMB for approval. The notice provided the required 60-day comment period. One public comment was received during the comment period and we have addressed the individual's concern by responding directly to him and making appropriate revisions to our renewal/extension request.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 29, 2004.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you as a commenter, wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or business, and from individuals identifying themselves as representatives of organizations or businesses, available for public inspection in their entirety.

DOI Information Collection Contact: Office of Planning and Performance Management (202) 208–1818.

Dated: November 17, 2004.

Richard T. Beck,

Director, Office of Planning and Performance Management.

[FR Doc. 04–26228 Filed 11–26–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180]

Notice of Intent To Prepare a Resource Management Plan and Associated Environmental Impact Statement for the Folsom Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) Field Office in Folsom, California, intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) to guide management activities for the public lands and resources under its jurisdiction. The public scoping process will begin with the publication of this notice. Public scoping meetings, to identify relevant issues and concerns, will be announced in advance through BLM's Web site and in local news media.

DATES: Public meetings will be held throughout the planned scoping and preparation period. In order to ensure local community participation and input, several meetings will be held, at least one for each watershed. Written comments sent to the address listed below will be accepted until further notice. The time and location of public scoping meetings, public comment periods, and comment closing dates will be announced through local news media, direct mailings, and on the Folsom Field Office Web site at <http://www.ca.blm.gov/folsom> within 15 days of the meetings.

ADDRESSES: Written comments should be sent to "RMP Comments," BLM, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630, or sent by fax to (916) 985–3259. Documents pertinent to this planning project may be examined at the Folsom Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Folsom Field Office during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part

of the RMP/EIS. Individuals who wish to withhold their name or street address from public review or from disclosure under the Freedom of Information Act must state this prominently at the beginning of their written comments. Such requests will be honored to the extent allowed by law. The BLM will not consider anonymous comments. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Rick Cooper, RMP Coordinator, BLM, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630, phone (916) 985–4474. To add a name to the RMP mailing list, contact Lou Cutajar, Public Contact Specialist, in the Folsom Field Office.

SUPPLEMENTARY INFORMATION: The Folsom Field Office is responsible for the management of approximately 230,000 acres of public land within fourteen California counties: Colusa, Yuba, Nevada, Sutter, Placer, El Dorado, Sacramento, San Joaquin, Amador, Calaveras, Merced, Stanislaus, Tuolumne, and Mariposa. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. The preliminary issues include: Management of public land resources at the watershed level; management of ecosystems and riparian areas to maintain and improve properly functioning conditions; management and protection of sensitive, rare, threatened, or endangered species; management of Wild and Scenic River corridors; implementation of the Federal Wildland Fire Policy; fluid and solid mineral development; meeting the needs of local and regional communities and the effects of a growing urban interface; land tenure adjustments, consideration of lands for special management designation; cultural resource identification, protection, and interpretation; and the provision of recreation opportunities to meet a growing and diverse demand.

These preliminary issues will be further defined by direct input through active public participation. Through the plan scoping process, the public will help identify issues, questions, and concerns to be addressed by the RMP.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified during the scoping process. The interdisciplinary team involved with the RMP process includes specialists with expertise in minerals and geology, forestry, range, fire and fuels management, outdoor recreation, archaeology, paleontology, botany, wildlife and fisheries, hydrology, lands and realty, soils, air quality, sociology, and economics.

The Folsom Field Office is currently managed under the Sierra Planning Area Management Framework Plan as Amended in 1988. Management under this document will continue until the RMP is approved.

Dated: October 4, 2004.

Deane K. Swickard,

Field Manager.

[FR Doc. 04-26324 Filed 11-26-04; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-930-1310-DB-CPAI]

Notice of Availability of the Record of Decision for the Alpine Satellite Development Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of record of decision (ROD).

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Alpine Satellite Development Plan Environmental Impact Statement (ASDP EIS) Record of Decision (ROD). The ASDP ROD approves satellite oil drilling and production pads and associated structures (roads, pipelines, gravel mine) and certain other activities proposed by ConocoPhillips Alaska, Inc. (CPAI) on BLM-managed lands in the National Petroleum Reserve—Alaska. Assistant Secretary Rebecca Watson signed the ROD on November 8, 2004.

ADDRESSES: Copies of the ROD are available at the Alaska State Office, Public Information Center at 222 West 7th Avenue, Anchorage, Alaska, 99513-7599 or upon request from that office by phoning (907) 271-5960 or Jim Ducker, Bureau of Land Management, Alaska State Office (931) 222 West 7th Avenue, Anchorage, Alaska 99513-7599; (907) 271-3130. The ROD may be viewed on BLM-Alaska's Web site at <http://www.ak.blm.us>.

FOR FURTHER INFORMATION CONTACT: Jim Ducker, BLM Alaska State Office, (907) 271-3130.

SUPPLEMENTARY INFORMATION: The ASDP EIS analyzed CPAI's proposal to develop oil accumulations from five satellite drilling and production pads, two of which would be on BLM-managed federal lands. The decisions in this ROD are limited to federal lands. BLM will issue permits and rights-of-way for the ASDP on federal lands following the State of Alaska's completion of its review of CPAI's coastal zone consistency certification and issuance of concurrence. Authorizations for development on non-federal lands will be issued by the U.S. Corps of Engineers (USACE), the U.S. Coast Guard (USCG), the U.S. Environmental Protection Agency (EPA), and the State of Alaska. In addition, these agencies will make decisions, within their respective authorities, on federal lands.

Dated: November 18, 2004.

Henri R. Bisson,

State Director.

[FR Doc. 04-26321 Filed 11-26-04; 8:45 am]

BILLING CODE 4310-AG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-920-1310-05; NMNM 106535]

Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 106535

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease NMNM 106535 for lands in Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 2003, the date of termination.

FOR FURTHER INFORMATION CONTACT: Bernadine T. Martinez, BLM, New Mexico State Office, (505) 438-7530.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting the lands. The lessees have agreed to new lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessees have paid the required \$500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lease Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective September 1, 2003, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Bernadine T. Martinez,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 04-26322 Filed 11-26-04; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-035-04-1430-EU; GP-04-0247]

Direct Sale of Public Land, OR 55881

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

ACTION: Notice of realty action.

SUMMARY: An 11.25 acre parcel of public land in Baker County, Oregon, is being considered for direct sale to George and Joanne Voile, the adjoining landowners, to resolve an inadvertent unauthorized use that was initiated many decades ago by the former owners.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The parcel proposed for sale is identified as suitable for disposal in the Baker Resource Management Plan, dated July 2, 1989.

DATES: Submit comments on or before January 13, 2005.

ADDRESSES: Address all written comments concerning this Notice to Penelope Dunn Woods, Field Manager, BLM Baker Field Office, 3165 10th Street, Baker City, Oregon 97814. Electronic format submittal will not be accepted.

FOR FURTHER INFORMATION CONTACT: Steve Davidson, Realty Specialist, at (541) 523-1349.

SUPPLEMENTARY INFORMATION: The following described public land in Baker County, Oregon, is suitable for sale under Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, (43 U.S.C. 1713 and 1719). The parcel proposed for sale is described as follows:

Willamette Meridian, Oregon

T. 8 S., R. 42 E.

Section 28: N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and
E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains 11.25 acres. The parcel will be sold at no less than the appraised fair market value of \$3,300.00.

The land will be sold using the direct sale procedures authorized under 43 CFR 2711.3–3. Direct sale is appropriate because of the need to resolve inadvertent unauthorized use and occupancy of the public land resulting from encroachment of a farmstead from adjoining land, and to protect equities arising from that use, which was initiated by a previous land owner several decades ago. Because of the small size and configuration of the parcel, its historic use and its location relative to the adjoining private land, it is impractical for another party to own or for the BLM to retain the parcel under its management.

George and Joanne Voile will be allowed 30 days from receipt of a written offer to submit a deposit of at least 20 percent of the appraised market value of the parcel, and 180 days thereafter to submit the balance.

The following rights, reservations, and conditions will be included in the patent conveying the land:

1. A reservation to the United States for a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. A right-of-way reserved to the United States for that electric power transmission line, and all appurtenances thereto, constructed by the United States under Federal Power Commission Order of 9/5/58 for Project 1971.

3. Such rights as Baker County, Oregon may have for a road right-of-way granted, created or established by or for the use of the public and by or under Local, State or Federal Laws or decisions, or otherwise.

4. Such rights for an irrigation canal that the Southside Improvement District may have pursuant to a right-of-way R.S. 2339 and R.S. 2340 (43 U.S.C. 661) (OR–58407).

5. A notice and indemnification statement on the patent under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9620) holding the United States harmless from any release of hazardous materials that may have occurred as a result of the unauthorized use of the property by other parties.

The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer

constitutes an application for conveyance of the mineral interest pursuant to 43 CFR part 2720. In addition to the full purchase price, a nonrefundable fee of \$50 will be required for purchase of the mineral interests to be conveyed simultaneously with the sale of the land.

The land described is segregated from appropriation under the public land laws, including the mining laws, with the exception of sales under the above cited statutes, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

Detailed information concerning this sale, including the reservations, sale procedures and conditions, appraisal, planning and environmental documents, and mineral report is available for review at the Baker Field Office at the above address.

Objections will be reviewed by the Vale District Manager who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to request that the BLM consider withholding your name, street address and other contact information, *e.g.*, Internet address, fax or phone number, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public inspection in their entirety all submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

(Authority: 43 CFR 2711.1–2(a))

Dated: September 15, 2004.

Penelope Dunn Woods,

Field Manager, Baker Resource Area.

[FR Doc. 04–26323 Filed 11–26–04; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–527]

In the Matter of Certain Digital Image Storage and Retrieval Devices; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 21, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ampex Corporation of Redwood City, California. An amended complaint was filed on October 29, 2004, and a supplemental letter was filed on November 5, 2004. The amended complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital image storage and retrieval devices by reason of infringement of claims 7–8 and 10–15 of U.S. Patent No. 4,821,121. The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, D.C. 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Erin Joffe, Esq., Office of Unfair Import

Investigations, U.S. International Trade Commission, telephone (202) 205-2550.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2004).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on November 22, 2004, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital image storage and retrieval devices by reason of infringement of one or more of claims 7-8 and 10-15 of U.S. Patent No. 4,821,121, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Ampex Corporation, 1228 Douglas Avenue, Redwood City, California 94063-3117.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served: Eastman Kodak Company, 343 State Street, Rochester, New York 14650-0001; Chinon Industries, Inc., 23 11 Naka Oshio, Chino City, Nagano 391 0293, Japan; Altek Corporation, 3F, No. 10, Li-Hsin Road Science-Based Industrial Park, Hsinchu, Taiwan.

(c) Erin Joffe, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. is designated as the presiding administrative law judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation.

Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 22, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04-26275 Filed 11-26-04; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on September 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"), AAF Association, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Post Group, Hollywood, CA has been dropped as a party to this venture. Also, the following member has changed its name: AAF Member National Imagery and Mapping Agency to National Geospatial-Intelligence Agency, Reston, VA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc., intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc., filed its original notification

pursuant to section 6 (a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 30, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 6, 2004 (69 FR 47958).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26201 Filed 11-26-04; 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—ACORD Corporation

Notice is hereby given that, on September 20, 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"), ACORD Corporation ("ACORD") 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: ACORD Corporation, Pearl River, NY. The nature and scope of ACORD's standards development activities are: To improve efficiency in insurance and reinsurance transactions by: (1) Providing a common framework for the interchange of information; (2) speeding up communication of data; (3) reducing processing costs and paperwork; and (4) improving accuracy and facilitating e-commerce.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26206 Filed 11-26-04; 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—The Aluminum Association, Inc.

Notice is hereby given that, on September 20, 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 Aluminum Association, Inc., ("the Aluminum Association") 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: The Aluminum Association, Inc., Washington, DC. The nature and scope of the Aluminum Association's standards development activities are: to review all proposals or recommendations regarding revisions, additions, or deletions to the alloy and Temper Designation Systems for Aluminum (ANSI H35.1 and .1(M)), Dimensional Tolerances for Aluminum Mill Products (ANSI H35.2 and .2(M)), the Designation System for Aluminum Hardeners (ANSI H35.3), the Designation System for Unalloyed Aluminum (ANSI H35.4) and the Nomenclature System for Aluminum Metal Matrix Composite Materials (ANSI H35.5); to encourage the use of these documents by reference in other specifications; and to develop proposals for new ANSI standards applicable to aluminum and aluminum alloy wrought and cast products.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26200 Filed 11-26-04; 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—American Dental Association

Notice is hereby given that, on September 14, 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 Dental Association ("ADA") 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: American Dental Association, Chicago, IL. The nature and scope of ADA's standards development activities are: Development of nomenclature, standards and specifications for dental materials, except those recognized as drugs or dental radiographic film; development of nomenclature, standards and specifications for dental instruments, equipment and accessories used in dental practice, dental technology and oral hygiene that are offered to the public or the profession. Orthodontic, prosthetic, and restorative appliances designed or developed by the dentist for an individual patient are excluded. The ADA also promotes patient care and oral health through the application of information technology to dentistry's clinical and administrative operations, developing standards, specifications and technical reports, and guidelines for: Components of a computerized dental clinical workstation; electronic technologies used in dental practice; and interoperability standards for different software and hardware products which provide a seamless information exchange throughout all facets of healthcare.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26212 Filed 11-26-04; 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—American Gear Manufacturers Association

Notice is hereby given that, on September 24, 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 Gear Manufacturers Association ("AGMA") 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: American Gear Manufacturers Association, Alexandria, VA. The nature and scope of AGMA's standards development activities are: The development and promulgation of voluntary consensus standards for the U.S. gear and mechanical power transmission industries.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26217 Filed 11-26-04; 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—American Public Transportation Association

Notice is hereby given that, on September 22, 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 Public Transportation Association ("APTA") 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 involving 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: American Public Transportation Association, Washington, DC. The nature and scope of APTA's standards development activities are: APTA participates in five major voluntary standards development programs. These programs cut across all transit modes and are focused on key elements of transit operations and maintenance including the design of bus and rail vehicles, the development of operating practices, inspection and maintenance guidelines for vehicles and facilities, the interoperability and interchangeability of component systems and parts, as well as the adoption of definitions for data structures so that electronic components can exchange information.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26197 Filed 11-26-04; 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—Cemented Carbide Producers Association

Notice is hereby given that, on September 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"), Cemented Carbide Producers Association ("CCPA") 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: Cemented Carbide Producers Association, Cleveland, OH. The nature and scope of CCPA's standards development activities are: the standardization of blanks and inserts

composed of carbide, ceramic and compacted diamond/CBN; the standardization of the tools and holders for these blanks and inserts as used for turning (both internal and external) including nomenclature, classification, size, tolerances and identification; and the establishment of standard test methods for physical and chemical properties of cemented carbides, ceramics and compacted diamond/CBN.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26202 Filed 11-26-04; 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—Compressed Air and Gas Institute

Notice is hereby given that, on September 20, 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"), Compressed Air and Gas Institute ("CAGI") 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: Compressed Air and Gas Institute, Cleveland, OH. The nature and scope of CAGI's standards development activities are: Multiple standards for compressors, compressor-related testing, air dryers, filters and portable air tools, many prepared and updated in coordination with other standards organizations, including PNEUROP and the American National Standards Institute.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26211 Filed 11-26-04; 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—DVD Copy Control Association

Notice is hereby given that, on October 1, 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"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AKI Digital Electrical Appliance Co., Ltd., Shenzhen, People's Republic of China; Bcom Electronics, Inc., Taipei, Taiwan; Dahaam E-Tec Co., Ltd., Seoul, Republic of Korea; Dalian Golden Hualu Digital Technology Co., Ltd., Dalian, People's Republic of China; Dephi Technology Inc., Taipei Hsien, Taiwan; Discronics Texas, Inc. dba DiscUSA, Plano, TX; GP Industries Limited, Singapore, Singapore; Hamg Shing Technology Corp., Chu Pei City, Taiwan; Hyo Seong Techno Corporation, Seoul, Republic of Korea; Jiangsu Hongtu High Technology Co.; Ltd. Nanjing, People's Republic of China; Malata Seeing & Hearing Equipment Co., Ltd., Fujian, People's Republic of China; Mikasa Shoji Co., Ltd., Osaka, Japan; Realtek Semiconductor Corp., Hsinchu, Taiwan; Technew Electronic Engineering Co., Ltd., Taipei, Taiwan; Vtrek Electronics Co., Ltd., Guangzhou City, People's Republic of China; and Watye Corporation, Taipei, Taiwan have been added as parties to this venture. Also, UL Tran Technology & Service, Taipei Hsien, Taiwan has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on July 23, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 24, 2004 (69 FR 52031).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26207 Filed 11-26-04; 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—DVD Forum

Notice is hereby given that, on September 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"), DVD Forum 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: DVD Forum, Tokyo, Japan. The nature and scope of DVD Forum's standards development activities are: (a) To establish the single DVD Format for each of the DVD application products, including revisions, improvements and enhancements, that would be in the best interests of consumers and users; and (b) to encourage the broad acceptance of DVD Formats on a worldwide basis among members of the DVD Forum, related industries, and the public.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26224 Filed 11-26-04; 8:45 am]

BILLING CODE 4416-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—EMVCo, LLC

Notice is hereby given that, on September 20, 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"), EMVCo, LLC ("EMVCo") 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: EMVCo, LLC, Foster City, CA. The nature and scope of EMVCo's standards development activities are: (1) Managing, maintaining, and enhancing the EMV_{tm} Integrated Circuit Card Specifications for Payment Systems; (2) standards maintenance that ensures interoperability and acceptance of payment system integrated circuit cards on a worldwide basis; and (3) a type approval process that defines test requirements and test cases that are used for terminal compliance testing.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26208 Filed 11-26-04; 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—Enterprise Grid Alliance

Notice is hereby given that, on October 13, 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"), Enterprise Grid Alliance ("EGA") 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: Enterprise Grid Alliance, San Ramon, CA. The nature and scope of EGA's standards development activities are: To provide, plan, develop and coordinate voluntary standards and solutions allowing enterprise users to embrace and realize the benefits of grid technologies in the near term.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26215 Filed 11-26-04; 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—Forum on Education Abroad, Inc.

Notice is hereby given that, on September 20, 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"), Forum on Education Abroad, Inc. ("Forum") 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: Forum on Education Abroad, Inc., Northampton, MA. The nature and scope of Forum's standards development activities are: (1) To develop and present voluntary consensus standards for education abroad programs, for domestic colleges and universities and entities in other nations that provide or partner in providing education abroad programs for students from U.S. colleges and universities; and (2) to present

standards and methods for assessing performance against the standards that can be used by the smallest and simplest organizations interested in self-improvement, through to the largest and most complex organizations in the education abroad field.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26221 Filed 11-26-04; 8:45 am]

BILLING CODE 4416-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Government Electronics & Information Technology Association

Notice is hereby given that, on September 15, 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"), Government Electronics & Information Technology Association ("GEIA") 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: Government Electronics & Information Technology Association, Arlington, VA. The nature and scope of GEIA's standards development activities are: standards focused on business, management, modeling and processes. These include those functions associated with the design, manufacture, and integration of electronics and information technology systems, products, and their interoperability.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26219 Filed 11-26-04; 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—HR-XML Consortium, Inc.

Notice is hereby given that, on August 27, 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"), HR-XML Consortium, Inc. ("HR-XML") 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: HR-XML Consortium, Inc., Raleigh, NC. The nature and scope of HR-XML's standards development activities are: the development of voluntary, consensus standards for data interchange between and among human resource (HR) management systems. Topics for data interchange standards considered by HR-XML include: Payroll, employee benefits, compensation, recruiting, temporary staffing, background checks, drug testing, assessments, competencies, HR business process outsourcing, and other HR management processes.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26220 Filed 11-26-04; 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—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on September 21, 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"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its

membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Sentient Consulting Limited, Liverpool, United Kingdom; ACT Consultants Ltd., Sheffield, United Kingdom; and UK eUniversities Worldwide Limited, London, United Kingdom have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on June 29, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 6, 2004 (69 FR 47959).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26227 Filed 11-26-04; 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—Insulating Glass Manufacturers Alliance

Notice is hereby given that, on September 15, 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"), Insulating Glass Manufacturers Alliance ("IGMA") 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: Insulating Glass Manufacturers Alliance, Ottawa, Ontario, CANADA. The nature and scope of IGMA's standards development activities are: To develop and coordinate voluntary consensus standards applicable to the production of insulating glass units primarily through its sponsorship and administration of a certification program for insulating glass units. The IGMA certification program recognizes the need for regular and impartial product testing, maintenance of quality control in the manufacturing process, and identification of products that conform to established criteria. Products eligible for certification under the IGMA certification program are insulating glass units meeting the current published version of one or more of the following: (1) ASTM E2190, Standard Specification for Insulating Glass Unit Performance and Evaluation; (2) CAN CGSB 12.8, Insulating Glass Units. IGMA contracts with independent agencies and/or auditors to perform facility audits and compliance audits to ensure eligibility for certification. As part of the certification program, IGMA also provides guidelines to manufacturers and others for the implementation of quality assurance programs to ensure in-plant quality control.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26198 Filed 11-26-04; 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—International Association of Plumbing and Mechanical Officials

Notice is hereby given that, on September 14, 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"), International Association of Plumbing and Mechanical Officials ("IAPMO") 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: International Association of Plumbing and Mechanical Officials, Ontario, CA. The nature and scope of IAPMO's standards development activities are: The development of minimum standards and requirements to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation and maintenance or use of plumbing, heating, ventilating, cooling, refrigeration systems, incinerators, and other miscellaneous heat producing appliances. The activity also includes the development of performance standards for synthetic organic plumbing fixtures and standards for the composition, dimensions, and/or mechanical and physical properties of materials, fixtures, devices and equipment used or installed in plumbing or mechanical systems.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26222 Filed 11-26-04; 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—International Code Council, Inc.

Notice is hereby given that, on September 20, 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"), International Code Council, Inc. ("ICC") 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: International Code Council, Inc., Country Club Hills, IL. The nature and scope of ICC's standards development activities are: To develop standards on building construction.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26213 Filed 11-26-04; 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—Joint Committee on Standards for Educational Evaluation

Notice is hereby given that, on September 22, 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"), Joint Committee on Standards for Educational Evaluation ("JCSEE") 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: Joint Committee on Standards for Educational Evaluation, Kalamazoo, MI. The nature and scope of JCSEE's standards development activities are: The development and maintenance of standards for evaluations of educational programs, projects, and materials; educational personnel; and other critical aspects of education.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26205 Filed 11-26-04; 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—Joint Venture Under ATP Award No. 70NAB4H3055**

Notice is hereby given that, on October 20, 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 Joint Venture Under ATP Award No. 70NAB4H3055 has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. 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 identities of the parties to the venture are: The Dow Chemical Company, Midland, MI and Veeco Metrology, LLC, Santa Barbara, CA. The nature and objectives of the venture are to develop high speed atomic force microscope capabilities for quantitative nanomechanical measurements.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26214 Filed 11-26-04; 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—Mobile Enterprise Alliance, Inc.**

Notice is hereby given that, on September 30, 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"), Mobile Enterprise Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intellisync Corporation, San Jose, CA has been added as a party to this venture. Also, Symbian Ltd.,

London, United Kingdom has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Mobile Enterprise Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On June 24, 2004, Mobile Enterprise Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 23, 2004 (69 FR 44062).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26210 Filed 11-26-04; 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—MPLS and Frame Relay Alliance**

Notice is hereby given that, on September 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"), MPLS and Frame Relay Alliance ("MFA") 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: MPLS and Frame Relay Alliance, Fremont, CA. The nature and scope of MFA's standards development activities are: (1) Serving as a meeting ground for companies that are creating and deploying products that implement MPLS, or services that depend on the capabilities introduced by MPLS and its associated technologies; (2) identifying, selecting, augmenting, as appropriate, and publishing MPLS implementation agreements drawn from appropriate national and international, defacto, and de jure standards; (3) identifying,

selecting, augmenting, as appropriate, and publishing frame relay implementation agreements drawn from appropriate national and international, defacto, and de jure standards; (4) promoting/fostering the measurement, demonstration and testing of frame relay products in order to further compatibility and interoperability; (5) conducting cooperative research; (6) developing proposals to be made to appropriate national and international standards bodies in order to further system compatibility and interoperability; and (7) developing publications and informational materials. "Implementation agreement(s)" shall mean specifications, protocols, system architectures and other similar guidelines related to multi-protocol label switching and/or frame relay technologies that may be developed, adopted, published or otherwise made available to the public by the Corporation.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26204 Filed 11-26-04; 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—National Electrical Contractors Association**

Notice is hereby given that, on October 8, 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"), National Electrical Contractors Association ("NECA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name the 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: National Electrical Contractors Association, Bethesda, MD. The nature and scope of NECA's standards development activities are: NECA, in partnership with other industry organizations, has developed

the *National Electric Installation Standards™* for electrical construction. The standards go beyond the basic safety requirements of the National Electrical Code to clearly define what is meant by installing products and systems in a “neat and workmanlike” manner. All NEIS are submitted for approval by the American National Standards Institute (ANSI).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26209 Filed 11–26–04; 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—Network Processing Forum

Notice is hereby given that, on September 20, 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”), Network Processing Forum (“NPF”) 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: Network Processing Forum, Fremont, CA. The nature and scope of NPF’s standards development activities are: Identifying, selecting, augmenting, as appropriate, and publishing Implementation Agreements to encourage the development and effective use of network processing technology.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26218 Filed 11–26–04; 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—Petroleum Convenience Alliance for Technology Standards

AGENCY: Notice is hereby given that, on September 22, 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”), Petroleum convenience Alliance for Technology Standards (“PCATS”) 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: Petroleum Convenience Alliance for Technology Standards, Alexandria, VA. The nature and scope of PCATS’ standards development activities are: (1) Development and maintenance of XML-based standards for electronic data interchange, specifically related to information between point-of-sale (POS) systems and back office systems, and for exchanging data between trading partners for general merchandise, lottery, and motor fuels; (2) development of an “open site” architecture for integration of devices used by petroleum and convenience retailers through peer-to-peer messaging, based on JXTA, an open standard; and (3) maintenance of product codes used in terminal-to-host messages developed by ANSI-Accredited Standards Committee X9, originally contained in Technical Guide-23 (1999) and now being balloted by X9 for adoption as X9.104, Parts 1 and 2.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26226 Filed 11–26–04; 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—PICMG—PCI Industrial Computer Manufacturers Group, Inc.

Notice is hereby given that, on September 20, 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”), PICMG—PCI Industrial Computer Manufacturers Group, Inc. (“PICMG”) 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: PICMG—PCI Industrial Computer Manufacturers Group, Inc., Wakefield, MA. The nature and scope of PICMG’s standards development activities are: the development and design of open and neutral computer system standards, and performing related research and experimentation in, and implementation of, system standards and technology.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26225 Filed 11–26–04; 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—Siemens Westinghouse Power Corporation: Conformal Direct-Write Technology Enabled, Wireless, Smart Turbine Components

Notice is hereby given that, on October 20, 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”), Siemens Westinghouse Power Corporation: Conformal Direct-Write Technology Enabled, Wireless, Smart Turbine Components has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. 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 identities of the parties to the venture are: Siemens Westinghouse Power Corporation, Orlando, FL and Mesoscribe Technologies, Inc., Stony Brook, NY. The nature and objectives of the venture are to demonstrate the viability of smart, self-aware engine components that will incorporate embedded, harsh-environment capable sensors for thermal, mechanical, and wear sensing, integrated with wireless technology for signal transmission under the Advanced Technology Program of NIST. The activities of the joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26223 Filed 11-26-04; 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—Smart Active Label Consortium, Inc.

Notice is hereby given that, on September 20, 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"), Smart Active Label Consortium, Inc., ("SAL") 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: Smart Active Label Consortium, Inc., Wakefield, MA. The nature and scope of SAL's standards development activities are: (a) To bring smart active label

technology into use in a wide range of industries; and (b) to bring together a critical mass of technology suppliers, manufacturers, solutions providers, end-users, standards organizations, governmental bodies, and academic institutions.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26203 Filed 11-26-04; 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—U.S. Product Data Association

Notice is hereby given that, on September 20, 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"), U.S. Product Data Association ("US PRO") 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: U.S. Product Data Association, North Charleston, SC. The nature and scope of US PRO's standards development activities are: To provide the management functions for the IGES/PDES Organization (IPO) and its related activities, including the U.S. Technical Advisory Group (TAG) to ISO TC184/SC4.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04-26216 Filed 11-26-04; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 01-31]

Deborah Bordeaux, M.D.; Revocation of Registration

On June 8, 2001, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause/Immediate Suspension of Registration to Deborah Bordeaux, M.D. (Dr. Bordeaux), notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BB3869370, as a practitioner, pursuant to 21 U.S.C. 824(a)(4) for reason that Dr. Bordeaux's continued registration would be inconsistent with the public interest and to deny any pending applications for renewal of registration pursuant to 21 U.S.C. 823(f). The Order to Show Cause/Immediate Suspension of Registration further advised Dr. Bordeaux that her DEA Certificate of Registration had been suspended, pursuant to 21 U.S.C. 824(d), as an imminent danger to public health and safety.

The Order to Show Cause/Immediate Suspension of Registration alleged, *inter alia*, that for February 2000 through February 2001, Dr. Bordeaux was employed by the Comprehensive Care & Pain Management Center (CCPMC) and the Myrtle Beach Medical Clinic (MBMC), both located in Myrtle Beach, South Carolina. During this period she routinely and continually prescribed controlled substances, including Oxycontin, Lortab and Lorcet, to patients without adequate medical testing, validation of patients' complaints or consideration of more appropriate alternative treatments.

Many of these patients were traveling hundreds of miles to CCPMC, bypassing legitimate physicians qualified to treat chronic pain. DEA investigators also determined that a number of Dr. Bordeaux's patients were at drug treatment centers throughout South Carolina, where they were being treated for addiction to Oxycontin that had repeatedly been prescribed them by Dr. Bordeaux and other CCPMC physicians.

It was further alleged that she routinely issued controlled substance prescriptions to patients never seen by staff physicians and issued refills of Oxycontin prescriptions for no reason other than the patients "wanted" refills. Further, in March 2001, Dr. Bordeaux opened her own clinic where, until she was told by DEA investigators that she was operating at an unregistered location, she continued to prescribe controlled substances without obtaining

DEA approval to modify her registered address. She also indicated that she had been invited to resume work as a physician at CCPMC and it was alleged that she had continued her prescribing practices, even after becoming aware of DEA's investigation into those practices.

On July 3, 2001, counsel for Dr. Bordeaux requested a hearing and following prehearing procedures, Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) scheduled the hearing to begin on July 16, 2002. On July 10, 2002, counsel for Dr. Bordeaux filed a Motion to Defer Hearing as a result of her indictment by a Federal grand jury on charges stemming from the conduct alleged in the Order to Show Cause/Immediate Suspension of Registration. That motion was granted on July 10, 2002.

On February 27, 2004, counsel for the Government filed a Motion for Summary Judgment. It alleged that on February 10, 2003, Dr. Bordeaux had been convicted in United States District Court for the District of South Carolina, of Conspiracy to Unlawfully Distribute Controlled Substances, in violation of 21 U.S.C. 846. Further, the motion alleged that March 10, 2003, the State Board of Medical Examiners of South Carolina (Medical Board) issued an Order of Temporary Suspension of Dr. Bordeaux's license to practice medicine in South Carolina and that she was no longer authorized to handle controlled substances in the State in which she maintained her DEA registration.

The Government attached to its motion an affidavit from a Medical Board investigator documenting the Federal conviction, a copy of the Order of Temporary Suspension and a February 20, 2004, letter from the Medical Board, indicating that as of that date, Dr. Bordeaux's medical license was still suspended. While given the opportunity, Dr. Bordeaux did not file a response to the Government's motion.

On May 4, 2004, Judge Bittner issued the Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Judgment, finding Dr. Bordeaux lacked authorization to handle controlled substances in South Carolina, the jurisdiction in which she is registered with DEA.

In granting the Government's motion, Judge Bittner further recommended that Dr. Bordeaux's DEA registration be revoked and that any pending applications for modification or renewal be denied. No exceptions to the Opinion and Recommended Decision were filed.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Dr. Bordeaux currently possesses DEA Certificate of Registration BB3869370 and is registered to handle controlled substances in the State of South Carolina. The Deputy Administrator further finds that in response to her Federal conviction, on March 10, 2003, the State Board issued an Order of Temporary Suspension immediately suspending Dr. Bordeaux's license to practice medicine in South Carolina. There is no evidence before the Deputy Administrator that the State Board's Order has been lifted, stayed or modified. Therefore, the Deputy Administrator finds that Dr. Bordeaux is currently not licensed to practice medicine in South Carolina and as a result, it is reasonable to infer she is also without authorization to handle controlled substances in that State.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which she conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Stephen J. Graham, M.D.*, 69 FR 11661 (2004); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988). Revocation is also appropriate when a State license has been suspended, but with the possibility of future reinstatement. See *Alton E. Ingram, Jr., M.D.*, 69 FR 22562 (2004); *Anne Lazar Thorn, M.D.*, 62 FR 847 (1997).

Here, it is clear Dr. Bordeaux is not currently licensed to handle controlled substances in South Carolina, where she is registered with DEA. Therefore, she is not entitled to maintain that registration. Because Dr. Bordeaux is not entitled to a DEA registration in South Carolina due to lack of State authorization to handle controlled substances, the Deputy Administrator concludes it is unnecessary to address whether Dr. Bordeaux's registration should be revoked based upon the remaining public interest grounds asserted in the Order to Show Cause/Immediate Suspension of Registration. See *Fereida Walker-Graham, M.D.*, 68 FR 24761 (2003); *Nathaniel-Aikens-*

Afful, M.D., 62 FR 16871 (1997); *Sam F. Moore, D.V.M.*, 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BB3869370, issued to Deborah Bordeaux, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective December 29, 2004.

Dated: November 10, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04-26306 Filed 11-26-04; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

CWK Enterprises, Inc.; Denial of Registration

On July 23, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to CWK Enterprises, Inc. (CWK) proposing to deny its March 1, 2003, application for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting CWK's application would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h). The order also notified CWK that should not request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to CWK at its proposed registered location at 3065 McCall Drive, Suite 10, Atlanta, Georgia 30224. It was received on August 5, 2004, and DEA has not received a request for a hearing or any other reply from CWK or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that CWK has waived its hearing right. See *Aqui Enterprises*, 67 FR 12576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53 (c) and (d) and

1316.67. The Deputy Administrator finds as follows.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. As noted in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a persistent and growing problem in the United States. See e.g., *Direct Wholesale*, 69 FR 11,654 (2004); *Branex, Inc.*, 69 FR 8,682 (2004); *Yemen Wholesale Tobacco and Candy Supply, Inc.*, 67 FR 9997 (2002); *Denver Wholesale*, 67 FR 99986 (2002).

The Deputy Administrator's review of the investigative file reveals that on or about March 1, 2003, an application was submitted by the President of CWK, Mr. Charles In Kim, seeking registration to distribute ephedrine and pseudoephedrine list I chemical products. The application originally included phenylpropanolamine, but that listed chemical product was eventually deleted from the request.

In connection with the pending application, an on-site pre-registration investigation was conducted at the proposed premises. Investigators were advised that CWK, which was incorporated in 2001, was a wholesale distributor of general merchandise to convenience stores and gas stations.

CWK was proposing to sell Mini-Thins and traditional single entity and combination pseudoephedrine products. Investigators noted that CWK had no products list, but the company officer referred to a catalogue produced by a national wholesaler.

At the initial investigation, Mr. Chul Kim, CWK's Vice-President, also failed to provide DEA investigators an updated customer list for listed chemical products. Subsequently, a list of fourteen customers was provided to the investigators. A customer verification revealed that seven of these purported customers either did not know, or did not intend to do listed chemical business with CWK.

DEA is aware that small illicit laboratories operate with listed chemical products often procured, legally or illegally, from non-traditional retailers of over-the-counter drug products, such as gas stations and small retail markets. Some retailers acquire product from multiple distributors to mask their acquisition of large amounts of listed chemicals. In addition, some individuals utilize sham corporations or

fraudulent records to establish a commercial identity in order to acquire listed chemicals.

The illegal production of methamphetamine continues unabated within the DEA Atlanta region. The adjacent State of Tennessee leads the region in the number of clandestine laboratories seized, accounting for approximately 50 percent of the clandestine laboratories seized during the second quarter of 2002. When compared with the third quarter of 2001, the increase in clandestine laboratory seizures is notable. According to later records for the Atlanta region, 360 clandestine laboratories were seized during the third quarter of 2002. Of the 360 laboratories seized during that reporting period, 207 were located in Tennessee, 103 in Georgia, 35 in South Carolina and 15 in North Carolina.

In the State of Georgia, there has been a consistent increase in the number of illicit laboratories and enforcement teams continue to note a trend toward smaller capacity laboratories. This is likely due to the ease of concealment associated with smaller laboratories, which continue to dominate seizures and cleanup responses.

The adjacent State of Tennessee has a substantial methamphetamine abuse problem in the Chattanooga and Eastern Tennessee areas and DEA is aware of a past history of trafficking in precursors in these locations. Distributors or retailers serving the illicit methamphetamine trade observe no borders and trade across State lines. In fact, where precursor laws are stringent, out-of-state distributors often make direct shipments to retailers without observing State requirements.

DEA knows by experience that there exists a "gray market" in which certain high strength, high quantity pseudoephedrine and ephedrine products are distributed only to convenience stores and gas stations, from where they have a high incidence of diversion. These gray market products are not sold in large discount stores, retail pharmacies or grocery stores, where sales of therapeutic over-the-counter drugs predominate. Mini-Thins and other "two-way" ephedrine and single entity pseudoephedrine products are prime products in this gray market industry and are rarely found in any retail store serving the traditional therapeutic market.

DEA also knows from industry data, market studies and statistical analysis that over 90% of over-the-counter drug remedies are sold in drug stores, supermarket chains and "big box" discount retailers. Less than one percent

of cough and cold remedies are sold in gas stations or convenience stores. Studies have indicated that most convenience stores could not be expected to sell more than \$20.00 to \$40.00 worth of products containing pseudoephedrine per month. The expected sales of ephedrine products are known to be even smaller. Most convenience stores handling gray market products often order more product than what is required for the legitimate market and obtain chemical products from multiple distributors.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest:

- (1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;
- (2) Compliance with applicable Federal, State and local law;
- (3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;
- (4) Any past experience of the applicant in the manufacture and distribution of chemicals; and
- (5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See, e.g., *Energy Outlet*, 64 FR 14269 (1999). See also, *Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

The Deputy Administrator finds factors four and five relevant to the pending application for registration.

With regard to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant based on CWK's lack of knowledge and experience regarding the laws and regulations governing handling of list I chemical products. In prior DEA decisions, this lack of experience in handling list I chemical products has been a factor in denying pending applications for registration. See, e.g., *Direct Wholesale, supra*, 69 FR 11654; *ANM Wholesale*, 69 FR 11652 (2004);

Xtreme Enterprises, Inc., 67 FR 76195 (2002).

With regard to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor weighs heavily against granting the application. Unlawful methamphetamine use is a growing public health and safety concern throughout the United States and Southeast. Ephedrine and pseudoephedrine are precursor products needed to manufacture methamphetamine and operators of illicit methamphetamine laboratories regularly acquire the precursor products needed to manufacture the drug from convenience stores and gas stations which, in prior DEA decisions, have been identified as constituting the grey market for list I chemical products. It is apparent that CWK intends on being a participant in this market.

While there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found these establishments serve as sources for the diversion of large amounts of listed chemical products. See, e.g., *ANM Wholesale, supra*, 69 FR 11652; *Xtreme Enterprises, Inc., supra*, 67 FR 76195; *Sinbad Distributing*, 67 FR 10232 (2002); *K.V.M. Enterprises*, 67 FR 70968 (2002).

The Deputy Administrator has previously found that many considerations weighed heavily against registering a distributor of list I chemicals because, "[v]irtually all of the Respondent's customers, consisting of gas station and convenience stores, are considered part of the grey market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine." *Xtreme Enterprises, Inc., supra*, 67 FR at 76197. As in *Xtreme Enterprises, Inc.*, lack of a criminal record and intent to comply with the law and regulations are far outweighed by CWK's lack of experience and the company's intent to sell ephedrine and pseudoephedrine exclusively to the gray market. The Deputy Administrator is further troubled by CWK's providing DEA investigators misleading information, indicating the company cannot be trusted to handle the responsibilities of a registrant.

Based on the foregoing, the Deputy Administrator concludes that granting the pending application would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823

and 824 and 28 CFR 0.100(b) and 0.104, hereby orders the pending application for DEA Certification of Registration, previously submitted by CWK Enterprises, Inc., be, and it hereby is, denied. This order is effective December 29, 2004.

Dated: November 10, 2004.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02-40]

Dan E. Hale, D.O., Denial of Registration

On March 21, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Dan E. Hale, D.O. (Respondent) notifying Respondent of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration as a practitioner pursuant to 21 U.S.C. 824(a)(1) and (a)(5) and on grounds that his registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause alleged in sum that on March 21, 1995, Respondent had been convicted by a jury in United States District Court, Eastern District of Kentucky, of 21 felony counts related to wrongful billing under Medicaid, Medicare and TennCare programs from 1980 to 1993. On June 20, 1995, Respondent surrendered his DEA Certificate of Registration AH7753709 and was subsequently sentenced to a total of 57 months confinement, followed by two years of supervised release.

It was also alleged that on March 18, 1994, the Tennessee Department of Health, Board of Osteopathic Medicine (Board), issued a Notice of Charges alleging, among other things, that Respondent improperly allowed a physician assistant to dispense and prescribe controlled substances without supervision and that in several instances Respondent and the physician assistant, dispensed and prescribed controlled substances in violation of established treatment protocols. On November 8, 1995, he entered into an Agreed Order with the Board, whereby the Board ordered that he surrender his osteopathic medical license and in the event his conviction was upheld on

appeal, his license would be automatically revoked. After the conviction was affirmed by the Sixth Circuit Court of Appeal on January 28, 1997, the Board revoked Respondent's medical license. That license was subsequently reinstated on May 25, 2001.

It was further alleged that on January 26, 1996, as a result of Respondent's convictions, the United States Department of Health and Human Services notified him that he was mandatorily excluded from the Medicare program pursuant to 42 U.S.C. 1320a-7(a).

Finally, it was alleged that on June 18, 2001, Respondent materially falsified an application for DEA registration by failing to disclose the voluntary surrender of his previous DEA registration and the revocation of his State osteopathic medical license.

Respondent requested a hearing on the issues raised by the Order to Show Cause and following pre-hearing procedures, a hearing was held in Arlington, Virginia, on January 7 and 8, 2003. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted written proposed findings of fact, conclusions of law, and argument.

On November 26, 2003, Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge (Opinion and Recommended Ruling) in which she concluded that grounds existed to deny Respondent's application for DEA registration and recommended the application be denied. On January 14, 2004, Respondent filed exceptions to Judge Bittner's Opinion and Recommended Ruling and on January 15, 2004, Judge Bittner transmitted the record of these proceedings to the then-Acting Deputy Administrator of DEA.

By his counsel's letter dated March 22, 2004, Respondent asked the Deputy Administrator to consider the impact of recent changes implemented by the State of Tennessee, Bureau of TennCare. Counsel for the Government had no objection and the submission has been considered as a part of the administrative record.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. As set forth below, the Deputy Administrator adopts in whole, the recommended findings of

fact and conclusions of law of the Administrative Law Judge. Her adoption is in no manner diminished by any recitation of facts, issues, or conclusions herein, or of any failure to mention a matter of fact or law.

The record before the Deputy Administrator shows that on October 7, 1977, Respondent, an osteopathic physician, was issued DEA Certificate of Registration AH7753707, as a practitioner. At that time, Respondent had recently opened a practice in Morristown, Tennessee, had two employees and shared office space with another physician, Doctor L., at the Boulevard Center clinic. Respondent later purchased Doctor L.'s practice, hired him as an employee and began to expand operations. By the early 1990's, Respondent had over 100 employees and his clinic was seeing between 225 to 250 patients per day.

Around 1989, Respondent opened a second clinic in Bean Station, Tennessee, about eleven miles from Morristown. It was primarily staffed by Mr. Dean B., a physician assistant. Respondent later added a pharmacy and dental office to his Bean Station operations. Respondent testified that he never intended to go to the Bean Station clinic on a daily basis to see patients and it was overseen by the Rural Health Consortium, a government agency which oversees clinics run by physician assistants. He testified that he had consulted with attorneys who advised him it was permissible for Mr. B., to staff the Bean Station clinic.

From about 1991 to 1994, Respondent made four trips to Benin, Africa, where he and his team provided humanitarian medical assistance to hundreds of patients every day. During an early 1991 trip, he asked Dr. L. to cover for him at Bean Station. While Dr. L. discussed patients with Mr. B., he did not sign medical charts and Respondent signed them upon his return. Respondent testified he thought it did not make any difference whether he or Dr. L. signed the charts and that based on his review of those charts, all controlled substances prescribed at the clinic were appropriate.

On March 18, 1994, the Tennessee Division of Health Related Boards, Department of Health (Department of Health), issued a Notice of Charges against Respondent. It alleged, in sum, that: Respondent had been improperly using physician assistants to supervise his clinics since at least 1985, even though State legislation authorizing osteopathic physicians to utilize and supervise physician assistants was not enacted until 1992 and it had no retroactive effect; that he allowed his

physician assistants to see, treat and diagnose conditions in new patients and previously undiagnosed conditions in regular patients; that the allowed Mr. B. to improperly see patients and render treatment that was inappropriate for the diagnosed conditions; allowed Mr. B. to provide treatment and medications that were inconsistent with written protocols and allowed him to diagnose conditions outside the scope of those protocols without first consulting Respondent; that between January 1991 until April 1992, he continuously improperly dispensed or prescribed controlled substances to numerous patients without adequate attempts to diagnose their need for the controlled substances or attempt alternative methods of therapy; and allowed his patients to refer to Mr. B. as "doctor."

While Respondent was afforded a right to a hearing on the allegations, on November 8, 1995, through counsel, he entered into an Agreed Order with the Tennessee Board of Osteopathic Examination (Tennessee Board). However, the Agreed Order did not specifically address the allegations in the Notice of Charges but was, instead, based on Respondent's felony convictions of March 21, 1995.

At the DEA hearing, Respondent contested the allegations in the Notice of Charges. He testified, in sum, that he was appropriately vigilant in prescribing controlled substances and in supervising Mr. B. Respondent's son, an attorney and medical student who worked in the clinic, testified Respondent saw Mr. B. each morning and they talked on the phone eight to ten times a day. The son further testified that during 1992 and 1993, the Bean Street clinic saw an average of 45 to 55 patients per day and, while not every patient was a subject of discussion between Respondent and Mr. B., Respondent would review all patient notes and ask questions.

Dr. Maurice R., an osteopath who had known Respondent for 26 years, testified on Respondent's behalf. He had worked in Respondent's clinic briefly as part of his training and considered Respondent his mentor. He testified he never saw Respondent over-prescribe controlled substances and described the difficulties facing doctors in East Tennessee in determining patients' legitimate needs for controlled substances. He described Respondent as providing care to a medically underserved community by accepting Medicaid patients.

With regard to the allegations in the Notice of Charges, Dr. R. testified in order to determine whether the standard of care was met with regard to any

patient, it would be necessary to review the patient's charts, which were unavailable. However, from what was contained in the Notice of Charges, he saw no deviation from the standard of care. With regard to the allegation that Respondent utilized a physician's assistant prior to enactment of legislation permitting such a practice, Dr. R. testified that the Tennessee Legislature frequently forgot to include physicians with Doctor of Osteopathy degrees in legislation addressing physicians with Medical Doctor degrees.

A pharmacist who worked at the pharmacy next door to Respondent's Morristown office testified that from 1985 to 1995, prescriptions issued by Respondent made up about thirty percent of the pharmacy's prescription business. He further testified Respondent did not issue prescriptions for controlled substances in greater proportions than other area physicians or issue prescriptions for abnormal quantities of drug. The pharmacist had also accompanied Respondent on a humanitarian trip to Benin and described the good work they performed. The pharmacy's owner, who co-owned the building with Respondent, testified Respondent issued the "vast majority" of prescriptions filled at the pharmacy and that he prescribed drugs in Schedules III, IV and V, but rarely those in Schedule II.

On November 17, 1994, Respondent was indicated in the United States District Court for the Eastern District of Kentucky on 21 felony counts of racketeering, conspiracy to engage in racketeering, insurance fraud, and Medicare and Medicaid fraud. A 22nd count contained forfeiture allegations.

The indictment alleged, in substance, that Respondent and his associates ordered and performed diagnostic tests on patients that were unnecessary, but for which medical insurers would pay; personnel working for Respondent put computer-generated medical histories in patient charts to justify diagnostic tests; providers at Respondent's clinic treated Medicare and Medicaid patients differently from others by, for example, requiring them to come to the clinic in person to obtain prescription refills, thus affording the clinic more opportunities to run reimbursable tests; although some Medicaid patients abused addictive medications, providers repeatedly gave such medications to those patients because the patients were a good source of business and did not object to being given numerous diagnostic tests as long as they received the drugs they wanted; that Respondent and Dr. L. had admitted to hospital personnel that certain individuals were

engaged in an on-going insurance fraud to collect on multiple hospital supplemental insurance policies and were rewarded for this assistance by receiving payment for medical services and unnecessary diagnostic tests; the clinic gave numerous new patients complete electrocardiograms, blood tests, and X-ray tests before the patients saw a physician and without regard for medical necessity; clinic personnel injected patients with certain drugs because there was an abundant supply of the drug in the clinic, not because the drug was medically necessary; injectable medications were diluted below the therapeutic dosages to increase profits; and when Medicaid patients were switched to TennCare in January 1994, they were given unnecessary comprehensive examinations solely because TennCare would reimburse the clinic for these tests.

On March 21, 1995, a jury found Respondent guilty of all 21 counts. On March 21, 1995, Respondent entered into an Agreed Order of Forfeiture with the United States. On July 3, 1995, the court sentenced Respondent to 57 months of incarceration, followed by two years of supervised release and ordered him to comply with the Agreed Order of Forfeiture and pay a special assessment of \$1,050.00.

Respondent appealed the judgment to the United States Court of Appeals for the Sixth Circuit, which affirmed the convictions on January 28, 1997. *See, United States v. Hale*, No. 95–5915 (6th Cir. January 28, 1997). The Court of Appeal described the hospital admission aspect of the case as follows:

The fraud worked simply. Participants would buy numerous hospital indemnity policies that paid a sum certain in the event of a hospital admission. They would then fake injuries, present themselves to a “sympathetic” doctor, and gain admission to a hospital, typically for a soft tissue injury. The participants then filed claims for coverage with numerous insurance companies. *Id.*

The Court stated that the issue on appeal was whether Respondent knew of the fraud. It concluded he did, relying on testimony from Russell R., who had directed many of the scheme’s participants, that Respondent had advised that patients should “bend over in pain, use a wheelchair, and request pain medication.” Respondent “also discouraged [Russell R.’s] fondness for staging car accidents because they involved police; rather, ‘a bathtub was a good place to have an accident.’” The court also relied on the testimony of a hospital administrator that he had been warned his hospital was being used to

perpetuate fraud, the he discussed the fraud with Respondent, and Respondent indicated he knew about it. *Id.*

With respect to overbilling, the court noted testimony that Respondent’s “goal was to see as many patients and perform as many tests as the government would pay for” and that Respondent used an egg timer to time himself and challenged the staff to increase the number of tests they performed. In sum, the court found, “the testimony at trial from former employees, including doctors, nurses, and staff about the unnecessary testing and dubious billing was overwhelming.” *Id.*

During the DEA hearing, Respondent testified about the conduct leading to his convictions. He testified that several patients came to him “faking injuries” and “wanting to be put into the hospital for physical therapy,” and that these patients used supplemental insurance to pay for their hospitalization and had bribed one of Respondent’s insurance clerks to stamp forms for multiple (as many as 25) different companies, and would then collect on all of their policies. According to Respondent, “I was guilty of participating in that because I was the physician.”

Respondent testified that “I know that there were things going on that shouldn’t be there and I should have taken action to have changed it.” He admitted to the conduct alleged in various counts of the indictment, but denied providing addictive medications to patients who abused them in return for the patients agreeing to undergo diagnostic tests and that he felt they needed the diagnostic tests he ordered for them.

Notwithstanding the allegations in the indictment relating to providing drugs to persons who abused them and likewise, notwithstanding the jury’s verdicts, Respondent also testified at the DEA hearing that he had never been charged with any crime relating to the unlawful prescribing or dispensing of controlled substances.

On June 20, 1995, Respondent surrendered his DEA Certificate of Registration AH7753709 and signed a DEA form preprinted with language that he was surrendering the registration “[i]n view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part.”

As previously noted, on November 8, 1995, Respondent entered into an Agreed Order with the Tennessee Board. The Agreed Order cited the Tennessee Board’s policy of disciplining osteopathic physicians convicted of

felonies and ordered Respondent to surrender his license to practice osteopathic medicine in Tennessee. It did not address the specific allegations in the Notice of Charges.

The Agreed Order further stated that if Respondent’s conviction was upheld on appeal, his license would be automatically revoked and if the conviction was reversed, the Tennessee Board would hear the matters in the Notice of Charges on their merits.

Respondent commenced his sentence on July 24, 1995. On January 26, 1996, the Director, Health Care Administrative Sanctions, U.S. Department of Health and Human Services, wrote Respondent advising him that because of his felony convictions, he was excluded from participating in Federal health care programs, including Medicare and Medicaid, for a period of fifteen years.

Respondent was released from incarceration on May 19, 1998. In early 2000, he applied to the Tennessee Board for relicensure. After taking and passing a Board ordered national examination, Respondent’s medical license was reinstated on May 25, 2001.

On June 18, 2001, Respondent executed the application for DEA registration at issue in this matter. The form included several standard liability questions asking about prior convictions or adverse actions being taken against Federal or State licenses. Question 4(c) asked, “Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law?” Question 4(d) asked, “Has the applicant ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied?” Question 4(e) asked, “Has the applicant ever had a State professional license or controlled substance registration revoked, suspended, restricted, or placed on probation?” The application further directs the applicant to explain any affirmative answers. Respondent answered “no” to all three questions and left the explanation section blank.

A DEA Diversion Investigator was assigned to investigate the application after a routine check of the NADDIS system indicated he had surrendered a previous DEA registration. The investigator testified at the hearing that Respondent’s answer to question 4(d) was false because he had surrendered his DEA registration in 1995 and that his answer to question 4(e) was also false because he was ordered to surrender his State license as a result of his felony conviction and when the conviction was affirmed on appeal, the license was automatically revoked.

Respondent testified that while his answer to question 4(d) was false, he had simply forgotten he had surrendered his previous DEA registration and his answer had not been an intentional misrepresentation. He attributed the error to stress, anxiety and depression he was suffering at the time of the surrender emanating from the criminal proceedings and loss of his practice. Respondent's son also testified regarding the stress his father had been suffering at the time and the possibility that he had genuinely forgotten about surrendering the registration when he executed the application.

With regard to the answer pertaining to revocation of his State license, Respondent testified that his then-counsel had signed the Agreed Order, as Respondent had begun serving his prison sentence. He testified he answered question 4(e) in the negative because he knew he had surrendered his license and in his mind, at the time, he thought it was "gone" and thus not revoked.

Two months after applying for registration, Respondent called a diversion investigator to inquire as to its status. When told he had falsified the application, he did not claim he had simply forgotten surrendering the prior registration. Instead, he argued with the investigator that he had never surrendered his prior registration. Respondent testified that when he had made that phone call, he still believed he had never surrendered the registration.

Following Respondent's State relicensure, he was certified as a Medical Review Officer and passed examinations for certifications in pediatric acute life support and acute cardiac life support. He was designated a Civil Surgeon by the United States Immigration and Naturalization Service, authorizing him to perform medical examinations of aliens seeking permanent residence in the United States.

A pastor of a local church, whose congregants are mostly Spanish speakers from Central and South America, testified in Respondent's behalf. He described Respondent's close involvement with the church, its humanitarian assistance efforts and missions and Respondent's practice of conducting health fairs for congregants where he screened and treated them at no charge. He described Respondent as one of the few local physicians fluent in Spanish and that with his ability to communicate to Spanish speaking patients and his low fees, Respondent's contribution to the Latino community was invaluable. When questioned on

cross-examination as to the reasons for the fraud convictions, the pastor attributed them to the size of Respondent's practice and his lack of management skills to "stay on top of the bookkeeping and reports that were made."

An assistant plant manager for a local poultry plant, whose employees are mostly Latino, testified for Respondent. He described how the company sends employees covered by workman's compensation to Respondent, which is cost effective and where they receive good medical treatment. He would like to send employees covered by the company's health insurance to Respondent, but the carrier requires that all covered physicians be able to prescribe any requisite medications, including controlled substances.

A reverend who was a missionary to Benin submitted a declaration describing Respondent and his wife's humanitarian efforts in Africa during 1991 through 1994, where they brought medical supplies and treated patients on four two-week trips, which were performed at their own expense. These activities were further testified to by a Licensed Practical Nurse who had worked for Respondent and accompanied him on the humanitarian missions.

In letters of support, a local doctor who had been the chief of the family practice service at the local hospital, described Respondent as a compassionate, hard working and competent general practitioner whose practice fills "a necessary niche."

Respondent's head nurse between 1985 and 1994 testified she was aware of the circumstances behind the convictions and that Respondent, Mr. B. and Dr. L. had all prescribed narcotics "in a careful and responsible manner" and that his registration should be granted.

Respondent testified that he now has a small practice, where his wife works as the receptionist and there is only one nurse. He sees about 20 patients per day and very few are covered by insurance. He testified that he needs a DEA registration in order to be a provider for various insurance plans, but that he had little need to prescribe controlled substances. However, he did have some patients suffering from pain and without registration, he has to send them to a pain clinic which is very expensive for the mostly low income patients. He further testified that whenever he calls a prescription into a pharmacy, he is asked for a DEA registration number, even when it is not a prescription for a controlled substance. Because the local pharmacy computer systems use DEA

registration numbers for tracking purposes, whenever he writes any prescription, the pharmacy has to override its program in order to fill a prescription issued by Respondent.

Regarding acceptance of responsibility for his misconduct, Respondent testified he is not the same person as before and that he had made a number of errors in judgment, including turning management of his practice over to other people instead of "keeping my hand on the pulse." Asked if he took "full responsibility for the actions, your actions, that led to the indictment and conviction," Respondent replied, "Absolutely, I mean, * * * it was plain old outright horrible mistakes, and I take full responsibility. That's one thing that the prison did teach me, is that I can't pass it off on anyone else. It was me."

Respondent also noted the conviction on his resume, which he prepared in 2001. In it he stated: "I was convicted of insurance fraud. I lost my license to practice medicine. I *steadfastly assert my innocence*, but I readily accept responsibility for what happened. The crime occurred in my office under my nose and I did not take appropriate steps to correct the situation (emphasis added)."

Respondent also testified that "*I did not have a criminal intent to commit a crime*, but I did commit a crime. So I'm guilty. I'm guilty of committing a crime. I accept full responsibility for it, and I agree with the Government and everything that they did to me. I have no bad feelings at all about anything that happened to me (emphasis added)."

He further testified that he had no intent to build his practice like he previously had and that if he received a DEA registration, he would treat it as a privilege and not abuse it.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny any pending applications for renewal of DEA registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

The Controlled Substances Act further specifies in 21 U.S.C. 824(a), that the Deputy Administrator may revoke a DEA Certificate of Registration if the registrant:

(1) has materially falsified any application for a DEA registration;

(2) has been convicted of a felony under Federal or State law relating to a controlled substance;

(3) has had his State license or registration suspended, revoked, or denied and is no longer authorized to handle controlled substances in the State in which he maintains a DEA registration;

(4) has committed acts that would render his registration inconsistent with the public interest as determined pursuant to 21 U.S.C. 823(f); or

(5) has been excluded from participation in a program pursuant to 42 U.S.C. 1320a-7(a).

As a threshold matter, Judge Bittner noted that although the grounds listed under 21 U.S.C. 824(a) pertain to revocation or suspension of a registration, "[t]he agency has consistently held that the Administrator may also apply these bases to the denial of a registration, since the law would not require an agency to indulge in the useless act of granting a license on one day only to withdraw it the next." See *Kuen H. Chen, M.D.*, 58 FR 65,401, 65, 402 (1993) (citing *Sterling Drug Co. and Detroit Prescription Wholesaler, Inc.*, 40 FR 11918 (1975)).

Further, the factors specified in section 823(f) are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration. See *Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

The Administrative Law Judge found three grounds to deny Respondent registration under section 824(a). First, pursuant to 21 U.S.C. 824(a)(1), Judge Bittner found he materially falsified his application for registration and rejected Respondent's assertions to the contrary, primarily on credibility grounds. DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See *Merlin E. Shuck, D.V.M.*, 69 FR 22566 (2004); *James C. LaJavid, D.M.D.*, 64 FR 55962 (1999); *Martha Hernandez, M.D.*, 62 FR 61145 (1997).

The Deputy Administrator agrees with Judge Bittner's finding, made after observing Respondent's demeanor, that, "In the instant case, and contrary to Respondent's assertions, I do not find that his misstatements were unintentional. Although Respondent did not sign the Agreed Order, he did sign the DEA form surrendering his previous Certificate of Registration and I do not credit his testimony that he did not know he had done so. I therefore find that Respondent materially falsified his application for registration and that under 21 U.S.C. 824(a)(1) this conduct is grounds to deny his application."

Respondent was also convicted of a felony relating to controlled substances and the Deputy Administrator agrees with Judge Bittner's conclusion that Respondent's convictions for mail fraud and racketeering were based, in part, on his conduct in providing controlled substances to patients who were abusing them, so that those patients would acquiesce to unnecessary diagnostic tests. While Respondent denied this activity at the hearing, it is a long standing principle that facts established by criminal convictions are res judicata and cannot be relitigated in a DEA administrative forum. See, e.g., *Robert A. Leslie, M.D.*, 64 FR 25908-25910 (1999); *Shahid M. Siddiqui, M.D.*, 61 FR 14818 (1996). Respondent's convictions constitute grounds for denying the application under 21 U.S.C. 824(a)(2).

The Deputy Administrator further agrees that Respondent has been excluded by the United States Department of Health and Human Services from participating in Medicare, Medicaid and Maternal and Child Health Services Block Grants to States for Social Services programs for a period of fifteen years. This constitutes an independent ground for denying the application under 21 U.S.C. 824(a)(5).

The Deputy Administrator further finds, in agreement with Judge Bittner, that under 21 U.S.C. 823(f), granting Respondent's application would not be in the public interest.

As to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, the Deputy Administrator finds that Respondent has regained his license to practice osteopathic medicine in Tennessee and this weighs in favor of registration. However, as noted by Judge Bittner, inasmuch as State licensure is a necessary but not sufficient condition for DEA registration, this factor is not determinative. See *Edson W. Redard, M.D.*, 65 FR 30616, 30619 (2000); *James C. LaJevic, D.M.D.*, 64 FR 55962, 55964 (1999).

As to factor two, the Administrative Law Judge noted that despite Respondent's assertions that he always properly handled substances, he was convicted of charges that he provided controlled substances to drug abusers because those persons were willing to undergo unnecessary diagnostic tests if they received the drugs they wanted. Additionally, Respondent permitted his physician assistant to provide controlled substances to patients prior to the effective date of legislation permitting such activity. The Deputy Administrator agrees with Judge Bittner that his factor weighs in favor of a finding that Respondent's registration would not be in the public interest.

As to factor four, his compliance with applicable laws relating to controlled substances, his unauthorized utilization of a physician assistant to provide controlled substances and his provision of controlled substances to drug abusing patients so they would submit to unnecessary medical tests, violated laws relating to controlled substances. The Deputy Administrator also agrees with Judge Bittner that this factor weighs against registration.

As to other conduct that may threaten the public health and safety, the Administrative Law Judge found that Respondent's felony convictions for racketeering and mail fraud fall within this factor. The Deputy Administrator also agrees that the jury in Respondent's criminal case found that as a part of the racketeering scheme, Boulevard Center patients were given injections of drugs based on the abundance of the drug at the clinic, rather than medical necessity and that some injectable medications were diluted below their therapeutic dosages. The Deputy Administrator agrees that this factor also weighs in favor of denying registration.

The Administrative Law Judge concluded that the record established grounds to deny the application for registration. However, as Judge Bittner notes in her Opinion and Recommended Ruling, the governing statute is discretionary. See *Mary Thomson, M.D.*, 65 FR 75969 (2000). In exercising her discretion in determining the appropriate remedy in any given case, the Deputy Administrator should consider all the facts and circumstances of the case. See *Martha Hernandez, M.D.*, 62 FR 61145 (1997).

In recommending against Respondent's application, Judge Bittner took particular note that,

As discussed above, Respondent claims that he has taken "full responsibility" for the actions that led to his convictions. This assertion is, however, belied by the evidence. For example, and as also noted above,

Respondent denied that he engaged in some of the conduct for which he was convicted, including providing addictive medications to patients who abused them, and also testified that he felt that the patients needed the diagnostic examinations he ordered for them. I also note that in his resume Respondent “steadfastly assert[s]” his innocence, and that he testified that although he was guilty, he had no “criminal intent to commit a crime.”

Based on the record, Judge Bittner could not “find that Respondent recognizes his own misconduct, or that he is yet in a position to accept the responsibilities inherent in a DEA registration.” She therefore concluded that granting Respondent’s application for DEA registration would not be consistent with the public interest and recommended that the application be denied. The Deputy Administrator agrees.

Respondent filed exceptions to the Opinion and Recommended Ruling. First, he asserted the ruling was arbitrary and capricious in comparison to prior decisions in which grants of restricted registration were recommended by the Administrative Law Judge and approved by the agency. However the facts and circumstances of the five cases cited by Respondent are distinguishable from the facts and circumstances of this matter. *See, Mark Binette, M.D.*, 64 FR 42977 (1999); *Michael Alan Patterson, M.D.*, 65 FR 5682; *Robert M. Golden, M.D.*, 65 FR 5663; *Nick M. Higgins, D.D.S.*, 54 FR 53388 (1989); *Jane W. Wuchinich, M.D.*, 56 FR 4081 (1991).

As opposed to several cases cited by Respondent, he engaged in his criminal misconduct for pecuniary gain, not because he suffered from an addiction or dependency which was later demonstrated to have been successfully mitigated by rehabilitation, therapy or careful monitoring. While neither is desirable, depending on the facts, greed can be viewed as a more serious personal motivator for criminal activity than addiction or dependency. Respondent’s reasons for violating the law and risking reputation and his growing livelihood also reflect a cavalier attitude toward his responsibilities as a physician and DEA registrant.

As opposed to other cases relied upon by Respondent, he has also failed to adequately acknowledge personal responsibility for the actions leading to his convictions and lengthy prison sentence. He also knowingly made material misrepresentations on his DEA application and was excluded from participating in Federal health care programs for 15 years, both of which are additional independent grounds for denying registration.

Finally, DEA has previously revoked registrants for actions and on grounds comparable to Respondent’s. *See, Johnnie Melvin Turner, M.D.*, 67 FR 71203 (2002) (revocation based on exclusion from Medicare program after Federal fraud conviction); *Stanley Dubin, D.D.S.*, 61 FR 60727 (1996) (revocation for exclusion from Federal health programs after State fraud conviction).

In sum, the facts of this matter are unique and the cases cited by Respondent simply do not demonstrate that the recommended action is a departure from agency practice and policy or was rendered either arbitrarily or capriciously.

Respondent also contends in numerous exceptions that the Administrative Law Judge’s ruling “failed to take into account” or “ignores” or “disregards” or “erroneously discounted” or “failed to credit” or “refused to consider” or “placed improper emphasis” on certain evidence in reaching her findings and recommendations. These include: Respondent’s degree of contrition and acceptance of responsibility; the opinions of several witnesses as to Respondent’s prescribing activities; his monitoring of the physician assistant at the secondary clinic; his post-incarceration medical education; his value to the local, humanitarian efforts and opinions of charter witnesses; his professed intended limited use of the registration were it to be granted; the nature of his current and intended medical practice; and the adverse impact denying registration will have upon Respondent and his practice.

The Opinion and Recommended Ruling clearly demonstrates that the Administrative Law Judge admitted and carefully considered Respondent’s evidence on all of the foregoing issues. While Respondent would prefer Judge Bittner arrived at a different outcome, his objectives are really just a re-argument as to the weight which should be assigned certain testimony and documentary evidence introduced during the hearing and the credibility which the fact finder should give Respondent’s explanations for his misrepresentations, the extent and sincerity of his remorse and his acceptance of personal responsibility. Given the record supporting Judge Bittner’s conclusions, these arguments are insufficient to alter the outcome.

Finally, in the letter received by the Deputy Administrator after the Opinion and Recommended Ruling was transmitted to this office by Judge Bittner, Respondent notes recent changes in TennCare Products which

will have the effect of limiting his ability to prescribe even non-controlled substances for TennCare patients, should DEA registration be denied. He submits this “hardship could neither have been intended, nor anticipated by Judge Bittner’s Report.”

However, while this particular consequence was not addressed at the hearing, when Judge Bittner recommended denial she was well aware of the multiple hardships befalling any physician denied DEA registration. She was also aware of numerous specific hardships that would impact Respondent and practice, were the application denied. Nevertheless, these consequences were insufficient for Judge Bittner to warrant recommending the application be granted and the Deputy Administrator does not consider the additional information on adverse collateral consequences sufficient to alter the conclusion that registration would not be in the public interest.

The Deputy Administrator has examined the record and finds that the facts and credibility determinations of Judge Bittner are well supported by the evidence. Respondent materially falsified his application for DEA registration and has been excluded from participating in Federal health care programs for fifteen years, both of which constitute independent grounds for denying registration. It has also been sufficiently established that Respondent’s registration would not be in the public’s interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b), and 0.104, hereby orders the Respondent’s pending application for registration be, and it hereby is, denied. This order is effective December 29, 2004.

Dated: November 10, 2004.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. 04–26310 Filed 11–26–04; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Prachi Enterprises, Inc.; Denial of Registration

On July 23, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Prachi Enterprises, Inc. (Prachi) proposing to deny its September 9, 2003, application for DEA

Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting Prachi's application would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h) and 824(a). The order also notified Prachi that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Prachi at its proposed registered location at 1516 Kalamazoo Drive, Suite 5A, Griffin, Georgia 30224. It was received on August 2, 2004, and DEA has not received a request for a hearing or any other reply from Prachi or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) Thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concluded that Prachi has waived its hearing right. *See Aquil Enterprises*, 67 FR 12576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53 (c) and (d) and 1316.67. The Deputy Administrator finds as follows.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. As noted in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a persistent and growing problem in the United States. *See e.g., Direct Wholesale*, 69 FR 11654 (2004); *Branex, Inc.*, 69 FR 8682 (2004); *Yemen Wholesale Tobacco and Candy Supply, Inc.*, 67 FR 9997 (2002); *Denver Wholesale*, 67 FR 99986 (2002).

The Deputy Administrator's review of the investigative file reveals that on or about September 9, 2003, an application was submitted by an officer of Prachi, Mr. Ashish Patel, seeking registration to distribute ephedrine, pseudoephedrine and phenylpropanolamine list I chemical products. Subsequently Mr. Patel notified DEA the company did not intend to sell any products containing phenylpropanolamine.

In connection with the pending application, an on-site pre-registration investigation was conducted. Mr. Patel advised investigators that Prachi was a

wholesale distributor of over-the-counter items to convenience stores, liquor stores, gas stations and grocery stores. He proposed to sell Mini-Thins and Max-Brand pseudoephedrine and Two-Way products, but was unable to articulate any other intended products containing listed chemicals the company might sell. He also failed to provide DEA with a requested list of intended products. He furthermore failed to provide DEA with a list of intended customers for the list I chemical products, although he had 350 customers purportedly awaiting his registration. DEA was unable to conduct customer verifications without that information.

DEA is aware that small illicit laboratories operate with listed chemical products often procured, legally or illegally, from non-traditional retailers of over-the-counter drug products, such as gas stations and small retail markets. Some retailers acquire product from multiple distributors to mask their acquisition of large amounts of listed chemicals. In addition, some individuals utilize sham corporations or fraudulent records to establish a commercial identity in order to acquire listed chemicals.

The illegal production of methamphetamine continues unabated within the Southwest region. The adjacent State of Tennessee leads the region in the number of clandestine laboratories seized, accounting for approximately 50 percent of the clandestine laboratories seized during the second quarter of 2002. When compared with the third quarter of 2001, the increase in clandestine laboratory seizures is notable.

According to records for the DEA Atlanta region, 360 clandestine laboratories were seized during the third quarter of 2002. Of these, 207 were located in Tennessee, 103 in Georgia, 35 in South Carolina and 15 in North Carolina. In Georgia, there has been a consistent increase in the number of illicit laboratories and enforcement teams continue to note a trend toward smaller capacity laboratories. This is likely due to the ease of concealment associated with smaller laboratories, which continue to dominate seizures and cleanup responses.

The adjacent State of Florida has a substantial methamphetamine abuse problem in Northeast and Central Florida, and DEA is aware of a past history of trafficking in precursors in these areas. Distributors or retailers serving in the illicit methamphetamine trade observe no borders. In fact, where precursor laws are stringent, out-of-state distributors often make direct shipments

to retailers without observing state requirements.

DEA knows by experience that there exists a "gray market" in which certain high strength, high quantity pseudoephedrine; and ephedrine products are distributed only to convenience stores and gas stations, from where they have a high incidence of diversion. These grey market products are not sold in large discount stores, retail pharmacies or grocery stores, where sales of therapeutic over-the-counter drugs predominate. Mini-Thins and Max Brand products are prime products in this gray market industry and are rarely found in any retail store serving the traditional therapeutic market.

DEA also knows from industry data, market studies and statistical analysis that over 90% of over-the-counter drug remedies are sold in drug stores, supermarket chains and "big box" discount retailers. Less than one percent of cough and cold remedies are sold in gas stations or convenience stores. Studies have indicated that most convenience stores could not be expected to sell more than \$20.00 to \$40.00 worth of products containing pseudoephedrine per month. The expected sales of ephedrine products are known to be even smaller. Convenience stores handling gray market products often order more product than what is required for the legitimate market and obtain chemical products from multiple distributors.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination

of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g., Energy Outlet*, 64 FR 14269 (1999). *See also, Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

The Deputy Administrator finds factors four and five relevant to the pending application for registration.

With regard to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant based on Mr. Patel's lack of knowledge and experience regarding the laws and regulations governing handling of list I chemical products. In prior DEA decisions, this lack of experience in handling list I chemical products has been a factor in denying pending applications for registration. *See, e.g., Direct Wholesale, supra*, 69 FR 11654; *ANM Wholesale*, 69 FR 11652 (2004); *Xtreme Enterprises, Inc.*, 67 FR 76195 (2002).

With regard to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor weighs heavily against granting the application. Unlawful methamphetamine use is a growing public health and safety concern throughout the United States and Southeast. Ephedrine and pseudoephedrine are precursor products needed to manufacture methamphetamine and operators of illicit methamphetamine laboratories regularly acquire the precursor products needed to manufacture the drug from convenience stores and gas stations which, in prior DEA decisions, have been identified as constituting the grey market for list I chemical products. It is apparent that Prachi intends on being a participant in this market.

While there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found these establishments serve as sources for the diversion of large amounts of listed chemical products. *See, e.g., ANM Wholesale, supra*, 69 FR 11652; *Xtreme Enterprises, Inc., supra*, 67 FR 76195; *Sinbad Distributing*, 67 FR 10232 (2002); *K.V.M. Enterprises*, 67 FR 70968 (2002).

The Deputy Administrator has previously found that many considerations weighed heavily against registering a distributor of list I chemicals because, "[v]irtually all of the Respondent's customers, consisting of gas station and convenience stores, are considered part of the grey market, in

which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine." *Xtreme Enterprises, Inc., supra*, 67 FR at 76197. As in *Xtreme Enterprises, Inc.*, Mr. Patel's lack of a criminal record and stated intent to comply with the law and regulations are far outweighed by his lack of experience and the company's intent to sell ephedrine and pseudoephedrine exclusively to the gray market.

The Deputy Administrator is further troubled by Mr. Patel's reticence to provide requested information to DEA, indicating his company cannot be trusted to handle the responsibilities of a registrant.

Based on the foregoing, the Deputy Administrator concludes that granting the pending application would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 823 and 28 CFR 0.100(b) and 0.104, hereby orders the pending application for DEA Certificate of Registration, previously submitted by Prachi Enterprises, Inc., be, and it hereby is, denied. This order is effective December 29, 2004.

Dated: November 10, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04-26311 Filed 11-26-04; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Volusia Wholesale; Denial of Registration

On July 23, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Volusia Wholesale (Volusia) proposing to deny its December 12, 2003, application for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting Volusia's application would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h). The order also notified Volusia that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Volusia at its then-proposed registered location at 917 Daytona Avenue, Daytona Beach,

Florida 32117. It was received on August 2, 2004, and DEA has not received a request for a hearing or any other reply from Volusia or anyone purporting to represent the company in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days have passed since delivery of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Volusia has waived its hearing right. *See Aqui Enterprises*, 67 FR 12576 (2002). After considering relevant material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67. The Deputy Administrator finds as follows.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. As noted in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a persistent and growing problem in the United States. *See e.g., Direct Wholesale*, 69 FR 11654 (2004); *Branex, Inc.*, 69 FR 8682 (2004); *Yemen Wholesale Tobacco and Candy Supply, Inc.*, 67 FR 9997 (2002); *Denver Wholesale*, 67 FR 99986 (2002).

The Deputy Administrator's review of the investigative file reveals that on or about September 9, 2003, an application was submitted by the owner of Volusia, Mr. Anwar Khrino, seeking registration to distribute ephedrine and pseudoephedrine list I chemical products. The application initially listed the proposed registered location as Mr. Khrino's then-residence, 1420 N. Grandview Avenue, Daytona Beach, Florida 32118. He subsequently moved to 917 Daytona Avenue, Daytona Beach, Florida 32117, which was to be Volusia's registered address.

In connection with the pending application, an on-site pre-registration investigation was conducted at the Daytona Avenue proposed premises. The location was Mr. Khrino's residence. There were no security measures in place and his intent was to store the chemical products overnight in a locked delivery van in the driveway.

Mr. Khrino advised investigators Volusia is a sole proprietorship and wholesale distributor of approximately 60 to 80 sundry and novelty items to convenience stores and gas stations. He proposed to distribute "two packs" of

six different cough and cold remedies containing pseudoephedrine.

Mr. Khrino identified two proposed suppliers of listed chemicals, one of which DEA was aware no longer held a DEA registration to handle listed chemicals. Mr. Khrino initially failed to provide DEA a complete proposed customer list for listed chemical products. Later, he sent DEA a handwritten list of 13 purported customers for listed chemicals. DEA conducted two verifications of purported customers. At the first convenience store, investigators were told the store was not a customer of Volusia. Investigators also noted the store was displaying the combination ephedrine, Mini-thins product on its counter. Investigators were unable to locate the second purported customers, a delicatessen. There was no such retailer at the address provided by Mr. Khrino and the contact number for this "customer" turned out to be Volusia's fax machine.

The State of Florida has a substantial methamphetamine abuse problem in Northeast and Central Florida, and DEA is aware of a past history of trafficking in precursors in these areas. Distributors or retailers serving in the illicit methamphetamine trade observe no borders and trade across state lines. In fact, where precursor laws are stringent, out-of-state distributors often make direct shipments to retailers without observing state requirements.

DEA is aware that small illicit laboratories operate with listed chemical products often procured, legally or illegally, from non-traditional retailers of over-the-counter drug products, such as gas stations and small retail markets. Some retailers acquire product from multiple distributors too mask their acquisition of large amounts of listed chemicals. In addition, some individuals utilize sham corporations or fraudulent records to establish a commercial identity in order to acquire listed chemicals.

In the adjacent State of Georgia, there has been a consistent increase in the number of illicit laboratories and enforcement teams continue to note a trend toward smaller capacity laboratories. This is likely due to the ease of concealment associated with smaller laboratories, which continue to dominate seizures and cleanup responses.

DEA knows by experience that there exists a "gray market" in which certain high strength, high quantity pseudoephedrine and ephedrine products are distributed only to convenience stores and gas stations, from where they have a high incidence

of diversion. These grey market products are not sold in large discount stores, retail pharmacies or grocery stores, where sales of therapeutic over-the-counter drugs predominate. Mini-Thins and "two-way" products and other pseudoephedrine products are prime products in this gray market industry and are rarely found in any retail store serving the traditional therapeutic market.

DEA also knows from industry data, market studies and statistical analysis that over 90% of over-the-counter drug remedies are sold in drug stores, supermarket chains and "big box" discount retailers. Less than one percent of cough and cold remedies are sold in gas stations or convenience stores. Studies have indicated that most convenience stores could not be expected to sell more than \$20.00 to \$40.00 worth of products containing pseudoephedrine per month. The expected sales of ephedrine products are known to be even smaller. Furthermore, convenience stores handling gray market products often order more product than what is required for the legitimate market and obtain chemical products from multiple distributors.

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires that the following factors be considered in determining the public interest:

- (1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;
- (2) Compliance with applicable Federal, State and local law;
- (3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;
- (4) Any past experience of the applicant in the manufacture and distribution of chemicals; and
- (5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g., Energy Outlet*, 64 FR 14269 (1999). *See also,*

Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Deputy Administrator finds factors one, four and five relevant to the pending application for registration.

As to factor one, maintenance of effective controls against diversion of listed chemicals into other than legitimate channels, the DEA pre-registration inspection documented inadequate security at the proposed registered location, which is a personal residence. *See, e.g., John E. McRae d/b/a J & H Wholesale*, 69 FR 51480, 51481 (2004). Mr. Khrino has proposed the storage of listed chemical products inside a van that is routinely parked in the driveway of his residence. As the Deputy Administrator has previously held, "the prospect of listed chemicals being stored in an unattended vehicle [is] fraught with the dangers of diversion." *See, William E. "Bill" Smith d/b/a B & B Wholesale*, 69 FR 22559, 22560 (2004). Accordingly, this factor weighs against the granting of Volusia's pending registration application.

With regard to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant based on Mr. Khrino's lack of knowledge and experience regarding the laws and regulations governing handling of list I chemical products. In prior DEA decisions, this lack of experience in handling list I chemical products has been a factor in denying pending applications for registration. *See, e.g., Direct Wholesale, supra*, 69 FR 11654; *ANM Wholesale*, 69 FR 11652 (2004); *Xtreme Enterprises, Inc.*, 67 FR 76195 (2002).

With regard to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor weighs heavily against granting the application. Unlawful methamphetamine use is a growing public health and safety concern throughout the United States and the Southeast. Ephedrine and pseudoephedrine are precursor products needed to manufacture methamphetamine and operators of illicit methamphetamine laboratories regularly acquire the precursor products needed to manufacture the drug from convenience stores and gas stations which, in prior DEA decisions, have been identified as constituting the grey market for list I chemical products. It is apparent that Volusia intends on being a participant in this market.

While there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found

these establishments serve as sources for the diversion of large amounts of listed chemical products. See, e.g., *ANM Wholesale supra*, 69 FR 11652; *Xtreme Enterprises, Inc., supra*, 67 FR 76195; *Sinbad Distributing*, 67 FR 10232 (2002); *K.V.M. Enterprises*, 67 FR 70968 (2002).

The Deputy Administrator has previously found that many considerations weighed heavily against registering a distributor of list I chemicals because, "[v]irtually all of the Respondent's customers, consisting of gas station and convenience stores, are considered part of the grey market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine." *Xtreme Enterprises, Inc., supra*, 67 FR at 76197. As in *Xtreme Enterprises, Inc.*, Mr. Khrino's lack of a criminal record and intent to comply with the law and regulations are far outweighed by his lack of experience and the company's intent to sell ephedrine and pseudoephedrine exclusively to the gray market.

The Deputy Administrator is further troubled by Mr. Khrino's failure to provide accurate information to DEA, indicating his company cannot be trusted to handle the responsibilities of a registrant.

Based on the foregoing, the Deputy Administrator concludes that granting the pending application would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders the pending application for DEA Certificate of Registration, previously submitted by Volusia Wholesale, be, and it hereby is, denied. This order is effective December 29, 2004.

Dated: November 10, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04-26312 Filed 11-26-04; 8:45 am]

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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 a provision of the Paperwork Reduction Act of 1995 at 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 and Training Administration (ETA) is soliciting comments concerning the proposed extension of the State Quality Service Plan (SQSP).

Guidelines for completion and submittal of the SQSP are contained in ETA Handbook 336, 17th Edition. Fiscal year-specific information such as Federal program emphasis, or additional budget allocations, will be provided annually in an implementation directive that will initiate the planning process each year. The requirements of the reporting and data collection process itself will remain unchanged from year to year. Copies of the SQSP Handbook may be obtained by contacting the addressee below. The Handbook is also available on the Internet at <http://www.workforcesecurity.doleta.gov>.

DATES: Submit comments on or before January 28, 2005.

ADDRESSES: Send comments to Delores A. Mackall, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-4231, Washington, DC 20210, (202) 693-3183 (this is not a toll-free number); fax, (202) 693-3975; Internet: mackall.delores@dol.gov.

FOR FURTHER INFORMATION CONTACT: Delores A. Mackall, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-4231, Washington, DC 20210, (202) 693-3183 (this is not a toll-free number); fax, (202) 693-3975; Internet: mackall.delores@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The SQSP is the planning instrument for the Unemployment Insurance (UI) system nationwide. The statutory basis for the SQSP is Title III of the Social Security Act, which establishes conditions for each State to receive grant funds to administer its UI program. Plans are prepared annually, since funds for UI operations are appropriated each year. ETA's annual budget request for State UI operations contains workload assumptions for

which a State must plan in order for the Secretary of Labor to carry out her responsibilities under Title III. ETA issues financial planning targets based on the budget request. States make plans based on these assumptions and targets.

II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the proposed extension collection of the UI SQSP. The Department 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.

A copy of the proposed ICR can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

ETA proposes to extend this clearance which contains a reduction in burden hours. The reduction in hours is a result of changes to the SQSP which stemmed from a 5-year review of UI Performs. The number of measures for which a state is held accountable has been reduced; however, the average number of corrective action plans that states must submit for not meeting the criteria has increased. States are no longer required to submit continuous improvement plans. The SQSP narrative has been streamlined to exclude previously required Focus narratives. Additionally, states will no longer be required to address environmental factors, such as economic conditions, political climate, labor/business relationships, or state legislative issues. States will describe in a single narrative: performance in comparison to the Government Performance Results Act (GPRA) goals; results of customer satisfaction surveys, which is optional; and actions planned to correct deficiencies regarding program reviews,

DEPARTMENT OF LABOR

Employment and Training Administration

State Quality Service Plan (SQSP); Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden

reporting requirements, and the Benefits Accuracy Measurement (BAM), Tax Performance System (TPS), and Data Validation (DV) programs. States are requested to submit the SQSP and the required signature page electronically.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Unemployment Insurance State Quality Service Plan (SQSP)

OMB Number: 1205-0132.

Affected Public: State Workforce Agencies (SWAs).

Total Respondents: 53.

Frequency: Annually.

Average Time per Response: 3.14 hours.

Estimated Total Burden Hours: 1829 hours.

Estimated Total Burden Cost: \$0.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E4-3355 Filed 11-26-04; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

Information Regarding the Relocation of Foreign Labor Certification Staff in the Dallas and Philadelphia Regional Offices to the Dallas and Philadelphia Backlog Processing Centers and Information Regarding H-1B and H-1B1 Case Processing

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is issuing this notice to announce that DOL has moved its Foreign Labor Certification field staff in the Dallas and Philadelphia Regional Offices to the new Dallas and Philadelphia Backlog Processing Centers. This notice provides the public in the Dallas and Philadelphia regions with contact information regarding these two new processing centers. All foreign labor certification processing activities previously conducted in the Dallas or Philadelphia Regional Offices will now be assumed by the corresponding Dallas or Philadelphia Backlog Processing Center.

The Backlog Processing Centers shall continue these functions on an interim basis and ETA shall publish a **Federal Register** notice in the near future providing guidance as to the handling of backlogged cases with the State Workforce Agencies (SWAs).

Employers should continue, until ETA publishes future guidance on this issue, to file applications for H-2B and H-2A, as well as applications for permanent labor certification with the appropriate SWA, which will, in turn, forward materials to the appropriate Backlog Processing Center.

Effective November 30, 2004, H-1B and H-1B1 filings must use a new form, as discussed below.

FOR FURTHER INFORMATION CONTACT:

William Carlson, Chief, Division of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210; Telephone: (202) 693-3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Dallas and Philadelphia Backlog Processing Centers partially opened September 27, 2004 and have assumed the responsibility for processing Applications for Alien Employment Certification (ETA Form 750) for Permanent Employment, and H2-A, and H2-B applications previously processed by ETA's Dallas or Philadelphia Regional Offices. H-1B and H-1B1 program notice: A new version of the form ETA 9035, Labor Condition Application (LCA), will be required, to be used as of November 30, 2004 for both H-1B and H-1B1 filings. The new form incorporates the distinction between H-1B and H-1B1 Singapore and H-1B1 Chile programs, updates OMB approval information, and removes the "Government Use Only" section. Starting on approximately November 15, 2004, H-1B and H-1B1 filings using the revised ETA Form 9035 will be accepted at the existing Application Processing Center address and fax number set forth below. The new form will be available for use on the LCA Online Web site (<http://www.lca.doleta.gov>). As of November 30, 2004, the new ETA Form 9035 *must* be used by both H-1B and H-1B1 filers, and the H-1B1 applications for Singapore and Chile will no longer be accepted at the Washington, DC, address previously included in H-1B1 program instructions.

The H1-B and H-1B1 address and fax number are: ETA Application Processing Center, P.O. Box 13640, Philadelphia, PA 19101, Fax: 800-397-0478.

This notice does not affect the pending proposal to streamline procedures for permanent labor certification under 20 CFR part 656, which was published in the **Federal Register** on May 6, 2002.

ADDRESSES: The following new addresses, phone numbers, and fax numbers should be used by employers and by State Workforce Agencies for either inquiries or for the forwarding of application materials, as appropriate.

Please note: For all application materials, inquiries, and other correspondence sent to either the Dallas or Philadelphia Backlog Processing Center, envelopes should be clearly marked according to the appropriate program type, *i.e.*, Permanent, H2-A or H2-B.

Dallas Backlog Processing Center
Address: ETA/DFLC Backlog Processing Center, U.S. Department of Labor, 700 North Pearl Street, Suite 400 N, Dallas, TX 75201, Phone: 214-237-9111, Fax: 214-237-9135.

Philadelphia Backlog Processing Center
Address: ETA/DFLC Backlog Processing Center, U.S. Department of Labor, 1 Belmont Avenue, Suite 200, Bala Cynwyd, PA 19004, Phone: 484-270-1500, Fax: 484-270-1600.

Signed in Washington, DC, this 19th day of November, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E4-3352 Filed 11-26-04; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based on the petitioner's statements,

comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term FR Notice appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. For further information contact Barbara Barron at (202) 693-9447.

Dated at Arlington, Virginia this 19th day of November 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M-2003-015-C.

FR Notice: 68 FR 15245.

Petitioner: Mettiki Coal, LLC.

Regulation Affected: 30 CFR 75.1325(c).

Summary of Findings: Petitioner's proposal is to conduct blasting in certain locations on the longwall face of the Mettiki Mine without always requiring all miners to leave the face to go to an area that is around at least one corner from the blasting area. The blasting will be conducted at longwall faces at locations more than 200 feet inby the headgate. This is considered an acceptable alternative method for the Mettiki Mine. MSHA grants the petition for modification for the Mettiki Mine with conditions.

Docket No.: M-2003-062-C.

FR Notice: 68 FR 57932.

Petitioner: Tito Coal.

Regulation Affected: 30 CFR 75.1002(a).

Summary of Findings: Petitioner's proposal is to use non-permissible electric equipment such as drags and battery locomotives within 150 feet of the pillar line due in part to the method of mining used in anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. This is considered an acceptable alternative method for the Whites Vein Slope Mine. MSHA grants the petition for

modification for the use of non-permissible battery-powered locomotives and associated non-permissible electric components located within 150 feet from pillar workings for the Whites Vein Slope Mine with conditions.

Docket No.: M-2003-077-C.

FR Notice: 68 FR 64129.

Petitioner: Consolidation Coal Company.

Regulation Affected: 30 CFR 75.507.

Summary of Findings: Petitioner's proposal is to install non-permissible submersible pumps in bleeder and return entries and sealed areas of the Robinson Run No. 95 Mine. This is considered an acceptable alternative method for the Robinson Run No. 95 Mine. MSHA grants the petition for the use of low- and medium-voltage, three-phase, alternating-current submersible pump(s) installed in return and bleeder entries and sealed areas in the Robinson Run No. 95 Mine with conditions.

Docket No.: M-2003-086-C.

FR Notice: 68 FR 67218.

Petitioner: Genwal Resources, Inc.

Regulation Affected: 30 CFR 75.1101-8.

Summary of Findings: Petitioner's proposal is to use a water sprinkler system that consists of a single overhead pipe system with automatic sprinklers located not more than 10 feet apart so that the water discharged from the sprinklers will cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt adjacent to the belt drive. In addition, automatic sprinklers would be located not more than 10 feet apart so that the water discharged from the sprinkler(s) will cover the drive motor(s), belt take-up electrical controls, and gear reducing unit for each belt drive. This is considered an acceptable alternative method for the South Crandall Canyon Mine. MSHA grants the petition for modification for use of a single overhead pipe sprinkler system with conditions.

Docket No.: M-2003-088-C.

FR Notice: 68 FR 67218.

Petitioner: D & D Coal Company.

Regulation Affected: 30 CFR 75.311(b)(2) and (b)(3).

Summary of Findings: Petitioner's proposal is to permit electrical circuits entering the underground mine to remain energized to the mine's de-watering pumps while the mine ventilation fan is intentionally stopped during idle shifts while no miners are underground in its Primrose Slope Anthracite mine. This is considered an acceptable alternative method for the Primrose Slope Mine. MSHA grants the petition for modification for the Primrose Slope Mine with conditions.

Docket No.: M-2003-090-C.

FR Notice: 68 FR 67218.

Petitioner: Kingwood Mining Company, LLC.

Regulation Affected: 30 CFR 75.503 (30 CFR 18.35).

Summary of Findings: Petitioner's proposal is to use #4 A.W.G. and #2 A.W.G. portable trailing cables up to a maximum length of 750 feet to supply 575-volt, three phase, alternating current to roof bolting machines and shuttle cars under specific terms and conditions. This is considered an acceptable alternative method for the Whitetail Kittanning Mine. MSHA grants the petition for modification for 750-foot trailing cables from the power center to roof bolting machines and shuttle cars during the continuous mining cycle development on larger center pillars for the Whitetail Kittanning Mine with conditions.

Docket No.: M-2003-096-C.

FR Notice: 69 FR 3947.

Petitioner: Knott County Mining Company.

Regulation Affected: 30 CFR 75.900.

Summary of Findings: Petitioner's proposal is to use contactors for undervoltage protection in lieu of using the required circuit breakers under specific terms and conditions. This is considered an acceptable alternative method for the Mine 582. MSHA grants the petition for modification to allow the use of contactors to provide undervoltage and grounded phase and to monitor the grounding conductors for low-voltage power circuits serving the five Horsepower or greater, three-phase alternating current belt drive(s) and pump(s) located in the Mine 582 with conditions.

Docket No.: M-2003-097-C.

FR Notice: 69 FR 3948.

Petitioner: Knott County Mining Company.

Regulation Affected: 30 CFR 75.900.

Summary of Findings: Petitioner's proposal is to use contactors for undervoltage protection in lieu of using the required circuit breakers, and use an additional ground fault protection device for the affected circuits; to eliminate hazards caused by personnel rushing to the remote location to reset breakers; to make travelways safer and to eliminate the risks that miners will have to take out of a sense of urgency to resume production. This is considered an acceptable alternative method for the Puncheon Branch Mine. MSHA grants the petition for modification to allow the use of contactors to provide undervoltage, grounded phase, and monitor the grounding conductors for low-voltage power circuits serving five Horsepower

or greater three-phase alternating current belt drive(s) and pump(s) located in the Puncheon Branch Mine with conditions.

Docket No.: M-2004-018-C.

FR Notice: 69 FR 27955.

Petitioner: Dakota Westmoreland Corporation.

Regulation Affected: 30 CFR 77.1607(u).

Summary of Findings: Petitioner's proposal is to use a portable hydraulic unit (power pack) to tow large trucks in lieu of using a tow bar and safety chain; provide training to operators and mechanics to perform the installations of the pack; and if anything fails, automatically set up haul truck brakes and stop all towing procedures. This is considered an acceptable alternative method for the Beulah Mine. MSHA grants the petition for modification for the Beulah Mine with conditions.

Docket No.: M-2004-021-C.

FR Notice: 69 FR 30726.

Petitioner: Spartan Mining Company.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal is to transfer high-voltage, 2,400-volt continuous miner equipment from one mine to another mine within the Spartan Mining Company; and to provide training on high-voltage safety, testing, and maintenance procedures to all personnel who perform maintenance on the high-voltage continuous miner system, and who work in proximity to high-voltage equipment or cable(s), before the proposed alternative method is implemented. This is considered an acceptable alternative method for the Laurel Creek Coalburg mine. MSHA grants the petition for modification for the Laurel Creek Coalburg Mine with conditions.

Docket No.: M-2004-026-C.

FR Notice: 69 FR 43628.

Petitioner: Ohio County Coal Company.

Regulation Affected: 30 CFR 75.1103-4(a).

Summary of Findings: Petitioner's proposal is to install a carbon monoxide monitoring system as an early warning fire detection system near the center and in the upper third of the belt entry in a location that would not expose personnel working on the system to unsafe situations under specific terms and conditions. This is considered an acceptable alternative method for the Big Run Underground Mine. MSHA grants the petition for modification for the use of a carbon monoxide monitoring system that identifies the location of sensors in lieu of identifying belt flights at the Big Run Underground Mine with conditions.

Docket No.: M-2004-034-C.

FR Notice: 69 FR 46186.

Petitioner: Warrior Coal, LLC.

Regulation Affected: 30 CFR 75.1103-4(a).

Summary of Findings: Petitioner's proposal is to install a low-level carbon monoxide detecting system as an early warning fire detection system in all belt entries where a monitoring system identifies a sensor location in lieu of identifying each belt flight. This is considered an acceptable alternative method for the Cardinal Mine. MSHA grants the petition for modification for the use of a carbon monoxide system that identifies the location of sensors in lieu of identifying belt flights for the Cardinal Mine with conditions.

Docket No.: M-2004-036-C.

FR Notice: 69 FR 51863.

Petitioner: Warrior Coal, LLC.

Regulation Affected: 30 CFR 75.1101-1(b).

Summary of Findings: Petitioner's proposal is to use the deluge-type water spray systems installed at belt-conveyor drives in lieu of blow-off dust covers for nozzles; and train a person on testing procedures specific to the deluge-type water spray fire suppression system who will once every 7 days (1) conduct a visual examination of each deluge-type water spray fire suppression system, (2) conduct a functional test of the deluge-type water spray fire suppression system by actuating the system and observing its performance, (3) record results of the examinations and test in a book maintained on the surface and made available to interested parties, and (4) immediately correct any malfunction or clogged nozzle that is detected during examination and test. This is considered an acceptable alternative method for the Cardinal Mine. MSHA grants the petition for modification for use of the deluge-type water spray systems installed at belt-conveyor drives in lieu of blow-off dust covers for nozzles at the Cardinal Mine with conditions.

Docket No.: M-2004-006-M.

FR Notice: 69 FR 35686.

Petitioner: Penn Big Bed Slate Company, Inc.

Regulation Affected: 30 CFR 56.19012.

Summary of Findings: Petitioner's proposal is to use oversized grooves on the crane drums. The drum grooves are 3/4-inch and Penn Slate uses 5/8-inch wire rope on all of their hoists. The 5/8-inch wire ropes have been used on these drums for more than 70 years and the hoists have operated with no reported accidents or injuries. The hoists transport miners into the pit, and blocks of slate out of the pit. The average slate

block weighs up to 7 tons. The petitioner alleges that the 5/8-inch wire rope does not flatten or restrict the cable. Each year, 30 to 65 feet of wire rope is cut off the working end of the wire rope to ensure that it is safe for continued service. Only during the last year of service is the cable in the grooves used to operate the hoists. This is considered an acceptable alternative method for the Manhattan Quarry Penn Big Bed Mine. MSHA grants the petition for modification for the Manhattan Quarry Penn Big Bed Mine with conditions.

[FR Doc. 04-26279 Filed 11-26-04; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. J & J Coal Company

[Docket No. M-2004-046-C]

J & J Coal Company, 678 Main Street, Goodspring, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.335 (Construction of seals) to its Rocky Top Mine (MSHA I.D. No. 36-09072) located in Schuylkill County, Pennsylvania. Petitioner proposes constructing seals from wooden materials of moderate size and weight; designing the seals to withstand a static horizontal pressure in the range of 10 psi; and installing a sampling tube only in the monkey (higher elevation) seal. The petitioner asserts that because of the pitch of anthracite veins, concrete blocks are difficult to use and expose miners to safety hazards during transport. The petitioner cites the low level of explosibility of anthracite coal dust and the minimal potential for either an accumulation of methane in previously mined pitching veins or an ignition source in the gob area as justification for the proposed 10 psi design criterion. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Arclar Company, LLC

[Docket No. M-2004-047-C]

Arclar Company, LLC, 420 Long Lane Road, Equality, Illinois 62934 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible

diesel-powered equipment; design and performance requirements) to its Willow Lake Mine (MSHA I.D. No. 11-030054) located in Saline County, Illinois. The petitioner proposes to operate its Getman RDG-1504S Road Builder as it was originally designed, without front wheel brakes. The petitioner states that the Getman Road Builder has six (6) wheels and a dual brake system on the four (4) rear wheels and is designed to prevent a loss of braking due to a single component failure. In addition, the petitioner will limit the speed of the equipment to 10 miles per hour; provide training to the operators to recognize appropriate speeds for different road conditions and slopes; and provide training for the operators to lower the grader blade to provide additional stopping capability. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Unimin Corporation

[Docket No. M-2004-009-M]

Unimin Corporation, 258 Elm Street, New Canaan, Connecticut 06840 has filed a petition to modify the application of 30 CFR 56.13020 (Use of compressed air) to its Marston Plant (MSHA I.D. No. 31-01518) located in Richmond County, North Carolina. The petitioner proposes to implement a clothes cleaning booth process that has been jointly developed with and successfully tested by the National Institute for Occupational Safety and Health (NIOSH), for the use of controlled compressed air for cleaning miners' dust laden clothing. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: <http://www.regulations.gov>; e-mail: Comments@MSHA.gov; Fax: (202) 693-9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before December 29, 2004. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 22nd day of November 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04-26280 Filed 11-26-04; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 04-130]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Kathy Shaeffer, Mail Code V, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Code V, Washington, DC 20546, (202) 358-1230, kshaeff1@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that is used to ensure the proper disposition of rights to inventions made in the course of NASA-funded research. With this collection NASA tracks all inventions that are disclosed by grant recipients.

II. Method of Collection

NASA utilizes paper and electronic methods to collect information from grant recipients.

III. Data

Title: Patents—Grants and Cooperative Agreements.

OMB Number: 2700-0048.

Type of Review: Revision of a currently approved collection.

Affected Public: Not-for-profit institutions; Business or other for-profit; State, Local, or Tribal Government.

Estimated Number of Respondents: 8,128.

Estimated Time Per Response: Ranges from 1/3 hour to 8 hours per response.

Estimated Total Annual Burden Hours: 15,137.

Estimated Total Annual Cost: \$0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 04-26313 Filed 11-26-04; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 04-131]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Kathy Shaeffer, Mail

Code V, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Code V, Washington, DC 20546, (202) 358-1230, kshaeff1@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that is used to ensure the proper disposition of rights to inventions made in the course of NASA-funded research. This information is required to monitor contract compliance in support of NASA's mission and in response to procurement requirements.

II. Method of Collection

NASA utilizes paper and electronic methods to collect information from collection respondents.

III. Data

Title: NASA FAR Supplement, Part 1827, Patents, Data, & Copyrights.

OMB Number: 2700-0052.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Estimated Number of Respondents: 2,351.

Estimated Time Per Response: Ranges from ½ hour to 8 hours per response.

Estimated Total Annual Burden

Hours: 8,603.

Estimated Total Annual Cost: \$0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB

approval of this information collection. They will also become a matter of public record.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 04-26314 Filed 11-26-04; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 04-132]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Kathy Shaeffer, Mail Code V, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Code V, Washington, DC 20546, (202) 358-1230, kshaeff1@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that is used to help NASA to assess the services provided by its procurement offices.

II. Method of Collection

NASA uses electronic methods to collect information from collection respondents.

III. Data

Title: NASA Procurement Customer Survey.

OMB Number: 2700-0101.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 1,000.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden

Hours: 125.

Estimated Total Annual Cost: \$0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 04-26315 Filed 11-26-04; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04-129]

Return to Flight Task Group; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the Return to Flight Task Group (RTF TG).

DATES: Thursday, December 16, 2004, from 7 a.m. until Noon. Central Standard Time.

ADDRESSES: The Marshall Institute, 14205 Cochran Road, Building 700, Huntsville, AL 35824.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent D. Watkins at (281) 792-7523.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

- Welcome remarks from Co-Chair
- Discussion of status of NASA's implementation of selected Columbia Accident Investigation Board Return to Flight recommendations
- Action item summary from Executive Secretary
- Closing remarks from Co-Chair

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Live audio of the public meeting will be available via the Internet at <http://returntoflight.org>.

P. Diane Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 04-26303 Filed 11-26-04; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[Docket NO. 50-170]

Notice of License Renewal Application for Facility Operating License; Armed Forces Radiobiology Research Institute

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application dated June 24, 2004, from the Armed Forces Radiobiology Research Institute (AFRRI), filed pursuant to Section 104c of the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR 50.51(a), to renew Operating License No. R-84 for the Armed Forces Radiobiology Research Institute TRIGA Mark-F reactor. AFRRI requested renewal of the license to authorize operation of the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for the AFRRI reactor (R-84) expired on August 1, 2004. In accordance with 10 CFR 2.109(a), the application for renewal was submitted at least 30 days prior to the expiration of the existing license, and therefore the existing license will not be deemed to have expired until the application has been finally determined. The reactor is located on the grounds of the National Naval Medical Center (NNMC), Bethesda, Maryland. The mission of AFRRI is to conduct scientific research in the field of radiobiology and related matters essential to the support of the Department of Defense. The acceptability of the tendered application

for renewal and other matters including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available electronically at NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> under accession number ML041800067. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Please note that on October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's Web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397-4209, (301) 415-4737 or by e-mail to: pdr@nrc.gov.

Dated at Rockville, Maryland, this 18th day of November 2004.

For the Nuclear Regulatory Commission.

Patrick M. Madden,

Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04-26242 Filed 11-26-04; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 and 50-318]

Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Notice of Consideration of Issuance of Amendment to Renewed Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Renewed Facility Operating License No. DPR-53 and No. DPR-69, issued to Calvert Cliffs Nuclear Power Plant, Inc. (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 located in Lusby, MD.

The proposed amendment would revise Technical Specification 3.9.4, "Shutdown Cooling (SDC) and Coolant Circulation-High Water Level," to incorporate the use of an alternate cooling method to function as a path for

decay heat removal when in Mode 6 with the refueling pool fully flooded. The spent fuel pool cooling system is the alternative cooling method intended to be used as a substitute for the SDC system during the refueling operations, including during fuel movement.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. (**NOTE:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with

particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express

mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by email to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to James M. Petro, Jr., Esquire, Counsel, Constellation Energy Group, Inc., 750 East Pratt Street, 5th floor, Baltimore, MD 21202, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated June 7, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, (301) 415-4737, or by e-mail to pdr@nrc.gov. (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.)

Dated in Rockville, Maryland, this 22nd day of November, 2004.

For the Nuclear Regulatory Commission.

Richard V. Guzman,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04-26243 Filed 11-26-04; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-123]

Notice of License Renewal Application for Facility Operating License, University of Missouri—Rolla

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application dated August 30, 2004, from the University of Missouri—Rolla (UMR), filed pursuant to Section 104c of the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR 50.51(a), to renew Operating License No. R-79 for the University of Missouri—Rolla Reactor (UMRR). UMR requested renewal of the license to authorize operation of the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for the UMRR (R-79) expires on January 14, 2005. In accordance with 10 CFR 2.109(a), the application for renewal was submitted at least 30 days prior to the expiration of the existing license, and therefore the existing license will not be deemed to have expired until the application has been finally determined. The reactor is located on the campus of the University of Missouri in the city of Rolla, Missouri. The UMRR is used for training of nuclear engineering students and other engineering and science students. It is also used for research by the UMR faculty, UMR graduate students, UMRR staff, and students and instructors from other colleges and universities in the Midwest. The acceptability of the tendered application for renewal and other matters including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

Copies of the application are available electronically at NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> under accession number ML042820116. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Please note that on October 25, 2004, the NRC terminated public access to ADAMS and initiated an

additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's Web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397-4209, (301) 415-4737 or by e-mail to: pdf@nrc.gov.

Dated at Rockville, Maryland, this 18th day of November 2004.

For the Nuclear Regulatory Commission.

Patrick M. Madden,

Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04-26241 Filed 11-26-04; 8:45 am]

BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on September 23, 2004, in Vol. 69, No. 184, page 57102, at which time a 60-day comment period was announced. This comment period ended November 22, 2004. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review, OMB control number 3420-0019, is summarized below.

DATES: Comments must be received within 30 calendar days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336-8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503; (202) 395-3897.

Summary Form Under Review

Type of Request: Revised form.

Title: Self Monitoring Questionnaire for Insurance & Finance Projects.

Form Number: OPIC-162.

Frequency of Use: Annually for duration of project.

Type of Respondents: Business or other institution (except farms); individuals.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 8.5 hours per project.

Number of Responses: 300 per year.

Federal Cost: \$23,919.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amend.

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: November 23, 2004.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 04-26298 Filed 11-26-04; 8:45 am]

BILLING CODE 3210-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on September 23, 2004, in Vol. 69, No. 184 FR 57102, at which time a 60-day comment period was announced. This comment period ended November 22, 2004. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form, OMB control number 3420-0023, under review is summarized below.

DATES: Comments must be received within 30 calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336-8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503; (202) 395-3897.

Summary Form Under Review

Type of Request: Revised form.

Title: Self-Monitoring Questionnaire for Investment Funds' Sub-Projects.

Form Number: OPIC-217.

Frequency of Use: Annually for duration of project.

Type of Respondents: Business or other institution (except farms); individuals.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 8.5 hours per project.

Number of Responses: 189 per year.

Federal Cost: \$15,068.97.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: November 23, 2004.

Eli Landy,

*Senior Counsel, Administrative Affairs,
Department of Legal Affairs.*

[FR Doc. 04-26299 Filed 11-26-04; 8:45 am]

BILLING CODE 3210-01-M

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: Supplemental Information on Accident and Insurance; OMB 3220-0036.

Under Section 12(o) of the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board is entitled to reimbursement of the sickness benefits paid to a railroad employee if the employee receives a sum or damages for the same infirmity for which the benefits are paid. Section 2(f) of the RUIA requires employers to reimburse the RRB for days in which salary, wages, pay for time lost or other remuneration is later determined to be payable. Reimbursements under section 2(f) generally result from the award of pay for time lost or the payment of guaranteed wages. The RUIA prescribes that the amount of benefits paid be deducted and held by the employer in a special fund for reimbursement to the RRB.

The RRB currently utilizes Form(s) SI-1c, (Supplemental Information on Accident and Insurance), SI-5 (Report of Payments to Employee Claiming Sickness Benefits Under the RUIA), ID-

3s (Request for Lien Information), ID-3s-1, (Lien Information Under Section 12(o) of the RUIA), ID-3u (Request for Section 2(f) Information), ID-30k (Form Letter Asking Claimant for Additional Information on Injury or Illness), and ID-30k-1 (Request for Supplemental Information on Injury or Illness—3rd Party), to obtain the necessary information from claimants and railroad employers. The RRB proposes the addition of a column to Form ID-3s that will differentiate informal informational inquiries from formal inquiries that initiate a reimbursement action. Completion of the forms is required to obtain or retain benefits. One response is requested of each respondent.

In addition, the RRB proposes to provide employers an alternative method for providing ID-3s, (Request for Lien Information) and ID-3u, (Request for Section 2(f) Information) data to the RRB. Instead of the current manual form or facsimile process, the RRB will utilize secure and encrypted e-mail to accept responses and respond to inquiries from railroad employers. The new method of collection, which will essentially mirror the information currently provided on Forms ID-3s and ID-3u, will use digital certificates and encryption software consistent with National Institute of Standards and Technology (NIST) standards to exchange data between the RRB and railroad employers. Railroad employers will be required to purchase a digital certificate and encryption software at an estimated cost of \$15 annually to take part in the proposed program.

The estimated annual respondent burden for this collection is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form Nos.	Annual responses	Time (min)	Burden (hrs)
SI-1c	1,000	5	93
SI-5	2,500	5	208
ID-3s	11,100	3	555
ID-3s (secure e-mail)	7,400	3	370
ID-3s.1	500	3	25
ID-3u	900	3	45
ID-3u (secure e-mail)	600	3	30
ID-30k	2,000	5	208
ID-30k.1	2,500	5	167
Total	28,500		1,691

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. 04-26287 Filed 11-26-04; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26682; File No. 812-13101]

ING USA Annuity & Life Insurance Company, et al.

November 23, 2004.

AGENCY: The Securities and Exchange Commission ("SEC" or "Commission").**ACTION:** Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities and for an order of exemption pursuant to Section 17(b) of the Act.**APPLICANTS:** ING Insurance Company of America, ING Life Insurance and Annuity Company, ING USA Annuity and Life Insurance Company, ReliaStar Life Insurance Company, ReliaStar Life Insurance Company of New York, and Security Life of Denver Insurance Company (each a "Company" and together, the "Companies"), Variable Annuity Account I of ING Insurance Company of America ("ING America I"),

Variable Annuity Account B of ING Life Insurance and Annuity Company ("ING Life B"), Variable Annuity Account C of ING Life Insurance and Annuity Company ("ING Life C"), Variable Annuity Account G of ING Life Insurance and Annuity Company (ING Life G"), Separate Account B of ING USA Annuity and Life Insurance Company ("ING USA B"), Select*Life Variable Account of ReliaStar Life Insurance Company ("ReliaStar SL"), ReliaStar Select Variable Account of ReliaStar Life Insurance Company ("ReliaStar VA"), Separate Account N of ReliaStar Life Insurance Company ("ReliaStar N"), ReliaStar Life Insurance Company of New York Separate Account NY-B ("ReliaStar NY B"), ReliaStar Life Insurance Company of New York Variable Annuity Funds P & Q ("ReliaStar NY P&Q"), ReliaStar Life Insurance Company of New York Variable Life Separate Account I ("ReliaStar NY I"), Security Life Separate Account L1 ("Security Life L1"), Security Life Separate Account S-A1 ("Security Life S-A1"), and Security Life Separate Account S-L1 ("Security

Life S-L1") (each, an "Account" and together, the "Accounts"), and ING Partners, Inc. ("ING Partners"). The Companies, the Accounts and ING Partners are collectively referred to herein as the "Applicants."

SUMMARY: The Applicants have submitted an application (the "Application") for an order of the Securities and Exchange Commission (the "Commission"), pursuant to Section 26(c), formerly Section (b), of the Investment Company Act of 1940, as amended (the "1940 Act"), permitting the substitutions of securities issued by certain registered investment companies held by the Accounts to support certain in force variable life insurance policies and variable annuity contracts (collectively, the "Contracts") issued by the Companies. More particularly, the Applicants propose to substitute shares of certain series of ING Partners (the "Substitute Funds") for shares of certain registered investment companies currently held by subaccounts of the various Accounts (the "Replaced Funds") as follows:

Replaced funds	Substitute funds
Janus Aspen Balanced Portfolio—Institutional Shares	ING Van Kampen Equity and Income Portfolio—Initial Class.
Janus Aspen Balanced Portfolio—Service Shares	ING Van Kampen Equity and Income Portfolio—Initial Class.
ING Van Kampen Equity and Income Portfolio—Service Class	ING Van Kampen Equity and Income Portfolio—Initial Class.
Janus Aspen Capital Appreciation Portfolio—Service Shares	ING Salomon Brothers Large Cap Growth Portfolio—Initial Class.
Janus Twenty Fund—Class I	ING Salomon Bros Large Cap Growth Portfolio—Initial Class.
Janus Aspen Flexible Income Portfolio—Institutional Shares	ING Oppenheimer Strategic Income Portfolio—Initial Class.
Oppenheimer Strategic Bond Fund/VA—Non-Service Shares	ING Oppenheimer Strategic Income Portfolio—Initial Class.
Janus Aspen Flexible Income Portfolio—Service Shares	ING Oppenheimer Strategic Income Portfolio—Service Class.
Oppenheimer Strategic Bond Fund/VA—Service Shares	ING Oppenheimer Strategic Income Portfolio—Service Class.
Janus Aspen Growth Portfolio—Institutional Shares	ING American Century Select Portfolio—Initial Class.
ING American Century Select Portfolio—Service Class	ING American Century Select Portfolio—Initial Class.
Janus Aspen Growth Portfolio—Service Shares	ING American Century Select Portfolio—Initial Class.
Janus Aspen Mid Cap Growth Portfolio—Institutional Shares	ING T. Rowe Price Diversified Mid Cap Growth Portfolio—Initial Class.
ING T. Rowe Price Diversified Mid Cap Growth Portfolio—Service Class.	ING T. Rowe Price Diversified Mid Cap Growth Portfolio—Initial Class.
Janus Aspen Mid Cap Growth Portfolio—Service Shares	ING T. Rowe Price Diversified Mid Cap Growth Portfolio—Initial Class.
Janus Aspen Worldwide Growth Portfolio—Institutional Shares	ING Oppenheimer Global Portfolio—Initial Class.
Oppenheimer Global Securities Fund/VA—Non-Service Shares	ING Oppenheimer Global Portfolio—Initial Class.
ING Oppenheimer Global Portfolio—Service Class	ING Oppenheimer Global Portfolio—Initial Class.
Janus Aspen Worldwide Growth Portfolio—Service Shares	ING Oppenheimer Global Portfolio—Initial Class.
Oppenheimer Global Securities Fund/VA—Service Shares	ING Oppenheimer Global Portfolio—Initial Class.

FILING DATE: The application was filed on June 10, 2004. The application was amended and restated on November 5, 2004 and November 19, 2004.**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 17, 2004, and should be accompanied

by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: For the Commission: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. For Applicants, J. Neil McMurdie, Esquire, ING U.S. Legal Services, 151

Farmington Avenue, TS31, Hartford, CT 06156-8975.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.**SUPPLEMENTARY INFORMATION:** The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission.

The Application

The Applicants have requested that the Commission issue an order to permit the substitution ("Substitution") of certain shares of certain investment management companies currently held by sub-accounts of the various Accounts for shares of certain series of the Substitute Funds.

The Applicants, Funds and Contracts

1. The Companies. Each of the Companies is an indirect wholly owned subsidiary of ING Groep, N.V. ("ING"). ING is a global financial services holding company based in The Netherlands which is active in the field of insurance, banking and asset management. As a result, each Company likely would be deemed to be an affiliate of the others.

a. ING Insurance Company of America ("ING America"). ING America is a stock life insurance company organized under the laws of the State of Connecticut in 1990 and redomesticated under the insurance laws of the State of Florida in 2000. Prior to May 1, 2002, ING America was known as Aetna Insurance Company of America ("Aetna America"). ING America is principally engaged in the business of issuing life insurance and annuities. ING America is the depositor of Variable Annuity Account I, a separate account which is registered with the Commission as a unit investment trust.

b. ING Life Insurance and Annuity Company ("ING Life"). ING Life is a stock life insurance company organized under the laws of the State of Connecticut in 1976 as Forward Life Insurance Company. Through a December 31, 1976 merger ING Life's operations include the business of Aetna Variable Annuity Life Insurance Company (formerly known as Participating Annuity Life Insurance Company). Prior to May 1, 2002, ING Life was known as Aetna Life Insurance and Annuity Company ("Aetna"). ING Life is principally engaged in the business of issuing life insurance and annuities. ING Life is the depositor of Variable Annuity Account B, Variable Annuity Account C and Variable Annuity Account G, separate accounts which are registered with the Commission as unit investment trusts.

c. ING USA Annuity and Life Insurance Company ("ING USA"). ING USA is an Iowa stock life insurance company which was originally organized in 1973 under the insurance laws of Minnesota. Through a January 1, 2004 merger ING USA's operations include the business of Equitable Life Insurance Company of Iowa, United Life

and Annuity Insurance Company, and USG Annuity and Life Company. Prior to January 1, 2004, ING USA was known as Golden American Life Insurance Company ("Golden"). ING USA is principally engaged in the business of issuing life insurance and annuities. ING USA is the depositor of Separate Account B, a separate account which is registered with the Commission as a unit investment trust.

d. ReliaStar Life Insurance Company ("ReliaStar"). ReliaStar is a stock life insurance company organized in 1885 and incorporated under the laws of the State of Minnesota. Through an October 1, 2002 merger ReliaStar's operations include the business of Northern Life Insurance Company ("Northern"). ReliaStar is principally engaged in the business of issuing life insurance, annuities, employee benefits and retirement contracts. ReliaStar is the depositor of ReliaStar Select Variable Account, Select*Life Variable Account and Separate Account N, separate accounts which are registered with the Commission as unit investment trusts.

e. ReliaStar Life Insurance Company of New York ("ReliaStar NY"). ReliaStar NY is a stock life insurance company which was incorporated under the laws of the State of New York in 1917. Through an April 1, 2002 merger ReliaStar NY's operations include the business of First Golden American Life Insurance Company of New York ("First Golden"). ReliaStar NY is principally engaged in the business of issuing life insurance and annuities. ReliaStar NY is the depositor of Separate Account NY-B, Variable Annuity Funds P & Q and Variable Life Separate Account I, separate accounts which are registered with the Commission as unit investment trusts.

f. Security Life of Denver Insurance Company ("Security Life"). Security Life is a stock life insurance company organized under the laws of the State of Colorado in 1929. Security Life is principally engaged in the business of issuing life insurance and annuities. Security Life is the depositor of Security Life Separate Account L1, Security Life Separate Account S-A1, and Security Life Separate Account S-L1, separate accounts which are registered with the Commission as unit investment trusts.

2. The Accounts. Each of the Accounts is a segregated asset account of the applicable Company, and is registered under the 1940 Act as a unit investment trust. Each of the respective Accounts is used by the Company of which it is a part to support the Contracts that it issues.

Each Account is administered and accounted for as part of the general

business of the Company of which it is a part. The assets of each Account attributable to the Contracts issued through it are owned by each Company but are held separately from all other assets of that Company for the benefit of the owners of, and persons entitled to benefits under such Contracts. Pursuant to applicable state insurance law and to the extent provided in the Contracts, such assets are not chargeable with liabilities arising out of any other business that each Company may conduct. Income, if any, gains and losses, realized or unrealized, from each Account are credited to or charged against the assets of that Account, without regard to other income, gains or losses of its Company or any of its other segregated asset accounts. Each Account is a "separate account" as defined by Rule 0-1(e) under the 1940 Act.

Each Account is divided into subaccounts, each of which invests exclusively in shares of one investment company portfolio of ING Partners, a Replaced Fund or another mutual fund. Each investment company portfolio has its own distinct investment objective(s) and policies. Income, gains and losses, realized or unrealized, of a portfolio are credited to or charged against the corresponding subaccount of each Account without regard to any other income, gains or losses of the applicable Company. To the extent provided in the Contracts, assets equal to the reserves and other contract liabilities with respect to an Account are not chargeable with liabilities arising out of any other business of the Company that is the depositor of the Account.

Each of the prospectuses for the Contracts discloses that the Companies reserve the right, subject to Commission approval and compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a subaccount of an Account whenever the Company, in its judgment, determines that a portfolio no longer suits the purpose of the Contract.

3. The Substitute Funds. Each of the Substitute Funds is a series of ING Partners. ING Partners, formerly known as Portfolio Partners, Inc., was organized as a Maryland corporation in 1997 and commenced operations on November 28, 1997. ING Partners is registered under the 1940 Act as an open-end management investment company (File No. 811-08319). ING Partners is a series investment company as defined by Rule 18f-2 under the 1940 Act and currently consists of 21 investment portfolios which are offered by prospectus dated May 1, 2004. ING Partners issues a

separate series of shares of beneficial interest in connection with each portfolio and has registered these shares under the Securities Act of 1933 on Form N-1A (File No. 333-32575) which was last updated in an amendment to the registration statement filed on August 18, 2004.

ING Life serves as the investment adviser for each ING Partners' portfolio. ING Life is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). ING Life maintains its offices at 151 Farmington Avenue, Hartford, Connecticut 06156. As of December 31, 2003, the Adviser managed over \$3.5 billion in registered investment company assets.

ING Life delegates to sub-advisers the responsibility for day-to-day management of the investments of each portfolio, subject to the ING Life's oversight. ING Life also recommends the appointment of additional or replacement sub-advisers to the Board.

ING Partners and ING Life have received exemptive relief from the Commission that permits ING Life and ING Partners to add or terminate a portfolio's sub-adviser without shareholder approval.

4. The Replaced Funds. Each fund to be replaced with a Substitute Fund is a portfolio of the Janus Aspen Series, the Janus Investment Fund, the Oppenheimer Variable Account Funds, or ING Partners, Inc.

5. The Contracts. The Contracts are flexible premium variable annuity and variable life insurance contracts. The variable annuity Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable or fixed basis. The variable life insurance Contracts provide for the accumulation of values on a variable basis, fixed basis, or both throughout the insured's life and for a death benefit, upon the death of the insured. Under each of the prospectuses for the

Contracts, each Company reserves the right to substitute shares of one fund or portfolio for shares of another.

A Contract owner may transfer all or any part of the Contract value from one subaccount to any other subaccount or a fixed account as long as the Contract remains in effect and at any time up to 30 days before the due date of the first annuity payment for variable annuity contracts. For many of the Contracts, the Company issuing the Contract reserves the right to limit the number of transfers during a specified period.

The Substitutions

1. The Funds and the Accounts. Subject to the approval of the Commission under Section 26(c) of the Act, Applicants propose, as set forth below, to substitute shares of each Substitute Fund for those of the applicable Replaced Fund and transfer cash or securities held by each Replaced Fund to the applicable Substitute Fund.

Replaced funds	Substitute funds	Accounts holding replaced fund assets
Janus Aspen Balanced Portfolio—Institutional Shares.	ING Van Kampen Equity and Income Portfolio—Initial Class.	ING Life C; ING Life B; ING America I; Security Life S-L1; Security Life S-A1.
Janus Aspen Balanced Portfolio—Service Shares.	ING Van Kampen Equity and Income Portfolio—Initial Class.	Security Life S-L1; Security Life S-A1; ING USA B.
ING Van Kampen Equity and Income Portfolio—Service Class.	ING Van Kampen Equity and Income Portfolio—Initial Class.	ING Life C; ING Life B; ING America I; ING USA B.
Janus Aspen Capital Appreciation Portfolio—Service Shares.	ING Salomon Brothers Large Cap Growth Portfolio—Initial Class.	ING Life C.
Janus Twenty Fund—Class I	ING Salomon Bros Large Cap Growth Portfolio—Initial Class.	ING Life C.
Janus Aspen Flexible Income Portfolio—Institutional Shares.	ING Oppenheimer Strategic Income Portfolio—Initial Class.	ING Life C; ING Life B; ING America I.
Oppenheimer Strategic Bond Fund/VA—Non-Service Shares.	ING Oppenheimer Strategic Income Portfolio—Initial Class.	ING America I; ING Life B; ING Life C; ING Life G; ReliaStar NY P&Q.
Janus Aspen Flexible Income Portfolio—Service Shares.	ING Oppenheimer Strategic Income Portfolio—Service Class.	ING USA B.
Oppenheimer Strategic Bond Fund/VA—Service Shares.	ING Oppenheimer Strategic Income Portfolio—Service Class.	ING USA B.
Janus Aspen Growth Portfolio—Institutional Shares.	ING American Century Select Portfolio—Initial Class.	ING Life C; ING Life B; ING America I; ReliaStar N; ReliaStar SL; ReliaStar NY I.
ING American Century Select Portfolio—Service Class.	ING American Century Select Portfolio—Initial Class.	ING Life C; ING Life B; ING America I; ING USA B.
Janus Aspen Growth Portfolio—Service Shares	ING American Century Select Portfolio—Initial Class.	ING USA B.
Janus Aspen Mid Cap Growth Portfolio—Institutional Shares.	ING T. Rowe Price Diversified Mid Cap Growth Portfolio—Initial Class.	Security Life S-L1; Security Life S-A1; ING Life C; ING Life B; ING America I; ReliaStar N; ReliaStar SL; ReliaStar NY I; ReliaStar VA.
ING T. Rowe Price Diversified Mid Cap Growth Portfolio—Service Class.	ING T. Rowe Price Diversified Mid Cap Growth Portfolio—Initial Class.	ING Life C; ING Life B; ING America I; ING USA B.
Janus Aspen Mid Cap Growth Portfolio—Service Shares.	ING T. Rowe Price Diversified Mid Cap Growth Portfolio—Initial Class.	Security Life S-L1; Security Life S-A1; Security Life L1.
Janus Aspen Worldwide Growth Portfolio—Institutional Shares.	ING Oppenheimer Global Portfolio—Initial Class.	ING Life C; ING Life B; ING America I; ReliaStar N; ReliaStar SL; ReliaStar NY I; Security Life S-L1; Security Life S-A1; ReliaStar VA.
Oppenheimer Global Securities Fund/VA—Non-Service Shares.	ING Oppenheimer Global Portfolio—Initial Class.	ING America I; ING Life B; ING Life C; ING Life G; ReliaStar NY P&Q.
ING Oppenheimer Global Portfolio—Service Class.	ING Oppenheimer Global Portfolio—Initial Class.	ING Life C; ING Life B; ING America I; ING USA B; ReliaStar NY B.
Janus Aspen Worldwide Growth Portfolio—Service Shares.	ING Oppenheimer Global Portfolio—Initial Class.	Security Life S-A1; Security Life S-L1; Security Life L1; ReliaStar NY B; ING USA B.

Replaced funds	Substitute funds	Accounts holding replaced fund assets
Oppenheimer Global Securities Fund/VA—Service Shares.	ING Oppenheimer Global Portfolio—Initial Class.	ING USA B.

Each Substitute Fund and Replaced Fund is registered as an open-end management investment company under the Act. Further, each is a series investment company as defined by Rule 18f-2 under the Act and issues separate series of shares of stock (for corporations) or of beneficial interest (for business trusts) in connection with each portfolio. The shares of each fund are registered under the 1933 Act on Form N-1A.

2. Investment Objectives and Policies. With respect to each Replaced Fund, the Applicants have determined that the investment objective and the investment policies of the corresponding Substitute Fund are the same as, similar to or consistent with those of the Replaced Fund and therefore the essential objectives and risk expectations of those Contract owners with interests in subaccounts of each Replaced Fund will continue to be met after the Substitutions.

a. The ING Van Kampen Equity and Income Portfolio (“ING Equity and Income Portfolio”) for the Janus Aspen Balanced Portfolio (“Janus Balanced Portfolio”). The investment objective of the ING Equity and Income Portfolio is total return, consisting of long-term capital appreciation and current income. The investment objective of the Janus Balanced Portfolio is long-term capital growth, consistent with preservation of capital and balanced by current income. Although not articulated in exactly the same way, both funds seek to achieve a balance of capital growth and current income in their investment portfolios over the long term.

Furthermore, each of these funds is diversified and categorized as a domestic hybrid fund by Morningstar, although the Janus Balanced Portfolio is considered conservative in that categorization while the ING Equity and Income Portfolio is considered moderate. Additionally, the investment policies of the Janus Balanced Portfolio and ING Equity and Income Portfolio are the same as, similar to or consistent with each other. Although the ratios vary slightly, each fund invests in equity and debt securities and each fund may invest in domestic and foreign issuers. Each fund may also invest in options, futures and derivatives.

b. The ING Salomon Brothers Large Cap Growth Portfolio (“ING Large Cap

Growth Portfolio”) for the Janus Aspen Capital Appreciation Portfolio (“Janus Capital Appreciation Portfolio”) and the Janus Twenty Fund. The investment objectives of the ING Large Cap Growth Portfolio, the Janus Capital Appreciation Portfolio and the Janus Twenty Fund are essentially the same. Specifically, the ING Large Cap Growth Portfolio seeks long-term capital appreciation and the Janus Capital Appreciation Portfolio and the Janus Twenty Fund seek long-term growth of capital.

Furthermore, each of these funds is included in the same fund category by Morningstar and each has a large cap growth style. Each fund pursues its investment objectives by investing in companies deemed to have growth potential. Although the ING Large Cap Growth Portfolio invests under normal circumstances at least 80% of its assets in equities of companies with large market capitalizations and the Janus Capital Appreciation Portfolio and Janus Twenty Fund may invest in equities of companies of any size, historically the Janus Capital Appreciation Portfolio and Janus Twenty Fund have also concentrated their investments in large capitalization companies. Additionally, each manager uses a bottom up approach to investing and focuses on individual companies.

c. The ING Oppenheimer Strategic Income Portfolio (“ING Strategic Income Portfolio”) for the Janus Aspen Flexible Income Portfolio (Janus Flexible Income Portfolio”) and the Oppenheimer Strategic Bond Fund/VA (“Oppenheimer Strategic Bond Fund”). The ING Strategic Income Portfolio will be a “clone” of the Oppenheimer Strategic Bond Fund and these two funds will have the same investment objective and policies. Additionally, the investment adviser for the Oppenheimer Strategic Bond Fund will be the sub-adviser to the ING Strategic Income Portfolio and will manage the two funds in the same way.

The investment objective of the ING Strategic Income Portfolio is a high level of current income principally derived from interest on debt securities. The investment objective of the Janus Flexible Income Portfolio is to obtain maximum total return consistent with preservation of capital. Notwithstanding the differences between the funds’ investment objectives and emphasis (current income versus total return),

each fund’s investment strategy focuses on investing in income-producing debt securities.

Each fund has the principal strategy of investing the majority of its net assets (80% for the Oppenheimer Strategic Bond Fund and 65% for the Janus Flexible Income Portfolio) in debt securities. Each fund also invests in government securities, corporate bonds and notes and lower grade high yield debt in an effort to achieve its objective. Each fund also allows borrowing for investment purposes.

Furthermore, to determine how differences in fund objectives translate into investment policies, we reviewed portfolio characteristics from the most recent 8 quarters for each fund and make the following observations:

- Both funds have had similar high yield exposure. Janus Flexible Income Portfolio’s high yield weighting ranged from 6.0% to 12.0%. Oppenheimer Strategic Income Fund’s high yield exposure ranged from 7.6% to 13.4%.
- Both funds have been invested, on average, in over 90% debt securities. Janus Flexible Income Portfolio’s debt security exposure ranged from 91.6% to 98.4%. Oppenheimer Strategic Income Fund’s debt security exposure ranged from 83.2% to 94.7%.
- Both funds have had minimal equity exposure (less than 2% each quarter for each fund).
- The remainder of assets in each fund was invested in cash equivalents.

Additionally, the risk characteristics for both of the funds (as measured by 3-year standard deviation) have been lower than the Multi-Sector Bond Morningstar average. Janus Flexible Income Portfolio’s 3-year standard deviation was 5.18, Oppenheimer Strategic Income Fund’s standard deviation was 5.38, and the Morningstar category average was 5.96.

The Applicants believe that the Oppenheimer Strategic Bond Fund and the Janus Flexible Income Portfolio have generally comparable investment strategies, that the similarities between these funds are greater than the differences and that an Affected Contract Owner’s fundamental investment objective can continue to be met after this Substitution.

d. ING American Century Select Portfolio (“ING Select Portfolio”) for the Janus Aspen Growth Portfolio (“Janus Growth Portfolio”). The investment objectives of the ING Select Portfolio

and the Janus Growth Portfolio are essentially the same. Specifically, the investment objective of the ING Select Portfolio is long-term capital appreciation. The investment objective for the Janus Growth Portfolio is long-term growth of capital in a manner consistent with preservation of capital.

Furthermore, each of these funds is diversified and is included in the same fund category by Morningstar. Each has a large cap style. Additionally, the investment policies of the each of these funds are the same as, similar to or consistent with each other. Each fund invests primarily in stocks of companies with growth potential. Each fund invests in larger companies, but may invest in companies of any size. Each fund also uses a bottom up approach and makes investment decisions based on the fundamentals of individual businesses rather than economic forecasts or outlooks for industries or market sectors. Also, each of these funds may invest without limit in foreign companies.

e. The ING T. Rowe Price Diversified Mid Cap Growth Portfolio ("ING Diversified Mid Cap Growth Portfolio") for the Janus Aspen Mid Cap Growth Portfolio ("Janus Mid Cap Growth Portfolio"). The investment objective of the ING Diversified Mid Cap Growth Portfolio is long-term capital appreciation. The investment objective of the Janus MidCap Growth Portfolio is long-term growth of capital. Although not articulated in exactly the same way, each of these funds seeks to achieve growth in their investment portfolios over the long term using a growth strategy.

Furthermore, each of these funds is diversified and is included in the same fund category by Morningstar. Each has a mid-cap growth style. Additionally, the investment policies of each of these

funds are the same as, similar to or consistent with each other. Each fund invests 80% of its net assets in equity securities of mid-sized companies whose market capitalization falls in the Russell MidCap Growth Index. The ING Diversified Mid Cap Growth Portfolio also looks at the S&P Mid Cap 400 Index when determining market capitalization. Also, each fund uses a bottom up investment approach.

f. ING Oppenheimer Global Portfolio ("ING Global Portfolio") for the Janus Aspen Worldwide Growth Portfolio ("Janus Worldwide Growth Portfolio") and the Oppenheimer Global Securities Fund/VA ("Oppenheimer Global Securities Fund"). The ING Global Portfolio will be patterned after the Oppenheimer Global Securities Fund and these two funds will have substantially the same investment objective and policies. Additionally, the investment adviser for the Oppenheimer Global Securities Fund will be the sub-adviser to the ING Global Portfolio and will manage the two funds in a similar way.

The investment objective of the ING Global Portfolio is capital appreciation. The investment objective of the Janus Worldwide Growth Portfolio is long-term growth of capital in a manner consistent with the preservation of capital. Both of these funds pursue their respective investment objectives by investing principally in common stocks of companies of any size located throughout the world.

Furthermore, each of these funds is diversified and is included in the same fund category by Morningstar. Each has a large-cap style. Additionally, the investment policies of each of these funds are the same as, similar to or consistent with each other. As noted above, the ING Global Portfolio and the Janus Worldwide Growth Portfolio both

invest primarily in common stocks of companies of any size located throughout the world. Each fund also invests in companies in emerging markets. While the ING Global Portfolio normally invests in issuers from at least three different countries, the Janus Worldwide Growth Portfolio normally invests in issuers from at least five different countries (although it may invest in issuers from even a single country).

g. ING Equity and Income Portfolio—Initial Class for the ING Equity and Income Portfolio—Service Class; ING Select Portfolio—Initial Class for the ING Select Portfolio—Service Class; ING Diversified Mid Cap Growth Portfolio—Initial Class for the ING Diversified Mid Cap Growth Portfolio—Service Class; ING Global Portfolio—Initial Class for the ING Global Portfolio—Service Class. Each of these Substitute Funds is the same as the corresponding Replaced Fund with the exact same investment objective and policies and managed by the exact same investment adviser/sub-adviser.

These Substitutions are necessary to prevent Contracts from offering two classes of shares of the same Substitute Fund and ensure that no affected Contract Owner will have Contract values allocated to two different classes of shares of the same Substitute Fund after the Effective Date.

3. Fees and Expenses. As is detailed below, the overall expenses of the Substitute Funds are lower than or equal to those of the Replaced Funds. Applicants believe that, because each Substitute Fund will be offered over a substantially larger asset base than the applicable Replaced Fund, there is a potential that Contract owners will, over time, realize the benefits from additional economies of scale with respect to the advisory fees.

[In percent]

	Management fees	Distribution (12b-1) fees	Other expenses	Total annual expenses	Expense waivers	Net annual expenses
Substitute Fund:						
• ING Equity and Income Portfolio—Initial Class	0.55	.....	0.02	0.57	.....	0.57
Replaced Fund:						
• Janus Balanced Portfolio—Institutional Shares	0.55	.....	0.02	0.57	.....	0.57
Replaced Fund:						
• Janus Balanced Portfolio—Service Shares	0.55	0.25	0.02	0.82	.....	0.82
Replaced Fund:						
• ING Equity and Income Portfolio—Service Class	0.55	.....	0.27	0.82	.....	0.82
Substitute Fund:						
• ING Large Cap Growth Portfolio—Initial Class	0.64	.....	0.20	0.84	.....	0.84
Replaced Fund:						
• Janus Capital Appreciation Portfolio—Service Shares	0.64	0.25	0.03	0.92	.....	0.92
Replaced Fund:						
• Janus Twenty Fund—Class I	0.64	.....	0.23	0.87	.....	0.87

[In percent]

	Management fees	Distribution (12b-1) fees	Other expenses	Total annual expenses	Expense waivers	Net annual expenses
Substitute Fund:						
• ING Strategic Income Portfolio—Initial Class	0.50	.....	0.04	0.54	.....	0.54
Replaced Fund:						
• Janus Flexible Income Portfolio—Institutional Shares	0.50	.....	0.04	0.54	.....	0.54
Replaced Fund:						
• Oppenheimer Strategic Bond Fund—Non-Service Shares	0.72	.....	0.03	0.75	.....	0.75
Substitute Fund:						
• ING Strategic Income Portfolio—Service Class ...	0.50	.....	0.29	0.79	0.04	0.75
Replaced Fund:						
• Janus Flexible Income Portfolio—Service Shares	0.50	0.25	0.04	0.79	.....	0.79
Replaced Fund:						
• Oppenheimer Strategic Bond Fund—Service Shares	0.72	0.25	0.05	1.02	.....	1.02
Substitute Fund:						
• ING Select Portfolio—Initial Class	0.64	.....	0.02	0.66	.....	0.66
Replaced Fund:						
• Janus Growth Portfolio—Institutional Shares	0.64	.....	0.02	0.66	.....	0.66
Replaced Fund:						
• ING Select Portfolio—Service Class	0.64	.....	0.27	0.91	.....	0.91
Replaced Fund:						
• Janus Growth Portfolio—Service Shares	0.64	0.25	0.02	0.91	.....	0.91
Substitute Fund:						
• ING Diversified Mid Cap Growth Portfolio—Initial Class	0.64	.....	0.02	0.66	.....	0.66
Replaced Fund:						
• Janus Mid Cap Growth Portfolio—Institutional Shares	0.64	.....	0.02	0.66	.....	0.66
Replaced Fund:						
• ING Diversified Mid Cap Growth Portfolio—Service Class	0.64	.....	0.27	0.91	.....	0.91
Replaced Fund:						
• Janus Mid Cap Growth Portfolio—Service Shares	0.64	0.25	0.02	0.91	.....	0.91
Substitute Fund:						
• ING Global Portfolio—Initial Class	0.60	.....	0.06	0.66	.....	0.66
Replaced Fund:						
• Janus Worldwide Growth Portfolio—Institutional Shares	0.60	.....	0.06	0.66	.....	0.66
Replaced Fund:						
• Oppenheimer Global Securities Fund—Non-Service Shares	0.63	.....	0.04	0.67	.....	0.67
Replaced Fund:						
• ING Global Portfolio—Service Class	0.60	.....	0.31	0.91	.....	0.91
Replaced Fund:						
• Janus Worldwide Growth Portfolio—Service Shares	0.60	0.25	0.06	0.91	.....	0.91
Replaced Fund:						
• Oppenheimer Global Securities Fund—Service Shares	0.63	0.25	0.05	0.93	.....	0.93

No brokerage commissions, fees or other remuneration will be paid by any Replaced Fund or any Substitute Fund

or Contract owner in connection with the Substitutions.

4. Expense Ratios and Total Returns. The following chart shows the expense

ratio (ratio of operating expenses as a percentage of average net assets) and total return for each Substitute Fund and the corresponding Replaced Fund.

[In percent]

	Expense ratio	Total return (as of June 30, 2004)
Substitute Fund:		
• ING Equity and Income Portfolio—Initial Class	0.57	16.93
Replaced Fund:		
• Janus Balanced Portfolio—Institutional Shares	0.57	9.32
Replaced Fund:		
• Janus Balanced Portfolio—Service Shares	0.82	9.09

[In percent]

	Expense ratio	Total return (as of June 30, 2004)
Replaced Fund:		
• ING Equity and Income Portfolio—Service Class	0.82	16.63
Substitute Fund:		
• ING Large Cap Growth Portfolio—Initial Class	0.84	18.93
Replaced Fund:		
• Janus Capital Appreciation Portfolio—Service Shares	0.92	17.11
Replaced Fund:		
• Janus Twenty Fund—Class I	0.87	22.04
Substitute Fund:		
• ING Strategic Income Portfolio—Initial Class	0.54	N/A
Replaced Fund:		
• Janus Flexible Income Portfolio—Institutional Shares	0.54	0.40
Replaced Fund:		
• Oppenheimer Strategic Bond Fund—Non-Service Shares	0.75	7.58
Substitute Fund:		
• ING Strategic Income Portfolio—Service Class 7	0.75	N/A
Replaced Fund:		
• Janus Flexible Income Portfolio—Service Shares	0.79	0.15
Replaced Fund:		
• Oppenheimer Strategic Bond Fund—Service Shares	1.02	6.91
Substitute Fund:		
• ING Select Portfolio—Initial Class	0.66	18.96
Replaced Fund:		
• Janus Growth Portfolio—Institutional Shares	0.66	20.59
Replaced Fund:		
• ING Select Portfolio—Service Class	0.91	18.80
Replaced Fund:		
• Janus Growth Portfolio—Service Shares	0.91	20.24
Substitute Fund:		
• ING Diversified Mid Cap Growth Portfolio—Initial Class	0.66	25.56
Replaced Fund:		
• Janus Mid Cap Growth Portfolio—Institutional Shares	0.66	26.07
Replaced Fund:		
• ING Diversified Mid Cap Growth Portfolio—Service Class	0.91	25.20
Replaced Fund:		
• Janus Mid Cap Growth Portfolio—Service Shares	0.91	25.76
Substitute Fund:		
• ING Global Portfolio—Initial Class	0.66	25.14
Replaced Fund:		
• Janus Worldwide Growth Portfolio—Institutional Shares	0.66	12.56
Replaced Fund:		
• Oppenheimer Global Securities Fund—Non-Service Shares	0.67	32.29
Replaced Fund:		
• ING Global Portfolio—Service Class	0.91	23.59
Replaced Fund: James Worlwide Growth portfolio		
• Janus Worldwide Growth Portfolio—Service Shares	0.91	12.31
Replaced Fund:		
• Oppenheimer Global Securities Fund—Service Shares	0.93	32.14

5. Estimated Net Assets after the Substitutions. The following chart shows the estimated size (in net assets)

for each Substitute Fund immediately following the Effective Date. Estimates

are based on actual net assets as of May 24, 2004.

Substitute funds	Estimated total net assets
ING Equity and Income Portfolio—Initial Class	\$1,173,946,084
ING Large Cap Growth Portfolio—Initial Class	23,597,475
ING Strategic Income Portfolio—Initial Class	335,297,373
ING Strategic Income Portfolio—Service Class	4,148,994
ING Select Portfolio—Initial Class	636,945,554
ING Diversified Mid Cap Growth Portfolio—Initial Class	1,123,324,459
ING Global Portfolio—Initial Class	1,989,859,052

Implementation

Applicants will effect the Substitutions as soon as practicable following the issuance of the requested order. As of the effective date of the Substitutions ("Effective Date"), shares of each Replaced Fund will be redeemed for cash or in-kind. The Companies, on behalf of each Replaced Fund subaccount of each relevant Account, will simultaneously place a redemption request with the Replaced Fund and a purchase order with the corresponding Substitute Fund so that the purchase of Substitute Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times. The proceeds of such redemptions will then be used to purchase the appropriate number of shares of the applicable Substitute Fund.

1. The Substitutions will take place at relative net asset value (in accordance with Rule 22c-1 under the 1940 Act) with no change in the amount of any affected Contract owner's account value or death benefit, or in the dollar value of his or her investment in the applicable Account. Any in-kind redemption of shares of a Replaced Fund or in-kind purchase of shares of the corresponding Substitute Fund will, except as noted below, take place in substantial compliance with the conditions of Rule 17a-7 under the 1940 Act. No brokerage commissions, fees or other remuneration will be paid by either the Replaced Fund or the corresponding Substitute Fund or by affected Contract owners in connection with the Substitutions. The transactions comprising the Substitutions will be consistent with the policies of each investment company involved and with the general purposes of the 1940 Act.

2. Affected Contract owners will not incur any fees or charges as a result of the Substitutions nor will their rights or the Companies' obligations under the Contracts be altered in any way. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses, and other fees and expenses. In addition, the Substitutions will not impose any tax liability on affected Contract owners. The Substitutions will not cause the Contract fees and charges currently being paid by affected Contract owners to be greater after the Substitutions than before the Substitutions. Also, as described more fully below, after notification of the Substitutions and for 30 days after the Substitutions, affected

Contract owners may reallocate to any other investment options available under their Contract the subaccount value of the Replaced Fund without incurring any administrative costs or allocation (transfer) charges.

3. All affected Contract owners were notified of the Substitutions by means of supplements to the Contract prospectuses or prospectus summaries. Among other information regarding the Substitutions, the supplements informed affected Contract owners that beginning on the date of the first supplement the Companies would not exercise any rights reserved by them under the Contracts to impose restrictions or fees on transfers from the Replaced Funds (other than restrictions related to frequent or disruptive transfers) until at least 30 days after the Effective Date of the Substitutions. Following the date the order requested by the Application is issued, but before the Effective Date, affected Contract owners will receive a second supplement to the Contract prospectus or prospectus summary, as applicable, setting forth the Effective Date and advising affected Contract owners of their right, if they so choose, at any time prior to the Effective Date, to reallocate or withdraw accumulated value in the relevant Replaced Fund subaccounts under their Contracts or otherwise terminate their interest therein in accordance with the terms and conditions of their Contracts. If affected Contract Owners reallocate account value prior to the Effective Date or within 30 days after the Effective Date, there will be no charge for the reallocation of accumulated value from each Replaced Fund subaccount and the reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers. The Companies will not exercise any right they may have under the Contracts to impose additional restrictions or fees on transfers from the Replaced Funds under the Contracts (other than restrictions related to frequent or disruptive transfers) for a period of at least 30 days following the Effective Date of the Substitutions. Additionally, all current Contract Owners will be sent prospectuses of the Substitute Funds before the Effective Date. Alternatively, ING America and ING Life may determine to send to Participants summaries of the prospectuses of the Substitute Funds.

4. Within five (5) business days after the Effective Date, affected Contract Owners will receive a written confirmation ("Post-Substitution Confirmation") indicating that shares of the Replaced Funds have been

redeemed and that the shares of Substitute Funds have been substituted. The Post-Substitution Confirmation will show how the allocation of the Contract Owner's account value before and immediately following the Substitutions have changed as a result of the Substitutions and detail the transactions effected on behalf of the respective affected Contract Owner because of the Substitutions.

Applicants' Legal Analysis

1. Section 26(c) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Prior to the enactment of this provision in 1970, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that the Act be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.

2. Each of the prospectuses for the Contracts expressly disclose the reservation of the Companies the right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a subaccount of an Account.

3. The Companies reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of its separate accounts and to afford the opportunity to replace such shares where to do so could benefit the Contract owners and Companies.

4. Applicants maintain that Contract owners will be better served by the proposed Substitutions. Applicants anticipate that the replacement of certain Replaced Funds will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products in both wholesale and retail markets. For all of the proposed substitutions, each Substitute Fund generally has had comparable or superior investment performance than the corresponding Replaced Fund that it

would replace. Moreover, each Substitute Fund has fees that are the same as or less than the corresponding Replaced Fund. Applicants state that for all of the proposed substitutions, the investment objective and policies of each Substitute Fund are the same as, similar to, or consistent with the investment objective and policies of the corresponding Replaced Fund.

5. In addition to the foregoing, Applicants submit that for two years following the implementation of the Substitutions described herein, the net annual expenses of each Substitute Fund will not exceed the net annual expenses of the corresponding Replaced Fund immediately preceding the Substitutions. To achieve this limitation, ING Life will waive fees or reimburse the appropriate Substitute Fund in certain amounts to maintain expenses at or below the limit. Any adjustments required by the waiver and/or reimbursement arrangement will be made at least on a quarterly basis. In addition, the Companies will not increase the Contract fees and charges that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Substitutions.

6. Applicants also generally submit that the proposed Substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

7. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts to be offered after the proposed substitutions as they have been with the array of subaccounts offered before the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer accumulated values and contract values between and among the remaining subaccounts as they could before the proposed substitutions.

8. Applicants assert that each of the proposed substitutions is not the type of substitution which Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the

opportunity to transfer amounts out of the subaccounts which invest in the Replaced Funds into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(c) was designed to prevent.

9. Applicants maintain that the proposed substitutions also are unlike the type of substitution which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific types of insurance coverages offered by the various Companies under the Contracts as well as numerous other rights and privileges set forth in each Contract. Contract owners may also have considered the size, financial condition, type, and reputation of ING and the various Companies. These factors will not change because of the proposed substitutions.

10. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

11. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and (c) the proposed transaction is consistent with the general purposes of the Act.

12. Applicants maintain that the terms of the Substitutions, including the consideration to be paid and received by each Replaced Fund or Substitute Fund, are reasonable, fair and do not involve overreaching principally because the

transactions do not cause owners' interests under a Contract to be diluted and because the transactions will conform with the principal conditions enumerated in Rule 17a-7. The proposed transactions will take place at relative net asset value with no change in the amount of any Contract owner's Contract or cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Even though the Applicants may not rely on Rule 17a-7, Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

13. The boards of trustees or directors, as applicable of each Replaced Fund and the ING Partners have adopted procedures, as required by paragraph (e)(1) of Rule 17a-7, pursuant to which the portfolios or funds of each may purchase and sell securities to and from their affiliates. The Companies and the investment advisers will carry out the Substitutions in conformity with the principal conditions of Rule 17a-7 and each Replaced Fund's and the Substitute Fund's procedures thereunder. Nevertheless, the circumstances surrounding the Substitutions will be such as to offer the same degree of protection to each Substitute Fund and each Replaced Fund from overreaching that Rule 17a-7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, because of the circumstances surrounding the Substitutions, no investment manager to a replaced Portfolio could "dump" undesirable securities on the corresponding Substitute Fund or retain its desirable securities for other portfolios or have them transferred to its other advisory clients. Nor can the Companies (or any of the affiliates of each) effect the proposed transactions at a price that is disadvantageous to any Substitute Fund or Replaced Fund. Although the transaction may not be entirely for cash, it will be effected based upon (a) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a-7, and (b) the net asset value per share of each Substitute Fund and the corresponding Replaced Fund valued in accordance with the procedures disclosed in the registration statements for each Substitute Fund and as required by Rule 22c-1 under the 1940 Act. No brokerage

commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, the ING Partners Board will subsequently review the Substitutions and make the determinations required by paragraph (e)(3) of Rule 17a-7.

14. Except as noted below, applicants state that the Substitutions will take place in accordance with the requirements enumerated in Rule 17a-7 under the 1940 Act and with the approval of the ING Partners, except that the Substitutions may be effected in cash or in-kind. Among other things, Rule 17a-7 requires, in relevant part, that

(a) [t]he transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available; (b) [t]he transaction is effected at the independent current market price of the security. For purposes of this paragraph, the "current market price" shall be * * * the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry * * * (c) [t]he transaction is consistent with the policy of each registered investment company and separate series of a registered investment company participating in the transaction, as recited in its registration statement and reports filed under the [1940] Act; (d) [n]o brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transaction; (e) [t]he board of directors of the investment company * * *, (1) [a]dopts procedures pursuant to which such purchase or sales transactions may be effected for the company, which are reasonably designed to provide that all of the conditions of this section * * * have been complied with, (2) [m]akes and approves such changes as the board deems necessary, and (3) [d]etermines no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures; (f) (1) [a] majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and (2) [a]ny person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel; and (g) [t]he investment company: (1) maintains and preserves permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (e) of this section, and (2) maintains and preserves for a period of not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the determination described in * * * [this section] were made.

In addition, Applicants further submit that the Substitutions are consistent with the investment policy of each Replaced Fund and each Substitute Fund, as recited in the current prospectuses relating to each.

15. With regard to the Substitutions involving in-kind transfers, ING Life as the investment adviser of each Substitute Fund and the investment adviser to the Replaced Fund intend to value securities selected for transfer between the two funds in a manner that is consistent with the current methodology used to calculate the daily net asset value of the Replaced Fund. Where a Replaced Fund's investment adviser employs certain third party, independent pricing services to value securities held by the Replaced Fund ("Vendor Pricing"), the ING Life and the Replaced Fund's investment adviser intend to employ Vendor Pricing to value securities held by the Replaced Fund that are selected for transfer to the Substitute Fund. Vendor Pricing may be used in each of the Substitutions. Generally, the redemption of securities from the Replaced Fund and subsequent transfer to the Substitute Fund will be done on a pro-rata basis. In the event that a Replaced fund holds illiquid or restricted securities or assets that are not otherwise readily distributable or if a pro-rata transfer of securities would result in the parties holding odd lots, the investment advisers may agree to have a Replaced Fund transfer to the Substitute Fund an equivalent amount of cash instead of securities.

16. After the assets have been contributed to the Substitute Fund, responsibility for valuation of the securities held by the Substitute Fund will shift to the valuation committee of the Board of ING Partners. At the end of the first trading following the transfer, the valuation agent and custodian for ING Partners, Investors Bank and Trust, will value the securities held by the Substitute Fund. The foregoing notwithstanding, the Board of ING Partners will retain ultimate responsibility for valuation decisions.

17. The Applicants believe that the use of neutral, third party vendor prices will ensure that both portfolios utilize unbiased evaluations in determining respective security and, ultimately, portfolio market values. In the event that independent pricing services do not provide valuations for a specific security selected for transfer, ING Life and the Replaced Fund's investment adviser, in accordance with paragraph (b)(4) of Rule 17a-7 under the 1940 Act, will rely on the "average of the highest current independent bid and lowest current independent offer determined

on the basis of reasonable inquiry.

* * *" in valuing any such security.

18. Applicants submit that the terms of the Substitutions by the Companies, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also submit that the Substitutions by the Companies are consistent with the policies of each Substitute Fund and each Replaced Fund, as recited in the current registration statements and reports filed by each under the 1940 Act. Finally, Applicants submit that the Substitutions are consistent with the general purposes of the 1940 Act.

19. Applicants submit that, to the extent that the Substitutions are deemed to involve principal transactions between affiliates, the procedures and terms and descriptions described in the Application demonstrate that neither the Replaced Funds, the Substitute Funds, the Accounts nor any other Applicant will be participating in the Substitutions on a basis less advantageous than that of any other participant.

20. The Substitutions are consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Moreover, the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors, as required by Section 6(c) of the 1940 Act. Contract owners will be fully informed of the terms of the Substitutions through the supplements and the Post-Substitution Confirmation and will have an opportunity to withdraw from the Replaced Fund through reallocation to another subaccount or otherwise terminate their interest thereof in accordance with the terms and conditions of their Contract prior to the Effective Date.

Applicants' Conditions

For purposes of the approval sought pursuant to Section 26(c) of the Act, the substitutions described in the application will not be completed unless all of the following conditions are met:

1. The Commission shall have issued an order (a) approving the Substitutions under Section 26(c) of the 1940 Act; and (b) exempting the in-kind redemptions from the provisions of Section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

2. A registration statement for the ING Oppenheimer Strategic Income Portfolio is effective and the sub-adviser changes, fund name changes, changes in investment objectives and/or policies, as applicable, and fee reductions for each of the other Substitute Funds have been implemented.

3. Each affected Contract owner will have been sent a copy of (a) a supplement to the prospectus or prospectus summary informing shareholders of the Application; (b) a prospectus or summary of the prospectus for the appropriate Substitute Fund, and (c) a second supplement to the prospectus or prospectus summary setting forth the Effective Date and advising affected Contract owners of their right to reconsider the Substitutions and, if they so choose, any time prior to the Effective Date and for at least 30 days after the Effective Date, to reallocate or withdraw amounts under their affected Contract without charge or otherwise terminate their interest therein in accordance with the terms and conditions of their Contract.

4. The Companies shall have satisfied themselves, that (a) the Contracts allow the substitution of investment company shares in the manner contemplated by the Substitutions and related transactions described herein; (b) the transactions can be consummated as described in the Application under applicable insurance laws; and (c) that any regulatory requirements in each jurisdiction where the Contracts are qualified for sale, have been complied with to the extent necessary to complete the transactions.

5. Within five business days of the Effective Date of the Substitutions, the Applicants will forward to affected Contract owners a Post-Substitution Confirmation.

Conclusion

Applicants assert that for the reasons summarized above the proposed substitutions and related transactions meet the standards of Section 26(c) of the Act and are consistent with the standards of Section 17(b) of the Act and that the requested orders should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3353 Filed 11-26-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26658]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 19, 2004.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November, 2004. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549-0102 (tel. (202) 942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 14, 2004, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0609. For Further Information Contact: Diane L. Titus at (202) 942-0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549-0504.

MuniInsured Fund, Inc. [File No. 811-5190]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 7, 2004, applicant transferred its assets to MuniYield Insured Fund, Inc., based on net asset value. Expenses of \$157,426 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on October 29, 2004.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Golden Gate Fund, Inc. [File No. 811-9925]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By October 25,

2004, all shareholders of applicant had redeemed their shares at net asset value. Expenses of \$32,015 incurred in connection with the liquidation were paid by Collins & Company, LLC, applicant's investment adviser.

Filing Date: The application was filed on October 29, 2004.

Applicant's Address: 100 Larkspur Landing Circle, Suite 102, Larkspur, CA 94939.

BMO Partners Fund, L.P. [File No. 811-9935]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering. Applicant will continue to operate as a private investment company in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on October 5, 2004, and amended on November 12, 2004.

Applicant's Address: 360 Madison Ave., 20th Floor, New York, NY 10017.

Merriman Investment Trust [File No. 811-5487]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 15, 2004, all shareholders of applicant had redeemed their shares at net asset value. Expenses of \$28,798 incurred in connection with the liquidation were paid by applicant and Merriman Capital Management, Inc., applicant's investment adviser.

Filing Dates: The application was filed on October 19, 2004, and amended on November 12, 2004.

Applicant's Address: 1200 Westlake Ave. N, Suite 700, Seattle, WA 98109.

Nations Government Income Term Trust 2004, Inc. [File No. 811-8192]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 31, 2004, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of \$10,098 incurred in connection with the liquidation were paid by applicant. PFPC, applicant's transfer agent, holds \$138,760 in cash for shareholders who have not been located. PFPC will hold the unclaimed assets for a period of three years, after which time any unclaimed assets will escheat to the State of Maryland. Applicant also has retained \$4,154 in cash to cover unpaid liabilities and expenses.

Filing Dates: The application was filed on October 20, 2004, and amended on November 5, 2004.

Applicant's Address: One Bank of America Plaza, 101 South Tryon St., Charlotte, NC 28255.

Nations Balanced Target Maturity Fund, Inc. [File No. 811-8452]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 30, 2004, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of \$10,075 incurred in connection with the liquidation were paid by applicant. PFPC, applicant's transfer agent, holds \$212,019 in cash for shareholders who have not been located. PFPC will hold the unclaimed assets for a period of three years, after which time any unclaimed assets will escheat to the State of Maryland. Applicant also has retained \$40,007 in cash to cover unpaid liabilities and expenses.

Filing Dates: The application was filed on October 20, 2004, and amended on November 5, 2004.

Applicant's Address: One Bank of America Plaza, 101 South Tryon St., Charlotte, NC 28255.

Nations Government Income Term Trust 2003, Inc. [File No. 811-7926]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 30, 2003, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of \$10,163 incurred in connection with the liquidation were paid by applicant. PFPC, applicant's transfer agent, holds \$141,651 in cash for shareholders who have not been located. PFPC will hold the unclaimed assets for a period of three years, after which time any unclaimed assets will escheat to the State of Maryland.

Filing Dates: The application was filed on October 20, 2004, and amended on November 5, 2004.

Applicant's Address: One Bank of America Plaza, 101 South Tryon St., Charlotte, NC 28255.

American Century Manager Funds [File No. 811-8668]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 2, 1997, applicant transferred its assets to corresponding series of American Century Strategic Asset Allocations, Inc., based on net asset value. Expenses of \$9,897 incurred in connection with

the reorganization were paid by American Century Investment Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on October 22, 2004.

Applicant's Address: 4500 Main St., Kansas City, MO 64111.

American Century Capital Preservation Fund, Inc. [File No. 811-2247]

American Century Capital Preservation Fund II, Inc. [File No. 811-3036]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On September 2, 1997, each applicant transferred its assets to a corresponding series of American Century Government Income Trust, based on net asset value. Expenses of \$19,794 incurred in connection with each reorganization were paid by American Century Investment Management, Inc., applicants' investment adviser.

Filing Date: The applications were filed on October 22, 2004.

Applicants' Address: 4500 Main St., Kansas City, MO 64111.

American Century Premium Reserves, Inc. [File No. 811-7446]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 2, 2001, applicant transferred its assets to corresponding series of American Century Investment Trust, based on net asset value. Expenses of \$24,157 incurred in connection with the reorganization were paid by American Century Investment Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on October 22, 2004.

Applicant's Address: 4500 Main St., Kansas City, MO 64111.

American Tax-Exempt Bond Trust, Series 1 [File No. 811-2457]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On October 6, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on August 9, 2004, and amended on October 26, 2004.

Applicant's Address: c/o B.C. Ziegler and Company, 250 East Wisconsin Ave., Milwaukee, WI 53202.

The Insured American Tax-Exempt Bond Trust, Series 1 [File No. 811-4026]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On August 2, 2000, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on August 23, 2004, and amended on October 26, 2004.

Applicant's Address: c/o B.C. Ziegler and Company, 250 East Wisconsin Ave., Milwaukee, WI 53202.

EACM Select Managers Equity Fund [File No. 811-9112]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 6, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$106,406 incurred in connection with the liquidation were paid by Evaluation Associates Capital Markets, Inc., applicant's investment adviser. Applicant has retained approximately \$32,223 to cover outstanding liabilities.

Filing Date: The application was filed on October 15, 2004.

Applicant's Address: 200 Connecticut Ave., Sixth Floor, Norwalk, CT 06854-1958.

Eureka Funds [File No. 811-8305]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 10, 2004, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of \$468,000 incurred in connection with the liquidation were paid by Bank of the West, the parent company of applicant's investment adviser.

Filing Date: The application was filed on October 14, 2004.

Applicant's Address: 3435 Stelzer Rd., Columbus, OH 43219.

IDS Life Series Fund, Inc. [File No. 811-4299]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 9, 2004, applicant transferred its assets to AXP VP-Investment Series, Inc., AXP VP-Income Series, Inc., AXP VP-Managed Series, Inc., and AXP VP-Money Market Series, Inc., based on net asset value. Expenses of \$245,518 incurred in connection with the merger were paid by American Express Financial Corporation.

Filing Dates: The application was filed on September 2, 2004 and amended and restated on October 20, 2004.

Applicant's Address: 70100 AXP Financial Center, Minneapolis, MN 55474

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3346 Filed 11-26-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50698; File No. SR-Amex-2004-66]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Allocation Procedures for Relisted Options

November 18, 2004.

On August 10, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Amex Rule 27, which would allow automatic allocation of relisted options to their previously assigned specialists upon satisfaction of certain conditions. On September 24, 2004, Amex filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on October 15, 2004.⁴ The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed

rule change, as amended, is consistent with Section 6(b)(5) of the Act,⁶ which requires that the rules of the an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, to protect investors and the public interest.

The Commission believes that automatic allocation of relisted options to their previously assigned specialists may provide specialists with an incentive to delist inactive options. As a result, the Commission further believes that this proposed rule change, as amended, could reduce quote traffic in options market. The Commission has previously noted that proposals that may mitigate quote traffic should benefit investors and other participants in the options markets.⁷ The Commission also notes that the proposed rule change, as amended, would not permit automatic allocation in all instances. Specifically, automatic allocation would not occur when a specialist is subject to an allocation prohibition, the Exchange relists an option more than one year after delisting, or a specialist declines the allocation. In any of these cases, the option would be allocated pursuant to the Exchange's regular options allocation procedure.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Amex-2004-66), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3347 Filed 11-26-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50690; File No. SR-DTC-2004-10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Implement Phase II of the IMS Service

November 18, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ notice is hereby given that on September 10, 2004, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is seeking to implement Phase II of its Inventory Management System ("IMS").² In the implementation of Phase I, IMS replaced the Authorization and Exception system to allow for automated settlement of institutional deliveries. By providing for authorization and control within asset class and transaction type, such as night deliver orders ("NDO"), through predefined profiles, IMS provides DTC participants with increased control and timing over their deliveries. The Phase II enhancements to the IMS service will extend a participant's ability to control the submission of its deliveries and will permit participants to determine how their deliveries recycle in the system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC is seeking to implement Phase II of IMS. Currently, IMS allows DTC participants to:

(1) Stage their institutional deliveries received from a matching utility system (such as Omgeo's TradeSuite system) for automated settlement;

¹ 15 U.S.C. 78s(b)(1).

² The Commission approved a proposed rule change implementing Phase I of the IMS. Securities Exchange Act Release No. 48176 (July 14, 2003), 68 FR 43244 [File No. SR-DTC-2002-19].

³ The Commission has modified the text of the summaries prepared by DTC.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 23, 2004 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 50498 (October 6, 2004), 69 FR 61274.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ See Securities Exchange Act Release No. 42764 (May 8, 2000), 65 FR 31037 (May 15, 2000) (approving File No. SR-Phlx-2000-06).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

(2) Establish a predefined profile to allow greater control over the timing and order of their deliveries by transaction type and asset class;

(3) Reintroduce drop deliveries for NDO, broker-to-broker balance orders, and all other participant deliveries; and

(4) Warehouse deliveries with future settlement dates through the NDO function.

Today, deliveries from the National Securities Clearing Corporation's ("NSCC") Continuous Net Settlement ("CNS") system are automatically processed unless a participant otherwise instructs NSCC through an exemption. Other deliveries such as NDOs, along with authorized institutional and CNS deliveries, are processed by DTC at predefined times. All of these transactions may recycle (*i.e.*, pend) in the event of a position deficiency or a problem with system controls. These recycles are processed based on one of two recycle options: A "first in first out" process or a DTC preestablished recycle queue.

DTC is now seeking to implement Phase II to allow participants to customize the order in which their authorized night cycle deliveries, such as CNS and institutional deliveries, are submitted for processing and to provide participants with the ability to create profiles that instruct DTC's processing system how to attempt to complete their recycling deliveries that are recycling for insufficient position.

DTC currently recycles deliveries for insufficient position in a prescribed order based on transaction type and settlement value. To address their unique recycle requirements, some participants withhold their deliveries to DTC. For other participants, deliveries may not complete in their desired order.

IMS Phase II permits participant to prepopulate a profile that "customizes" its position recycle order for settlement related transactions. Transactions will be processed in the prescribed order if there are sufficient shares. If there are insufficient shares to complete a high priority transaction, then transactions with a lower priority but with sufficient shares will be processed subject to other controls. This service will be optional, and the current recycle order will remain in effect unless profile changes are made.⁴

Participants will be able to promote their recycling transactions through 15022 messages or a new PBS screen in IMS if they have update capability.

Participants will be able to promote transactions to the top of the recycle queue. Once a transaction is promoted, a participant will be able to promote another transaction higher or lower than the previously promoted transaction.

In order to recoup the costs of this development, participants will be billed \$.045 for each delivery that is promoted. Participants will be charged \$.06 for each delivery that is "customized" by these profiles, including deliveries that are submitted using the current active to passive functionality. If a delivery is submitted and recycles based upon profile selection, the participant will not be double charged for the delivery.⁵

Participants will not be required to make systemic changes and will be able to continue processing their deliveries as they do today. All IMS features will be optional, and participants will be able to migrate to any or all features they deem valuable.

The new enhancements to the IMS service will extend and will improve participants' ability to control the submission of their deliveries and will permit users to determine how their deliverables should recycle in the system based on a participant-defined profile.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder applicable to DTC because it will promote the prompt and accurate clearance and settlement of securities transactions by increasing efficiency in processing member transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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 this Act, in the public interest, or for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has discussed this rule change proposal in its current form with various DTC participants and industry groups, a number of whom have worked closely in developing the proposed IMS system. DTC will notify the Commission of any written comments received by DTC.

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 such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-DTC-2004-10 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-DTC-2004-10. 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

⁴ For example, unless a participant customizes its position recycle order, CNS will continue to have the highest priority, followed by value releases, and others.

⁵ It will cost \$.06 to have a delivery submitted and recycled by IMS based upon the profile created.

⁶ 15 U.S.C. 78q-1.

inspection and copying at the principal office of DTC and on DTC's Web site (<http://www.dtc.org>). 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-DTC-2004-10 and should be submitted on or before December 20, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3348 Filed 11-26-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50712; File No. SR-FICC-2004-07]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend Its Rules To Eliminate the "Mortgage Banker" Category of Membership in Its Mortgage-Backed Securities Division

November 22, 2004.

I. Introduction

On March 25, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on June 21, 2004, and October 13, 2004, amended proposed rule change File No. SR-FICC-2004-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on October 20, 2004.² No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The proposed rule change amends the rules of FICC's Mortgage-Backed Securities Division ("MBSD") to eliminate the "mortgage banker" category of membership. In accordance with Article III, Rule 1, Section 2, "Financial Requirements for Participants and Limited Purpose Participants," of MBSD's Rules, mortgage bankers are subject to a

minimum net worth requirement of \$5 million. With the exception of "brokers," all other applicants are subject to a minimum net worth or regulatory net capital requirement of \$10 million.³

Historically, mortgage bankers (which generally act as mortgage originators) maintained relatively little capital. FICC considered a lower minimum capital standard appropriate to enable and encourage these types of firms to participate in FICC. The mortgage banker category of membership is now becoming obsolete for two principal reasons. First, changes in the mortgage business are causing small originators to use Fannie Mae and Freddie Mac, making MBSD membership less desirable and therefore making the relatively lower minimum capital standard less justified. Second, from a membership administration perspective there appears to be no precise, uniform definition for "mortgage banker."⁴

The proposed rule change eliminates the mortgage banker category from the MBSD Rules. Entities that would have previously qualified as mortgage bankers will now be classified under the catch-all category of membership in Article III, Rule 1, Section 1, "Applicants Eligible to Become Participants or Limited Purpose Participants."⁵ This reclassification will increase the minimum net worth requirement from \$5 million to \$10 million for these members. FICC does not anticipate that this increase will adversely affect existing mortgage banker members because member financial statements filed with FICC indicate that each mortgage banker member's capitalization currently exceeds the new minimum.

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the

³ MBSD's Rules define "broker" as a member that is in the business of buying and selling securities as agent on behalf of dealers. Brokers are currently subject to a minimum net or liquid capital requirement of \$5 million.

⁴ Mortgage originators are state-regulated entities, and definitions of such entities vary with each state. Generally, these definitions target entities whose "primary" business is the issuance of mortgages. MBSD has historically classified entities as mortgage bankers based upon an applicant's representations made in its membership application and confirmed by management's review of the applicant's business.

⁵ Article III, Rule 1, Section 1(f) provides a catch-all category for membership for "firms in such other categories as the Corporation [FICC] from time to time may determine." The proposed rule change was amended to add language to Addendum A of the MBSD Rules to clarify that entities that are deemed to be mortgage bankers would be considered to be one of the various entity types that fall under the catch-all category of membership.

rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.⁶ The Commission finds that FICC's proposed rule change is consistent with this requirement because by removing the mortgage banker category from the MBSD Rules and by providing that entities that currently are classified as such meet a higher minimum financial requirement, it enhances the ability of FICC to maintain a financially sound membership base without an adverse effect on itself or its members.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-FICC-2004-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3350 Filed 11-26-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50710, File No. SR-NASD-2004-157]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Performance Leveraged Upside Securities Linked to the Russell 2000 Index

November 19, 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 October 21, 2004, the National Association of Securities Dealers, Inc. ("NASD"), 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

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² CFR 240.19b-4.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 50536 (October 13, 2004), 69 FR 61699.

below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade Performance Leveraged Upside SecuritiesSM ("PLUS"), the return on which is based upon the Russell 2000 Index ("Notes") issued by Morgan Stanley.

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 proposed to list and trade the PLUS which provide for a return based upon the Russell 2000 Index (the "Index").

Index

The Index is a capitalization-weighted index maintained by Frank Russell company ("FRC").³ It is designed to track the performance of 2,000 common stocks of corporations with small market capitalizations relative to other stocks in the U.S. equity market. The companies represented in the Index are domiciled in the U.S. and its territories and cover a wide range of industry groups. All 2,000 stocks are traded on the New York Stock Exchange, the American Stock Exchange, or Nasdaq and form a part of the Russell 3000 Index. The Russell 3000 Index is composed of the 3,000 largest U.S. companies, based on market capitalization, and represents approximately 98% of the U.S. equity market.

The Index measures the price performance of the shares of common

stock of the smallest 2,000 companies included in the Russell 3000 Index, which represent approximately 8% of the total market capitalization of the Russell 3000 Index as of August 31, 2004.⁴ The Index is designed to track the performance of the small capitalization segment of the U.S. equity market. The Index is defined, assembled and calculated by FRC without regard to the Notes.

Only companies domiciled in the U.S. and its territories are eligible for inclusion in the Index. Companies domiciled in other countries are excluded, even if their common stock shares are traded on U.S. markets. Preferred stock, convertible preferred stock, participating preferred stock, paired shares, warrants, and rights are also excluded. Trust receipts, Royalty Trusts, limited liability companies, OTC Bulletin Board and Pink Sheets' quoted stock, closed-end mutual funds, and limited partnerships that are traded on U.S. exchanges, are also ineligible for inclusion. Real Estate Investment Trusts and Beneficial Trusts are eligible for inclusion, however. In general, only one class of securities of a company is allowed in the Russell 3000 Index, although exceptions to this general rule have been made where FRC has determined that each class of securities acts independent of the other.

The primary criteria used to determine the initial list of securities eligible for the Russell 3000 Index is total market capitalization, which is defined as the price of the shares times the total number of shares outstanding. Based on closing values on May 31 of each year, FRC reconstitutes the composition of the Russell 3000 Index using the then existing market capitalizations of eligible companies to reflect changes in capitalization rankings and shares available. If a stock ceases to trade as a result of a merger or acquisition during the year, the stock is deleted from the Index and will be replaced during the subsequent annual recapitalization. No interim replacements will be made. As of June 30 of each year, the Index is adjusted to reflect the reconstitution of the Russell 3000 Index for that year.

As of September 30, 2004, the market capitalization of the Index components ranged from approximately \$68 million to approximately \$2.353 billion. As of the same date, the Index's highest weighted component stock constituted approximately 0.213% of the Index's market capitalization, and the top five component stock constituted

approximately 0.9968% of the Index's market capitalization. For a 30-day period prior to August 19, 2004, the average daily trading volume of the average of all of the Index's components was approximately 195,000 shares.⁵

As a capitalization-weighted index, the Index reflects changes in the capitalization, or market value, of the component stocks relative to the capitalization on a base date. The current index value is calculated by adding the market values of the Index's component stocks, which are derived by multiplying the price of each stock by the number of shares outstanding, to arrive at the total market capitalization of the 2,000 stocks. The total market capitalization is then divided by a divisor, which represents the "adjusted" capitalization of the Index on the base date of December 31, 1986. To calculate the Index, last sale prices are used for exchanged-traded and Nasdaq stocks. If a component stock is not open for trading, the most recently traded price for that security is used in calculating the Index. In order to provide continuity for the Index's value, the divisor is adjusted periodically to reflect events including changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings and other capitalization changes.

The Index value is widely disseminated throughout the trading day because complete, "real time" dissemination of the Index value updated at least every 15 seconds, is available from sources independent of the issuer and Nasdaq, such as numerous vendors, including Bloomberg and Reuters. The value of the Index on a delayed basis can be accessed by individual investors at <http://finance.yahoo.com/q?s=^RUT&d=t>. The last sale information for the Notes is disseminated on a real time basis on Tape C and a variety of other sources.⁶ In the event that the calculation and dissemination of the Index from an independent third-party source is discontinued, Nasdaq states that it will delist the Notes.⁷

⁵ Telephone conference between Alex Kogan, Associate General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, ("Division"), Commission, dated November 16, 2004.

⁶ November 16, 2004 telephone conference between Alex Kogan, Associate General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, Division, Commission.

⁷ November 16, 2004 telephone conference between Alex Kogan, Associate General Counsel, Nasdaq, and Florence Harmon, Senior Special Counsel, Division, Commission.

³ For additional information regarding the Index see <http://www.russell.com>.

⁴ As of August 31, 2004, the total market capitalization of the Index was \$953.34 billion.

Other Information

Under Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.⁸ Nasdaq proposes to list and trade notes based on the Index under Rule 4420(f).

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under Rule 4420(f). Specifically, under Rule 4420(f)(1):

(A) The issuer shall have assets in excess of \$100 million and

(B) stockholders' equity of at least \$10 million.⁹ In the case of an issuer which is unable to satisfy the income criteria set forth in Rule 4420(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;

(C) 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;

(D) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(E) The aggregate market value/principal amount of the security will be at least \$4 million.

In addition, Morgan Stanley satisfies the listed marketplace requirement set forth in Rule 4420(f)(2).¹⁰ Lastly, pursuant to Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities, and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that such 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, such

transaction. In addition, pursuant to NASD Rule 2310(b), before executing a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly held units must be at least \$1 million. The Notes also must have at least two registered and active market makers, which is a continued listing requirement under Rule 4310(c)(1). The Notes will be subject to the NASD's existing trading halt rules. Nasdaq represents that it will consider prohibiting the continued listing of the Notes if Morgan Stanley is not able to meet its obligations on the Notes.

Description of the Notes

The Notes are a series of medium-term, senior non-convertible debt securities that will be issued by Morgan Stanley. The original public offering price of the Notes will be \$10 per PLUS. The Notes will not pay interest and are not subject to redemption by Morgan Stanley or at the option of any beneficial owner before maturity (approximately 1.25 years from the pricing date).

At maturity, if the value of the Index has increased, a beneficial owner will be entitled to receive a payment on the Notes based on 300% the amount of that percentage increase, subject to a maximum total payment at maturity that is expected to be between \$11.35 and \$11.65 per Note (the "Maximum Payment at Maturity").¹¹ Thus, the Notes provide investors the opportunity to obtain leveraged returns based on the Index subject to a cap that is expected to represent an appreciation of 11.5% to 16.5% over the original issue price of the Notes. However, the Notes are not leveraged on the downside; rather, the value of the Notes declines on a one-to-one basis with the Index. Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined from the time of pricing to the time of maturity, a beneficial owner will receive less, and

possibly significantly less, than the original issue price of \$10 per PLUS.

The payment that a beneficial owner will be entitled to receive at maturity depends entirely on the relation of the value of the Index generally on the second trading day prior to the date when the Notes are due (the "Final Index Value") and the value of the Index on the day they are priced for initial sale to the public (the "Initial Index Value"). If the Final Index Value is greater than the Initial Index Value, the payment at maturity per PLUS will equal the lesser of (a) \$10 plus the Leveraged Upside Payment¹² and (b) the Maximum Payment at Maturity. If the Final Index Value is less than or equal to the Initial Index Value, the payment at maturity per PLUS will equal \$10 times the Index Performance Factor.¹³

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Index. The Commission has previously approved the listing of options on, and other securities the performance of which have been linked to or based on, the Index and to other Russell indexes.¹⁴

Since the Notes will be deemed equity securities for the purpose of Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to Rule 2310 and IM-2310-2, 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.¹⁵ In

¹² The Leveraged Upside Payment is the product of (i) \$10 and (ii) 300% and (iii) the Index Percent Increase (a fraction, the numerator of which is the Final Index Value minus the Initial Index Value and the denominator of which is the Initial Index Value).

¹³ The Index Performance Factor is a fraction, the numerator of which is the Final Index Value and the denominator of which is the Initial Index Value.

¹⁴ See Securities Exchange Act Release No. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (SR-CBOE-92-02) (approving the listing and trading of options on the Index); Securities Exchange Act Release No. 49388 (March 10, 2004), 69 FR 12720 (March 17, 2004) (SR-CBOE-2003-51) (approving the listing and trading of options on 3 Russell indexes; order contains the list of 12 additional Russell indexes that were approved by the Commission at various times in the past for option listing and trading).

¹⁵ As stated, prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, Rule

⁸ See Securities Exchange Act Release No. 32988 (September 29, 1993), 58 FR 52124 (October 6, 1993) (SR-NASD-93-15).

⁹ Morgan Stanley satisfies this listing criterion.

¹⁰ NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange ("NYSE") or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

¹¹ The actual Maximum Payment at Maturity will be determined at the time of pricing of the Notes.

addition, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes.

Nasdaq represents that NASD Regulation's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD Regulation will rely on its current surveillance procedures governing equity securities and will include additional monitoring on key pricing dates.

Pursuant to Securities Exchange Act Rule 10A-3, 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.

Morgan Stanley will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Morgan Stanley's current procedure involving primary offerings.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹⁶ in general, and with Section 15A(b)(6)¹⁷ of the Act, 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. Specifically, the proposed rule change will provide investors with another investment vehicle based on the Index.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. 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-2004-157 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-2004-157. 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-2004-157 and should be submitted on or before December 20, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval for Proposed Rule Change

Nasdaq has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes. After careful consideration, 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,¹⁸ which requires in part that the rules be designed 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.¹⁹

The Notes are medium-term, senior non-convertible debt securities the return on which is based on the Index. The Notes, however, will not pay interest and are not subject to redemption by Morgan Stanley or at the option of any beneficial owner before maturity (approximately 1.25 years from the pricing date). Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined from the time of pricing to the time of maturity, a beneficial owner will receive less, and possibly significantly less, than the original issue price of \$10 per PLUS. The Commission believes that the Notes provide investors with the opportunity to obtain upside leveraged returns based on the Index subject to a cap that is expected to represent an appreciation of 13.5% to 16.5% over the original issue price of the Notes. The Commission notes that the return of the Notes, if the Index declines, is not leveraged.

The Commission notes that issues are raised by the fact that the Notes are debt securities that do not guarantee a return of principal, that return on the Notes is limited by the Maximum Payment at maturity, and that the Final Index Value is derivatively priced and based on the performance value of an index of securities. As set forth below, the Commission believes that these concerns are adequately addressed by Nasdaq's proposals.

¹⁸ 15 U.S.C. 78o-3(b)(6).

¹⁹ 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).

2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

¹⁶ 15 U.S.C. 78o-3.

¹⁷ 15 U.S.C. 78o3(b)(6).

First, the Commission notes that NASD Rule 4420(f) addresses the concerns stemming from the trading of hybrid securities such as the Notes. The Commission believes that the hybrid listing standards, suitability for recommendations standards²⁰ and compliance requirements will enable Nasdaq to address the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that pursuant to Rule 4420(f)(3), prior to the commencement of trading on the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. Specifically, among other things, the circular will note that the Notes do not guarantee a total return of principal at maturity, that they are subject to maximum total payment at maturity that is expected to be between \$11.35 and \$11.65 per Note (the "Maximum Payment at Maturity"), that the Notes will not pay interest, and that the Notes will provide exposure to the Index. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with the transactions in the Notes will trade the Notes. Nasdaq also represents that Morgan Stanley will deliver a prospectus in connection with the initial purchase of the Notes.

Second, the Commission notes that the final rate of return on the Notes depends in part upon the individual credit of the issuer, Morgan Stanley. To come extent this credit risk is minimized by NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. NASD's hybrid listing standards further require that the Notes have at least \$4 million in market value. In addition, financial information regarding Morgan Stanley will be publicly available.

Third, the Notes will be registered under Section 12 of the Act. NASD and Nasdaq's existing equity trading rules will apply to the Notes which will be subject to equity margin rules and will trade during the regular equity trading hours of 9:30 a.m. and 4 p.m. NASD

Regulation's surveillance procedures for the Notes will be the same as its current surveillance procedures for equity securities and will include additional monitoring on key pricing dates. The Commission believes that these rules and procedures will deter potential manipulation of the Notes.

Fourth, the Commission has a systematic concern that a broker-dealer, such as Morgan Stanley, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in prior approval orders for other hybrid instruments issued by broker dealers,²¹ the Commission believes that this concern is minimal, given the size of the Notes issuance in relation to the net worth of Morgan Stanley.

Fifth, the Commission believes the general broad diversification, level of capitalization, and trading activity in the markets for the Index's component stocks minimize the potential for manipulation of the Index. The Index is a capitalization-weighted index maintained by FRC. It is designed to track the performance of 2,000 common stocks of corporations with small market capitalizations relative to other stocks in the U.S. equity market. The companies represented in the Index are domiciled in the U.S. and its territories and represent a wide range of industry groups. All 2,000 stocks are traded on the New York Stock Exchange, the American Stock Exchange, or Nasdaq and form a part of the Russell 3000 Index. As of August 31, 2004, the total market capitalization of the Index was \$953.34 billion and as of September 31, 2004, the market capitalization of the Index components ranged from approximately \$68 million to approximately \$2.353 billion. As of the same date, the Index's highest weighted component stock constituted approximately 0.213% of the Index's market capitalization and the top five component stocks constituted approximately 0.9968% of the Index's market capitalization. For a 30-day period prior to August 19, 2004, the average daily trading volume of the

average of all of the Index's components was approximately 195,000 shares. The Commission notes that the overwhelming majority of the stocks that comprise the Index are not actively traded. The Commission also believes that the listing and trading of the Notes should not unduly impact the market for underlying securities comprising the Index. Finally, the Commission notes that the value of the Russell 2000 Index will be widely disseminated on a real-time basis (at least every 15 seconds) throughout the trading day. In the event that the calculation and dissemination of the index from an independent third-party source is discontinued, Nasdaq states that it will delist the Notes.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In determining to grant the accelerated approval for good cause, the Commission notes that it has previously approved the listing of options on/ and or securities, the performance of which has been based on the Index.²² In addition, the Commission has previously approved the listing of securities with a structure that is the same or substantially the same as the Notes.²³ The Commission believes the Notes will provide investors with an additional investment choice and that the accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act²⁴ that the proposed rule change (SR-NASD-2004-

²² See Securities Exchange Act Release No. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (SR-CBOE-92-02) (approving the listing and trading of options on the Index); Securities Exchange Act Release No. 49388 (March 10, 2004), 69 FR 12720 (March 17, 2004) (SR-CBOE-2003-51) (approving the listing and trading of options on 3 Russell indexes; order contains the list of 12 additional Russell indexes that were approved by the Commission at various times in the past for option listing and trading).

²³ See Securities Exchange Act Release No. 50501 (October 7, 2004), 69 FR 61533 (October 19, 2004) (SR-NASD-2004-138) (approving the listing and trading of PLUS based on the value of the Dow Jones Euro Stoxx 50 Index); Securities Exchange Act Release No. 48065 (June 19, 2003), 68 FR 38414 (June 27, 2003) (SR-NASD-2003-100) (approving the listing and trading of PLUS based on the value of the Nasdaq-100).

²⁴ 15 U.S.C. 78s(b)(2).

²⁰ Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that the transaction is suitable for a 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 involved in the transaction.

²¹ See Securities and Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving File No. SR-NASD-2001-73) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving File No. SR-Amex-2001-40) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected by the Amex Institutional Index); and 37744 (September 27, 1996) (order approving File No. SR-Amex-96-27) (approving the listing and trading of notes issued by Merrill Lynch the return of which is based on a weighted portfolio of healthcare/biotechnology industry securities).

157) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-26304 Filed 11-26-04; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50708; File No. SR-NSX-2004-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Stock Exchange To Amend Its By-Laws and Rules To Change the Designation of Its Board

November 19, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 19, 2004, the National Stock ExchangeSM ("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 Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3) thereunder⁴ as being concerned solely with the administration of the Exchange, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its By-Laws and Rules to change all references to its governing board from the "Board of Trustees" to the "Board of Directors," and to change all references to each member of the governing board from "Trustee" to "Director." The text of the proposed rule change is available at the Office of the Secretary of the Exchange 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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's By-Laws and Rules currently refer to the Exchange's governing board as the "Board of Trustees" and to each member of the governing board as a "Trustee." The Exchange proposes to change the name of its governing board to the "Board of Directors" and to change all references to each member of the governing board to "Director." Accordingly, the Exchange proposes to amend its By-Laws and Rules to reflect the change in nomenclature. The Exchange represents that this filing has no effect on the Exchange's governance structure and would not affect any of the operations of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(1) of the Act⁵ in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

B. Self-Regulatory Organization's Statement of 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 of Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange represents that written comments were neither solicited nor received with respect to the proposed rule change.⁶

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and Rule 19b-4(f)(3) thereunder⁸ because the proposed rule change is concerned solely with the administration of the Exchange. At any time within sixty (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.⁹

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-NSX-2004-06 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-NSX-2004-06. 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/>

⁶ See telephone conversation between Jennifer M. Lamie, Assistant General Counsel and Secretary, the Exchange, and Steve L. Kuan, Attorney, Division of Market Regulation, Commission, on October 27, 2004.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(3).

⁹ 15 U.S.C. 78s(b)(3)(C).

²⁵ 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. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

⁵ 15 U.S.C. 78f(b)(1).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSX-2004-06 and should be submitted on or before December 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3349 Filed 11-26-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50717; File No. SR-PCX-2004-80]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Arbitrator Classification, Challenges and Disclosure

November 22, 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 August 16, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed Amendment No. 1 to the proposed rule

change on October 1, 2004.³ 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 PCX is proposing this Amendment No. 1, which replaces the original filing in its entirety, to amend the PCX Options and PCX Equities, Inc. ("PCXE") arbitration rules relating to arbitrator classification, challenges, and disclosure. The text of the proposed rule change appears below; proposed deletions appear in [brackets], and proposed additions are *italicized*. Because the proposed changes to PCX Rule 12.8 through 12.11 are identical to the proposed changes to PCXE Rules 12.9 through 12.12, only the PCX rules appear below (the PCXE rules have not been included).

* * * * *

Rules of the Pacific Exchange, Inc.

Rule 12

Arbitration

* * * * *

Designation of Number of Arbitrators

Rule 12.8(a)-(b)—No change.

(c) An arbitrator will be deemed as a *non-public arbitrator*, or being from the securities industry, if he or she:

(i)[1.] is a person associated with an OTP Firm, OTP Holder, [or] broker/dealer, government securities broker, government securities dealer, municipal securities dealer or registered investment advisor, *is registered under the Commodity Exchange Act, a member of a commodities exchange or a registered futures association; or associated with a person or firm registered under the Commodity Exchange Act; or*

(ii)[2.] has been associated with any of the above within the past *five* [three (3)] years, or

(iii)[3.] is retired from, *or spent a substantial part of a career, engaging in any of the business activities listed* [any of the above] in subsection (i), or

(iv)[4.] is an attorney, accountant or other professional who devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two (2) years.

³ See letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 30, 2004, and accompanying Form 19b-4 ("Amendment No. 1"). Amendment No. 1 replaced the original filing in its entirety.

(d) *An arbitrator will be deemed as a public arbitrator if he or she:* [An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer or investment advisor]

(i) *is not engaged in the conduct or activities described in subsection (c)(i)-(iv);*

(ii) *was not engaged in the conduct or activities described in subsections (c)(i)-(iv) for a total of 20 years or more;*

(iii) *is not an investment adviser;*

(iv) *is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in subsections (c)(i)-(iv);*

(v) *is not the spouse, parent, stepparent, child, or stepchild, or a member of the household of a person who is engaged in the conduct or activities described in subsections (c)(i)-(iv);*

(vi) *is not a person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in subsections (c)(i)-(iv);*

(vii) *and is not a person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in subsections (c)(i)-(iv).*

(e)-(g)—No change.

Notice of Selection of Arbitrators

Rule 12.9. The Director of Arbitration shall inform the parties of the arbitrators' names and employment histories for the past ten (10) years, as well as information disclosed pursuant to Section 11 of this Rule at least eight (8) business days prior to the date fixed for the first hearing session. A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background. In the event that any arbitrator after appointment and prior to the first hearing session, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a replacement arbitrator to fill any vacancy. *The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The*

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1).

² CFR 240.19b-4.

interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. The Director of Arbitration shall inform the parties of the name and employment history of the arbitrator for the past ten (10) years, as well as information disclosed pursuant to Section 11, as soon as possible. A party may make further inquiry of the Director of Arbitration concerning the background of the replacement arbitrator and, within the time remaining prior to the first hearing session, or the five (5) day period provided under Section 10, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided under Section 10.

Peremptory Challenge

Rule 12.10. In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple Claimants, Respondents and/or Third Party Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge and the Third Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the persons named to the panel. There shall be unlimited challenges for cause.

In cases involving public customers, any close questions regarding arbitrator classification or challenges for cause brought by a customer will be resolved in favor of the customer.

Disclosures Required of Arbitrators

Rule 12.11(a). Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering any objective and impartial determination. Each arbitrator shall disclose:

(i)[(1)] any direct or indirect financial or personal interest in the outcome of the arbitration;

(ii)[(2)] any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or that might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators *must* [should] disclose any such relationships which they

personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They *must* [should] also disclose any such relationship involving members of their families or their current employers, partners, or business associates.

(b) persons who are requested to accept appointment as arbitrators *must* [should] make a reasonable effort to inform themselves of any interests or relationships described in subsection (a) above.

(c)-(d)—No change.

(e) *The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.*

* * * * *

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the PCX and PCXE arbitration rules relating to arbitrator classification and disclosure. The Exchange proposes to amend PCX Rule 12 and PCXE Rule 12 to: (1) Modify the classification of public and non-public arbitrators; (2) provide specific standards for deciding challenges to arbitrators for cause; and (3) clarify that compliance with arbitrator disclosure requirements is mandatory. This rule proposal is based on the National Association of Securities Dealers, Inc.'s ("NASD") rule proposal related to arbitrator classification, challenges and

disclosure, which was recently approved by the Commission.⁴

Specifically, the Exchange proposes to amend the classification of a non-public arbitrator (*i.e.*, deemed as being from the securities industry) in PCX Rule 12.8(c) and PCXE Rule 12.9(c) to increase from three years to five years the period for transitioning from a public to non-public arbitrator. The Exchange also proposes to add the classification of those arbitrators that are registered under the Commodity Exchange Act, members of a commodities exchange or a registered futures association; or associated with a person or firm registered under the Commodity Exchange Act as a classification of a non-public arbitrator. Such classifications are similar to those found in the NASD's rules. The Exchange also proposes to clarify, under the same rules, that the term "retired" from the securities industry includes anyone who spent a substantial part of his or her career in the industry.

In addition, the Exchange proposes to amend the classification of a public arbitrator as set forth in PCX Rule 12.8(d) and PCXE Rule 12.9(d) in order to: prohibit anyone who has been associated with the industry for at least 20 years from ever becoming a public arbitrator, regardless of how many years ago the association ended; exclude attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities stated in the classification of an industry arbitrator; and provide that investment advisers may not serve as public arbitrators and may only serve as non-

⁴ See Securities Exchange Act Release No. 49573 (April 16, 2004), 69 FR 21871 (April 22, 2004) (File No. SR-NASD-2003-095). In November 2002, at the Commission's request, Professor Michael Perino issued a report assessing the adequacy of NASD's and New York Stock Exchange, Inc.'s ("NYSE") arbitrator disclosure requirements and evaluating the impact of the recently adopted California Ethics Standards on the current conflict disclosure rules of the self-regulatory organizations ("SROs"). See Michael A. Perino, *Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations*, November 4, 2002 ("Perino Report"). The Perino Report recommended several amendments to SRO arbitrator classification and disclosure rules that, according to the Perino Report, might "provide additional assurance to investors that arbitrations are in fact neutral and fair." The Commission found the NASD's proposed rule changes implemented those recommendations, as well as several other related changes to the definition of public and non-public arbitrators that are consistent with the Perino Report recommendations. See Securities Exchange Act Release No. 49573 (April 16, 2004), 69 FR 21871 (April 22, 2004) (File No. SR-NASD-2003-095). Hence, the PCX proposes to make the same amendments to the PCX and PCXE arbitration rules.

public arbitrators if they otherwise qualify under PCX Rule 12.8(c) or PCXE Rule 12.9(c). The Exchange also proposes to amend the restriction for arbitrators with spouses or other members of the household associated with the securities industry as set forth in PCX Rule 12.8(d) and PCXE Rule 12.9(d). Such criteria would be expanded in PCX Rule 12.8(d)(v) and PCXE Rule 12.9(d)(v) to now exclude from the definition of public arbitrator (in addition to spouses and any member of the arbitrator's household, who are currently excluded), an arbitrator's parents, stepparents, children, and stepchildren.

Moreover, the Exchange proposes to amend PCX Rules 12.9 and 12.11, and PCXE Rules 12.10 and 12.12, to provide that a challenge for cause will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. In addition, PCX Rule 12.10 and PCXE Rule 12.11 would also be amended to add a new paragraph, which would provide that close questions regarding arbitrator classification or challenges for cause brought by a public customer would be resolved in favor of the customer.

Finally, the Exchange proposes to amend PCX Rule 12.11 and PCXE Rule 12.12 to clarify that arbitrators must disclose the required information and must make reasonable efforts to inform themselves of potential conflicts and update their disclosures as necessary. The Exchange believes that these amendments to the PCX and PCXE arbitration rules are necessary to provide consistency with respect to arbitration rules and procedures to the public and ensure that arbitrations are fair and neutral.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)⁵ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁶ in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2004-80 and should be submitted on or before December 20, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, 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 exchange⁷ and, in particular, the requirements of Section 6(b)⁸ of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ which, among other things, requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

At the Commission's request, Professor Michael Perino issued a report assessing the adequacy of NASD's and New York Stock Exchange, Inc.'s ("NYSE") arbitrator disclosure requirements and evaluating the impact of the recently adopted California Ethics Standards¹⁰ on the current conflict disclosure rules of the NASD and the NYSE.¹¹ The Perino Report recommended several amendments to the NASD's and NYSE's arbitrator classification and disclosure rules that, according to the report, might "provide additional assurance to investors that arbitrations are in fact neutral and fair." The Commission believes that the PCX's proposed rule change implements those same recommendations, as well as several other related changes to the definition of public and non-public arbitrators that are consistent with the recommendations made in the Perino Report with regard to the arbitration rules of the NASD and NYSE.

Specifically, the Commission finds that PCX's proposal to amend the definition of non-public arbitrator in PCX Rule 12.8(c) and PCXE Rule 12.9(c) is consistent with the Act. The

⁷ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration."

¹¹ See Perino Report, *supra* note 4.

Exchange's proposal, among other things, to exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined as non-public is reasonably designed to reduce a perception of bias by Exchange arbitration panel members. The Exchange's proposal to expand the definition of "immediate family member" in PCX Rule 12.8(d) and PCXE Rule 12.9(d) to include parents, stepparents, children, or stepchildren, as well as any member of the arbitrator's household is also consistent with the Act.

The Commission believes that the Exchange's proposal to exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator is reasonably designed to reduce a perception of bias by Exchange arbitration panel members. The Perino Report recommended that the NASD and NYSE consider an expansion of the definition of "immediate family member" to include parents and children, even if the parent or child do not share the same home or receive substantial support from a non-public arbitrator.¹² The PCX has considered this same issue and has determined to expand the term as was recommended in the Perino Report with regard to the arbitration rules of the NASD and the NYSE. The Commission believes it is reasonable for the PCX to further expand the definition of non-public arbitrator by including stepparents and step children as well as parents, children, and any household member in the definition of immediate family member. The Perino Report noted, generally, that "no classification rule could ever precisely define public and non-public arbitrators; there will always be classification questions at the margins about which reasonable people will differ."¹³ Thus, the Commission believes that the PCX's amendments to the definition of public arbitrator, including the 10 percent threshold and definition of "immediate family member" are consistent with the Act.

The PCX has represented that the proposed amendments to PCX Rule 12 and PCXE Rule 12 would substantially conform its arbitration rules relating to arbitrator classification, challenges, and disclosure to the existing arbitration

rules of the NASD, which the Commission has already approved. As such, the Commission believes that the proposed amendments to PCX Rule 12 and PCXE Rule 12 are necessary and appropriate to provide consistency with respect to arbitration rules and procedures to the public and ensure that arbitrations are fair and neutral. The Commission believes that granting accelerated approval of the proposed rule changes would facilitate the accomplishment of these objectives. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁴ for approving the proposed rule change prior to the thirtieth day of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-PCX-2004-80) as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3354 Filed 11-26-04; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 4909]

Culturally Significant Objects Imported for Exhibition Determinations: "Retratos: 2,000 Years of Latin American Portraits"

ACTION: Notice; correction.

SUMMARY: On November 2, 2004, Notice was published in the **Federal Register** (volume 69, number 211, 63566) pertaining to the exhibition "Retratos: 2,000 Years of Latin American Portraits." The referenced Notice is hereby corrected to include the San Diego Museum of Art, San Diego, California, as an exhibition venue from on or about April 16, 2005 to on or about June 12, 2005.

FOR FURTHER INFORMATION CONTACT: For further information contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453-8050). The address is: Department of State, SA-44, and 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ *Id.*

¹⁶ 17 CFR 200.30-3(a)(12).

Dated: November 17, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04-26293 Filed 11-26-04; 8:45 am]

BILLING CODE 4710-08-P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1556).

TIME AND DATE: 9 a.m. (c.s.t.), November 30, 2004, Lucille N. Galin Municipal Auditorium, 204 Second Avenue, NE., Cullman, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on October 27, 2004.

New Business

A—Budget and Financing

A1. Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the United States Treasury.

A2. Approval of tax-equivalent payments for Fiscal Year 2004 and estimated payments for Fiscal Year 2005.

B—Purchase Awards

B1. Contracts with Siemens Information and Communications Networks, Inc.; SBC Global Services, Inc.; Northrop Grumman Information Technology; and Henkels & McCoy, Inc., for telecommunications network equipment.

B2. Contract with CDW-Government, Inc., to furnish a Microsoft Enterprise Agreement that provides standard software, including upgrades and support, for both personal computers and enterprise servers.

B3. Supplement to contract with Cigna Healthcare of Tennessee for a health maintenance organization medical plan option.

B4. Contract with Connecticut General Life Insurance Company for dental benefit services.

C—Energy

C1. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a contract with Burlington Northern & Santa Fe Railway for transportation of coal from Wyoming to Memphis, Tennessee.

C2. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into two term coal supply contracts with Arch Coal Sales

¹² See *Id.*

¹³ See *Id.*

Company, Inc., for coal to supply various TVA fossil plants.

C3. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a term contract with Massey Utility Sales Company for coal to supply various TVA fossil plants.

C4. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a term coal contract with Thunder Basin Coal Company LLC for Powder River Basin coal to supply various TVA fossil plants through transportation terminals or direct delivery to the plants.

C5. Contracts with Voith Siemens Hydro Power Generation, Inc., and General Electric Company to provide turbines, mechanical equipment, and engineering and field services to support the completion of TVA's Hydro Modernization Program and to support other RSO&E hydro projects as needed.

E—Real Property Transactions

E1. Sale of a permanent easement affecting approximately 14.79 acres of land, Tract No. XJCCJC-1E, and a nonexclusive road easement affecting approximately .58 acre of land, Tract No. XJCCJC-2AR, to the Johnson City Power Board for commercial and light industrial development in Washington County, Tennessee.

E2. Grant of a permanent easement to the State of Tennessee for a highway and bridge improvement project affecting approximately 6.8 acres of land on Boone Dam Reservation in Sullivan County, Tennessee, Tract No. XTBR-23H.

E3. Sale of a 30-year term commercial recreation easement, with conditional options to renew for two additional 30-year terms, affecting approximately 235 acres of land on Cherokee Reservoir in Hamblen and Grainger Counties, Tennessee, Tract No. XCK-587RE.

F—Other

F1. Approval to file condemnation cases to acquire easements, rights-of-way, and right to enter for TVA power transmission line projects affecting the Pickwick-South Jackson Tap to East Savannah Transmission Line in Hardin County, Tennessee, and the Waynesboro-Clifton City Transmission Line in Wayne County, Tennessee.

Information Items

1. Approval of revisions to Competitive Indexed Rate arrangements among North Georgia EMC, Shaw Industries, and TVA.

2. Approval of a request by the city of Scottsboro, Alabama, for land allocation changes to the 2001 Guntersville Reservoir Land Management Plan,

affecting Tract Nos. XGR-108PT2, XGR-109PT2, and XGR-110PT2, in Jackson County, Alabama.

3. Approval of Alliance Capital Management L.P. as a new investment manager for the TVA Retirement System and the management agreement between the System and the new investment manager.

4. Amendments to Rules and Regulations of the TVA Retirement System to provide a new method for calculating TVA contributions to the System and to establish procedures for a reserve account.

5. Amendments to the Rules and Regulations of the TVA Retirement System and to the Provisions of the TVA Savings and Deferral Retirement Plan (401(k) Plan) to provide credit for certain lump-sum payments made in lieu of base wage or salary increases for the purposes of calculating pension benefits.

6. Approval of the TVA contribution to the TVA Retirement System for Fiscal Year 2005.

7. Approval of a public auction sale of the Knoxville Office Complex East Tower, Tract No. XKOC-4, and associated easements, Tract Nos. XKOC-5E and -6E.

For more information: Please call TVA Media Relations at (865) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898-2999. People who plan to attend the meeting and have special needs should call (865) 632-6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: November 23, 2004.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 04-26423 Filed 11-24-04; 2:24 pm]

BILLING CODE 8120-08-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Arkansas River Valley Intermodal Facilities, Russellville, AR (Pope County)

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent to prepare an EIS.

SUMMARY: The Federal Highway Administration (FHWA) in a joint venture with the Arkansas State

Highway and Transportation Department (AHTD) and the River Valley Regional Intermodal Facilities Authority (RVRIFA) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) to develop a regional intermodal facility in the Arkansas River Valley. This project is intended to improve regional and national transportation, to serve existing industry, and to provide services necessary to promote economic development in the six-county Arkansas River Valley region (Conway, Johnson, Logan, Perry, Pope, and Yell Counties).

FOR FURTHER INFORMATION CONTACT: Mr. Randal Looney, Environmental Specialist, 501-324-6430.

ADDRESSES: Federal Highway Administration "Arkansas Division Office, 700 West Capitol Avenue, Room 3130, Little Rock, AR 72201-3298.

SUPPLEMENTARY INFORMATION: The Arkansas River Valley Intermodal Facilities project would include local roadway access to Interstate (I-40) highway connections via State Highway 7 and access to the Dardanelle Russellville Railroad development. A slackwater harbor along the McClellan-Kerr Arkansas River Navigation System (MKARNS), which would connect the intermodal facilities to the U.S. Inland Waterway System, would be constructed. Additional services at the intermodal facility would include on-site rail/truck transfers, truck/water transfers, rail/water transfers, freight tracking, a foreign trade sub-zone, warehousing, distribution, consolidation, just-in-time inventory services, and material storage capabilities.

There are currently three public ports/terminals along the Arkansas segment of the MKARNS located in Pine Bluff, Little Rock, and Fort Smith. There are no public use facilities within 30 miles of the study area, however there are three private docks within 30 miles of the study area including the following: Pine Bluff Sand & Gravel, the Port of Dardanelle; and Oakley Port.

With this notice of intent, FHWA, AHTD, and RVRIFA are initiating the National Environmental Policy Act (NEPA) process for the Arkansas River Valley Intermodal Facilities project to study the potential transportation improvements in the region. As part of the NEPA process, the purpose and need will be developed with regional and national needs and goals in mind.

The NEPA process to support this intermodal facility was initiated by the development of an Environmental Assessment (EA) with a defined purpose

and need and supporting alternatives. The EA was approved for public dissemination by FHWA in November 2002, however it was determined that further study would be required and a Finding of No Significant Impact (FONSI) would not be issued by FHWA for the project. Further study in the proposed EIS will include a refinement of purpose and need for the project, alternatives development and screening based on social, environmental, and economic impacts of the proposed project. Recognizing that NEPA requires the consideration of a reasonable range of alternatives that will address the purpose and need, the EIS will include a range of alternatives for detailed study consisting of a no-build alternative, several build alternatives, as well as alternatives consisting of transportation system management strategies, improvements to existing facilities, and/or new alignment of facilities. These alternatives will be developed, screened, and carried forward for detailed analysis in the Draft Environmental Impact Statement (DEIS) based on their ability to address the project purpose and need while avoiding adverse impacts to known and sensitive resources. Letters describing the proposed NEPA study and soliciting input will be sent to the appropriate Federal, State, and local agencies who have expressed or are known to have an interest or legal role in this proposal. It is anticipated that at least one formal agency scoping meeting will be held as part of the NEPA process, in the vicinity of the project, to facilitate local, State, and Federal agency involvement and input into the project in an effort to identify all of the issues that need to be addressed in developing the EIS. Tribal consultation will also be an important part of the scoping process. Private organizations, citizens, and interest groups will also have an opportunity to provide input into the development of the Environmental Impact Statement and identify issues that should be addressed. A Public Involvement Plan will be developed to involve the public in the project development process. This plan will utilize outreach efforts to provide information and solicit input such as informal meetings, public information meetings, public hearings, and other efforts as necessary and appropriate. Notices of public meetings or public hearings will be given through various forums providing the time and place of the meeting along with other relevant information. The DEIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and Draft Environmental Impact Statement should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: November 16, 2004.

Sandra L. Otto,

Division Administrator, FHWA, Little Rock, Arkansas.

[FR Doc. 04-26229 Filed 11-26-04; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 19, 2004.

The Department of the 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 December 29, 2004 to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505-0177.

Form Numbers: None.

Type of Review: Extension.

Title: Procedures for Payments to Persons Who Hold Certain Categories of Judgments.

Description: Submissions will provide the U.S. Government with information to be used in determining the eligibility of an applicant under Sec. 2002 of Public Law 106-386 (The Victims of Trafficking and Violence Protection Act of 2000) and to complete processing of payments under Sec. 2002.

Respondents: Individuals or households.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per

Respondent: 12 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 240 hours.

Clearance Officer: Lois K. Holland, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220, (202) 622-1563.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395-7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04-26267 Filed 11-26-04; 8:45 am]

BILLING CODE 4811-16-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 19, 2004.

The Department of the 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 December 29, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1594.

Regulation Project Number: REG-51520-96 Final.

Type of Review: Extension.

Title: Classification of Certain Transactions Involving Computer Programs.

Description: The information requested in regulation Section 1.861-18(k) is necessary for the Commissioner to determine whether a taxpayer properly is requesting to change its method of accounting.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: R. Joseph Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622-3634.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395-7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04-26268 Filed 11-26-04; 8:45 am]

BILLING CODE 4830-01-P

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. 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. The OCC is soliciting comment concerning its information collection titled, "Assessments—12 CFR 8." 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 December 29, 2004.

ADDRESSES: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1-5, Attention: 1557-0223, 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.

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 Mary Gottlieb, 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 requesting extension of OMB approval, with revision, of the following information collection:

Title: Assessments—12 CFR 8.

OMB Number: 1557-0223.

Description: The National Bank Act authorizes the OCC to collect assessments, fees, and other charges as necessary or appropriate to carry out the responsibilities of the OCC. The OCC will require national banks to provide the OCC with receivables attributable data from independent credit card banks, that is, national banks that primarily engage in credit card operations and are not affiliated with a full service national bank. Receivables attributable are the total amount of outstanding balances due on credit card accounts owned by an independent credit card bank (the receivables attributable to those accounts) on the last day of an assessment period, minus receivables retained on the bank's balance sheet as of that day. The OCC

will use the information to verify the accuracy of each bank's assessment computation and to adjust the assessment rate for independent credit card banks over time.

Type of Review: Extension, without change, of a currently approved information collection.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 35.

Estimated Total Annual Responses: 70.

Frequency of Response: Semiannually.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden: 70 hours.

Comments submitted in response to this notice will be summarized and 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 has 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 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 operation, maintenance, and purchase of services to provide information.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 04-26236 Filed 11-26-04; 8:45 am]

BILLING CODE 4810-33-M

Corrections

Federal Register

Vol. 69, No. 228

Monday, November 29, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2004-19334; Airspace
Docket No. 04-ACE-63]

Modification of Class E Airspace;
Sedalia, MO

Correction

In rule document 04-24259 beginning on page 63056 in the issue of Friday,

October 29, 2004, make the following correction:

On page 63056, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C4-24259 Filed 11-26-04; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Monday,
November 29, 2004**

Part II

Department of Agriculture

Natural Resources Conservation Service

7 CFR Part 652

**Technical Service Provider Assistance;
Final Rule**

DEPARTMENT OF AGRICULTURE**Natural Resources Conservation Service****7 CFR Part 652****Technical Service Provider Assistance**

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service (NRCS) is issuing a final rule for technical service provider assistance as authorized under section 1242 of the Food Security Act of 1985 (Food Security Act), as amended by the Farm Security and Rural Investment Act of 2002, P.L. 107-171 (2002 Farm Bill). This final rule responds to comments received on the Interim Final Rule and two amendments, makes adjustments to the implementation of Technical Service Provider (TSP) assistance in response to these comments, and sets forth the final process for providing conservation technical assistance through technical service providers. The Secretary of Agriculture has delegated responsibility for administering technical services provided by technical service providers to NRCS.

DATES: Effective November 29, 2004.

FOR FURTHER INFORMATION CONTACT:

Angel Figueroa, Technical Service Provider Coordinator, NRCS, P.O. Box 2890, Washington, DC 20013-2890, telephone: (202) 720-2520; fax: (202) 720-0428; submit e-mail to: angel.figueroa@usda.gov, Attention: Technical Service Provider Assistance.

SUPPLEMENTARY INFORMATION: NRCS is issuing a final rule for the implementation of TSP assistance, as authorized by Section 1242 of the Food Security Act of 1985, as amended. In this preamble, NRCS provides background information about the TSP statutory authority, the promulgation of the Interim Final Rule and the two amendments thereto implementing such authority, summary analysis of the comments received, significant modifications NRCS is making to the rule in response to the comments, and a section-by-section summary of the comments received and the agency response.

Historical Background

In 1994, the Department of Agriculture reorganized and transferred increased responsibilities for administration of conservation programs to the NRCS to provide technical and financial assistance to producers to

improve the natural resource conditions on their land. The Federal Agricultural Improvement and Reform Act of 1996 (1996 Farm Bill), Public Law 104-127, created several new conservation programs for which the Secretary of Agriculture delegated administrative responsibility to NRCS.

Through the implementation of its conservation programs, NRCS utilizes its technical expertise to provide producers with information to help them make land management decisions. When a producer applies to participate in a conservation program, NRCS helps the producer evaluate the resource conditions on their land to determine the most appropriate way to meet the producer's conservation objectives. Through its conservation planning process, NRCS helps the producer develop a conservation plan and, depending upon the availability of funds, the Department provides financial assistance to the producer to implement identified conservation practices or systems.

The 2002 Farm Bill

The 2002 Farm Bill expanded the availability of financial and technical assistance funds for the implementation of conservation programs. At the time of enactment, the Congressional Budget Office estimated that the 2002 Farm Bill represented a \$17 billion increase in the level of funding for conservation programs.

The current staffing levels of NRCS are insufficient to adequately meet the increased need for technical assistance under the conservation programs authorized or re-authorized by the 2002 Farm Bill. Section 2701 of the 2002 Farm Bill amended Section 1242 of the Food Security Act to require the Secretary of Agriculture to provide technical assistance for conservation programs authorized under Title XII of the Food Security Act to a producer eligible for that assistance "directly * * * or at the option of the producer, through a payment * * * to the producer for an approved third party, if available." The Secretary of Agriculture delegated authority to implement Section 1242 to NRCS.

Section 1242 of the Food Security Act greatly expands the availability of technical assistance to producers by encouraging other non-USDA potential providers of technical assistance to assist in the delivery of technical services. To ensure that high quality technical services are available to all producers, Section 1242 requires the Secretary of Agriculture to establish, by regulation, a system for "approving individuals and entities to provide

technical assistance to carry out programs under the [Farm Bill] * * * and establishing the amounts and methods for payments for that assistance."

Overview of Technical Service Provider Assistance

In the winter 2003, NRCS launched TechReg, a Website, through which individuals, businesses, and public agencies may apply to become certified TSPs. It also provides conservation participants with a registry for identifying certified TSPs. As of October 2004, there were approximately 2,100 entities (individuals or businesses) listed as certified in the TechReg registry. There remained about 1,300 certifications pending.

During fiscal years (FY) 2003 and 2004, NRCS obligated approximately \$23 and \$48 million for technical service provider assistance, and NRCS has a goal of obligating at least \$35 million for technical service provider assistance during FY 2005.

Interim Final Rule and Amendments

NRCS published an Interim Final Rule on November 21, 2002, (67 FR 70119) that established a certification process under which NRCS evaluates and approves individuals, entities, and public agencies as eligible to provide conservation technical services for certain conservation programs. The Interim Final Rule also established the criteria by which NRCS evaluates all potential providers of technical assistance.

The Interim Final Rule distinguished between certification of an individual working under his or her own auspices and that of an organization, such as a corporation or a public agency, which has individuals working on its behalf. Certification of an individual means the individual has the requisite education and technical expertise to perform the technical services. Certification of an entity or public agency means that the organization could receive payment for the services provided by individuals working under its auspices provided certified individuals review the work while the organization assumes the liability for the quality of work performed.

The Interim Final Rule requires that the same certification process applies regardless of the individual or entity's desire to provide technical service through USDA or directly to participants. NRCS requested comments on proposed methods for determining payment rates for reimbursing participants for technical services obtained from certified TSPs stipulating

that the payment method would be set forth in a subsequent rule-making.

The Interim Final Rule also sets forth conditions and procedures by which NRCS determines that a certified technical service provider has failed to provide producers technical services of adequate quality, and thus, should not remain certified as a provider of technical assistance for conservation programs under Title XII of the Food Security Act.

The Interim Final Rule had a 90-day comment period. On March 31, 2003, NRCS re-opened the comment period for the Interim Final Rule and extended the comment due date to April 30, 2003. NRCS received 1350 comments on the

Interim Final Rule from over 350 entities, both private and public, to the Interim Final Rule.

On March 24, 2003, NRCS published an amendment to the Interim Final Rule in the **Federal Register** (68 FR 14131), establishing the process for determining payment levels for technical service provider assistance. In addition, the amendment sets forth the policy regarding subcontracting by technical service providers in the course of their delivery of technical services. The amendment also clarifies the process for certification and amended the definition of technical service provider. The March 24, 2003, amendment had a 90-day

comment period. NRCS received 15 comments from seven entities.

On July 9, 2003, NRCS published a second amendment to the Interim Final Rule in the **Federal Register** (68 FR 40751), establishing a limited exception to the certification and payment requirements when the Department is partnering with State, local, or tribal governments to carry out its duties to provide technical services. The July 9, 2003, amendment had a 30-day comment period. Eleven entities submitted 25 comments on this second amendment to NRCS.

Organizational Differences Between the Interim Final Rule and Final Rule

Change description	Interim final rule		Final rule	
	Section No.	Heading	Section No.	Heading
► Sections on definitions and applicability exchanged places. ► Exception section content incorporated in section on Department acquisition of services, eliminating the need for this section.	7 CFR 652.1	Definitions	7 CFR 652.1	Applicability.
	7 CFR 652.2	Applicability	7 CFR 652.2	Definitions.
	7 CFR 652.8	Limited Exception to Certification Requirements for State, Local, and Tribal Government Partners.	7 CFR 652.6	Department Delivery of Technical Services.

Note: The final rule contains no further organizational changes.

Overview of Public Comments

In this final rule, NRCS reorganized several of the sections to improve the regulation's overall organization. For example, NRCS received comments that it would be better to have the applicability and administration sections of the rule described prior to the definitions section in order to provide an overview of the rule's applicability. Accordingly, § 652.1 of the Interim Final Rule has been moved to § 652.2 of the final rule. Additionally, NRCS removed several provisions in the administration section that addressed internal administrative matters that did not need to be incorporated in regulation. These changes were not substantive changes. NRCS made such adjustments in the final rule; however, NRCS has organized the discussions regarding public comments in the same sequence as the sections appeared in the Interim Final Rule.

NRCS received 1350 comments from over 350 entities on the Interim Final Rule. Among these comments, NRCS received two series of batch letters from individuals, conservation districts, and certified crop advisors. The March 24, 2003, amendment had a 90-day comment period, and NRCS received 15 comments from seven entities to this amendment. The July 9, 2003,

amendment had a 30-day comment period. NRCS received 25 comments from 11 entities to this second amendment. NRCS considered all these comments received to the Interim Final Rule and the two amendments, and responds to these collectively in its section-by-section discussion below. Overall, most comments commended NRCS for publishing the rule and its ongoing efforts to develop and implement an effective TSP process.

Most of the comments NRCS received on the November 21, 2002, TSP Interim Final Rule related to Subpart A and Subpart B. Of the comments received on Subpart A, the sections regarding administration, technical service standards, and participant acquisition of technical services received the majority of the comments.

In the administration section, § 652.3, 20% expressed concern over the changing relationship between NRCS and conservation districts. Ten percent expressed support for the evaluation of NRCS' historic relationship and existing agreements with providers of technical services to avoid conflicts of interest. The same 10% also recommended that NRCS not enter into any Memoranda of Understanding or agreements with any group or program that does not have or enforce its written code of ethics.

In the section regarding technical service standards, § 652.4, the primary concern in this section was liability, with over 40% of the comments focused

on the issue. Though comments expressed understanding for the need to hold providers liable for services rendered, most members of the private sector expressed strong concern over being held fully liable for an overall project, even when the TSP is not involved in all phases of the project's technical service delivery. The other concern expressed was for liability in situations where NRCS standards and specifications were met, but final outcome proved deficient. In addition, numerous Extension Service employees expressed concerns over the extent of liability of TSP trainers. 30% of comments supported the Agency's allowance of new technologies and innovative practices upon prior NRCS approval, and also sought the use of TSPs as a means of expanding these and alternative methods to promote sustainable agriculture. Finally, over 10% of comments suggested that the Agency provide clarification on the process, roles, and responsibilities of TSPs relating to liability and reporting accomplishment data to NRCS.

In the section regarding participant acquisition of technical services, § 652.5, NRCS received over 160 comments. Most comments expressed disappointment that NRCS did not promulgate the rule amendment about payment rates within the 30 days time-frame originally set forth in the preamble of the Interim Final Rule. Of

the three payment rate options published in original Interim Final Rule, most comments supported not-to-exceed rates, though there was concern about the method through which NRCS would establish these rates. Several comments expressed opinion that prices needed to be based on realistic estimates based on data from both the public and private sectors. Establishing flat rates received least support as it was perceived as not allowing for geographic differences and marketplace fluctuations. Commenters also expressed concern that the Privacy Act and Freedom of Information Act did not apply to information provided by participants to TSPs directly hired by the participants. The public requested additional clarification on the roles and responsibilities of NRCS, its contractors, participants, and TSPs hired directly by participants on matters related to the confidentiality of information.

NRCS also received many comments regarding the section about the Department's delivery of technical services, § 652.6. Under this section, NRCS received the most comments on two areas: (1) Potential conflicts of interest; and (2) the 50% matching requirement for contribution agreements. Most comments were submitted primarily in a batch letter format. In terms of potential conflicts of interest, over 55% comments came from certified crop advisors who expressed strong opposition to statements suggesting conflicts of interest with private technical service providers who sell agriculture input products. These commenters felt strongly that these statements failed to recognize the trust and strong relationships developed over the years between farmers and their consultants. This group also expressed frustration with the slow development of agreements for technical services between NRCS and the private sector.

However, over 25% comments of the comments received on this issue did not support the certification of entities engaged in the selling of agricultural products. NRCS also received numerous comments related to the requirement that the TSP provide a 50 percent match under a contribution agreement, with 30% stating that the matching requirement should be lowered or eliminated.

Under Subpart B of the Interim Final Rule, Certification, NRCS received over 220 comments primarily in the areas certification criteria, training, and certification costs and fees. Most comments expressed the need to have strong, rigorous, and uniform certification criteria that set the bar high enough to ensure that only qualified people received certification. The

commenters also expressed that NRCS should recognize demonstrated competence, allow for recognition of private sector certification programs, and encourage involvement from professional societies, universities, and others qualified sectors. Many commenters expressed that certification criteria should also seek to promote a more holistic approach to the delivery of conservation technical services. Overall, the commenters believe that the certification process goes hand in hand with success of the TSP process and delivery of quality services, and overall quality assurance. Several wildlife groups expressed frustration with their wildlife qualifications not meeting the criteria for wildlife professionals identified in TechReg.

Most of the comments related to training expressed a need for the evaluation of a high quality training program that addresses continuing education, facilitates reciprocity from one State to another, avoids duplication with private sector certification programs, focuses on Department/NRCS protocol and procedures, recognizes the technical expertise of State agencies, and specifies training requirements that are equally stringent for all providers of technical service. Of the comments related to costs and fees, over 20 universities and Extension Service entities provided comments expressing interest in providing training and in having capacity to provide training, but also needing funding to cover training costs, including supplemental funds from NRCS. This same group expressed a belief that universities cannot provide education at no-cost and should be allowed to create fee structures that cover program development and delivery costs while meeting educational needs. Several comments from private sector entities expressed opposition to being charged for certification costs, as they have already paid fees to meet training program requirements and State requirements.

Summary of Changes

NRCS analyzed the comments received related to the Interim Final Rule and the amendments. NRCS established an interdisciplinary team of agency staff to evaluate comments as well as the Department's experience gained from implementation of the Interim Final Rule in its first year. The team reviewed overall agency operation of the TSP provisions and ascertained efficiencies that could be gained through adjustments to the process. The public comments and the internal review identified several common areas needing clarification, and as a result,

NRCS has incorporated the following changes in the final rule: (1) Verification of TSP credentials, (2) liability of technical service providers, (3) Department acquisition of technical services, (4) cost-share incentives, and (5) customer utilization of technical service providers prior to entering program agreements. NRCS describes below its basis for the changes in these five areas within the section-by-section discussion of the public comments received.

Section-by-Section Comments and Response

Section 652.1 Definitions

Comment: NRCS received 15 comments on § 652.1, Definitions. In particular, NRCS received 4 comments referring to the inclusion of conservation planning in the definition of "technical services" and recommended that the quality assurance section, § 652.7, provide for separate and specific measures for quality assurance as it relates to conservation planning and conservation practice implementation. Seven commenters suggested that "deficient, harm, and injury" are terms that are difficult to define and recommended that NRCS add language to clarify these and similar terms in the rule. One commenter recommended that the acronym "TSP" not be used for Technical Service Provides since it causes confusion with the Thrift Savings Plan. One commenter suggested that the term "entity" should include specific reference to farmer cooperatives. One commenter recommended that Conservation Districts be explicitly referred to as a public entity TSP.

Response: NRCS agrees that specific standards should be developed for conservation planning and conservation practice implementation, and will incorporate new language in its quality assurance policy to address the specific needs of both planning and implementation. However, because the quality assurance process is an internal management process, NRCS has determined that it is not appropriate to set forth the specifics of its quality assurance policy in this rulemaking. The terms "deficient, harm, and injury" are legal standards surrounding the duty of care owed by a professional to a customer or client, the parameters of which are established in case law regarding such duties of care. Therefore, NRCS does not believe that further clarification is warranted in the rule. The acronym "TSP" may cause confusion to Federal employees who participate in the Thrift Saving Plan

program, but NRCS believes the general public can distinguish between a Federal retirement benefits system and a delivery mechanism for technical services. Therefore, NRCS will continue to use the acronym "TSP." NRCS agrees that farmer cooperatives have delivered valuable services to farmers in the past, and NRCS wants to assure that equal access is provided to all available sources of technical services. Therefore, NRCS has added the term "cooperative" to the definition of "entity" in the final rule. However, NRCS believes that its definition of "public agency" adequately encompasses Conservation Districts since it includes subdivisions of State and local government. While NRCS appreciates its long-standing partnership with America's Conservation Districts, the term "public agency" adequately includes Conservation Districts and all other subdivisions of government, without the need to identify specific partners. Therefore, no change has been made to this definition.

Section 652.2 Applicability

Comment: NRCS received 1 comment regarding the applicability section of the Interim Final Rule. The commenter requested NRCS to identify specific categories of technical services since the designation of categories is important for the TSP and educational institutions to understand the educational programs needed to support the TSP effort.

Response: NRCS agrees that specificity may help clarify educational requirements for TSPs and assist educational institutions in developing courses to help TSP meet those requirements. However, specific categories are more appropriately described in TechReg. Consequently, only references to general categories appear in the final rule.

Section 652.3 Administration

Comment: NRCS received a total of 88 comments on § 652.3, Administration. In particular, NRCS received 1 general comment on the section as a whole, 6 comments on paragraph (a), 4 comments on paragraph (b), 28 comments on paragraph (c), and 49 comments on paragraph (e).

The one general comment viewed the privatization of the provision of technical services in theory as acceptable, but felt that there was a large amount of training, oversight, and administration requirements related to the implementation of programs that only NRCS could provide adequately.

Response: NRCS agrees that NRCS must provide oversight of the technical services provided under the programs

for which it has been delegated responsibility. Additionally, there exist several activities requiring technical expertise, such as the assigning of ranking points to a particular program application for enrollment, which are tied to program administration, and thus are inherently NRCS responsibilities.

Comment: Paragraph (a) of § 652.3 of the Interim Final Rule simply sets forth the statutory provision that the Department of Agriculture will provide technical services to participants, or at the option of the participant, through a technical service provider. One commenter recommended that there should be incentives, such as awarding additional points to landowners that either participate in or select TSPs that participate in watershed groups or other collaborative conservation partnerships.

Response: NRCS believes that these matters would best be handled under program ranking criteria, and are not appropriate considerations for the TSP rule. Therefore, no change to the TSP interim final rule has been made in response to this comment.

Comment: One commenter requested that NRCS make it clear to participants that they may choose either NRCS or a TSP to provide needed technical assistance in the delivery of programs.

Response: NRCS will continue to provide outreach to its participants and potential sources of technical services to ensure that participants are aware of their options under the TSP provisions.

Comment: One Commenter supported the provisions but recommended NRCS build a strong TSP infrastructure and support new, strategic investments to develop a cadre of qualified professionals in both the public and private sectors. This Commenter also recommended that NRCS develop adequate tools and use a multi-disciplinary approach to provide technical assistance.

Response: NRCS recognizes the need to develop a cadre of professionals equipped with adequate tools within both the NRCS workforce and Technical Service Providers. NRCS also supports the use of a multi-disciplinary approach and encourages collaboration between technical service providers to ensure comprehensive planning assistance is provided to landowners. As clarified by the March 24, 2003, amendment to the Interim Final Rule, technical service providers may subcontract for any additional support they need to deliver the necessary services to participants. However, NRCS has very limited authority to expend funds for training of professionals other than for its own personnel. As described later, NRCS will make its staff available to the

training efforts developed by other entities.

Comment: One Commenter recommended that technical assistance requests should be offered to the private sector before NRCS or other public agencies so that private organizations could screen and select the projects most suitable for them. The Commenter also recommended that participants be required to seek three bids and select the lowest bid, and require that bids that are either too high or too low be rejected. A different Commenter agreed that NRCS staffing levels should not be increased, and that certified crop advisers, as TSPs, should meet the conservation demand.

Response: NRCS policy supports the authorizing statute that participants select technical service providers, whether they are public or private entities. NRCS does not impose a three-bid requirement upon its participants because the Agency believes it creates an unreasonable administrative burden on them. As discussed in its payment section, NRCS is updating the process for establishing Not-To-Exceed (NTE) cost information. This update should provide better information regarding the NRCS costs related to the delivery of technical services. The Agency believes that these updated rates should be more reflective of costs incurred by technical service providers. New NTE rates should allow participants to access quality technical assistance from either public or private sources while exercising their right to choose who delivers the service to them. NRCS does not believe it is appropriate to impose on participants one type of technical service provider over another.

Comment: Paragraph (b) of § 652.3 provides that the Chief, NRCS, shall direct and supervise the administration of the rule. One commenter suggested that NRCS extend the comment period.

Response: NRCS provided an initial 90-day comment period, which was then extended for an additional period of time. NRCS received 1350 comments from over 350 entities and believes that it has received a broad spectrum of comments on all aspects of the rule. Therefore, NRCS does not intend to re-open the comment period.

Comment: Another commenter requested that NRCS keep the TSP process simple and free of paperwork, and to keep the approval process localized and streamlined. This same commenter recommended that delays in payment should not be tolerated and that complaints of unfairness handled quickly and in an un-biased manner. Another commenter stated that the rule was silent on the format of the

paperwork associated with the development of conservation plans and contracts, noting that NRCS field offices utilize geographic information systems and specially-developed software in the completion of their work.

Response: NRCS agrees that it is important to minimize paperwork and ensure an efficient process for reimbursing participants for technical services obtained from TSPs. The Agency also agrees that it is critical to the success of the program to ensure that all complaints are handled fairly and expeditiously as possible. NRCS has instituted TechReg as an electronic means for TSP to obtain certification, and is instituting other e-government provisions in order to reduce the paperwork burden on its participants. These e-government efforts provide a mechanism through which NRCS will streamline applications and payments. NRCS is working collaboratively with partners to develop a means to allow technical service providers to access conservation planning information currently available to NRCS field personnel. TSPs will have an opportunity to gain analogous access to the same reference information, planning tools including forms, and reporting systems as Department employees currently have.

Comment: One commenter stated that it may be necessary for NRCS and the Department to provide national leadership to ensure successful adoption of the TSP policy by the public and by NRCS employees in all the regions and States. The commenter reflected that the differences in States should not create significant inconsistencies in policy implementation.

Response: NRCS believes that the use of TSPs will be more readily accepted in some States than others. While there has been only one year of implementation of TSP policy, some regional differences have emerged with the Midwest region of the country utilizing TSPs to a much greater extent than other parts of the country. However, NRCS is committed to promoting the use of technical service providers throughout the country, and has established a National framework, sensitive to State and local requirements. NRCS is also committed to ensuring that NRCS Regional and State personnel seek every opportunity to utilize qualified technical service providers in the delivery of its conservation programs.

Comment: Paragraph (c) of § 652.3 consists of several paragraphs. In order to streamline its response, NRCS will address the comments by topics within

each paragraph comprising § 652.3(c). Several comments expressed concern regarding the unprecedented nature of the TSP provisions and recommended several approaches to ensure that NRCS had the requisite advice and framework to ensure successful implementation of the TSP provisions. One approach included the establishment of a Federal Advisory Committee to provide NRCS advice. Another approach suggested that NRCS conduct State listening sessions and surveys of conservation needs to guide delivery of technical assistance.

Response: NRCS agrees with comments that success lies in cooperation between all parties involved in TSP, but does not believe that a Federal Advisory Committee is needed, especially since adequate opportunities for advice and input exists through the public comment period under rulemaking and participation in State Technical Committees. State Technical Committees provide guidance to State Conservationist on a broad range of conservation issues, and entities interested in participating on a State Technical Committee should contact the State Conservationist.

Comment: One commenter encouraged NRCS to anticipate needed technical assistance and develop contracts with organizations based on competitive processes that focus primarily on quality.

Response: NRCS State Conservationists, with the advice of State Technical Committees, determine natural resource priorities within the State and develop strategies for delivery of conservation programs to meet these resource needs. Through this assessment, State Conservationists anticipate where workload demand necessitates the increased use of technical service providers to meet this demand and may choose to enter into contracts and cooperative agreements with qualified technical service providers. NRCS also balances its own obligation to administer its conservation programs effectively while ensuring that sufficient funds are available to support participants' option to select individual technical service providers. NRCS will enter into written agreements with participants wishing to hire TSPs in accordance with the priorities identified by the State Conservationists.

Comment: Paragraph (c)(3) of the Interim Final Rule stated that NRCS would establish policies, procedures, and guidelines regarding the certification and decertification of technical service providers. NRCS received 4 comments on this paragraph, 2 of which expressed a need for the

procedures to be in "plain English." One comment indicated that State Technical Committees should provide leadership in fashioning TSP initiatives, and one comment indicated that NRCS should focus on training.

Response: NRCS agrees that the language used to explain its procedures should be clear and concise, and will work to simplify the guidance made available through TechReg. As described earlier, NRCS believes the State Technical Committees can provide valuable advice on the implementation of TSP initiatives and encourages interested parties to attend State Technical Committee meetings. NRCS concurs with the comment on training and addresses this concern fully in the discussion on training under § 652.21.

Comment: Paragraph (c)(4) of the Interim Final Rule stated that NRCS will certify, decertify, renew certification, and recertify technical service providers. NRCS received 4 comments on this paragraph, all of which encouraged NRCS to work with existing and appropriate certification programs, and recommended that the certification system be stringent enough to ensure high quality technical service providers. However, these commenters expressed concern that NRCS not place itself in direct competition with private sector programs, but instead rely almost exclusively upon other entities' certification programs.

Response: NRCS agrees that there are several high quality certification programs in the private sector and has entered into Memoranda of Understanding with several of these certifying organizations. However, the statute clearly assigns responsibility to NRCS for establishing the criteria for qualifications that technical service providers must meet. NRCS is committed to working with all partners to ensure that certification programs meet established criteria. NRCS is not going to utilize one organization's certification as applicable to all categories because an organization's certification process is specific to the mission of that particular organization. NRCS must focus on the certification criteria that best meet the resource needs and issues addressed under its publicly-funded conservation programs.

NRCS values the assistance provided by recommending organizations through Memoranda of Understanding to evaluate the qualifications of applicants and make recommendations for certification. However, NRCS also believes that the TSP certification system must have an avenue for qualified individuals and entities to become certified technical service

providers, whether or not such individuals or entities are associated with a particular certifying organization or for disciplines where a certifying organization does not exist. NRCS believes that the TechReg's certification process, combined with a credible quality assurance and verification process, provides a streamlined process for such technical service providers without competing with private professional organizations.

Comment: Paragraph (c)(5) of the Interim Final Rule stated that NRCS will encourage the development and availability of training opportunities. NRCS received 4 comments on this paragraph, 3 of which stressed that additional training should be based on need and built into a continuing education system of a certification program. One commenter supported the use of NRCS personnel and materials for training technical service providers.

Response: NRCS recognizes the need for development of training and addresses this concern fully in the discussion on training under § 652.21.

Comment: Paragraph (c)(6) indicated that NRCS would track payment and accomplishment data related to technical services delivery. NRCS received 1 comment to this paragraph, expressing concern that the technical services provided may not be done in the most cost-effective way. This commenter requested that NRCS indicate the methods it would utilize when NRCS seeks to acquire technical services from non-Federal sources.

Response: NRCS recognizes that there is inevitably some inefficiency in offering new opportunities to deliver technical assistance through technical service providers, but believes that the framework in place will help minimize such inefficiency by encouraging highly qualified technical service providers to work with NRCS conservation participants. NRCS will utilize the most appropriate tool, whether that be contracts, cooperative agreements, or contribution agreements, to achieve the most efficient delivery of service to the public.

Comment: Paragraph (c)(7) states that NRCS will implement a quality assurance process to evaluate technical service provided by Technical Service Providers. NRCS received one comment regarding this issue. The commenter stated that NRCS should develop a system of compensation and job descriptions on a component basis that provides for incentives for quality not just quantity. The respondent also emphasized that conservation technical assistance work is based significantly on consulting with landowners which may

not correlate directly to obligating conservation program funds.

Response: NRCS concurs with these comments, working with private landowners requires regular, authentic communication to foster a trusting relationship. NRCS has developed more detailed, practice-specific statements of work for technical service providers' use. These working documents carefully describe required components and documentation of work completed to be submitted for payment. The use of these templates, available through the Field Office Technical Guides, should also guide some discussion between landowners and technical service providers and should lead to improved communication and planning.

Section 652.3(e)

Comment: Section 652.3(e) of the Interim Final Rule stated that the Department would evaluate the terms and conditions of existing agreements with technical service providers to ensure they were consistent with the regulation. NRCS received 25 comments that expressed concern about the historic relationship NRCS has with conservation districts and 7 comments that supported NRCS re-evaluating historic and existing agreements to ensure there were no conflicts of interest.

Response: NRCS believes that it addressed these concerns in its second amendment to the Interim Final Rule, published July 9, 2003, when it provided for a limited waiver to the certification requirements for public entities who enter into contribution agreements with NRCS to provide technical services. NRCS described in detail the long-standing, productive partnership NRCS has with other public agencies, especially conservation districts. NRCS also described the cooperative working agreements that it has with conservation districts and its desire to continue this relationship and approve district employees to provide technical services through these agreements. These agreements set forth criteria and ensure that they are met.

As described in the amendment, if NRCS contributes financial resources to a partnership with a conservation district, such a relationship is consummated through a contribution agreement and the conservation district must contribute at least 50 percent of the resources needed for implementing the contribution agreement. Under the provisions of the Interim Final Rule amendment, public agencies that wanted to compete for contracts or cooperatives agreements for the delivery of technical services had to become

certified in accordance with the certification process set forth in the Interim Final Rule. However, this final rule changes the certification requirement for all entities, whether a public agency or private company, when such an entity seeks to enter into an agreement or contract with NRCS to provide technical services.

As described in the preamble discussion under § 652.6 of this final rule, when obtaining technical services directly, NRCS will utilize qualification and performance criteria in a procurement contract or cooperative agreement, rather than the certification process under Subpart B, to select qualified technical service providers. NRCS will comply with applicable rules of competition under Federal acquisition and assistance authorities in its selection of technical service providers under procurement contract or cooperative agreement. The NRCS contracting officer is responsible for ensuring that the procurement process is fair and competitive. The impetus for this change is explained in this preamble's discussion of § 652.6(b).

Comment: One commenter said that existing agreements should be allowed to run their course without interference.

Response: NRCS honored its obligations under existing contracts and agreements. However, NRCS reviewed and modified many framework agreements that did not involve specific obligation of funds to ensure that the terms and conditions of the agreements were consistent with the Interim Final Rule and the two amendments. NRCS also did not enter into modifications or renewals of existing documents that obligated funds unless the terms and conditions were consistent with the Interim Final Rule and the two amendments.

Comment: One commenter suggested that NRCS create a highly pragmatic, two-tiered approach with public entities or non-profit organizations providing comprehensive technical assistance, and private, for-profit vendors providing specifically-defined technical assistance.

Response: As described more fully below in the discussion about changes to § 652.6, NRCS will utilize a two-prong approach similar to that recommended by the commenter. However, NRCS does not believe that the profit motive of the TSP is the determining factor in selecting a TSP for comprehensive technical assistance. NRCS believes that the TSP needs the Agency has in the implementation of the conservation programs differs from the TSP needs of a participant meeting program requirements. In particular,

NRCS distinguishes the qualification evaluation process used for TSPs hired directly by participants and TSPs hired directly by NRCS. NRCS believes that the selection process through the existing legal framework for Federal acquisition and cooperative agreement activities ensures that the agency obtains qualified technical services from vendors and partners for the types of technical services the Agency needs, while the certification process set forth under this final rule will ensure that participants obtain qualified technical services they need.

Comment: Two commenters expressed concern over the accelerated time schedule for implementation of the TSP provisions while another commenter recommended that a Federal Advisory Committee should be established to assist with the new initiative. One commenter stated that TechReg was an effective mechanism for implementing TSP provisions.

Response: NRCS believes that the time schedule set forth in the Interim Final Rule was warranted by the need to meet the additional technical services demand. As mentioned earlier in this preamble, NRCS does not intend to establish a Federal Advisory Committee at this time, and recommends that interested parties provide input to NRCS through the State Technical Committees. Through adjustments made in the two amendments to the Interim Final Rule and in this final rule, NRCS believes it has demonstrated flexibility to meet effectively the new issues that have arisen from this unprecedented initiative for expanding the availability of technical services to America's farmers and ranchers. NRCS will continue to seek sensible and innovative improvements to the implementation of these provisions.

Comment: One commenter stated that NRCS should not compete with private sector services, while another commenter expressed support for Department employees providing technical services. Three commenters stated that technical service providers should supplement rather than replace the base delivery of technical services.

Response: NRCS policy encourages the expansion of technical services provided by all sources. The not-to-exceed payment rates, established under this part, are based upon the direct and indirect costs to NRCS for providing technical services, and thus help minimize cost differences between NRCS and non-NRCS sources of technical services. Additionally, private, commercial sources may be in a better position to provide a participant with more timely services.

Comment: Two commenters expressed approval for NRCS and partner technical service delivery in New York and 2 commenters expressed approval for NRCS and partner technical service delivery in North Carolina. All 4 comments commended NRCS' utilization of private and public sector partners. One commenter, however, felt that NRCS should empower its field office employees more in deciding the technical service needs of participants.

Response: NRCS appreciates the continued support it receives for its delivery of technical services to participants, especially from its field office professionals. NRCS is committed to stimulating the private sector technical service provider industry through its policies and partnerships, and NRCS believes that participants will benefit greatly from having a broader choice of technical service providers. NRCS contends that it has empowered its field offices through TSP by providing them with another tool to meet their conservation goals.

Section 652.4 Technical Service Standards

Comment: In the Interim Final Rule, § 652.4 establishes the technical service standards that technical service providers must meet to receive payment for their services. NRCS received 142 comments on the provisions contained within this section. In general, several commenters expressed concern that TSPs are not subject to the Freedom of Information Act and Privacy Act protections against disclosure of participants' proprietary information.

Response: The Freedom of Information Act, the Privacy Act, and the confidentiality provision of the Food Security Act of 1985, 16 U.S.C. 3844, are Federal statutes that promote an open Government with recognition of protections for private citizens, and thus these statutes only apply to records maintained by the Federal Government. For these reasons, NRCS again cautions participants to obtain necessary assurances regarding the confidentiality of information that is provided to the TSPs they hire.

Section 3844 of Title 16 of the United States Code (the "confidentiality provision") addresses the disclosure of certain information provided to the Department or a contractor of the Department by a participant for the purposes of providing the participant technical or financial assistance under a conservation program of the Department. In particular, the Department may release certain information obtained from a participant

to a technical service provider working in cooperation with the Department if the disclosure of such information is needed in providing technical or financial assistance to the participant. By statute, the technical service provider hired by the Department is prohibited from disclosing the information to anyone outside the Department, and NRCS incorporates such prohibition in the terms of its contracts and agreements.

However, the confidentiality provision does not authorize the Department to disclose such information to a technical service provider hired by a participant unless the participant consents to such disclosure. Therefore, § 652.5 notifies a participant that NRCS will not disclose information in an NRCS case file to a technical service provider hired by the participant unless the participant provides such written authorization.

Comment: Section 652.4(a) of the Interim Final Rule required that the technical services provided by technical service providers meet all applicable NRCS standards and specifications. NRCS received 3 comments on this provision, including 2 commenters expressing support for high standards and 1 commenter expressing concern that the State-specific nature of NRCS standards and specifications will cause administrative burdens to TSPs who wish to provide technical services in several different States.

Response: NRCS developed its standards and specifications based upon its lengthy experience with local resource conditions and believe they are the most appropriate standards for the conservation programs it administers.

Comment: Section 652.4(b) of the Interim Final Rule specified that the Department must approve all new technologies and innovative practices prior to a technical service provider initiating technical services for those technologies and practices. NRCS received 47 comments on this provision. Three commenters expressed general support for this provision while 3 commenters expressed concern that the requirements would be too burdensome and restrictive. One commenter agreed that all projects should meet NRCS standards, but believed that TSPs should be able to utilize more innovative methods than might exist in NRCS manuals, handbooks, or other references. NRCS received 9 comments that recommended that NRCS establish a review and approval process for innovative technologies and practices. NRCS also received 29 comments that the rule should encourage technical service providers to develop innovative

practices that promote sustainable agriculture. One commenter requested further clarification of what constituted an innovative technology or practice.

Response: While the perspectives of these commenters are appreciated, NRCS must first ensure the integrity of conservation program implementation and that the practices installed and funded by public investment are technically sound and cost effective. Throughout its history, NRCS, and its predecessor the Soil Conservation Service, have internally developed and tested standards and specifications that provided safe, reliable, and effective conservation practices. These practice standards are performance-based in that they encourage the use of innovative treatments by establishing performance criteria rather than prescriptively describing the specific treatment. As new technologies have been proven through research and demonstration efforts, NRCS has adopted many new technologies and made them available for implementation through its interim standards process. The interim standards process allows for State, regional, and national testing of the application and its performance for subsequent adoption into the Field Office Technical Guides. For these reasons, NRCS believes that it balances reliability and innovation for use in its publicly-funded conservation programs. Therefore, NRCS requires under its conservation programs that practices meet NRCS standards and specifications prior to making payment for their installation. NRCS made a change to § 652.4(b) in the final rule to clearly state this requirement.

Additionally, NRCS has received authorization in the 2002 Farm Bill to implement the Conservation Innovation Grants program (CIG). CIG, authorized under the Environmental Quality Incentives Program (EQIP), is a voluntary program intended to stimulate the development and adoption of innovative conservation approaches and technologies while leveraging Federal investment in environmental enhancement and protection, in conjunction with agricultural production. Under CIG, EQIP funds are used to award competitive grants to non-Federal governmental or non-governmental organizations, Tribes, or individuals. NRCS published a Request for Proposals in the **Federal Register** on March 29, 2004 (69 FR 169400), announcing the availability of up to \$15 million of CCC funds for the implementation of CIG in FY 2004. NRCS expects that the CIG-funded projects will lead to the transfer of conservation technologies, management

systems, and innovative approaches into NRCS technical manuals or guides, or to the private sector. NRCS believes CIG should fund the development of innovative practices related to sustainable agriculture.

Comment: Section 652.4(c) requires that technical service providers warrant in writing that the particular technical service provided meets several requirements, including compliance with all applicable Federal, State, Tribal, and local laws and incorporates, where appropriate, low-cost alternatives that meet the objectives of both the program and its participants. NRCS received one comment expressing concern that technical service providers must warrant that practices meet all requirements even though there may exist conflicts between the various legal requirements.

Response: Technical service providers are responsible for knowing the legal and regulatory framework under which they are providing services. While there may exist overlapping and varied regulatory standards under applicable law, a professional experienced in providing technical services will be aware of the appropriate resolution to these potential conflicts of law.

Comment: NRCS also received 5 comments about low-cost alternatives, with 1 commenter expressing general support for the provision, 3 commenters expressing concern that technical service providers will not promote low-cost alternatives, and 1 commenter requesting clarification on how low-cost alternatives that are not currently in the FOTG might be incorporated.

Response: There often exist several approaches to solve a resource issue under the NRCS conservation programs. The NRCS conservation planning procedures manual provides guidance on appropriate planning methods, including the development of alternatives to be presented to participants to address their resource concerns. These alternative approaches are supported by the standards and specifications available to resolve the issue. However, NRCS agrees that the concept of what constitutes the “low-cost alternative” is problematic in implementation, especially since the choice of alternatives belongs to the participant based upon their conservation needs and which alternative best addresses the needs of the resource. Therefore, in this final rule, NRCS modified the language to require that technical service providers incorporate alternatives that are both cost-effective and appropriate to address the resource issues.

Comment: Section 652.4(d) of the Interim Final Rule required that technical service providers must assume all legal responsibility for the technical services provided, and must indemnify and hold the Department and the participant harmless for injuries arising from negligent or wrongful acts arising from the technical services provided. NRCS received 58 comments on this provision. The breakdown of the comments is as follows: 15 commenters expressed support for holding technical service providers liable but requested that clarification be provided on several aspects of liability; 9 comments opposed the hold harmless provision as a barrier to TSP participation; 14 comments expressed concern for potential liability of the individuals and institutions who provide training to technical service providers; 10 comments believed that NRCS should require technical service providers to have liability insurance; 1 commenter recommended that NRCS should provide liability insurance to technical service providers; 1 commenter inquired regarding who would ensure that standards and specifications were being met; 4 commenters felt that the liability provisions did not adequately protect participants; 1 commenter expressed concern about a public agency assuming broad liability; and 4 comments believed that NRCS should share in the liability if the technical services met NRCS standards and specifications.

Response: NRCS recognizes that the terminology used in the Interim Final Rule may have inadvertently caused problems in the ability for technical service providers to obtain liability insurance. The terms “indemnify” and “warrant” are used throughout the Interim Final Rule. Professional consultants find these terms problematic because a warranty or guarantee of their work could negate their professional liability coverage.

While technical service providers need to be held accountable for the work they do, the current regulatory language needs to more clearly state the extent of the liability that technical service providers assume when they provide technical services under this part. Of particular concern to many commenters was that technical service providers might be held liable for an overall project when they were not involved in all phases of its technical services delivery.

Therefore, NRCS has revised the liability language in § 652.4(d) to state more clearly that technical service providers assume legal responsibility for the technical services they provide. In response to the commenters' concerns,

the new language does not require blanket indemnification. NRCS has not required in this regulation that technical service providers submit to NRCS proof of liability insurance. Rather, NRCS will incorporate appropriate bonding and insurance requirements in its contracts or agreements with technical service providers and recommends that participants consider such matters when they hire their own technical service providers.

NRCS did not address in this regulation all the other potential liable parties if a project fails as a result of negligence or wrongful acts because such matters are beyond the scope of this regulation. Tort law provides the relevant framework for addressing such issues.

Comment: Section 652.4(e) of the Interim Final Rule stated that the Department will not be in breach of any program contract or agreement for not making payment for technical services that do not meet NRCS program requirements. NRCS received 3 comments to this provision. All 3 of the commenters expressed support for the provision, but 2 of the commenters provided alternative language.

Response: NRCS believes that the current language best captures the intent of the provision, and has made no changes in response to these comments.

Comment: Section 652.4(f) of the Interim Final Rule confirms that participants are responsible for complying with the terms and conditions of the program contract or agreement. NRCS received 4 comments on this provision. Three of the commenters expressed support for the provision, but the fourth commenter expressed concern that the language could be interpreted to attach liability to the participant for something that the technical service provider should assume sole responsibility.

Response: NRCS understands the concern expressed by this commenter. However, the technical service provider is not a party to the program contract or written agreement between NRCS and the participant, and therefore, the participant is responsible for compliance with the agreement. When the participant hires TSPs to assist in meeting the participant's obligations under the program agreement, the participant should incorporate their expectations of the contracted service provider, including fulfilling program requirements, into their contract with the provider of the technical service.

Comment: Section 652.4(g) of the Interim Final Rule requires TSPs to report in the NRCS accomplishment tracking system the appropriate

information associated with the technical services provided. NRCS received 16 comments on this provision. Five commenters requested additional information about how to access the accomplishment tracking system. Three commenters expressed the need for such a tracking system. Four commenters did not support requiring TSPs to use the accomplishment tracking system because it would be excessive, burdensome, and serve as a significant disincentive to TSP participation. Two commenters expressed concern that projects with multiple TSPs may result in redundancy in reporting. One commenter expressed concern that NRCS maintain the confidentiality of participant's proprietary information. One commenter requested that NRCS clearly identify the differences between outcomes and output, and that NRCS be able to use the tracking system to determine clearly accomplishments and areas needing improvement.

Response: It is essential to track performance information related to the implementation of NRCS' conservation programs, including the extent and type of technical services provided to conservation participants, to ensure the public investment in conservation is being well-spent and conservation objectives achieved. NRCS agrees that it is important to distinguish outcomes (i.e. improved water quality) and outputs (i.e. number of acres treated), but recognizes that there is overlap in these two concepts. NRCS has modified its performance tracking system to distinguish more clearly between the two concepts, stream-line data input, and provide a user-friendly system available to NRCS personnel and technical service providers. NRCS recognizes the challenges between balancing client privacy and accessibility to information contained within NRCS client files needed to develop appropriate planning and design products. As discussed more fully above in the discussion about the confidentiality provision of the 2002 Farm Bill, NRCS maintains the confidential nature of participant information and will only disclose information to a third party with the written agreement of the participant or in accordance with Federal disclosure laws. The confidentiality provision does allow NRCS to distribute aggregated performance information.

Section 652.5 Participant Acquisition of Technical Services

Section 652.5 of the Interim Final Rule stated that participants may obtain technical assistance directly from the Department or from a TSP. NRCS

received 180 comments on this section of the rule. Two comments were general comments, one commenter stating that good faith exceptions that apply to participants do not apply to technical service providers, and the second commenter suggesting that the TSP provisions will work only if NRCS allows private sector technical service providers to determine the work load that they can handle first. Most of the comments, 120 of the 180 received, were responses to the NRCS request for comments on how NRCS should determine the payment rates for technical service providers. NRCS has organized its response to these comments by topic, as set forth below.

Payment Rates

Comment: Sixteen distinct perspectives summarized the 120 comments NRCS received related to payment rates:

- Thirty-five of the commenters expressed approval for a not-to-exceed (NTE) payment approach utilizing NRCS cost as the basis for the maximum rate to be paid. However, most of the comments suggested that NRCS incorporate the "true" cost to NRCS to provide technical services, including overhead and operating expenses such as utilities and rental space.

- Five commenters requested that the not-to-exceed rates should incorporate an element of profit since private sector business need to make a profit to survive and that public sector entities benefit from having the public pay overhead costs.

- Seven commenters expressed concern that the costs will be difficult to establish and that the payment rates should be set at the cost charged for services in the private sector.

- Twelve commenters recommended utilizing both private and public sources of cost data to establish payment rates.

- Nine commenters expressed opposition to a flat rate while an additional five commenters expressed opposition to the establishment of a National price that did not take into account State-level differences in cost.

- Four commenters recommended that NRCS introduce a voucher system.

- Three commenters recommended that NRCS establish a fee structures based on a per acre rate or per plan rate.

- Three commenters advised against using a lowest-cost basis for acquiring professional services.

- Three commenters recommended that NRCS provide incentive payments for disadvantaged groups.

- Three commenters recommended that NTE rates as cap for the acceptable

bid obtained pursuant to NRCS acquisition process.

- Three commenters recommended that payments be based on specific practices or tasks.
- Three commenters expressed concern that NRCS would pay for services that were once provided to participants at no charge by private sector service providers and additionally discourage volunteer service.
- Three commenters recommended that NRCS utilize a two tiered payment process, where the payment rate would be based (1) upon a percentage of the total project cost and (2) upon a percentage of a not-to-exceed rate.
- Three commenters recommended utilizing an hourly rate with locally-set caps on the amount that can be paid.
- One commenter recommended that the payment rate should incorporate a fee to compensate general contractors for overseeing the work activities of non-certified technical service providers.
- One commenter wanted to be assured that NRCS could be chosen as the technical service provider because of the NRCS proven record of providing quality technical services.

Response: NRCS appreciates the thoughtful recommendations it received in response to its request for comments on this issue which is key to the success of the TSP provisions. The overriding goal for NRCS is to encourage the highest quality technical services for its participants with the most cost-effective expenditure of public dollars. Consequently, NRCS will base payment rates on the NRCS cost to provide a particular service. This cost will be reflected in the NTE rate for the technical service related to a particular conservation practice. NRCS used NTE rates in its FY 2003 implementation of TSP, and has made adjustments in order to better incorporate the complete cost for NRCS to provide a particular service.

For FY 2004, NRCS developed NTE rates from NRCS' Technical Assistance Cost for Conservation Practice (TACCP) database. It contains estimates for time required for each skill necessary to complete the four tasks of planning, design, installation, and checkout, associated with each conservation practice. The time by skill estimates are then applied to an NRCS staff cost per hour plus overhead for each needed discipline, to derive the estimates of the total technical assistance cost for a typically sized practice task. Then an NTE rate for a specific task is derived by dividing that total task costs by the reported typical job size (in acres, feet or in Animal Units). The current TACCP

includes personnel salary and benefits by discipline plus an overhead rate equal to about 26% of the associated personnel cost incurred from field offices up to the state level.

The rates are based on typically sized conservation practice jobs within 214 time team regions (TTRs) across the country. Each typically sized conservation practice job reflects the natural resource, regulatory, social and economic conditions that exist within each of TTRs. NTE rates are established for each of the four major conservation practice tasks, namely planning, design, installation and checkout. NTE rates have been established for most of the 163 conservation practices being applied by NRCS.

If special conservation practice situations arise that have unique or unusual circumstances, NRCS would be expected to incur higher costs. Therefore, State Conservationists are authorized to change NTE rates accordingly, with justification and documentation. The Deputy Chief for Science and Technology recently issued a National Bulletin providing conditions and a process for State Conservationists to justify exceptions to the NTE rates.

NRCS requested sources of technical services and pricing data for past technical services provided through a FedBizOpps advertisement. NRCS continues to make efforts to identify sources and receive information on current market prices from individuals and entities providing conservation technical assistance. The request for cost data posted on FedBizOpps allows users to submit these pricing data online. NRCS intends to use this pricing data to evaluate payment rates for technical service providers.

In its March 24, 2003 amendment to the Interim Final Rule and in response to the public comments received, NRCS considered several other options in determining how to establish the payment rate for technical service. This rulemaking is setting forth that policy decision. One option considered was for NRCS to base technical service payments upon a flat rate. Under this option, NRCS would pay a flat rate for each project. For instance, regardless of what a technical service provider might charge for a project, NRCS would pay a participant \$4,000, whether the work impacted 10, 100 or 1,000 acres. However, NRCS has determined that such an approach would not adequately address the actual cost for technical services on any particular project. NRCS believes that participants would have difficulty obtaining technical services for small or more complex projects because the actual cost for the design

could exceed the flat rate. Additionally, the flat rate would not encourage competition in the market place because it does not encourage cost-efficiency between potential technical service providers. NRCS believes the market would tend to shift towards the flat rate rather than encouraging more efficient or innovative delivery. Therefore, NRCS did not adopt this option.

NRCS also considered soliciting bids and selecting the low cost technical service providers for participants for specific services within specific geographic areas. The Department did not adopt this method as part of the rule because it would force the participant to select only the technical service provider identified by Department rather than allowing the participants to choose their preferred qualified technical service provider. In addition, the Department believes that this alternative method would create a substantial workload for the Agency because of the need to develop and administer contracts, especially given the variety and scope of technical services needed.

NRCS also considered soliciting bids for all technical service needs on a case by case basis and contract directly on behalf of participants with each technical service provider on each technical service needed. The Department did not adopt this method as part of the rule since this method would also limit the available choices of technical service providers to a participant and would create a similar significant administrative workload for the Agency.

In considering whether to continue using the NTE rates as a basis for TSP reimbursement, NRCS has determined that the NTE rates as described above provides the greatest opportunity for the marketplace to provide input on the costs of technical services, and it provides maximum flexibility for participants to choose their technical service provider.

NRCS believes that the current regulatory framework provides adequate flexibility to NRCS to adjust payment rates in response to additional information obtained from internal and external sources of cost data. Therefore, no changes were made to this regulatory language in this provision of the rule.

Section 652.5(a)

Comment: Section 652.5(a) of the Interim Final Rule restated the statutory provision that a participant may obtain technical assistance from the Department, or at the participant's option, from a certified technical services provider. NRCS received 2

comments to § 652.5(a). One commenter stated that the provision should not be written as an entitlement without some qualifying statement about whether certified TSPs were available in the particular geographic region. The other commenter suggested replacing the term from “participant” to “producer.”

Response: The ability for a participant to obtain technical services from a certified technical service provider depends upon whether there exist certified technical service providers in the geographic area and for the particular technical services. Therefore, NRCS has added the term “if available” to the language of § 652.5(a).

NRCS has sought to expand the availability of technical service providers nationwide, though their distribution across the country is not uniform. NRCS believes that the term “participant” more accurately defines the individuals and entities for which the TSP provisions are available. Therefore, no changes have been made to this term.

Section 652.5(c)

Comment: Section 652.5(c) provides that to acquire technical services from a technical service provider, participants must comply with the program agreement and select a certified technical service provider from the approved list of technical service providers. NRCS received 12 comments to this section. Eight of the commenters expressed support for the participant selecting the technical service provider from the NRCS list of certified technical service providers. Two commenters expressed concern about a program participant being assigned a technical service provider through a State contract or cooperating agreement. Two commenters requested that NRCS clarify whether a public agency can be placed on approved list of certified technical service providers.

Response: Participants are given the option to choose whether they wish NRCS to provide the technical services or to hire a technical service provider themselves. If NRCS is the chosen technical service provider, NRCS will either provide the services with its own personnel or with technical service providers assisting NRCS under a procurement contract or a contribution agreement. If a public agency plans to provide technical assistance directly to landowners, they may be placed on the approved list of certified technical service providers if they meet the certification standards. Public agencies may also be eligible to enter into program contracts or written agreements directly with the Department to deliver

technical assistance if they meet the requisite qualifications.

Section 652.5(d)

Comment: Section 652.5(d) provides that a participant must submit to the Department an invoice, supporting documentation, and a request for payment in order to obtain payment for technical services obtained from a certified technical service provider. Section 652.5(d) provides that a participant may receive payment or, upon receipt of an assignment of payment from the participant, NRCS may make payment directly to the technical service provider. NRCS received fifteen comments related to this provision. Nine of the commenters expressed concern about receiving payment through a participant because the submission of payment information would be done on the participant's schedule and subject to the participant's level of satisfaction with the quality of the technical services. Six commenters expressed support for the ability of technical service providers to receive payment directly through an assignment of payment process.

Response: NRCS based its payment process in the rule upon the requirements in the TSP statutory provisions that the option for the participant to select a technical service provider be through a payment to the participant. Any payment by the participant to the TSP is between those two parties under their contract and does not impact our payment to the participant under the program agreement. NRCS believes that the payment and assignment of payment options meet these statutory limitations and therefore no changes were made to this provision.

Section 652.5(g)

Comment: Section 652.5(g) of the Interim Final Rule provided that a participant may be reimbursed for technical service provider costs incurred prior to entering into a program contract or agreement provided several requirements were met. NRCS received 8 comments in response to this section. These comments supported the concept of providing assistance for technical services needed prior to entering into a program agreement or contract, but expressed concern that some participants may view it as an entitlement. Therefore, several of the commenters suggested the modification to the regulatory language to require a written contract or working agreement with NRCS before a participant can expect payment for these technical service costs.

Response: NRCS made changes to this section in response to these comments. NRCS modified the regulation to add the explicit requirement that NRCS requires the participant to enter into a written agreement with NRCS before NRCS will pay a participant for technical services obtained prior to entering into a program agreement or contract. This written agreement is not the same as the program agreement or contract, and does not indicate that a person has been accepted into a Farm Bill program. Any agreement is subject to the availability of funds and will be awarded in accordance with the priorities established by the State Conservationists. By making these changes in the final rule, NRCS will be able to manage the technical service funds more efficiently to meet the needs of its participants.

Section 652.5(h)

Comment: Section 652.5(h) provides that participants must authorize in writing to the Department the disclosure of their records on file with the Department that they wish to make available to specific technical service providers hired by the participant. NRCS received 16 comments specific to this provision. Fourteen of the comments expressed support for the confidentiality of participant records but were concerned that Federal disclosure laws and protections did not apply to technical service providers hired by participants. Two of the commenters expressed concern that the use of technical service providers should not be a shield from scrutiny when the service provided are paid with public funds to implement public programs.

Response: NRCS incorporated § 652.5(h) in the Interim Final Rule to notify participants that the Federal government would not disclose their records unless required by Federal disclosure laws or authorized by the participant. NRCS discussed this issue in greater detail earlier in the preamble discussion under § 652.4. NRCS did not make any changes to this section in the final rule.

Section 652.5(i)

Comment: Section 652.5(i) provides that payments for technical services will be made only one time for the same technical service provided unless, as determined by the Department, the emergence of new technologies or major changes in the participant's operations necessitated the need for additional technical services. NRCS received 2 comments, one commenter stating that a conservation plan should not have to

cover a landowner's entire property and the other commenter stating the provision needs to allow for follow-up assistance in implementing their plans and agreements.

Response: NRCS believes that conservation program requirements determine the extent of conservation planning that is needed to meet the goals of the particular program, and consequently, such a matter does not need to be addressed further in this rule. Therefore, no changes have been made to this provision.

Section 652.5(j)

Comment: Section 652.5(j), was added in the amendment to the Interim Final Rule published March 24, 2003, and provides that a participant may earn credits towards their cost-share practice installation if a participant selects a technical service provider with prices below the not-to-exceed rates for the provision of technical services. The credits earned will be equal to a percentage of the savings generated by the participant by choosing a lower cost technical service provider, but such amount could not exceed any statutory limitations on cost sharing or payments for a particular program. NRCS received 23 comments on this provision, 22 of which expressed concern about the ethical problems the cost-share credit could create.

In particular, these commenters expressed that the incentives created by this provision would encourage participants to make the cost of the professional service their first consideration. Pressure would be placed on prospective TSPs to make cost concessions in order to obtain the contract with the participant. Succumbing to this pressure may even violate the professional's code of ethics to which he or she must adhere.

Response: In response to these comments and internal financial administrative concerns, NRCS has removed this provision from the final rule. Without the cost-share credit, NRCS believes that the NTE framework for establishing TSP reimbursement is consistent with principles that quality should be a primary focus regarding the acquisition of professional services. The use of NTE rates is analogous to developing a reasonable estimate of what professional services should cost as part of the Federal procurement process.

NRCS believes that it has attempted to introduce market forces into the process by utilizing NTE rates as a base that the participant is assured when negotiating for professional services. Since NRCS will not cover any cost above the NTE

rate, the participant has a vested interest in obtaining the best quality service for the price. Therefore, market incentives are already built into the system without including a credit clause. In addition, NRCS believes that these market incentives maintain a more balanced approach between quality of service and cost when encouraging a private market for technical service providers.

Section 652.6 Departmental Delivery of Technical Services

Comment: Section 652.6 of the Interim Final Rule described how NRCS may procure technical services from technical service providers to assist NRCS in the development and implementation of the Farm Bill conservation programs and the instruments that NRCS would utilize to obtain those technical services. NRCS received a total of 296 comments about the provisions in § 652.6, including 19 general comments on the topics encompassed within the section.

Five of the general comments expressed concern about the ability of TSPs to have the breadth of knowledge about conservation planning and also expressed concern about the continued ability of NRCS to maintain its technical capabilities if NRCS staff were diverted to handle the administrative responsibilities associated with the TSP provisions.

Response: NRCS appreciates the commenters' recognition that NRCS is the leader in the delivery of conservation planning services. However, in order for conservation practices to be implemented effectively to land owners with varied needs, conservation planning needs to be integrated more completely in the delivery of technical services by private and other public entities, including delivery to customers who do not participate in Farm Bill programs. The TSP provisions provide an incentive to these non-NRCS technical service providers to gain expertise in conservation planning, and thus increasing the availability of conservation planning services. NRCS will work to maintain and improve its own capabilities to provide technical assistance directly, while encouraging expansion of the availability of technical services through other sources.

Comment: Six of the commenters urged that NRCS maintain flexibility in administering the TSP provisions since the provisions will raise new and unique issue that require flexibility and deliberation to develop effective solutions.

Response: NRCS believes that it has created a broad and flexible framework for the TSP provisions in which effective solutions can be crafted.

Comment: Six of the commenters expressed general concern about the relationships between NRCS and other public agencies, especially conservation districts, that the new TSP provisions might undermine the base delivery of technical services. These commenters believed that NRCS will need to take action to maintain its base capabilities to deliver technical services in addition to fashioning means to expand the availability of technical services to participants.

Response: The second amendment to the Interim Final Rule helped to ensure that NRCS could maintain its historic relationship with conservation districts and build additional relationships with other public agencies by removing the certification requirement for public agencies who provide technical services under a contribution agreement. Additionally, NRCS has addressed this concern about expanding the availability of technical services in the final rule at 652.6(b) by replacing the certification requirements with a qualification and performance-based selection process when NRCS procures technical services under Federal acquisition processes or enters into a contribution agreement with public or private entities.

Comment: One commenter expressed general disapproval for the provisions.

Response: NRCS recognizes that there may be dissatisfaction among some potential TSPs about the approach NRCS has taken in the Interim Final Rule. However, NRCS believes that some of this dissatisfaction may be alleviated by the adjustments NRCS is making in the final rule in response to the comments it received.

Comment: One commenter believed that only NRCS personnel, and not individuals hired under Federal contract, should work with Tribal governments in order to maintain the government to government relationship.

Response: NRCS will work with Tribal governments similar to how NRCS works with other governmental entities. NRCS personnel will be the signatories to agreements and the contacts for agreements entered into with Tribal governments. Tribal participants, like other participants, have the option to utilize NRCS or a technical service provider. If a participant selects NRCS, in order to meet work load obligations, NRCS may obtain assistance from a technical service provider hired directly by NRCS.

Comment: Section 652.6(a) provides that NRCS may procure services through either a contract or a contribution agreement. Paragraph (a) specifies that NRCS will only enter into a contribution agreement if the technical service provider “contributes at least 50 percent of the technical services needed to accomplish the goals of the project.”

* * * NRCS received 80 comments on paragraph (a), 78 of which referred to the 50 percent contribution rate. These 78 comments felt that the contribution rate should either be lowered or eliminated completely, stating that this requirement would discourage partners from providing assistance at a time when NRCS wanted to expand the availability of technical assistance. One commenter agreed with language in the preamble to the Interim Final Rule that indicated NRCS would seek to meet the additional demand for technical services through contracts and agreements, rather than expanding its own work force. One commenter expressed that the rule should be structured to give the State Conservationist and the conservation district boards the ability to work together in deciding the role of conservation districts in delivering conservation programs in association with NRCS.

Response: The authority for contribution agreements is the Agriculture Appropriations Act for FY 2001, 7 U.S.C. 6962a, and is permanent authority for the agency. Section 6962a of Title 7 of the United States Code specifies that NRCS may enter into cooperative agreements to obtain goods and services without competition provided that (1) both parties to the agreement share in meeting the goals of an NRCS program; and (2) both parties contribute resources to meeting those goals. The statute did not specify a contribution rate, but allowed that issue to be decided by the agency.

NRCS determined that the mutuality goals would best be served if the other party, or parties, shared at least 50% of the cost. While NRCS is not able to renew several of its previous contribution agreements because a partner is unable to meet the 50% contribution requirement, NRCS has greatly increased its utilization of competitive processes under Federal contracts and cooperative agreements. Therefore, several partners with whom NRCS previously worked with under a contribution agreement may now compete for projects through these competitive processes. If an interruption in program delivery appears to result from the 50% contribution requirement, NRCS will reconsider this particular

issue. However, NRCS’s current experiences is that the conservation programs are being effectively delivered under the current contribution rate requirements.

NRCS will continue to work with conservation districts and its other partners to provide a comprehensive technical service delivery to its conservation participants. Conservation participants benefit from having multiple potential sources of technical services.

Comment: Section 652.6(b) of the Interim Final Rule indicated that the Department may also enter into competitive cooperative agreements to expand the availability of technical services. Paragraph (b) specified that only the Chief, NRCS, or Administrator, Farm Service Agency, could determine that competition was not needed for an award of a particular cooperative agreement, as allowed by 7 CFR Part 3015. NRCS received 15 comments on § 652.6(b). Ten of these comments expressed general support for the use of cooperative agreements, especially to provide external expertise in geographic or substantive areas where NRCS may not have sufficient personnel. One commenter recommended that NRCS State Conservationists be authorized to determine whether competition was needed or not in the award of a particular agreement. One commenter stressed that NRCS honor existing cooperative agreements. One commenter recommended that NRCS consider proposals from qualified conservation organizations to partner on regional or large-scale conservation initiatives. One commenter questioned the role of the Farm Service Agency. One commenter questioned whether there existed enough qualified technical service providers and whether Federal annual appropriation processes and funding delays would prevent the adequate availability of technical assistance funds.

Response: NRCS honored existing cooperative agreements but has only renewed or entered into new cooperative agreements that are consistent with the provisions of the Interim Final Rule. The scope of the contracts and cooperative agreements NRCS has formed reflects program participants’ varying needs for technical services. Some contracts or agreements are project-specific, while others provide the framework for numerous projects within a geographic area or of a particular technical service need. NRCS works with the full range of available qualified technical service providers, though in the first year of implementation, NRCS worked more

predominantly with public agencies and non-profit organizations.

NRCS expects that it will enter into more contracts with private commercial entities in the current fiscal year and will strive to balance its acquisition of assistance from all sources of technical services. However, technical assistance funds are annual funds, and unless they become obligated by the end of the fiscal year, they become unavailable. The Farm Bill technical assistance funds that were made available this year encompassed all Title XII programs, including the Conservation Reserve Program administered by FSA.

NRCS has restructured § 652.6 to incorporate the two-pronged approach for NRCS acquisition of technical services, and thus paragraph (b) of the final rule now provides that a TSP may obtain a payment for technical services under a contract, cooperative agreement, or contribution agreement with NRCS that contains qualification and performance criteria even if the TSP is not certified in accordance with subpart B of the final rule.

Comment: Section 652.6(c) of the Interim Final Rule provided that a certified technical service provider is not eligible to receive payment under a program contract or agreement for technical services provided directly to a participant if that technical service provider has entered into an agreement with NRCS to provide technical services to that participant.

Response: The provisions of § 652.6(c) have been moved to § 652.6(d), and the new § 652.6(c) in the final rule provides that NRCS will utilize the applicable competition and selection criteria under the Federal Acquisition Regulations, Federal Grants and Cooperative Agreements Act, and related applicable requirements.

Comment: NRCS received 181 concerning issues related to matters in paragraph (c) of the Interim Final Rule. For example, questions were raised in listening sessions and elsewhere about a potential “conflict of interest” if a technical service provider hired by NRCS also attempts to sell agricultural products in the course of providing those technical services. This particular issue was not discussed in the Interim Final Rule. Ninety-six commenters responded negatively, stating that they strongly opposed statements made by some people at the listening sessions that suggested to NRCS that private sector TSPs who sell agriculture input products have a conflict of interest. These 96 commenters emphasized the trust and strong relationship that such private sector TSPs have developed with their farmer customer over the

years. Sixty-one commenters responded that they favored a conflict of interest provision, stating that TSPs should be independent of any financial interest in the sale of any materials, equipment, or inputs needed for implementing a conservation plan.

Response: This particular issue is not a regulatory issue appropriately addressed in this regulation, but is one that should be handled between the party who seeks technical services and the party who provides the technical services. This is not an ethics matter to which the Federal rules apply. Participants are prudent to adopt a "buyer-beware" approach in their business transactions, including who they decide to hire to provide them with technical services.

Comment: NRCS received 15 comments requesting that NRCS consider the significant role that certified crop advisers (CCA) can play in helping NRCS in implementing the Farm Bill conservation programs. In particular, these comments described the rigorous agronomic curricula and testing programs needed in modern agriculture and the extensive training that exist through the CCA certification program.

Response: NRCS has entered into Memoranda of Understanding (MOU) with several organizations related to evaluating the qualifications of individuals and entities interested in providing technical services to conservation participants. These recommending organizations include: the Society for Range Management (signed 02/02/03); the American Society of Agronomy—Certified Crop Advisers, Certified Professional Crop Scientists, Certified Professional Agronomists (Updated 02/06/03); American Society of Agronomy—Certified Professional Soil Scientists (Updated 02/06/03); The Wildlife Society—Certified Wildlife Biologist (signed 03/27/03); University of Tennessee (signed 04/09/03); Irrigation Association (signed 05/08/03); Environmental Management Solutions, LLC (signed 06/17/03); American Registry of Professional Animal Scientists (signed 07/30/04); Association of Consulting Foresters of America, Inc. (signed 09/15/04); and, Iowa State University (signed 10/14/04). NRCS values the contribution provided by certified crop advisers and the many other professionals and professional organizations that have assumed responsibility for ensuring that high quality technical assistance is provided to landowners. Through these MOUs and other discussions with professional organizations, NRCS is clarifying the proficiencies, standards, and work

statements that help both the recommending organization and technical service provider applicants to understand and provide the expected quality of service.

Comment: NRCS received 1 comment competition between profit and non-profit organizations is unfair. NRCS also received 1 comment disagreeing with preamble language that public agencies have a conflict of interest. One commenter indicated that NRCS should ensure that individuals and organizations that provide technical services do not recommend or approve their own work. Finally, NRCS received one comment that the rule did not clearly distinguish between TSPs hired by participants and those obtained by NRCS through contracts, contribution agreements, and cooperative agreements.

Response: NRCS is making changes to § 652.6 in response to these comments and comments received internally from the implementation of the TSP provisions for the past year and a half. NRCS indicated in the preamble of the Interim Final Rule that it would utilize technical assistance from only technical service providers that had been certified under the provisions of the Interim Final Rule. The original TSP Interim Final Rule prohibited NRCS from making a payment under a program contract or agreement, a procurement contract, a contribution agreement, or cooperative agreement for technical service provided by a technical service provider unless the technical service provider was certified by NRCS and was identified on the approved list. NRCS modified this provision in the July 9, 2003, TSP rule amendment to allow NRCS to make a payment to a public agency who entered into a contribution agreement with NRCS, as described above. In the final rule, NRCS has placed all parties who do business directly with the Agency, both public and private entities, on an even playing field by removing the certification requirements and simplifying the process for selection of qualified providers.

NRCS has determined that its TSP certification requirements are potentially inconsistent with the legal framework for obtaining Architectural and Engineering (A & E) services, and that it needed to address this issue in this final TSP rule. NRCS based its determination upon the Brooks Act (Public Law 92–582) and the process by which Federal agencies must select A & E services. The Brooks Act sets forth the procurement process by which architects and engineers are selected for design contracts with Federal design

and construction agencies. The Brooks Act establishes a qualifications-based selection process, in which contracts are negotiated on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price. The Brooks Act selection process is more detailed and tailored to the acquisition of these types of services than the TSP certification requirements.

NRCS is modifying § 652.6 in the final rule distinguishing further between participant acquisition of technical services and NRCS delivery of technical services through contracts, contribution agreements, or cooperative agreements. Technical service providers who desire to work directly with participants will need to be certified under these regulations to receive payment from the participant through a reimbursement from NRCS. Technical service providers who wish to enter into a Federal contract, contribution agreement, or cooperative agreement with NRCS to deliver technical services must meet Federal acquisition or USDA Federal assistance rules and requirements for competency, quality, and selection, as appropriate. NRCS will incorporate into its contracts and agreements the necessary quality and performance requirements. Technical service providers who are selected as qualified and competent under such requirements will not need to be certified separately under TechReg when entering into contracts and agreements with NRCS.

This two-pronged system will meet statutory requirements, address concerns raised by commenters to the Interim Final Rule, and provide a logical distinction between technical service providers who are hired by participants and those who are hired by NRCS.

In addition, Section 1242(b)(3) of the Food Security Act, as amended, requires that NRCS evaluate individuals and entities with whom it had, prior to May 13, 2002, an agreement to provide technical assistance according to the system for approving individuals and entities developed by NRCS under regulation. In particular, Section 1243(d) of the Food Security Act provides that participants may obtain technical assistance from "approved sources, as determined by the Secretary, other than the Natural Resources Conservation Service." Pursuant to this authority, enacted in the 1996 Farm Bill, prior to the enactment of the 2002 Farm Bill, NRCS had entered into Memoranda of Understanding (MOU) with several organizations to assist NRCS with the evaluation and approval of individuals and entities to provide technical services, such as conservation planning,

to conservation participants. The MOU set forth the qualifications these sources of technical assistance would need to meet in order to be "approved" by NRCS. While NRCS did not make payment to participants for participants to utilize these sources of technical assistance, these technical assistance providers have received a type of approval from NRCS to provide technical services to participants. Pursuant to Section 1242(b)(3), NRCS updated many of these Memoranda of Understanding to ensure that these previously approved providers of technical services were evaluated under the requirements of the Interim Final Rule, and thus allow participants that utilized these sources of technical services to receive payment for such assistance. Where appropriate, the MOUs, as modified, now serve as the basis for NRCS to receive recommendations for certification from organizations with an appropriate accreditation program in place under § 652.25 of this part.

Section 652.7 Quality Assurance

Section 652.7 of the Interim Final Rule provided that NRCS would review, in consultation with the Farm Services Agency (FSA), as appropriate, the quality of the technical service provided by technical service providers. In particular, the Interim Final Rule required that technical service providers develop and maintain documentation in order to facilitate the NRCS quality assurance process.

Comment: NRCS received 83 comments to this section. Forty commenters believed that NRCS must review and approve all plans prepared by technical service providers to ensure consistency and adequacy of the technical services, and thus make NRCS accountable for the plans. Seventeen commenters, however, believed that a system of random spot-checks was adequate to ensure quality of technical service.

Response: Similar to NRCS quality assurance reviews conducted for conservation programs, NRCS will conduct quality assurance reviews to verify the quality of technical services provided. As an internal management process, NRCS does not specify in the final rule the particular methodology it will utilize for conducting quality assurance reviews. Instead, NRCS sets forth in policy its quality assurance methodology and procedures, and will modify these procedures if needed. Currently, NRCS randomly selects and evaluates projects implemented by both its employees and technical service providers to ensure quality of technical

service delivery. When deficiencies are identified, NRCS takes the necessary action. NRCS believes that the random selection process provides sufficient review of the work performed by its employees and TSPs in a cost-efficient manner. While a 100% review would provide more complete information about the quality of work being performed, such an extensive quality assurance process would greatly increase technical assistance costs and lacks practicality from an administrative standpoint.

Comment: NRCS received six comments expressing support for NRCS as the agency providing quality assurance, four comments requesting that NRCS extend its quality assurance process to training programs for technical service providers, three comments expressing support for quality assurance, two comments requesting that NRCS distinguish its quality assurance process for plans from its quality assurance process for practice implementation, two comments requesting clarification of the need for coordination with FSA, and one comment requesting that NRCS district conservationists hold regular meetings with technical service providers to improve communications.

Response: The Secretary of Agriculture delegated to NRCS the responsibility to implement the TSP provisions of the 2002 Farm Bill for all conservation programs, including programs administered by FSA. Since FSA participants may utilize the services of technical service providers, NRCS must coordinate with FSA to ensure that the needs of FSA and its participants are met.

NRCS intends to ensure, through the certification criteria and quality assurance procedures, that participants will receive high quality technical services, whether the participant chooses NRCS or a technical service provider. Therefore, NRCS will provide comprehensive policy and guidance on technical service delivery and will make such policy and guidance available through TechReg. As mentioned above, NRCS currently selects and evaluates projects implemented by both its employees and TSPs on a random basis. The number, type, and location of projects selected for review are determined through criteria identified in the NRCS Conservation Programs Manual.

Comment: NRCS also received 3 comments regarding the need to have a strong quality assurance program and to verify the credentials of individuals and entities certified as technical service providers.

Response: The verification of Technical Service Provider certifications and quality assurance of services provided are essential elements in assuring that there are available qualified, able and skilled Technical Service Providers. TSPs identify in TechReg that they have the requisite education and experience to accomplish the technical service for which they wish to be certified, and NRCS must be able to confirm that such criteria have been met. In the final rule, NRCS identifies the verification as an essential part of its quality assurance and certification responsibilities by adding a paragraph to § 652.2(c), a new sentence to § 652.2(f) regarding submission of education and licensing documentation, and a new provision in § 652.7(a) about utilizing documentation submitted by the TSP as part of its quality assurance process. NRCS adopts a verification process for all certified technical service providers. This will ensure that participants receive the highest quality technical service. A potential TSP will still need to submit only one application and list additional States in which the applicant wishes to be considered for national certification.

Section 652.8

Section 652.8 was added to the Interim Final Rule in the July 9, 2003 amendment, and established a limited exception to certification requirements for State, Local and Tribal Government partners. In particular, § 652.8 of the Interim Final Rule established that, in carrying out its duties to deliver technical services, the Department may enter into agreements with State, local and tribal governments (including conservation districts) approving such governmental entities to provide technical services when the Department determines that such a partnership is an effective means to provide technical services.

Comment: NRCS received 24 comments on this section. The topics fell into 8 categories. Eight commenters supported the limited exception and the use of agreements, however, they felt that only one agreement should be required by a partner rather than both a working agreement to establish qualification requirements and a contribution agreement to obligate funds for projects. Fourteen commenters opposed the use of the exception because they believed it is preferential and should be available to all interested in participating in this manner. These commenters felt strongly that the private sector has the same ability to contribute as the public sector. Two commenters recommended reducing the match

requirement from 50% or allowing in-kind contributions to constitute the match. One commenter asked for clarification of the restrictions, such as time frame limitations related to the memorandum of understanding. They also stated that it would be difficult for State agencies to keep current the names listed as representing them because of high turnover rates.

Response: NRCS responded to the concerns raised in this section in its discussion in § 652.6, Department delivery of technical services. In particular, NRCS has established a two-prong system for technical services delivery. NRCS has modified § 652.6 to distinguish between participant acquisition of technical services and NRCS procurement of technical services. Technical service providers who desire to work directly with participants will need to be certified under these regulations to receive payment from the participant through a reimbursement from NRCS. Technical service providers who enter into a Federal contract, contribution agreement, or cooperative agreement with NRCS to deliver technical services must meet Federal acquisition or USDA Federal assistance rules and requirements for competency, quality, and selection, as appropriate. NRCS will incorporate into its contracts and agreements the necessary quality and performance requirements. However, technical service providers who are selected as qualified and competent under such requirements will not need to be certified separately under TechReg when they enter into procurement contracts or agreements directly with NRCS. Therefore, NRCS has removed § 652.8 from the final rule.

Section 652.21 Certification Criteria and Requirements

Section 652.21 of the Interim Final Rule set forth the minimum certification criteria and requirements for an individual to qualify for certification under the TSP provisions. In particular, § 652.21 establishes that an individual must: (1) Have the technical training, education, or experience to perform the level of technical assistance for which certification is sought; (2) meet the applicable licensing or similar qualification standards; (3) demonstrate through documentation of training or experience, familiarity with NRCS technical and program requirements; and (4) not be decertified in any State under these provision. Section 652.21 also requires as part of certification, that the individual must enter into a certification agreement with NRCS specifying the terms and conditions of

the certification. NRCS certification is in effect for three years, unless decertified. NRCS also indicated that it might establish and collect fees for certification of technical service providers. Finally, this section also addressed conditional certification.

NRCS received 247 comments on this section concerning three main topics: criteria and requirements, training, and certification. Therefore, NRCS discusses these comments below by topic, rather than by paragraph as was done in the previous preamble discussion.

Criteria and Requirements

Comment: NRCS received 9 comments opposing national certification and 4 comments supporting national certification with State reciprocity. The commenters opposed to national certification expressed concern that technical service providers would not be in compliance with State regulations. One commenter believed certification should be done on a single-State basis. This commenter also believed that technical service providers should be subject to all NRCS documentation requirements and that NRCS should provide ongoing training. Two commenters supported regional certification. These commenters also recommended cross-state certification reciprocity for technical service providers working in multiple states.

Two commenters did not support self-certification, but recommended that if such an approach were taken, NRCS should post self-certifications on a public website, with meaningful certification limited to those areas where credentials are checked by State Conservationists or their designees. These commenters believed that payments should only be made to those technical service providers whose credentials have been verified. Six commenters recommended that NRCS require State Conservationists to contact appropriate State agencies to ensure compliance with State requirements. Two commenters suggested that NRCS establish a review and sampling process to verify and evaluate TSP qualifications. One commenter recommended the development and use of a TSP locator to encourage TSPs to post resumes, one commenter thought there is a need for uniform criteria and requirements with a baseline national certification on self-certified qualifications and compliance, and one commenter recommended NRCS provide guidance to State Conservationists that encouraged the development of quality assurance measures to ensure program standards and legal requirements are being met.

The commenter felt that NRCS should not check every single practice but rather provide onsite NRCS spot checks on newly certified technical service providers and ongoing random spot checks to ensure quality. One commenter said NRCS should make sure the qualification standards are high enough so that NRCS field staff does not have to recheck contractor work.

Response: NRCS believes comments about National certification and verification of credentials are interrelated. As clarified in this final rule, the education, licensing and experiential qualifications that a TSP indicates through TechReg are subject to verification by NRCS. Notably, in both the original Interim Final Rule and in the March 24, 2003 Amendment, applicants for certification are required to “demonstrate, through documentation of training or experience” their familiarity with NRCS policy, including standards, specifications and guidelines. Service provider applicants must demonstrate this familiarity and may not merely indicate that they have this familiarity through TechReg.

Currently, National certification is based on a review by the designee of the certifying State Conservationist of applicants’ information submitted through TechReg, including self-certification that the applicant is in compliance with all State and local laws and is familiar with NRCS guidelines, including those applicable to particular counties.

NRCS State Conservationists have expressed concerns about one State Conservationist certifying an individual in their State and other States in which the applicant wishes to be considered for certification. Normally, certifying State Conservationists have only the requisite knowledge of the requirements of Federal and State requirements within their State, and not the requirements within the other States where the technical service provider may wish to be certified. Therefore, NRCS is making internal policy adjustments to address this concern while maintaining a National process through which individuals seek certification in a single application, and thus maintain uniformity of the certification process. Certifying State Conservationists will verify in-State compliance with certification criteria, and refer the application to the other States where the applicant wishes to provide technical service. These States will verify the applicant’s compliance with their particular certification criteria and only then will the certifying State Conservationist approve the

certification for the applicant for all the identified States. In addition, NRCS is improving its processes to verify qualifications.

Comment: NRCS received 15 comments that expressed appreciation for NRCS recognition of its historic relationships with conservation districts by providing for an exemption from certification requirements for public agencies. Three of these commenters also encouraged the maintenance and continuation of cooperative agreements and contribution agreements. Two commenters recognize the short time frame to implement the provisions and stated that it warranted immediate certification for traditional partners.

Response: NRCS discussed above in § 652.6 that when it obtains assistance from a technical service provider, whether a public agency or a private entity, through a procurement contract, contribution agreement, or cooperative agreement, the technical service provider is authorized to provide technical services and receive payment even if such individual is not certified in accordance with § 652.21.

Training

Comment: NRCS received 75 comments related to the topic of training and certification. Many of these comments, including 37 from universities, recommended adding language to the rule that NRCS will subsidize the cost of providing training. In particular, these commenters recommended that training entities should be allowed to design and provide training on a cost recovery basis with NRCS covering the cost of training. NRCS also received a range of recommendations regarding the development and delivery of training, including partnering with universities and the Extension Service; delivering training through distance learning and demonstration projects; establishing core training with state additions; continuing education requirements; building capacity based upon current competency; and reciprocity of the training materials between States.

Response: NRCS recognizes that TSP has the potential to support expansion of a qualified technical service provider industry, however NRCS has neither the resources nor specific authority to provide training to individuals and entities outside of the agency, nor does it want to compete with partners and private interests whose primary purpose is to provide training and services to professionals in this field.

NRCS also recognizes that its staff currently comprises the largest repository of information and expertise

in the field of natural resource planning and implementation on private land. NRCS is committed to enabling the development of external training sources and for these reasons, agency staff will be made available to assist in the support of the training developed by others in order to facilitate the administration of the Title XII programs.

NRCS recently convened a Technical Service Provider Training Summit, where TSPs, private training consultants and Universities, defined training strategies to address the future needs for training in this area. NRCS recognizes that its staff's expertise is required to train the trainers initially. For a limited time, NRCS will commit staff resources and funding to support the development of training, after which it is anticipated that private sector providers and universities will aptly provide the required training.

Although NRCS knows that service providers will eventually depend on external sources for training, NRCS will continue maintaining the standards that TSPs must meet. For instance, NRCS has developed and intends to maintain statements of work for each of the practices for which technical service providers may be paid. NRCS has developed and shared with entities with accrediting programs and other potential trainers the proficiency standards technical service providers must meet in order to successfully become NRCS-certified. NRCS is working with these organizations to ensure that their training programs meet these standards. NRCS will maintain these proficiency standards requisite to establishing a qualified core of professionals carrying out natural resource work funded with public money.

NRCS acknowledges its responsibility service providers, both those seeking certification others already certified, to help them understand the requirements and processes associated with TSP. To fulfill this responsibility, NRCS intends to develop step-wise Web or compact disc based training in TSP procedures. Training in order to facilitate administration of technical services for Title XII conservation programs is an internal administrative matter more appropriately addressed in internal agency guidance and policy. So although NRCS has not made any additions to the final rule in response to comments on training, it intends to facilitate the growth of professional development opportunities for natural resource professionals.

Certification

Comment: NRCS received 33 general comments about certification as described in this section, § 652.21. Nine commenters felt certification should be streamlined to minimize service delivery costs. They expressed that part of this streamlining should include delegating approval authority to each NRCS State office, because National certification standards would not accommodate individual State differences.

Response: As described above, NRCS will have essentially a National certification process and registry through State-verified certification. Adjustments to the administration of the certification process will be handled through internal agency policies regarding the routing of applications to the appropriate NRCS State offices.

Comment: Five commenters recommended that State Conservationist actively encourage a wide range of technical service providers to participate in the TSP program and that NRCS should not limit certification to any one group. These commenters were concerned about potential conflict of interest that could result if only one source of technical service providers was utilized. The commenters also expressed that certification should require a combination of credentials, education, training and experience, and that individuals providing technical service through an entity or public agency should have qualifications and expertise specific to the resource concerns, practices and systems relevant to the services provided. NRCS also received 2 related comments expressing concern that the relationship between certified crop advisors (CCA) and NRCS needs to be clarified and that a technical service provider must not necessarily be a CCA.

Response: NRCS believes that the success of the TSP provisions depends upon attracting a diverse technical service provider pool with varied skills and perspectives. Therefore, no single source of technical services is emphasized, and the opportunity for certification is open to all qualified individuals and entities. However, any individual or entity providing technical services to either participants or the Department must demonstrate their qualifications as competent technical service providers. NRCS encourages a multi-disciplinary approach to resource conservation, as it is often difficult for a single profession or discipline to provide the full range of demanded technical services.

Comment: NRCS received nine comments related to the qualification standards for certification. Three commenters recommended recognizing and grandfathering into certification retired NRCS employees, thereby creating a system that provides levels of certification based on years working for NRCS. Two other commenters recommended utilizing existing certifications, and one commenter believed that all technical service providers, including new and experienced technical service providers, should be held to the same standard of certification. One commenter suggested that certification be for specific practices, tied to specific educational requirements, credentials, training and professional experience. The commenter also suggested there be a limit on the number of uncertified employees under a certified persons' direction. One commenter believed the certification requirements were unclear, while two other commenters expressed appreciation for what they felt was a simple application process that only evaluated necessary information.

Response: NRCS believes that all technical service providers need to be held to the same standards of quality and proficiency, regardless of their prior relationship to NRCS. NRCS plans to verify technical service provider credentials in a manner that ensures participants receive competent technical service delivery.

NRCS also is making efforts to clarify its expectations regarding specific practices through published statements of work that outline required deliverables. NRCS recognizes the challenges that technical service providers must meet in order to comply with State licensing provisions and NRCS requirements. Technical service providers should identify and establish staffing levels to meet these requirements, that may vary depending upon the type of work to be completed. Therefore, NRCS does not believe it is prudent for the agency to establish in the rule a numeric limit on how many non-certified employees a certified individual may supervise. The certified individual and entity assumes full legal responsibility for the work completed by non-certified individuals working under the auspices of their certification, and therefore, should exercise the necessary level of oversight.

Comment: NRCS received 4 miscellaneous comments regarding certification. One commenter recommended that NRCS develop a TSP packet that includes an explanation of the certification process, forms and application. This commenter also

recommended that NRCS include field practices and cost share lists, as well as appropriate reporting codes for databases. One commenter recommended establishing a carbon sequestration specialist class to be added to the cadre of TSP specialists. These specialists would develop landscape management plans on eligible lands that increase biomass production over a baseline for the purpose of drawing carbon dioxide from the atmosphere and storing it for periods of time in plants and soils. One commenter stated that State Conservationists should work with State agencies in the development of fish and wildlife technical services delivery. Finally, NRCS received one comment recommending that NRCS allow technical service providers to use local NRCS office space, phones, faxes and electronic mail.

Response: NRCS has established a website, TechReg, that provides the electronic equivalent of a TSP packet. On TechReg, technical service providers and participants may access current information and technical references about TSP. Among the available technical references, a person can access eFOTG, the NRCS electronic reference for technical standards. NRCS expects that as demand for additional and emerging technical services grows, new categories and standards for technical service, such as carbon sequestration specialists, will be developed. While NRCS is dedicated to making available technical resources, overhead costs for delivery of technical services are the responsibility of the technical service provider and not the Federal government.

Fees

Comment: Section 652.21(e) provides that NRCS may establish a system for collecting fees related to certification. NRCS received 21 comments about this provision, 18 of which expressed support for NRCS charging a certification fee. However, several of these commenters recommended that particular individuals or entities, such as State agencies or retired professionals, should be exempt from having to pay the fee. Some commenters said certification fees would be viewed as a mandatory tax, while others suggested that the certification fee was a duplicate certification charge since many service providers already pay fees to State licensing boards. Three commenters said it would be appropriate to charge a fee to cover administrative costs only.

Response: NRCS has not established a system for collecting fees at this time.

However, the authority exists under 31 U.S.C. 9701, for such a system, and the rule reflects that this authority exists and may be used in the future. No changes were made to the rule in response to these comments.

Policy & Procedure

Comment: NRCS received nineteen comments related to policy and procedures for technical service providers that mirror many of the comments NRCS received under other sections. In particular, these commenters felt that TSP certification should be national in scope with flexibility to meet State and local conditions. They suggested that standards need to be tailored to State and local needs. These comments indicated that NRCS should establish minimum qualification standards for all groups, including requirements for education, training, and experience for all resource concerns, practices and agricultural systems for which certification is sought. One commenter suggested that a process be developed to ensure entities and public agencies do not provide blanket certification of individuals where expertise has not been developed. NRCS also received a comment that NRCS should define methods for certifying farmland protection skills.

Response: NRCS has developed proficiency standards accessible through TechReg and is working with various organizations and universities to develop appropriate training to ensure technical service providers' competence. NRCS will not change its certification requirements, but as previously described, it has established a means to validate self-certified credentials.

State Coordination

Comment: Five commenters said NRCS needs to ensure State and local reciprocity in its certification process. One commenter indicated that technical service providers should not be unduly inhibited or restricted when providing technical services across State lines. Two commenters said the certification process needs to allow for technical service providers to work across State lines.

Response: As described earlier, certification needs to be coordinated between States due to the unique and diverse conservation technical requirements of each State and its laws. However, NRCS does not have authority to exempt technical service providers from State law requirements. Since technical service providers must comply with State law, including licensure

requirements, State-specific requirements must be met and a State-by-State review of self-certification requirements is necessary. NRCS facilitates the ability of technical service providers to offer technical services to multiple States through its streamlined National certification application process, provided such technical service providers meet all State requirements specific to the locations where they wish to work. If a service provider applying for certification in multiple states lacks the qualifications to gain certification in each state, NRCS will encourage the applicant to withdraw his or her certification request for those particular states for which the applicant lacks the necessary qualifications. If the service provider does not wish to withdraw these requests, NRCS will delay granting certification until the applicant obtains the necessary qualifications in each state requested.

Comment: One commenter believed that the certification process for NRCS employees should be the same as for technical service providers.

Response: NRCS has a long-established planning certification and job approval authority structure that applies to its employees and the proficiencies they must meet to provide services in their location of employment. If a current NRCS employee wishes to act as a TSP in an off-duty job that is unrelated to the performance of his or her NRCS responsibilities, such NRCS employee would need to be certified under this regulation.

Comment: NRCS received one comment recommending that NRCS certification match the 2-year cycle for certified crop advisor certification renewal.

Response: As stated previously, NRCS will not base its certification process upon any one organization's certification program, regardless of whether such organization is also a recommending organization as described in § 652.25. While NRCS greatly appreciates the contribution that CCAs are making to the delivery system, there are multiple sources of technical service providers that also contribute to the delivery system and each has its own schedule for certification renewal. NRCS has adopted a flexible approach in this final rule, stating that certification shall not be for a period of time in excess of three years.

Quality Assurance

Comment: NRCS received three comments to § 652.21 related to quality assurance. One commenter stated that technical service providers must be

certified even if the provider is working under NRCS supervision. One commenter encouraged NRCS to do onsite evaluations for animal waste systems design and installation, recommending that NRCS check on-the-ground outcomes related to changes in water quality or phosphorus index changes. One commenter stated that the review process should be either multi-county or at the State level. This commenter believed that local NRCS staff should act as a watchdog, a layer of local scrutiny, and should report poor performance to a local review board. One commenter said the section on certification agreements does not provide for non-disclosure of records or compliance with the Freedom of Information Act and Privacy Act.

Response: The only non-NRCS personnel that work under NRCS supervision are employees of a conservation district with which NRCS has a cooperative working agreement, as described in the July 9, 2003, amendment to the Interim Final Rule. These non-NRCS personnel are not authorized under the cooperative working agreement to be hired by participants as technical service providers while serving under NRCS supervision. If the conservation district, or its employee, is hired directly by a participant, then neither the district nor its employees are operating under NRCS supervision, and they must be certified and operating within the legal framework of that particular county and State.

When NRCS employees, or others working under its supervision or pursuant to a contract, provide technical services, NRCS performs the necessary quality assurance to ensure that practices have been properly designed and installed. NRCS also implements established processes to identify the conformance to practice standards and compliance with conservation program requirements. NRCS randomly selects and evaluates projects implemented by both its employees and technical service providers to ensure quality of technical service delivery. When deficiencies are identified, NRCS will take the necessary action, as appropriate.

As specified in the preamble discussion under §§ 652.4 and 652.5, technical service providers hired by participants are not subject to Federal disclosure and privacy requirements regarding the release of Government records. However, NRCS is subject to these requirements. Therefore, NRCS must have written authorization from the participant before it will provide the participant's technical service provider access to these records.

Section 652.22 Certification Process for Individuals

Comment: Section 652.22 of the Interim Final Rule sets forth the requirements for an individual to become a certified technical service provider. NRCS received 10 comments to this section. Three of these comments expressed the need to add rule language clarifying proficiency standards for trainers who provide training to Technical Service providers. This commenter also encouraged NRCS to certify training programs and materials that meet the agency criteria for certification of technical service providers.

Response: NRCS addresses these comments in the discussion on training under § 652.21.

Comment: One commenter stated that NRCS should require State Conservationists to provide clear guidance and information to applicants about laws and requirements. Technical service providers should not be certified without demonstrating knowledge of state laws and requirements for the specific work for which they are seeking certification.

Response: NRCS appreciates this commenters' opinion, however, each technical service provider is responsible for knowing and understanding the laws of the State in which they choose to do business. It is not within the agency's authority or area of expertise to interpret or provide information about the laws of any specific State. To the extent practicable, NRCS will make its staff available to any technical service provider to clarify its standards and specification or provide other information pertaining to contractual obligations imposed by the NRCS.

Comment: One commenter expressed support for national certification. Two commenters said TSP dollars should fund only the work of qualified individuals. Individuals should be certified by category and based on clear category guidelines avoiding blanket certification.

Response: As previously stated, NRCS is clarifying in its policy, as available on TechReg, the qualifications and proficiencies a technical service provider must meet in order for their work to be eligible for reimbursement with public funds. NRCS does certify individuals and entities according to categories of technical services, and does not provide blanket certification.

Comment: One commenter agrees that a sufficient review time period is essential to a successful certification process and suggests at the end of a 60-day time period NRCS would accept or

deny certification from applicants, allowing for some fixed amount of time for the applicant to complete the process.

Response: NRCS is continually making improvements to its online registration process, TechReg. NRCS agrees that timeliness in the certification process is essential and will do its part to ensure efficient certification of technical service providers.

Comment: One commenter believes that the lack of a 4-year college degree should not hinder an applicant from certification in an area where they can demonstrate knowledge and expertise, and that applicants should have the option to pass a test or prove through documentation their ability to complete the required work. One commenter believed certified technical service providers should meet all requirements related to knowledge, training and experience.

Response: NRCS understands that some of the education requirements may inadvertently hinder otherwise qualified individuals from becoming technical service providers. However, the first priority of the certification process is that participants are able to obtain qualified technical services, and appropriate levels of education is an important aspect to ensure competency in meeting such qualifications.

Section 652.23 Certification Process for Private-Sector Entities

Comment: Section 652.23 of the Interim Final Rule sets forth the requirements for a private-sector entity to become a certified technical service provider. NRCS received 13 comments to this section. Eleven of these comments stated that NRCS should complete a market analysis to determine availability of technical service providers, assess their training needs, and establish if there is sufficient workload to sustain the development of a business based on participant demand for their services. One commenter supported the certification of private-sector entities. One commenter believes NRCS should automatically certify registered, licensed foresters who are certified by the National Association of State Foresters or the State Forestry Association.

Response: NRCS regularly provides the public its State-by-State allocations and the end-of-fiscal year conservation program accomplishments, including the number of contracts entered, acres enrolled, and the amount of funds obligated. A private-sector technical service provider has the ability to utilize this information and other potential market information to perform its own

business projections about whether adequate market-share is available to sustain a viable business investment. Existing and emerging technical service businesses need to define and market themselves to potential clients that need the services they provide.

Additionally, NRCS conducts its own workload analysis and identifies opportunities to compete specific workload products. In order to access such information, technical service providers may wish to familiarize themselves with FedBizOpps and related sources utilized by the Federal Government to advertise its solicitation for bids.

As discussed previously in this preamble, NRCS cannot provide blanket certification to members of a particular professional organization. NRCS has specific criteria that it needs to be met in order to certify an individual as a technical service provider. Blanket certification would be an impermissible delegation of NRCS's responsibility under the statute to certify individuals and entities as TSPs.

Section 652.24 Certification Process for Public Agencies

Comment: Section 652.24 of the Interim Final Rule set forth the requirements for a public agency to become a certified technical service provider. NRCS received 57 comments to this section. Fifteen of these comments expressed support for exempting from certification requirements conservation districts or State agencies working under contribution agreements with NRCS. Seven comments stated that State agencies have stringent proficiency requirements for their employees and should be exempt from NRCS certification requirements. Eleven commenters disagreed with the requirement that public agencies assume liability and would reconsider their relationship with NRCS if such requirement is not changed. Two commenters expressed support for the requirement that a public agency must have a certified individual working under its auspices.

Response: While NRCS recognizes that various agencies have rigorous requirements, the TSP statute requires NRCS to establish a system for evaluating who is qualified to provide technical services. Therefore, NRCS will require individuals and entities, including public agencies, to be certified in accordance with the certification process under subpart B, before a participant may obtain payment from NRCS for services rendered. When the agency is acquiring technical

services, NRCS will set forth the qualification and performance criteria in a procurement contract, contribution agreement, or cooperative agreement, rather than through the certification process under Subpart B, to select qualified technical service providers. In either situation, a public agency must demonstrate that it has staff that meets NRCS technical requirements before NRCS will issue payment for technical services rendered by that public agency. NRCS also believes that it is appropriate for a public agency to assume responsibility for the work of its employees.

Comment: Six commenters disagreed with the restriction on outside employment while four commenters agreed with the restriction.

Response: Based on these comments, NRCS re-examined its position regarding outside employment of public agency employees, and felt that such matters were best addressed by ethical rules established by the public agencies. Therefore, NRCS did not prohibit in the final rule outside employment of certified individuals working under the auspices of a public agency as set forth in § 652.24 of the Interim Final Rule.

Comment: Four commenters stated that all technical service providers should be held to the same standards. Four commenters stated that public agencies should not be utilized as technical service providers unless private technical service providers were not available.

Response: NRCS believes that the final rule establishes consistent standards for all technical service providers. Additionally, NRCS believes that the extra demand for technical services created by the increased funding for conservation programs will necessitate support from all sources of technical services. More importantly, Section 1242 of the Food Security Act clearly provides that Federal, State, and local governments are all eligible to become technical service providers. Therefore, NRCS has not made any changes to this section in response to these comments.

Section 652.25 Alternative application Process for Individual Certification

Section 652.25 of the Interim Final Rule provided that pursuant to an agreement with NRCS, an organization with an adequate accreditation program could provide an NRCS official with a list of individuals identified by that organization (referred to as a "recommending organization") as meeting NRCS criteria for specific practices or categories of technical service and recommend that NRCS

certify these individuals as technical service providers. NRCS received 24 comments to this section.

Comment: Eight commenters expressed support for the alternative application process as described in the Interim Final Rule, and three other commenters expressed support for NRCS recognition of private sector certification organizations but felt that NRCS should not act as a certifier. Two commenters wanted NRCS to offer recommending organization various levels of recommendation of individuals. One commenter supported NRCS certification, one commenter supported State organizations as certification entities, and one commenter supported State-level agreements with recommending organizations. One commenter stated that individuals should not have to be certified crop advisors to be certified as a technical service provider, and one commenter stated that expectations of technical service providers should be the same whether or not they are independent or members of an organization. NRCS also received three comments stating that NRCS or certifying organization requirements were too stringent and would discourage potential sources of technical services.

Response: As described earlier, NRCS has entered into Memoranda of Understanding with several organizations to be recommending organizations. NRCS will continue to work with these organizations and others to ensure that recommended individuals have the appropriate proficiencies to meet NRCS requirements for technical services delivery. NRCS has the responsibility under the statute to approve individuals and entities to provide technical services for USDA conservation programs, and, therefore, cannot delegate this responsibility to an outside organization. The process outlined in the Interim Final Rule and adopted in the final rule without changes provides NRCS the flexibility to avail itself of the expertise of professional organizations while ensuring the technical standards required by USDA conservation programs are met in a consistent manner. Furthermore, all applicants are treated equally and must meet the same standards for certification regardless of whether an applicant is a member of a recommending organization. If a recommending organization whose agreement with NRCS either expires without renewal or is terminated, the technical service providers recommended for certification through this recommending organization would

not lose their certification. However, when these technical service providers seek to renew their certification, these technical service providers will need to meet current qualification standards and apply through the prescribed application process. NRCS will develop MOUs with recommending organizations at the appropriate level within its organizational structure. Therefore, no changes have been made to this section in response to these comments.

Section 652.26 Certification Renewal

Comment: Section 652.26 of the Interim Final Rule provided a process for individuals and entities to renew their certification as technical service providers. NRCS received 9 comments on this section. Five commenters expressed support for a finite time limit for certification and believed that the time limit should match the continuing education cycle time limits of private sector certification. Three commenters disagreed with the 3-year limit to certification and felt that a 5-year limit would lower costs. One commenter believed that NRCS needs to provide criteria for certification renewal.

Response: NRCS has modified this section slightly to allow certifications to remain valid for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years, and automatically expire unless they are renewed for an additional time period prior to expiration. By providing a time period of up to 3 years, NRCS has the flexibility to coordinate certification time frame with other requirements that a technical service provider may need to meet. Since State laws change frequently, and NRCS updates its standards and specifications regularly, NRCS believes that a 5-year time frame is too long a time period as a certification time frame, and the shorter time frame allows NRCS to ensure that technical service providers are current in their professional credentials. NRCS will provide through TechReg the specific requirements for certification renewal for each conservation practice as it does for certification.

Subpart C Decertification

Comment: Subpart C of the Interim Final Rule established the NRCS policy and procedures for decertification. NRCS received 21 comments to this subpart. Seven commenters expressed support for the subpart while seven commenters expressed concern that the decertification policy is inadequate, requesting that decertification be clearly linked to quality assurance criteria and that NRCS should clarify the conditions

under which a technical service provider will be decertified. Two commenters emphasized that decertification should be a formal process, two commenters believed that technical service providers should be able to appeal decertification decisions to the Department's National Appeals Division, one commenter supported the possibility of permanent decertification for especially egregious action, and one commenter requested clarification about how contracted work would be completed if the technical service provider was decertified mid-performance.

Response: In response to these comments, NRCS slightly modified § 652.32 to clarify the reasons for which a technical service provider could be decertified, including matters encountered during NRCS quality assurance reviews. In particular, if a technical service provider, or someone acting on behalf of the technical service provider fails to meet NRCS standards and specifications in the provision of technical services; violates the terms of the Certification Agreement; engages in a scheme or device to defeat the purposes of this part, including, but not limited to, coercion, fraud, misrepresentation, or providing incorrect or misleading information; or commits any other action of a serious or compelling nature as determined by NRCS that demonstrates the technical service provider's inability to fulfill the terms of the Certification Agreement or in providing quality technical services under this part, that TSP would be decertified. NRCS added the phrase "someone acting on behalf of the technical service provider" to clarify that a private entity TSP or public agency TSP could be held accountable for the actions of individuals working under their auspices.

Technical service providers are not participants and therefore, the National Appeals Division does not have jurisdiction over decertification decisions affecting technical service providers. The decertification process provides one level of appeal to ensure due process. NRCS needs sufficient time to review the merits of an appeal, and thus has increased the time period in § 652.35 of the final rule for a State Conservationist decision from 30 days to 40 days. Additionally, in § 652.38(b) of the Interim Final Rule, an entity or public agency was required to "promptly" amend its Certification Agreement to remove decertified individuals from the Certification agreement. NRCS believes that the time period intended by the term "promptly" needed to be clarified, and thus in the final

rule, NRCS has specified the time frame "within 10 calendar days." All other time frames have remained as set forth in the Interim Final Rule. NRCS believes that the decertification process in the final rule provides an administrative process that adequately balances a TSP's right to due process with the need to decertify a TSP who provides substandard performance within a reasonable period of time.

NRCS believes that three years is an acceptable time frame for decertification. This time frame corresponds to the time period for suspension and debarment under the Federal Government's uniform suspension and debarment regulations. Once the term of the decertification has transpired, an individual or entity may apply for certification, and will need to meet the current requirements to be certified.

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB). Pursuant to § 6(a)(3) of Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this rulemaking, and included the analysis as part of a Regulatory Impact Analysis document prepared for this final rule. The analysis estimates that the technical service provider process will have a beneficial impact on the Nation's natural resources by accelerating adoption of conservation practices. New information included in this analysis but not considered in the analysis associated with the interim final rule is the cost for participant-selected TSP program oversight and administration, estimated at an additional \$24 million to \$26 million per year. A copy of this analysis is available upon request from Angel Figueroa, Technical Service Provider Coordinator, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, or by e-mail to angel.figueroa@usda.gov; attn: Technical Service Provider Assistance—Economic Analysis, or at the following web address: <http://www.nrcs.usda.gov>.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

a. Does not have an annual effect on the economy of \$100 million or more. This rule will result in a few, mostly administrative changes from the interim final rule currently in effect that are expected to improve program management and oversight. The economic analysis accompanying this rulemaking includes new estimates for the administrative costs of program oversight of participant-selected TSPs. These costs range from \$24 million to \$26 million per year.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive. The USDA has not identified any State or local laws that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such conflict is identified, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this rule.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(c) of the Regulatory Flexibility Act, it has been determined that this rule will not have a significant impact on a substantial number of small entities as defined by the Act. This rule sets forth the process by which entities could, on a voluntary basis, become certified providers. Therefore, a regulatory flexibility analysis is not required for this final rule. This final rule sets forth the policies and procedures for the provision of technical service provider assistance, which involves the voluntary participation of technical service providers.

Pursuant to Section 2702 of the 2002 Farm Bill, the Secretary "shall use the authority provided under section 808(2) of title 5, United States Code." As required by 5 U.S.C. 808(2), NRCS hereby finds that additional public notice and comment prior to the effective date of this final rule are unnecessary and contrary to the public interest. Even though proposed rulemaking was not required for this rulemaking, NRCS published in the **Federal Register** an Interim Final Rule on November 22, 2002, an Amendment

on March 24, 2003, and a second Amendment on July 9, 2003, all three of which requested public comment. In this final rule, NRCS responds to the comments received during the comment period for these three previous rulemakings. Thus, NRCS does not believe that additional public notice through 5 U.S.C. 808(1) is necessary prior to the effective date of this final rule. NRCS has determined that it is in the public interest for this rule to be in effect upon its publication in the **Federal Register**.

National Environmental Policy Act

The regulations promulgated by this rule do not authorize any action that may negatively affect the human environment. Accordingly, an analysis of impacts under the National Environmental Policy Act has not been performed. The technical service provider process will help implement new and existing USDA conservation programs which are subject to the environmental analyses pursuant to the National Environmental Policy Act.

Paperwork Reduction Act

Section 2702 of the 2002 Farm Bill requires that the promulgation of regulations and the administration of Title II of said act be carried out without regard to chapter 35 of title 44 of the United States Code (commonly known as the Paperwork Reduction Act). Accordingly, these regulations and the forms, and other information collection activities needed to administer technical service provider assistance under these regulations, are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom To E-File Act, which require Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system, TechReg, for public use.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, NRCS assessed the effects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments, or anyone in the private sector; therefore, a statement under section 202

of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 104-354, USDA classified this final rule as not major.

Civil Rights Impact Analysis

A Civil Rights Impact Analysis has been completed regarding this rule. The review reveals no factors indicating any disproportionate adverse civil rights impacts for participants in NRCS programs and services who are minorities, women, or persons with disabilities. A copy of this analysis is available upon request from Angel Figueroa, Technical Service Provider Coordinator, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, or by e-mail to angel.figueroa@usda.gov; attn: Technical Service Provider Assistance—Civil Rights Impact Analysis, or at the following web address: <http://www.nrcs.usda.gov>.

List of Subjects in 7 CFR Part 652

Natural Resources Conservation Service, Soil conservation, Technical assistance, Water resources.

■ For the reasons stated in the preamble, the Natural Resources Conservation Service hereby amends Title 7 of the Code of Federal Regulations as set forth below:

■ Accordingly, Title 7 of the code of Federal Regulations is amended by revising part 652 to read as follows:

PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE

Subpart A—General Provisions

Sec.

- 652.1 Applicability.
- 652.2 Definitions.
- 652.3 Administration.
- 652.4 Technical service standards.
- 652.5 Participant acquisition of technical services.
- 652.6 Department delivery of technical services.
- 652.7 Quality assurance.

Subpart B—Certification

- 652.21 Certification criteria and requirements.
- 652.22 Certification process for individuals.
- 652.23 Certification process for private-sector entities.
- 652.24 Certification process for public agencies.
- 652.25 Alternative application process for individual certification.

- 652.26 Certification renewal.

Subpart C—Decertification

- 652.31 Policy.
- 652.32 Causes for decertification.
- 652.33 Notice of proposed decertification.
- 652.34 Opportunity to contest decertification.
- 652.35 State Conservationist decision.
- 652.36 Appeal of decertification decision.
- 652.37 Period of decertification.
- 652.38 Scope of decertification.
- 652.39 Mitigating factors.
- 652.40 Effect of decertification.
- 652.41 Effect of filing deadlines.
- 652.42 Recertification.

Authority: 16 U.S.C. 3842.

Subpart A—General Provisions

§ 652.1 Applicability.

(a) The regulations in this part set forth the policies, procedures, and requirements related to delivery of technical assistance by individuals and entities other than the Department, hereinafter referred to as technical service providers. The Food Security Act of 1985, as amended, requires the Secretary to deliver technical assistance to eligible participants for implementation of its Title XII Programs either directly or, at the option of the producer, through payment to the producer for an approved third party provider. This regulation defines how a participant acquires technical service from a third party technical service provider, sets forth a certification and decertification process, and establishes a method to make payments for technical services.

(b) Technical service providers may provide technical assistance in the planning, design, installation, and check-out of conservation practices applied on private land or where allowed by conservation program rules on public land where there is a direct private land benefit.

(c) The Chief, NRCS, may implement this part in any of the fifty states, District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands.

§ 652.2 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Approved list means the list of individuals, private sector entities, or public agencies certified by NRCS to provide technical services to a participant.

Certification means the action taken by NRCS to approve:

(1) An individual as meeting the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system; or

(2) An entity or public agency as having an employee or employees that meet the minimum NRCS criteria for providing technical service for conservation planning or a specific conservation practice or system.

Chief means the Chief of NRCS or designee.

Conservation practice means a specified treatment, such as a structural or vegetative practice, or a land management practice, that is planned and applied according to NRCS standards and specifications.

Contribution agreement means the instrument used to acquire technical services under the authority of 7 U.S.C. 6962a.

Cooperative agreement means the same as that term is defined in the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*

Department means the Natural Resources Conservation Service, the Farm Service Agency, or any other agency or instrumentality of the United States Department of Agriculture that is assigned responsibility for all or a part of a conservation program subject to this part.

Entity means a corporation, joint stock company, association, cooperative, limited partnership, limited liability partnership, limited liability company, nonprofit organization, a member of a joint venture, or a member of a similar organization.

Participant means a person who is eligible to receive technical or financial assistance under a conservation program covered by this rule.

Procurement contract means the same as the term “contract” means under the Federal Grants and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*

Program contract means the document that specifies the rights and obligations of any individual or entity that has been accepted for participation in a Title XII conservation program.

Public agency means a unit or subdivision of Federal, State, local, or Tribal government, other than the Department.

Recommending organization means a professional organization, association, licensing board or similar organization with which NRCS has entered into an agreement to recommend qualified individuals for NRCS certification as technical service providers for specific technical services.

Secretary means the Secretary of the United States Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

Technical service means the technical assistance provided by technical service providers, including conservation planning, and/or the design, layout, installation, and check-out of approved conservation practices.

Technical service provider means an individual, entity, or public agency either:

(1) Certified by NRCS and placed on the approved list to provide technical services to participants; or,

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

Written agreement means the document that specifies the rights and obligations of any individual or entity that has been authorized by NRCS to receive conservation planning assistance without having a program contract.

§ 652.3 Administration.

(a) As provided in this part, the Department will provide technical assistance to participants directly, or at the option of the participant, through a technical service provider in accordance with the requirements of this part.

(b) The Chief, NRCS, will direct and supervise the administration of the regulations in this part.

(c) NRCS will:

(1) Provide overall leadership and management for the development and administration of a technical service provider process;

(2) Consult with the Farm Service Agency and other appropriate agencies and entities concerning the availability and utilization of technical service providers and the implementation of technical service;

(3) Establish policies, procedures, guidance, and criteria for certification, recertification, decertification, certification renewal, and implementation of the use of technical service providers; and

(4) Establish a process for verifying information provided to NRCS under this part.

(d) The Department will not make payments under a program contract or written agreement with a participant for technical services provided by a

technical service provider unless the technical service provider is certified by NRCS for the services provided and is identified on the approved list.

(e) The Department may enter into procurement contracts, contribution agreements, cooperative agreements, or other appropriate instruments to assist the Department in providing technical assistance when implementing conservation programs covered by this part. The Department will ensure that such instruments contain the qualification and performance criteria necessary to ensure quality implementation of the goals and objectives of these conservation programs; therefore, when the Department obtains assistance from a technical service provider in this manner, the technical service provider is authorized to provide technical services and receive payment even if such technical service provider is not certified in accordance with subpart B nor identified on the approved list.

(f) When a participant acquires technical services from a technical service provider, the Department is not a party to the agreement between the participant and the technical service provider. To ensure that quality implementation of the goals and objectives of the conservation programs are met, the technical service provider must be certified by NRCS in accordance with subpart B of this part and identified on the approved list. Upon request of NRCS, technical service providers are required to submit copies of all transcripts, licensing, and certification documentation.

§ 652.4 Technical service standards.

(a) All technical services provided by technical service providers must meet USDA standards and specifications as set forth in Departmental manuals, handbooks, guides, and other references for soils mapping and natural resources information, conservation planning, conservation practice application, and other areas of technical assistance.

(b) The Department will only pay a participant for technical services provided in accordance with established NRCS standards, specifications, and requirements. The Department must approve all new technologies and innovative practices, including interim standards and specifications, prior to a technical service provider initiating technical services for those technologies and practices.

(c) A technical service provider must assume responsibility in writing for the particular technical services provided. Technical services provided by the technical service provider must:

(1) Comply with all applicable Federal, State, Tribal, and local laws and requirements;

(2) Meet applicable Department standards, specifications, and program requirements;

(3) Be consistent with the particular conservation program goals and objectives for which the program contract was entered into by the Department and the participant; and

(4) Incorporate alternatives that are both cost effective and appropriate to address the resource issues.

Conservation alternatives will meet the objectives for the program and participant to whom assistance is provided.

(d) Technical service providers are responsible for the technical services provided, including any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions of the technical service provider in connection with the technical service provided.

(e) The Department will not be in breach of any program contract or written agreement if it fails to implement conservation plans or practices or make payment for conservation plans or practices resulting from technical services that do not meet USDA standards and specifications or are not consistent with program requirements.

(f) The participant is responsible for complying with the terms and conditions of the program contract or written agreement, which includes meeting USDA technical standards and specifications for any technical services provided by a technical service provider.

(g) The technical service provider shall report in the NRCS conservation accomplishment tracking system the appropriate data elements associated with the technical services provided to the Department or participant.

(h) To the extent allowed under State or Tribal law, technical service providers may utilize the services of subcontractors to provide specific technical services or expertise needed by the technical service provider, provided that the subcontractors are certified by NRCS in accordance with this part for the particular technical services to be provided and the technical services are provided in terms of their Certification Agreement.

Payments will not be made for any technical services provided by uncertified subcontractors, except when such technical services are provided under the provisions of a procurement contract, cooperative agreement, or contribution agreement with the NRCS.

§ 652.5 Participant acquisition of technical services.

(a) Participants may obtain technical assistance directly from the Department or, when available, from a technical service provider.

(b) To acquire technical assistance directly from the Department, participants should contact their local USDA Service Center.

(c) To acquire technical services from a technical service provider, participants must:

(1) Enter into and comply with a program contract or a written agreement prior to acquiring technical services; and

(2) Select a certified technical service provider from the approved list of technical service providers.

(d) The Department may approve written agreements for technical assistance prior to program participation based on available funding and natural resource priorities as identified by the State Conservationist.

(e) The technical assistance indicated in paragraph (d) may include the development of conservation plans suitable for subsequent incorporation into a program contract.

(f) The Department will identify in the particular program contract or written agreement the payment provisions for technical service providers hired directly by the participant.

(g) To obtain payment for technical services, participants must submit to the Department valid invoices, supporting documentation, and requests for payment. The Department will issue payment within 30 days of receiving these items. The Department may pay a participant for some or all of the costs associated with the technical services provided by a technical service provider hired by the participant or, upon receipt of an assignment of payment from the participant, make payment directly to the technical service provider.

(h) Participants must authorize in writing to the Department the disclosure of their records on file with the Department that they wish to make available to specific technical service providers.

(i) Payments for technical services will be made only one time for the same technical service provided unless, as determined by the Department, the emergence of new technologies or major changes in the participant's farming or ranching operations necessitate the need for additional technical services.

(j) *Payment rates for technical services acquired by participants.* (1) NRCS will establish payment rates by calculating not-to-exceed rates for technical services. NRCS will calculate

not-to-exceed rates using price data that it may acquire through various sources that it deems reliable.

(2) *Establishing not-to-exceed payment rates.* (i) NRCS will analyze the pricing information using a standardized methodology.

(ii) Not-to-exceed payment rates will be established nationally on a State by State basis for categories of technical services.

(iii) NRCS will coordinate payment rates between adjacent States to ensure consistency where similar resource conditions and agricultural operations exist. Payment rates may vary to some degree between States due to differences in State laws, the cost of doing business, competition, and other variables.

(iv) NRCS will review payment rates annually, or more frequently as needed, and adjust the rates based upon data from existing procurement contracts, Federal cost rates, and other appropriate sources.

(v) NRCS may adjust payment rates, as needed, on a case-by-case basis, in response to unusual conditions or unforeseen circumstances in delivering technical services such as highly complex technical situations, emergency conditions, serious threats to human health or the environment, or major resource limitations. In these cases, NRCS will set a case-specific not-to-exceed payment rate based on the Department's determination of the scope, magnitude, and timeliness of the technical services needed.

§ 652.6 Department delivery of technical services.

(a) The Department may enter into a procurement contract, contribution agreement, cooperative agreement, or other appropriate instrument to assist the Department in providing technical assistance when implementing the conservation programs covered by this part.

(b) The Department will ensure that such legal instruments contain qualification and performance criteria necessary to ensure quality implementation of these conservation programs. When the Department obtains assistance from a technical service provider through a procurement contract, contribution agreement, cooperative agreement, or other similar instrument, the technical service provider is authorized to provide technical services and receive payment even if such technical service provider is not certified in accordance with subpart B of this part nor identified on the approved list.

(c) The Department will implement procurement contracts, contribution

agreements, cooperative agreements, and other appropriate instruments in accordance with applicable Federal acquisition or USDA Federal assistance rules and requirements for competency, quality, and selection, as appropriate.

(d) A technical service provider may not receive payment twice for the same technical service, such as once from a participant through a program contract or written agreement and then again through a separate contract or agreement made directly with the Department.

(e) The Department will, to the extent practicable, ensure that the amounts paid for technical service under this part are consistent across conservation program areas, unless specific conservation program requirements include additional tasks.

§ 652.7 Quality assurance.

(a) NRCS will review, in consultation with the Farm Service Agency, as appropriate, the quality of the technical services provided by technical service providers. As a requirement of certification, technical service providers must develop and maintain documentation in accordance with Departmental manuals, handbooks, and technical guidance for the technical services provided, and furnish this documentation to NRCS and the participant when the particular technical service is completed. NRCS may utilize information obtained through its quality assurance process, documentation submitted by the technical service provider, and other relevant information in determining how to improve the quality of technical service, as well as determining whether to decertify a technical service provider under subpart C of this part.

(b) Upon discovery of a deficiency in the provision of technical service through its quality assurance process or other means, NRCS will, to the greatest extent practicable, send a notice to the technical service provider detailing the deficiency and requesting remedial action by the technical service provider. Failure by the technical service provider to promptly remedy the deficiency, or the occurrence of repeated deficiencies in providing technical services, may trigger the decertification process set forth in subpart C of this part. A failure by NRCS to identify a deficiency does not affect any action under the decertification process. Technical service providers are solely responsible for providing technical services that meet all NRCS standards and specifications.

Subpart B—Certification**§ 652.21 Certification criteria and requirements.**

(a) To qualify for certification an individual must:

(1) Have the required technical training, education, and experience to perform the level of technical assistance for which certification is sought;

(2) Meet any applicable professional or business licensing or similar qualification standards established by State or Tribal law;

(3) Demonstrate, through documentation of training or experience, familiarity with NRCS guidelines, criteria, standards, and specifications as set forth in the applicable NRCS manuals, handbooks, field office technical guides, and supplements thereto for the planning and applying of specific conservation practices and management systems for which certification is sought; and

(4) Not be decertified in any State under subpart C of this part at the time of application for certification.

(b) To qualify for certification an entity or public agency must be authorized to provide such services in the jurisdiction and have a certified individual providing, in accordance with this part, technical services on its behalf.

(c) A technical service provider, as part of the certification by NRCS, must enter into a Certification Agreement with NRCS specifying the terms and conditions of the certification, including adherence to the requirements of this part, and acknowledging that failure to meet these requirements may result in ineligibility to receive payments from the Department, either directly or through the participant, for the technical services provided or may result in decertification.

(d) NRCS will certify Technical Service Providers for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years. Decertification and Renewal of Certification is administered in accordance with § 652.26.

(e) NRCS may, pursuant to 31 U.S.C. 9701, establish and collect fees for the certification of technical service providers.

§ 652.22 Certification process for individuals.

(a) In order to be considered for certification as a technical service provider, an individual must:

(1) Submit an Application for Certification to NRCS in accordance with this section;

(2) Request certification through a recommending organization pursuant to § 652.25; or

(3) Request certification through an application submitted by a private-sector entity or public agency pursuant to § 652.23 or § 652.24, as appropriate.

(b) The application must contain the documentation demonstrating that the individual meets all requirements of paragraph (a) of § 652.21.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by an individual under paragraph (a)(1) of this section and in accordance with paragraph (a) of § 652.21. If all requirements are met, NRCS will:

(1) Enter into a Certification Agreement and certify the applicant as qualified to provide technical services for a specific practice, category, or categories of technical service;

(2) Place the applicant on the list of approved technical service providers when certified; and

(3) Make available to the public the list of approved technical service providers by practice or category of technical services.

(d) NRCS may decertify an individual in accordance with the decertification process set forth in subpart C of this part.

§ 652.23 Certification process for private-sector entities.

(a) A private sector entity that applies for certification must identify, and provide supporting documentation, that it has the requisite professional and business licensure within the jurisdiction for which it seek certification, and that it employs at least one individual, authorized to act on its behalf that:

(1) Has received certification on an individual basis in accordance with § 652.22; or

(2) Seeks certification on an individual basis as part of the private-sector entity's certification and ensures that the requirements set forth in § 652.21(a) are contained within the private-sector entity's application to support such certification.

(b) NRCS will determine pursuant to § 652.22 whether the individual(s) identified in the private-sector entity's application meets the certification standards set forth in § 652.21 for the specific services the entity wishes to provide.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by an entity. If NRCS determines that all requirements for the

private-sector entity and the identified individual(s) are met, NRCS will complete the actions described in paragraphs (c)(1) through (c)(3) of § 652.22.

(d) The Certification Agreement entered into with the private-sector entity shall:

(1) Identify the certified individuals who are authorized to perform technical services on behalf of and under the auspices of the entity's certification;

(2) Require that the entity has, at all times, an individual who is a certified technical service provider authorized to act on the entity's behalf;

(3) Require that the entity promptly provide an amended Certification Agreement to NRCS for approval when the list of certified individuals performing technical services under its auspices changes;

(4) Require that responsibility for any work performed by non-certified individuals be assumed by a certified individual who is authorized to act on the entity's behalf; and

(5) Require that the entity be legally responsible for the work performed by any individual working under the auspices of its certification.

(e) NRCS may, in accordance with the decertification process set forth in this part, decertify the private sector entity, the certified individual(s) acting under the auspices of its certification, or both the private sector entity and the certified individual(s) acting under the auspices of its certification.

§ 652.24 Certification process for public agencies.

(a) A public agency that applies for certification must identify, and provide supporting documentation, that it has the authority within the jurisdiction within which it seeks to provide technical services and an individual or individuals authorized to act on its behalf:

(1) Has been certified as an individual in accordance with § 652.22; or

(2) Seeks certification as an individual as part of the public agency's certification and sufficient information as set forth in § 652.21(a) is contained within the public agency's application to support such certification.

(b) NRCS shall determine whether the individual identified in the public agency's application meets the certification standards set forth in § 652.22.

(c) NRCS will, within 60 days of receipt of an application, make a determination on the application submitted by a public agency. If NRCS determines that all requirements for the public agency and the identified

individual(s) are met, NRCS will perform the actions described in paragraph (c)(1) through (c)(3) of § 652.22. The Certification Agreement entered into with the public agency shall:

(1) Identify the certified individuals that are authorized to perform technical services on behalf of and under the auspices of the public agency's certification;

(2) Require that the public agency have, at all times, an individual that is a certified technical service provider and is an authorized official of the public agency;

(3) Require that the public agency promptly provide to NRCS for NRCS approval an amended Certification Agreement when the list of certified individuals performing technical services under its auspices changes;

(4) Require that responsibility for any work performed by non-certified individuals be assumed by a certified individual that is authorized to act on the public agency's behalf; and

(5) Require that the public agency be legally responsible for the work performed by any individual working under the auspices of its certification.

(d) NRCS may, in accordance with the decertification process set forth in subpart C of this part, decertify the public agency, the certified individual(s) acting under its auspices, or both the public agency and the certified individual(s) acting under its auspices.

§ 652.25 Alternative application process for individual certification.

(a) NRCS may enter into an agreement, including a memorandum of understanding or other appropriate instrument, with a recommending organization that NRCS determines has an adequate accreditation program in place to train, test, and evaluate candidates for competency in a particular area or areas of technical service delivery and whose accreditation program NRCS determines meets the certification criteria as set forth for the technical services to be provided.

(b) Recommending organizations will, pursuant to an agreement entered into with NRCS:

(1) Train, test, and evaluate candidates for competency in the area of technical service delivery;

(2) Recommend to NRCS individuals who it determines meet the NRCS certification requirements of § 652.21(a) for providing specific practices or categories of technical services;

(3) Inform the recommended individuals that they must meet the

requirements of this part, including entering into a Certification Agreement with NRCS, in order to provide technical services under this part;

(4) Reassess individuals that request renewal of their certification pursuant to § 652.26 through the recommendation of the organization; and

(5) Notify NRCS of any concerns or problems that may affect the organization's recommendation concerning the individual's certification, recertification, certification renewal, or technical service delivery.

(c) Pursuant to an agreement with NRCS, a recommending organization may provide to the appropriate NRCS official a current list of individuals identified by the recommending organization as meeting NRCS criteria as set forth in § 652.21(a) for specific practices or categories of technical service and recommend that the NRCS official certify these individuals as technical service providers in accordance with this part.

(d) NRCS will, within 60 days, make a determination on the recommendation for certification issued by the recommending organization. If NRCS determines that all requirements for certification are met by the recommended individual(s), NRCS will perform the actions described in paragraphs (c)(1) through (c)(3) of § 652.22.

(e) NRCS may terminate an agreement with a recommending organization if concerns or problems with its accreditation program, its recommendations for certification, or other requirements under the agreement arise.

§ 652.26 Certification renewal.

(a) NRCS certifications are in effect for a time period specified by NRCS in the Certification Agreement, not to exceed 3 years and automatically expire unless they are renewed for an additional time period in accordance with this section.

(b) A technical service provider may request renewal of an NRCS certification by:

(1) Submitting a complete certification renewal application to NRCS or through a private sector entity, a public agency, or a recommending organization to NRCS at least 60 days prior to expiration of the current certification;

(2) Providing verification on the renewal form that the requirements of this part are met; and

(3) Agreeing to abide by the terms and conditions of a Certification Agreement.

(c) All certification renewals are in effect for a time period specified by NRCS in the Certification Agreement,

not to exceed three years and before expiration, may be renewed for subsequent time period in accordance with this section.

Subpart C—Decertification

§ 652.31 Policy.

In order to protect the public interest, it is the policy of NRCS to maintain certification of those technical service providers who act responsibly in the provision of technical service, including meeting NRCS standards and specifications when providing technical service to participants. This section, which provides for the decertification of technical service providers, is an appropriate means to implement this policy.

§ 652.32 Causes for decertification.

A State Conservationist, in whose State a technical service provider is certified to provide technical service, may decertify the technical service provider, in accordance with these provisions, if the technical service provider, or someone acting on behalf of the technical service provider:

(a) Fails to meet NRCS standards and specifications in the provision of technical services;

(b) Violates the terms of the Certification Agreement, including but not limited to, a demonstrated lack of understanding of, or an unwillingness or inability to implement, NRCS standards and specifications for a particular practice for which the technical service provider is certified, or the provision of technical services for which the technical service provider is not certified;

(c) Engages in a scheme or device to defeat the purposes of this part, including, but not limited to, coercion, fraud, misrepresentation, or providing incorrect or misleading information; or

(d) Commits any other action of a serious or compelling nature as determined by NRCS that demonstrates the technical service provider's inability to fulfill the terms of the Certification Agreement or provide technical services under this part.

§ 652.33 Notice of proposed decertification.

The State Conservationist will send by certified mail, return receipt requested, to the technical service provider proposed for decertification a written Notice of Proposed Decertification, which will contain the cause(s) for decertification, as well as any documentation supporting decertification. In cases where a private sector entity or public agency is being notified of a proposed decertification,

any certified individuals working under the auspices of such organization who are also being considered for decertification will receive a separate Notice of Decertification and will be afforded separate appeal rights following the process set forth below.

§ 652.34 Opportunity to contest decertification.

To contest decertification, the technical service provider must submit in writing to the State Conservationist, within 20 calendar days from the date of receipt of the Notice of Proposed Decertification, the reasons why the State Conservationist should not decertify, including any mitigating factors as well as any supporting documentation.

§ 652.35 State Conservationist decision.

Within 40 calendar days from the date of the notice of proposed decertification, the State Conservationist will issue a written determination. If the State Conservationist decides to decertify, the decision will set forth the reasons for decertification, the period of decertification, and the scope of decertification. If the State Conservationist decides not to decertify the technical service provider, the technical service provider will be given written notice of that determination. The decertification determination will be based on an administrative record, which will be comprised of: the Notice of Proposed Decertification and supporting documents, and, if submitted, the technical service provider's written response and supporting documentation. Both a copy of the decision and administrative record will be sent promptly by certified mail, return receipt requested, to the technical service provider.

§ 652.36 Appeal of decertification decisions.

(a) Within 20 calendar days from the date of receipt of the State Conservationist's decertification determination, the technical service provider may appeal, in writing, to the Chief of NRCS. The written appeal must state the reasons for appeal and any arguments in support of those reasons. If the technical service provider fails to appeal, the decision of the State Conservationist is final.

(b) Final decision. Within 30 calendar days of receipt of the technical service provider's written appeal, the Chief or his designee, will make a final determination, in writing, based upon the administrative record and any additional information submitted to the Chief by the technical service provider.

The decision of the Chief, or his designee, is final and not subject to further administrative review. The Chief's determination will include the reasons for decertification, the period of decertification, and the scope of decertification.

§ 652.37 Period of decertification.

The period of decertification will not exceed three years in duration and will be decided by the decertifying official, either the State Conservationist or Chief, as applicable, based upon their weighing of all relevant facts and the seriousness of the reasons for decertification, mitigating factors, if any, and the following general guidelines:

(a) For failures in the provision of technical service for which there are no mitigating factors, *e.g.*, no remedial action by the technical service provider, a maximum period of three years decertification;

(b) For repeated failures in the provision of technical assistance for which there are mitigating factors, *e.g.*, the technical service provider has taken remedial action to the satisfaction of NRCS, a maximum period of one to two years decertification; and

(c) For a violation of Certification Agreement terms, *e.g.*, failure to possess technical competency for a listed practice, a period of one year or less, if the technical service provider can master such competency within a year period.

§ 652.38 Scope of decertification.

(a) When the technical service provider is a private sector entity or public agency, the decertifying official may decertify the entire organization, including all the individuals identified as authorized to provide technical services under the auspices of such organization. The decertifying official may also limit the scope of decertification, for example, to one or more specifically named individuals identified as authorized to provide technical services under the organization's auspices or to an organizational element of such private sector entity or public agency. The scope of decertification will be set forth in the decertification determination and will be based upon the facts of each decertification action, including whether actions of particular individuals can be imputed to the larger organization.

(b) In cases where specific individuals are decertified only, an entity or public agency must file within 10 calendar days an amended Certification Agreement removing the decertified individual(s) from the Certification

Agreement. In addition, the entity or public agency must demonstrate that, to the satisfaction of the State Conservationist, the entity or public agency has taken affirmative steps to ensure that the circumstances resulting in decertification have been addressed.

§ 652.39 Mitigating factors.

In considering whether to decertify, the period of decertification, and scope of decertification, the deciding official will take into consideration any mitigating factors. Examples of mitigating factors include, but are not limited to the following:

(a) The technical service provider worked, in a timely manner, to correct any deficiencies in the provision of technical service;

(b) The technical service provider took the initiative to bring any deficiency in the provision of their technical services to the attention of NRCS and sought NRCS advice to remediate the situation; and

(c) The technical service provider took affirmative steps to prevent any failures in the provision of technical services from occurring in the future.

§ 652.40 Effect of decertification.

(a) The Department will not make payment under a program contract for the technical services of a decertified technical service provider that were provided during the period of decertification. Likewise, NRCS will not procure, or otherwise enter into an agreement for, the services of a decertified technical service provider during the period of decertification.

(b) National decertification list. NRCS shall maintain a current list of decertified technical service providers. NRCS shall remove decertified providers from the list of certified providers. Participants may not hire a decertified technical service provider. It is the participant's responsibility to check the decertified list before hiring a technical service provider. Decertification of a technical service provider in one State decertifies the technical service provider from providing technical services under current programs in all States, the Caribbean Area, and the Pacific Basin Area.

§ 652.41 Effect of filing deadlines.

A technical service provider's failure to meet the filing deadlines under this subpart will result in the forfeiture of appeal rights. All filings must be received by NRCS no later than the close of business (5 p.m.) the last day of the filing period.

§ 652.42 Recertification.

A decertified technical service provider may apply to be re-certified under the certification provisions of this part after the period of decertification

has expired. A technical service provider may not utilize the certification renewal process in an attempt to be recertified after being decertified.

Signed in Washington, DC, on November 12, 2004.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 04-25990 Filed 11-26-04; 8:45 am]

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Federal Register

**Monday,
November 29, 2004**

Part III

Department of Homeland Security

**8 CFR Parts 208, 212, and 235
Implementation of the Agreement
Between the Government of the United
States of America and the Government of
Canada Regarding Asylum Claims Made
in Transit and at Land Border Ports-of-
Entry; Final Rule**

Department of Justice

**8 CFR Part 1003 et seq.
Asylum Claims Made by Aliens Arriving
From Canada at Land Border Ports-of-
Entry; Final Rule**

DEPARTMENT OF HOMELAND SECURITY**8 CFR Parts 208, 212, and 235**

[CIS No. 2255-03]

RIN 1615-AA91

Implementation of the Agreement Between the Government of the United States of America and the Government of Canada Regarding Asylum Claims Made in Transit and at Land Border Ports-of-Entry

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule codifies specific terms of an agreement between the United States and Canada that permits the respective governments to manage which government decides certain aliens' requests for protection from persecution or torture pursuant to domestic implementation of international treaty obligations. This rule establishes U.S. Citizenship and Immigration Services ("USCIS") asylum officers' authority to make threshold determinations concerning applicability of this agreement in the expedited removal context. In addition, this rule codifies the existing definitions of "credible fear of persecution" and "credible fear of torture" without altering those definitions.

DATES: This final rule is effective December 29, 2004.

FOR FURTHER INFORMATION CONTACT:

Joanna Ruppel, Deputy Director, Asylum Division, Office of Refugee, Asylum, and International Operations, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW, Washington, DC 20536; Telephone (202) 272-1663.

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I. Background

On March 8, 2004, the Secretary of Homeland Security and the Attorney General promulgated proposed rules to implement terms of the "Agreement Between the Government of the United States of America and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries" ("Safe Third Country Agreement" or "Agreement"), which, consistent with section 208(a)(2)(A) of the Immigration and Nationality Act ("Act") (8 U.S.C. 1158(a)(2)(A)), provide for the return of certain asylum seekers to the "country of last presence." 69 FR 10620, 69 FR 10627. The Agreement is available both on the USCIS Web site, <http://www.uscis.gov>, and the Web site for the U.S. Embassy in Canada, http://www.usembassycanada.gov/content/can_usa/safethirdfinal_agreement.pdf.

The proposed rules outlined how the Department of Homeland Security (DHS) and the Department of Justice (DOJ) proposed to address the asylum, withholding of removal, and Convention Against Torture claims ("protection claims") of aliens seeking to enter the U.S. at U.S.-Canada land border ports-of-entry, or in transit through the U.S. during removal by the Canadian government, in accordance with the Safe Third Country Agreement. The Agreement allocates responsibility between the United States and Canada whereby one country or the other (but not both) will assume responsibility for processing the claims of certain asylum seekers who are traveling from Canada into the United States or from the United States into Canada. The Agreement provides for a threshold determination to be made concerning which country will consider the merits of an alien's protection claim, enhancing the two nations' ability to manage, in an orderly fashion, asylum claims brought by persons crossing our common border. As discussed in the **SUPPLEMENTARY INFORMATION** section in

the preamble to those proposed rules, the Agreement allocates resources and provides for prescreening of asylum and related claims in certain instances during the expedited removal process, where the asylum officer would determine whether any of the Agreement's exceptions apply or whether aliens should be returned to Canada for consideration of their protection claims. The limited number of aliens arriving from Canada at land border ports-of-entry or in transit during removal by the Canadian government who are placed in removal proceedings under section 240 of the Act (8 U.S.C. 1229a) (instead of being processed through expedited removal procedures) would have the Agreement applied to them in the first instance by immigration judges of the Executive Office for Immigration Review ("EOIR"), as outlined in the DOJ proposed rule at 69 FR 10627 *et seq.* In response to the DHS proposed rule, DHS received 7 sets of comments from non-governmental organizations ("NGOs") and the Office of the United Nations High Commissioner for Refugees ("UNHCR"). While incorporating several of the comments, this final rule implements the basic approach discussed in the March 8 rule proposed by DHS.

The following discussion of the comments received by DHS corresponds generally to the variety of issues raised by commenters and is arranged into the following categories: Validity of the threshold screening process identified in the proposed rule; issues related to detention of asylum seekers; procedural safeguards under the threshold screening process; adjudication of the Agreement's several exceptions to its general rule of returning certain asylum seekers to Canada; procedures for asylum seekers bound for and returned from Canada; monitoring of the Agreement's implementation and impact; and Agreement terms unrelated to processing asylum seekers coming to the United States from Canada. Within each category, the discussion summarizes the relevant comments and offers the Department's responses, including an explanation of any changes made to the rule. Following the discussion of the comments is an explanation of one minor conforming regulatory amendment included in the final rule to ensure that existing regulations governing the expedited removal process are consistent with the threshold screening interview mechanism adopted in DHS' final rule. Many commenters took issue with the Agreement itself, challenging its wisdom on policy grounds. This

Supplementary Information to the final rule, while endeavoring to address each comment as fully as possible, does not engage in a policy debate about the Agreement itself.

II. Validity of the Threshold Screening Process

One commenter indicated that creating a special process to assess the applicability of the Agreement and its exceptions would result in increased inefficiency and bureaucracy. The Department disagrees and, to the contrary, believes that the threshold screening process is the most efficient mechanism for implementing the Agreement. It will not create additional bureaucracy. The threshold screening process adopts existing processes from the credible fear process, will be a streamlined determination, and can be transitioned seamlessly to the credible fear process if an exception to the Agreement is found.

Other commenters argued that the new threshold screening process is legally insufficient, if not contrary to existing laws, because it does not occur as part of the credible fear determination and does not provide for independent administrative review of negative decisions by immigration judges. These commenters have concluded that the proposed process does not, therefore, comport with statutory expedited removal provisions. Specifically, the commenters identify sections 235(b)(1)(A)(ii) and 235(b)(1)(B) of the Act (8 U.S.C. 1225(b)(1)(A)(ii), 1225(b)(1)(B)), which provide that asylum officers shall interview arriving aliens who are inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act (8 U.S.C. 1182(a)(6)(C), 1182(a)(7)) and who indicate either an intention to apply for asylum or a fear of persecution in order to determine whether such aliens have a "credible fear of persecution," and further provide that negative credible fear determinations may be reviewed by immigration judges. Similarly, arriving aliens who express a fear of torture are subject to these same procedures as a matter of regulation. 8 CFR 208.30(e).

While the Department agrees that these provisions generally do call for the administration of credible fear interviews to those aliens in expedited removal processing who express an intent to apply for asylum or a fear of persecution or torture, a careful reading of the Act makes clear that credible fear interviews are not required for aliens subject to the Safe Third Country Agreement. Under section 208(a)(1) of the Act (8 U.S.C. 1158(a)(1)), any alien physically present in or arriving in the

United States may apply for asylum in accordance with that section, or where applicable, section 235(b) of the Act (8 U.S.C. 1225(b)). The following paragraph, section 208(a)(2)(A) of the Act (8 U.S.C. 1158(a)(2)(A)), however, creates an exception to this generally permissive asylum filing standard, revealing Congress' intent that an alien may not apply for asylum in accordance with section 235(b) (8 U.S.C. 1225(b)) if the alien "may be removed, pursuant to a bilateral or multilateral agreement, to a country * * * in which the alien's life or freedom would not be threatened. * * * Section 235(b)(1)(B)(ii) of the Act (8 U.S.C. 1225(b)(1)(B)(ii)) states that, when an alien successfully completes the credible fear interview process, "the alien shall be detained for *further consideration* of the application for asylum." (emphasis added). Clearly, then, the credible fear interview process constitutes the initiation of the asylum application process described in section 208(a)(1) or the Act (8 U.S.C. 1158(a)(1)). For this reason, and in light of section 208(d)(5)(B)'s (8 U.S.C. 1158(d)(5)(B)) authorization to promulgate regulations that impose "conditions or limitations on the consideration of an application for asylum," as long as they are "not inconsistent with this Act," the Department finds the threshold screening interview process described in the proposed rule to be in accord with the Act.

A closely related comment raised by some commenters is the request that the rule include an independent review or appeals process for asylum officer findings that an alien does not meet one of the Agreement's exceptions and is, accordingly, ineligible to pursue an asylum application via the credible fear interview process. The Department believes that, given the narrow legal and factual issues present in the threshold screening process, review of an asylum officer's threshold determination by a supervisory asylum officer will adequately serve to ensure that proper decisions are made on this limited issue. In light of the comments received, the requirement that a supervisory asylum officer must concur in the asylum officer's finding that the alien is subject to return to Canada under the Agreement has been expressly added to the final rule at 8 CFR 208.30(e)(6)(i).

III. Detention Issues

Several commenters addressed the issue of detention. For instance, some commenters suggested adding to the rule the statement that asylum seekers subject to the Agreement generally should not be detained. Another

commenter advocated a mechanism for the Department to refer individuals entering the United States or being returned by Canada under the Agreement to NGOs in the United States, to facilitate alternatives to detention. Commenters also expressed concern about the detention of returnees from Canada. One commenter would have the rule prohibit detention of this group under any circumstances, while another suggested that the Department only detain returnees under exceptional circumstances, and, if detention is necessary, to avoid detention in local and county jails. The Agreement does not amend the detention authority under sections 236, 236A and 241 of the Act (8 U.S.C. 1226, 1226a, 1231) or require that DHS alter its current detention policies or practices. No amendments to the detention regulations were proposed in the proposed rule, and any changes in these regulations would require a new proposed rule. After reviewing the comments, DHS is not convinced that there is any reason to amend the detention provisions of the regulations because of the implementation of the Agreement or this rule. The comments do not articulate any legitimate basis for treating aliens without lawful immigration status in the United States who are returned under the Agreement differently from other asylum seekers in the United States without lawful immigration status.

IV. Procedural Safeguards Under the Threshold Screening Interview Process: Arrivals From Canada

Screening Process Guarantees

Several commenters were concerned that the rule does not specify that individuals arriving from Canada would receive the same procedural safeguards in the threshold screening interview process that are provided to arriving aliens who receive credible fear interviews. In particular, the Department was urged to incorporate, in the final rule, the following such safeguards: Option to consult with a person of the alien's choosing; sufficient time to contact a consultant, relative, or relevant advocates, at no expense to the U.S. government; sufficient time to prepare for the eligibility interview; an assurance that the interview would not occur sooner than 48 hours after the asylum seeker's arrival at a detention facility, unless the individual waives this preparation period; the ability to request that the threshold screening interview be postponed, which the Department should grant if there are good reasons to do so; use of an

interpreter; explanation of and guidance on the interview procedure; and the issuance of a reasoned written decision.

The Department has clarified, in the final rule, that the same safeguards accorded to aliens who are eligible for a credible fear determination will be accorded to aliens who receive threshold screening interviews. However, the suggestion that the threshold screening interview be postponed upon an alien's request has no parallel in the sections of 8 CFR 208.30 outlining the credible fear process. Also, this suggestion would compromise the principle underlying the Agreement that aliens be returned promptly to the country of last presence; therefore, it will not be incorporated into the final rule. In appropriate cases, the Department may exercise its discretion to delay the threshold screening process where the delay is justified.

One commenter recommended that the final rule include a statement requiring the Department to accommodate reasonable requests for assistance in securing evidence in support of an asylum seeker's claim arising from the asylum seeker's detention. For example, an asylum seeker may need access to a telephone or fax machine to secure evidence establishing relationships, a family member's legal status, or the asylum seeker's age. The Department currently provides access to telephones to detained asylum seekers who are subject to expedited removal. If additional assistance is needed, such as access to a fax machine, an asylum officer may be able to facilitate such access. However, the Department does not believe it is necessary to incorporate this suggestion into the final rule, because it is operational in nature and instead will be incorporated into field guidance upon implementation of the rule.

Post-Interview Process

One commenter suggested that the rule should clarify that return to Canada under the Agreement would not render a person inadmissible to the United States on that basis. While the Agreement does not address matters of inadmissibility, the Department may only remove aliens from the United States using a mechanism provided by Congress. Generally, for aliens arriving in the United States without valid documents required for admission, expedited removal under section 235(b) of the Act (8 U.S.C. 1225(b)) is the removal mechanism provided by Congress. A removal order under section 235(b) of the Act would, as a matter of law, constitute a temporary

inadmissibility ground under section 212(a)(9)(A)(i) of the Act (8 U.S.C. 1182(a)(9)(A)(i)). Waivers and exceptions to this inadmissibility ground do exist and will be considered by the Department on a case-by-case basis, consistent with existing regulations and operational directives. Similarly, discretion exists on the part of Customs and Border Protection ("CBP") officers to allow aliens to withdraw their applications for admission (so that they would face no inadmissibility bar to a subsequent admission to the United States) and this discretion will continue to be used on a case-by-case basis.

Another commenter recommended that either the final rule or operating procedures should include a mechanism for reconsideration by the Department of its decision to remove an asylum seeker to Canada following a decision that he or she does not qualify for one of the Agreement's exceptions if new evidence subsequently becomes available. The Department plans to continue working with its Canadian counterparts to establish common procedures to resolve matters like these at the local level through operational guidance.

V. Adjudicating Exceptions to the Agreement

A substantial number of the comments to the proposed rule concerned the interpretation and adjudication of Agreement exceptions for asylum seekers arriving at land border ports-of-entry. These comments corresponded roughly to the specific exceptions themselves, and can be addressed with reference to the following categories: family unity; unaccompanied minors; public interest; validly issued visas; and other exceptions. Many of the concerns evident from these comments were raised initially at meetings with NGOs, including a public meeting in August 2002, before the Agreement was signed. The Department carefully considered several of the issues outlined in these comments at that time and incorporated many suggestions into the text of the Agreement.

Family-Based Exceptions

Many commenters believe that the rule should define "family member" broadly and in a more culturally sensitive manner that reflects the reality of the refugee experience. For example, one commenter recommended considering "de facto" family members as eligible anchor relatives within this exception, or, in the alternative, as part of the public interest exception. The definition of "family member" was the

subject of prolonged discussion while negotiating the Agreement. The United States delegation advocated and succeeded in achieving a definition much broader than the class of family members recognized for other purposes under United States and Canadian immigration law. During negotiations, both Canada and the United States took into account the reality that different cultures define "family member" differently. Given the specificity of the Agreement's enumerated relationships in its "family member" definition, the Department will not now, in effect, unilaterally amend the Agreement's definition by means of this rule to include additional individuals. The Department's position is that using the regulatory process to create new definitions at this stage would serve to undermine the compromise represented by this carefully negotiated, bilateral agreement.

Other commenters suggested including "cousins" as part of the "family member" definition in the rule. As explained above, the Agreement's list of who may qualify as an anchor "family member" is not subject to amendment by the rule. For the same reason, the Department will not include, as suggested in a separate comment, "other close relatives" to the list of family members.

Several commenters recommended that the rule specifically include a "common-law partners" exception, as it is included in the Canadian regulations' definition of "family member." Canada has included common-law partners in the definition of "family member" in the Canadian regulations implementing the Agreement because this relationship has often been recognized as a matter of Canadian law. Article 1 of the Agreement provides that each Party will apply the Agreement's family member exceptions in a manner that is consistent with its national law. While valid foreign marriages, including common law marriages, are generally given effect under U.S. immigration law, *see Matter of H-*, 9 I&N Dec. 640, 641 (BIA 1962); *but see* section 101(a)(35) of the Act (8 U.S.C. 1101(a)(35)), U.S. federal law precludes use of the terms "marriage" or "spouse" to refer to same-sex partnerships. *See* Defense of Marriage Act, Public Law 104-199, section 3, 110 Stat. 2419 (1996) (providing that, for purposes of federal law, "marriage" means only a legal union between one man and one woman as husband and wife, and * * * 'spouse' refers only to a person of the opposite sex who is a husband or a wife."). Because the Department cannot promulgate regulations that are contrary

to law, the Department did not adopt the commenters' suggestion to add a "common-law partner" interpretation of the term "spouse," as used in the Agreement's family member exceptions.

A few commenters believe that the rule should eliminate the Agreement's age and immigration status limits on anchor relatives, reasoning that the limits result in separating families when children cannot serve as anchors for their parents. Both countries have expressed their concern for reuniting separated families. To that end, both intend to work with the UNHCR and NGOs to monitor the Agreement's effect, addressing this potential problem operationally rather than by regulation. A key reason that age limits were included in the Agreement's family unity exceptions was that neither government wanted to trigger an increase in the smuggling and trafficking of minors, sent ahead by family members for the purpose of serving as anchors in either country. Further, the requirement that anchor relatives hold lawful, non-visitor immigration status derives from the negotiated Agreement terms, *see* art. 4, para. 2(a), which will not be modified through the rule-making process.

Unaccompanied Minor Exception

Some commenters felt that the rule should expand the Agreement's definition of "unaccompanied minor" to include a minor who is "separated from both parents and is not being cared for by an adult who by law has the responsibility to do so." The Department declines to incorporate this change to the Agreement's definition into the final rule. The Agreement's definition of "unaccompanied minor," as explained in the **SUPPLEMENTARY INFORMATION** accompanying the proposed rule, differs from the definition customarily used for purposes of U.S. immigration processing. As previously explained, the definitions in the Agreement were carefully negotiated with the Canadian government and the Department will not use the rule-making process to alter unilaterally the clear definitions in the Agreement. However, by applying DHS' customary operational definition to unaccompanied minors seeking asylum so that they are generally referred for a hearing by an immigration judge in proceedings under section 240 of the Act (8 U.S.C. 1229a), the Department is providing them ample process to explain whether they meet one of the Agreement's exceptions and to present their protection claims.

The same commenters also recommended that the rule should shift

the burden of proof concerning the location of an unaccompanied minor's parents from the unaccompanied minor to the government, requiring the government to demonstrate that the unaccompanied minor is in the care of his or her parents or is following to join them. While the Department understands the need to proceed with heightened restraint and sensitivity in the cases of unaccompanied minors, there is concern that this recommendation could adversely affect the unaccompanied minor by resulting in fact-finding delays before a final determination. The child likely will have more information than DHS as to the location of his or her parents and therefore it is more appropriate for the child to bear the burden of proof in establishing the parents' locations. Moreover, aliens in removal proceedings—regardless of age—generally bear the burden of proving their admissibility to the United States, 8 U.S.C. 1129a(c)(2), and, similarly, applicants for asylum, withholding of removal, and protection under the Convention Against Torture, bear the burden of proof to establish eligibility, even in cases where the applicant is a child. The commenters did not provide sound rationales for shifting the burden of proof for purposes of establishing that an exception to the Agreement applies.

These commenters also suggested that the rule include a mechanism for determining a child's relationship to an accompanying adult or to individuals present in the United States or Canada, including an interview with a child welfare specialist, if the child arrives at the border with an individual who is not his or her legal guardian. The mechanism, they suggest, should include procedures to identify potential family members and determine their suitability to serve as the child's guardian. The Department agrees that this is an area requiring further consideration; however, the issues surrounding identification of individuals accompanying alien children and verification of relationships between adults and children are broader than the scope of this rule and are not unique to those children subject to this rule. These issues may be raised at all borders, and all ports-of-entry, even in the case of aliens with lawful status here. Therefore, these issues would be more appropriately addressed systemically, as a coordinated effort among the Department's various agencies to create a uniform approach, rather than within this rule. Consequently, the Department declines to incorporate the process

proposed by commenters within the rule.

Many commenters, as previously stated, urged the Department to consider "separated children," who are not with either parent or with an adult responsible for their care, as part of the discretionary public interest exception under Article 6 of the Agreement. The Department is sensitive to the unique issues facing unaccompanied minors and will proceed carefully in cases where an unaccompanied minor arriving in the United States appears to be a "separated child." The Department will consider, on a case-by-case basis, whether such a child might meet the Agreement's public interest exception.

Public Interest Exception

Many of the commenters recommended that the rule should state that "humanitarian concern is a public interest." The Department believes that the Agreement's public interest exception is best administered through operational guidance and on an individualized, case-by-case basis, but does acknowledge that "humanitarian concern" is certainly an important consideration to factor in to a public interest assessment.

Some commenters suggested that the rule include a non-exhaustive list of categories that would merit consideration under the public interest exception. Three of the suggested categories—common-law spouses, de facto family members, and separated children with parents or legal guardians in the U.S. who are ineligible to serve as anchors—were addressed above in the discussion replying to comments about the proposed rule's sections concerning the "family member" and "unaccompanied minor" exceptions.

Other categories suggested by commenters for consideration under the public interest exception include:

a. Cases where effective protection cannot be guaranteed in Canada because of that country's asylum laws; and, similarly, cases where U.S. law and practice are not consistent with Canadian law and practice;

b. Cases in which the anchor relatives are under age 18 and have pending asylum applications;

c. Cases of survivors of torture; and

d. Cases of individuals with physical and psychological health needs.

Issues of minor anchor relatives, past torture, and health needs are some of the factors that may be considered under the Agreement's public interest exception, along with all other relevant circumstances, on a case-by-case basis. The intent behind this provision of the Agreement was to allow each

government to make case-by-case determinations with broad discretion. Had the parties' intent been to include the broad categories of individuals listed above, the categories would have been spelled out in the Agreement in the same manner as the other exceptions.

For reasons stated in the Supplementary Information to the proposed rule, the Department does not consider differences in Canadian and U.S. protection laws germane to decisions made under the Agreement. The commenters urged, with respect to this suggestion, that the rule include a mechanism for the UNHCR and NGOs to help the Department analyze Canadian law and practice, including approval rates by nationality and basis for approval, to ensure that the Department exercises discretion in cases where there are discrepancies with U.S. law. The Department will not apply the public interest exception in a manner that would undermine the Agreement's allocation of responsibility for adjudication of protection claims. Also, as explained in the Supplementary Information to the proposed rule, differences in our protection systems were contemplated by the United States and Canada during negotiations. In either country, asylum seekers will have their protection claims fully and fairly considered.

Other commenters suggested specific procedures in the rule concerning the exercise of discretion, in the public interest, to allow an individual to pursue a protection claim in the United States. One recommended explaining who specifically may exercise this discretion, and the other called for a clear procedure between EOIR and DHS to ensure that the Department properly considers cases pending before EOIR for the public interest exception. In response to these suggestions, the final rule has been amended at 8 CFR 208.30(e)(6)(iii)(F) to specify that the Director of USCIS, or the Director's designee, will be responsible for DHS determinations made under the Agreement's public interest exception. Any party wishing to present a case for consideration under this exception should provide relevant case information to the Director's office or that of his or her designee.

Valid Visa Exception

One commenter noted that the rule should define "validly issued visa" so as not to link the validity of its issue to the asylum seeker's presumed subjective intentions. For example, U.S. immigration authorities have determined in some instances that valid

tourist or business visas were obtained by "fraud" because of the visa holder's true intent to seek asylum. For the limited purposes of applying this exception to the Agreement, USCIS will construe the term "validly issued" to refer to visas that are genuine (*i.e.*, not counterfeit) and were issued to the alien by the U.S. government.

Other Exceptions

One commenter forwarded comments made in response to a review of an earlier draft of the Agreement in 2002, in which it recommended that, to avoid the separation of families and minimize social and economic costs for states, the Agreement add a transit exception. Additionally, the commenter suggested a "community support contact" exception, which could include friends or colleagues willing to submit statements about their willingness to support the asylum seeker during the process. A transit exception would effectively invalidate the Agreement, as the Agreement's stated purpose is quite clearly to return asylum seekers to the "country of last presence." With respect to the "community support contact" exception, the Department reiterates that the exceptions to the Agreement were determined through careful negotiations with the Canadian government, and that to create additional exceptions through rule-making would serve to undermine the process. Therefore, the Department declines to adopt this recommendation.

VI. Procedures for Asylum Seekers Going to and Being Returned From Canada

Process for Asylum Seekers Bound for Canada

Several commenters recommended that the rule include a mechanism whereby the Department could refer Canada-bound asylum seekers to NGOs in the United States for assistance in locating relatives and providing advice regarding eligibility before arriving at a land border port-of-entry. The commenters do not explain how the Department would identify these asylum seekers and implement this recommendation. While the Department appreciates the participation of NGOs in the process to date and will continue to seek their assistance to educate populations likely to be affected by the Agreement, it will not adopt this recommendation, because it would be administratively impracticable to implement and could unnecessarily delay travel for thousands of individuals crossing from the United States to Canada. U.S. officials generally do not

stop and address individuals leaving the United States to go to Canada. Even if immigration officials were to stop individuals traveling from the United States into Canada, it is unclear how they would identify those who intend to seek asylum in Canada—certainly a minimal portion of individuals crossing the border each day—in order to refer them to an NGO.

Process for Asylum Seekers Returned From Canada

Several commenters expressed a desire to have the rule clarify the process affecting those asylum seekers who are determined to be ineligible by Canada and returned to the United States—the group anticipated to constitute the majority of asylum seekers affected by the Agreement. One non-governmental organization recommended that the rule guarantee that these individuals be exempt from the expedited removal process.

The Department declines to codify the process affecting those returned to the United States under the Agreement, because existing regulations already govern how they will be treated by DHS. For purposes of U.S. immigration law, these returnees will be in the same position they would be in had they not left the United States. As the Department stated in the Supplementary Information to the proposed rule, individuals returned from Canada to the United States, with the rare exception noted below, will not be subject to expedited removal because they will not meet the definition of "arriving alien." Depending on the individual's immigration status in the United States, he or she may be subject to removal proceedings under section 240 of the Act (8 U.S.C. 1229a). However, it is not possible, practical or advisable for the Department to codify such a guarantee in this rule. There may be a rare circumstance in which the expedited removal provisions of the Act would apply. For example, someone initially paroled into the United States may attempt to enter Canada and then be returned to the United States after his or her parole period here expired. Such a person, as an individual whose parole period has expired, may be subject to expedited removal. 8 U.S.C. 1182(d)(5)(A), 1225(a)(1)–(b)(1)(A)(i); 8 CFR 1.1(q).

Many commenters suggested that the rule include a mechanism to enable Canada, in the event that it decides that the Agreement exceptions are inapplicable to an individual alien, to address any possible errors in its decision or consider new information offered by the alien that he or she

qualifies for an exception and is eligible to present a protection claim in Canada. DHS regulations do not govern Canadian authorities. It would be inappropriate for DHS regulations to outline a mechanism for the Canadian authorities to correct errors or address new information. Nonetheless, the Canadian and United States governments have agreed to consult with each other on these matters and to address them operationally.

One commenter also stressed that, in this context, the Department should release detainees or provide transport to the nearest land border port-of-entry if Canada agrees to reconsider a claim and requires the asylum seeker's presence at the border. Release of detainees will be determined on a case-by-case basis, depending on the facts of the case and applicability of immigration laws. Should an individual be released, the logistics for how that person will get to the border is best determined on a case-by-case basis and through operational, as opposed to regulatory, guidance.

Cost of Processing Returned Asylum Seekers

The majority of the commenters disagreed with the proposed rule's assessment of the costs that will result from the rule's implementation, as outlined in the proposed rule's determination made under Executive Order 12866. They allege that certain tangible costs—including increases in adjudications, detention, Border Patrol deployment, and criminality—were not adequately addressed. They argue that, among the intangible costs of this Agreement that were ignored by the proposed rule, are the increased risks to life and safety of those seeking to enter either country outside land border ports-of-entry, and the potential for the Agreement to attract more smugglers and traffickers, which would make this land border more dangerous.

The costs identified in discussing Executive Order 12866 were the costs associated with implementation of the provisions proposed in the rule, not the costs associated with the Agreement itself. The proposed and final rules are focused solely on asylum seekers seeking to enter the United States who may be returned to Canada pursuant to the Agreement, not those who are returned from Canada pursuant to the Agreement or who seek to cross the border illegally. As such, those costs were properly not considered in addressing Executive Order 12866. However, the United States Government carefully considered all of the potential costs identified by the commenters before it entered into the Agreement and

determined that the benefits of the Agreement outweigh its costs.

VII. Monitoring Plans

Nearly all of the commenters recommended that the rule explicitly refer to the UNHCR's monitoring role, as specified in Article 8 of the Agreement. They added that the rule should specify exactly what type of information the UNHCR will receive, such as numbers of applicants, their ages, their countries of origin, and the disposition of their eligibility and credibility determinations. They also recommended that the rule establish a timetable for the reports, preferably quarterly or whenever a special situation warrants one. In addition, the commenters recommended that the rule authorize the UNHCR to monitor eligibility and credibility determinations and to intercede in cases in which it believes erroneous decisions were made. The same commenters also felt that the rule should allow NGOs to operate as the UNHCR's implementing partners to monitor the Agreement.

The Department has not incorporated these recommendations into this rule, but plans to take them into consideration when finalizing its arrangements with Canada and the UNHCR concerning monitoring of the Agreement. The Department also would welcome the assistance and input of NGOs. It is fully the intent of the Department to abide by the Agreement, which, at Article 8, provides that "The Parties shall cooperate with UNHCR in the monitoring of this Agreement and seek input from non-governmental organizations." The Department values the longstanding consultative, cooperative relationship the UNHCR has had with the U.S. government, which includes monitoring the United States' application of the Convention Relating to the Status of Refugees, Jul. 28, 1951, 189 U.N.T.S. 150 ("Refugee Convention"). For example, the UNHCR recently monitored and analyzed the expedited removal process and made several useful recommendations for the Department. However, the Department considers it inappropriate to codify the nature of this relationship, or the relationship between the Department and the NGO community, in these rules. Details of monitoring plans often change and develop over time, as unforeseen events arise, and those involved in the monitoring plan identify methods, consistent with evolving events, to better gather and analyze data. As such, it is more appropriate to include details of such plans in formal action plans and memoranda. One comment suggested that the rule include a monitoring plan

concerning smuggling and trafficking developments. As stated earlier, the Department is aware of the potential for increased smuggling and trafficking after the Agreement is implemented and intends to monitor these developments. The Department does not believe, however, that it is appropriate to codify such a monitoring plan in regulations for the same reasons noted above.

VIII. Agreement Terms Unrelated to Processing Asylum Seekers Coming to the United States From Canada

Resettlement Under the Agreement

Most commenters wanted the rule to include details concerning the implementation of the resettlement side agreement addressed in Article 9 of the Agreement. Another commenter recommended that the Department of State introduce its own proposed rule to implement the resettlement agreement.

This comment concerns an issue separate and distinct from that of returning asylum seekers to the country of last presence. The scope of this rule will remain limited to implementing the Agreement's terms as they concern two limited categories of asylum seekers: Those seeking entry to the United States at a land border port-of-entry on the Canadian border and those who seek protection while being removed from Canada and transiting through the United States.

Terminating the Agreement

One commenter suggested that the rule include criteria to determine whether the Agreement should be cancelled because of negative impacts, particularly any increase in smuggling or trafficking. Another made a similar, though less specific suggestion, that the rule should include procedures for revising or terminating the Agreement, should that prove necessary. One commenter added that the Department of State should propose its own separate rule concerning the procedures for suspending or terminating the Agreement, including adequate or appropriate termination grounds.

With respect to termination procedures, Article 10 of the Agreement between the United States and Canada specifically provides that termination may occur with six months' written notice from either party, and that three months' written notice would result in suspension. It would be inappropriate for the U.S. Government to negotiate an Agreement with Canada and then unilaterally adopt specific criteria that would result in the Agreement's termination. The efficacy and ongoing commitment to an international

agreement is a matter of foreign policy of the United States, the proper subject of diplomacy, and inappropriate for regulation under the Administrative Procedure Act (5 U.S.C. 551–59, 701–06, 1305, 3105, 3344, 5372, 7521).

IX. Miscellaneous

Resolving U.S.-Canadian Differences in Interpreting the Agreement

Most commenters agreed that the rule should provide a detailed mechanism to resolve differences between Canada and the United States regarding the interpretation and implementation of the Agreement. In accordance with the second paragraph of Article 8 of the Agreement, which provides that standard operating procedures “shall include mechanisms for resolving differences respecting the interpretation and implementation of the terms of this Agreement,” the Department intends to cooperate with its Canadian colleagues to address and resolve differences in the same spirit in which the Agreement was negotiated. As reflected in the Agreement itself, resolution of such differences is more appropriately addressed through operating procedures than through the promulgation of regulations.

Defining “Land Border Port-of-Entry”

Over half of the commenters suggested that this rule provide a definition of “land border port-of-entry,” as that term is used in the Agreement. Prior regulatory attempts to define “port-of-entry” have done so in reference to geographical locations where federal officers have authority to perform their official functions. For example, in the customs regulations at 19 CFR 101.1, this term simply “refer[s] to any place designated by Executive Order of the President, by order of the Secretary of Treasury, or by Act of Congress, at which a Customs officer is authorized to * * * enforce the various provisions of the Customs and navigation laws.” Pursuant to this approach of port-of-entry designation, these regulations enumerate specific ports-of-entry that have been designated as “Customs port of entry.” 19 CFR 101.3(b)(1). Existing immigration regulations take a similar approach, defining “ports-of-entry” with an exhaustive list of locations, broken down into three “classes.” 8 CFR 100.4(c)(2). These definitional approaches reveal the difficulty of providing one uniform definition of “port-of-entry.” Indeed, beyond the fact of CBP officers’ presence, “ports-of-entry” can vary in nearly every way imaginable. For instance, some ports-of-

entry may sit on federally owned property, while others may be located on private or municipally owned property. Similarly, some land ports-of-entry border waterways or bridges, while others are located on busy highways or railroad tracks, while still others are situated in remote, rural areas. Given the impracticability of a one-size-fits-all definitional approach to “land border ports-of-entry,” the Department will rely on the current definitions of 8 CFR 100.4(c)(2) and 19 CFR 101.3(b)(1) in implementing the Agreement. Thus, where an alien arrives at a “port-of-entry,” as designated in one of these regulatory provisions, which is located at the shared U.S.-Canada border, the alien will be subject to the Agreement. Aliens apprehended in the immediate vicinity of such ports-of-entry attempting to avoid inspection will, where reasonable, be regarded as having “arrive[d] at a land border port of entry” and, consequently, be subject to the Agreement. Finally, the Department intends to work closely with the Canadian government to provide operational guidance concerning the Agreement’s applicability in marginal cases.

Aliens “Directed Back” From Canada

Two commenters raised the issue of aliens “directed back” by the Canadian government pending an interview by Canadian immigration officials. These commenters explained that, while Canadian authorities generally interview an alien who requests protection at the time he or she seeks to enter Canada from the United States, Canadian authorities have had occasion to direct such aliens back to the U.S. for future interview appointments in Canada during periods of increased attempted migration that outstrip Canadian processing resources. According to these commenters, such an increase is possible during the period immediately preceding Agreement implementation. The commenters have therefore requested that the Department work to accommodate such aliens’ attempts to enter Canada for a consideration of their protection claims. The Department will not adopt this suggestion. As discussed in the Supplementary Information to the proposed rule and, again, earlier in the Supplementary Information to this final rule, aliens who unsuccessfully attempt to enter Canada do not alter their immigration status by the attempted entry. Thus, if an alien who is present in the U.S. without having been inspected and admitted (or paroled) by an immigration officer unsuccessfully attempts to enter Canada, then he or she

remains an unlawfully present alien subject to removal from the United States under sections 212(a)(6)(A)(i) and 240(a) of the Act (8 U.S.C. 1182(a)(6)(A)(i), 1229a(a)), just as if an immigration officer had apprehended the alien before he or she sought to enter Canada. An alien’s appointment with Canadian immigration officials, while relevant to the Department’s prosecutorial discretion concerning any decision to place the alien in removal proceedings, does not confer legal status upon an unlawfully present alien.

Indirect Refoulement

One commenter argued that returning aliens to Canada under the Agreement would constitute “indirect” refoulement, and would therefore violate U.S. obligations under the Refugee Convention and the Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T.S. 6223 (“Refugee Protocol”). The Department disagrees. Article 33 of the Refugee Convention obligates the U.S., through its accession to the Refugee Protocol, not to “expel or return (‘refouler’) a refugee in any manner whatsoever to the *frontiers of territories where his life or freedom would be threatened* on account of his race, religion, nationality, membership of a particular social group or political opinion.” (emphasis supplied). Absent some claim that an alien’s life or freedom would be threatened in Canada, which the commenter did not suggest, the return of the alien to Canada for a full and fair consideration of his or her protection claims is consistent with U.S. obligations.

X. Conforming Amendment to 8 CFR Part 235

In preparing this final rule, the Department determined that 8 CFR 235.3(b)(4) must also be amended to reflect the proposed rule’s use of a threshold screening interview mechanism preceding the initiation of credible fear interviews for those aliens in expedited removal proceedings who are subject to the Safe Third Country Agreement. This existing regulatory provision explicitly makes reference to a CBP officer’s referral of protection claims for a “credible fear” determination under 8 CFR 208.30. As aliens subject to expedited removal who are covered by the Agreement must first pass a threshold screening interview to determine whether their protection claims may be considered in the U.S., 8 CFR 235.3(b)(4) has been revised to refer more generally to 8 CFR 208.30 without reference to the credible fear process. This amendment ensures that the expedited removal regulations conform

to the threshold screening interview process explained in the proposed rule.

Regulatory Flexibility Act

DHS has reviewed this rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and by approving it, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule, which relates to asylum claims, applies to individual aliens only. As such, a substantial number of small entities, as that term is defined in 5 U.S.C. 601(6), will not be affected by the rule.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of Homeland Security has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been submitted to the Office of Management and Budget for review. In particular, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs.

The rule implements a bilateral agreement that allocates responsibility between the United States and Canada for processing claims of certain asylum seekers by codifying the process by which individuals seeking entry into the United States, or being removed by Canada in transit through the United

States, may be returned to Canada pursuant to the Agreement. The rule applies to individuals who are subject to expedited removal and, under existing regulations, would receive a credible fear interview by an asylum officer. This rule simply provides a preliminary screening by asylum officers to determine whether the alien is even eligible to seek protection in the United States, in which case the asylum officer will then proceed to make the credible fear determination under existing rules. Based on statistical evidence, it is anticipated that approximately 200 aliens may seek to enter the United States from Canada at a land border port-of-entry and be placed into expedited removal proceedings. A significant number of these aliens will be found exempt from the Agreement and eligible to seek protection in the United States after the threshold screening interview proposed in this rule. It is difficult to predict how many aliens will be returned to Canada under the Agreement, but the costs incurred in detaining and transporting them are not likely to be substantial. Therefore, the "tangible" costs of this rulemaking to the U.S. Government are minimal. Applicants who are found to be subject to the Agreement will be returned to Canada to seek protection, saving the U.S. Government the cost of adjudicating their asylum claims and, in some cases, the cost of detention throughout the asylum process.

The cost to asylum seekers who, under the rule, will be returned to Canada are the costs of pursuing an asylum claim in Canada, as opposed to the United States. There is no fee to apply for asylum in Canada and, under Canadian law, asylum seekers are provided social benefits that they are not eligible for in the United States, including access to medical coverage, adult public education, and public benefits. Therefore, the tangible costs of seeking asylum in Canada are no greater than they are in the United States. The "intangible" costs to asylum seekers who would be returned to Canada under the proposed rule are the costs of potential separation from support networks they may be seeking to join in the United States. However, the Agreement contains broad exceptions based on principles of family unity that would generally allow those with family connections in the United States to seek asylum in the United States under existing regulations governing the credible fear process.

The Executive Order 12866 cost analysis captures the costs which apply to those instances where an alien requests protection from the United

States government under one of two scenarios: when arriving at a port-of-entry on the United States-Canada land border; or, when transiting through the United States as part of the Canadian government's effort to remove the alien to a third country. In either scenario, the rule provides asylum officers with authority to make basic, threshold screening determinations about how the Agreement applies to the alien. Although additional costs may be incurred as part of the Safe Third Country Agreement between the United States and Canada, the costs discussed in the Executive Order 12866 are limited to those costs arising under the two scenarios outlined in the rule and not the cost impact of the overall Agreement between the two countries.

The Agreement provides for a threshold determination to be made concerning which country will assume responsibility for processing claims of asylum seekers. This rule only clarifies the threshold screening determination for a United States asylum officer when determining whether an alien should be returned to Canada. It is unclear how many individuals will seek asylum in the United States from Canada. Similarly, the Agreement permits Canada to return to the United States certain asylum seekers attempting to enter Canada from the United States at a land border port-of-entry. The Department does not know how many asylum seekers Canada will return to the United States. As discussed in the proposed rule and above, individuals returned from Canada to the United States will be in the same position as they would be in had they not sought entry in Canada. This analysis is beyond the purview of the rule. However, the Department will continue to monitor the costs associated with handling asylum seekers at land border ports-of-entry.

The Department recognizes that there have been pre-existing periodic costs associated with the departure of aliens from the United States to Canada for purposes of seeking asylum, particularly during the period in which the National Security Entry-Exit Registration System (NSEERS) was operating. These costs arose when, during a period of increased attempted migration to Canada from the United States, the Government of Canada decided not to admit asylum seekers until they could be scheduled for interview appointments. The Department recognizes that many of these costs were directly borne by aliens, State and local agencies, and nonprofit organizations. While costs similar to those incurred in the past may be borne by aliens attempting to enter Canada before the

Agreement becomes effective, they are not affected by the terms of this rule. However, the Department will continue to monitor the costs associated with handling asylum seekers at land border ports-of-entry.

The rule benefits the United States because it enhances the ability of the United States and Canada to manage, in an orderly fashion, asylum claims brought by persons crossing our common border. By implementing the Agreement, the rule furthers U.S. and Canadian goals, as outlined in the 30-Point Action Plan under the Smart Border Declaration signed by Secretary Ridge and former Canadian Deputy Foreign Minister John Manley, to ensure a secure flow of people between the two countries while preserving asylum seekers' access to a full and fair asylum process in a manner consistent with U.S. law and international obligations.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

The regulations at 8 CFR 208.30 require that an asylum officer conduct a threshold screening interview to determine whether an alien is ineligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act (8 U.S.C. 1158(a)(2)(A)). The threshold screening interview is considered an information collection under the Paperwork Reduction Act (PRA) of 1995. On March 8, 2004, the Department of Homeland Security, published a proposed rule in the **Federal Register** to provide USCIS asylum officers' with authority to make threshold determinations concerning applicability of the Agreement Between the Government of the United States of America and the Government of Canada regarding asylum claims made in transit and at land border ports-of-entry. In the Supplementary Information in the proposed rule under the heading "Paperwork Reduction Act" the USCIS

published a 60 day notice encouraging the public to submit comments specifically to the information collection requirements contained in 8 CFR 208.30. The USCIS did not receive any comments on the information collection requirements. Accordingly, the USCIS has submitted an information collection package to OMB in accordance with the PRA and OMB has approved this information collection.

Family Assessment Statement

The Department has reviewed this rule and determined that it may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105-277, Div. A. Accordingly, the Department has assessed this action in accordance with the criteria specified by section 654(c)(1). In this rule, an alien arriving at a land border port-of-entry with Canada may qualify for an exception to the Safe Third Country Agreement, which otherwise requires individuals to seek protection in the country of last presence (Canada), by establishing a relationship to a family member in the United States ("anchor relative") who has lawful status in the United States, other than a visitor, or is 18 years of age or older and has an asylum application pending. This rule incorporates the Agreement's definition of "family member," which may be a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew. The "family member" definition was intended to be broad in scope to promote family unity. This rule thereby strengthens the stability of the family by providing a mechanism to reunite separated family members in the United States.

In some cases, the rule will have a negative effect resulting in the separation of family members. The Agreement's exceptions, as expressed in the rule, require an anchor relative to have either lawful status in the United States, other than visitor, or else to be 18 years of age or older and have a pending asylum application. Family members who do not meet one of these conditions, therefore, would be separated under the rule. However, this rule's definition of "family member," which derives from the exceptions to the Agreement, is more generous than other family-based immigration laws, which require the anchor relative to have more permanent status in the United States (such as that of citizen, lawful permanent resident, asylee or refugee) and which have a more restricted list of the type of family relationships that can be used to

sponsor someone for immigration to the United States (although, unlike those laws, this Agreement provides only an opportunity to apply for protection and does not directly confer an affirmative immigration benefit). Under this rule, family members will be able to reunite even if the anchor relative's status is less than permanent in the United States. Further, on a case-by-case basis, the Agreement's "public interest" exception can be used to minimize this cost.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

■ 2. Section 208.4 is amended by adding a new paragraph (a)(6) to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) * * *

(6) *Safe Third Country Agreement.* Asylum officers have authority to apply section 208(a)(2)(A) of the Act, relating to the determination that the alien may be removed to a safe country pursuant to a bilateral or multilateral agreement, only as provided in 8 CFR 208.30(e). For provisions relating to the authority of immigration judges with respect to section 208(a)(2)(A), see 8 CFR 1240.11(g).

* * * * *

■ 3. Section 208.30 is amended by:
a. Redesignating paragraph (e)(4) as (e)(7);

b. Redesignating paragraph (e)(2) as paragraph (e)(4), and by revising newly redesignated paragraph (e)(4);

c. Redesignating paragraph (e)(3) as paragraph (e)(5) and by revising newly redesignated paragraph (e)(5);

d. Adding new paragraphs (e)(2), (e)(3), and (e)(6);

e. Revising paragraph (g)(2)(i), and by f. Removing paragraphs (g)(2)(iii) and (g)(2)(iv).

The additions and revisions read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

* * * * *

(e) * * *

(2) An alien will be found to have a credible fear of persecution if there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, the alien can establish eligibility for asylum under section 208 of the Act or for withholding of removal under section 241(b)(3) of the Act.

(3) An alien will be found to have a credible fear of torture if the alien shows that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture, pursuant to 8 CFR 208.16 or 208.17.

(4) In determining whether the alien has a credible fear of persecution, as defined in section 235(b)(1)(B)(v) of the Act, or a credible fear of torture, the asylum officer shall consider whether the alien's case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.

(5) Except as provided in paragraph (e)(6) of this section, if an alien is able to establish a credible fear of persecution or torture but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the Act, or to withholding of removal contained in section 241(b)(3)(B) of the Act, the Department of Homeland Security shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's claim, if the alien is not a stowaway. If the alien is a stowaway, the Department shall place the alien in proceedings for consideration of the alien's claim pursuant to 8 CFR 208.2(c)(3).

(6) Prior to any determination concerning whether an alien arriving in the United States at a U.S.-Canada land border port-of-entry or in transit through

the U.S. during removal by Canada has a credible fear of persecution or torture, the asylum officer shall conduct a threshold screening interview to determine whether such an alien is ineligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act and subject to removal to Canada by operation of the Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries ("Agreement"). In conducting this threshold screening interview, the asylum officer shall apply all relevant interview procedures outlined in paragraph (d) of this section, provided, however, that paragraph (d)(2) of this section shall not apply to aliens described in this paragraph. The asylum officer shall advise the alien of the Agreement's exceptions and question the alien as to applicability of any of these exceptions to the alien's case.

(i) If the asylum officer, with concurrence from a supervisory asylum officer, determines that an alien does not qualify for an exception under the Agreement during this threshold screening interview, the alien is ineligible to apply for asylum in the United States. After the asylum officer's documented finding is reviewed by a supervisory asylum officer, the alien shall be advised that he or she will be removed to Canada in order to pursue his or her claims relating to a fear of persecution or torture under Canadian law. Aliens found ineligible to apply for asylum under this paragraph shall be removed to Canada.

(ii) If the alien establishes by a preponderance of the evidence that he or she qualifies for an exception under the terms of the Agreement, the asylum officer shall make a written notation of the basis of the exception, and then proceed immediately to a determination concerning whether the alien has a credible fear of persecution or torture under paragraph (d) of this section.

(iii) An alien qualifies for an exception to the Agreement if the alien is not being removed from Canada in transit through the United States and

(A) Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada;

(B) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who has been granted asylum, refugee, or other lawful status in the United States, provided, however, that this exception shall not apply to an alien whose relative maintains only nonimmigrant visitor status, as defined in section

101(a)(15)(B) of the Act, or whose relative maintains only visitor status based on admission to the United States pursuant to the Visa Waiver Program;

(C) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who is at least 18 years of age and has an asylum application pending before U.S. Citizenship and Immigration Services, the Executive Office for Immigration Review, or on appeal in federal court in the United States;

(D) Is unmarried, under 18 years of age, and does not have a parent or legal guardian in either Canada or the United States;

(E) Arrived in the United States with a validly issued visa or other valid admission document, other than for transit, issued by the United States to the alien, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States; or

(F) The Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the alien to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.

(iv) As used in 8 CFR 208.30(e)(6)(iii)(B), (C) and (D) only, "legal guardian" means a person currently vested with legal custody of such an alien or vested with legal authority to act on the alien's behalf, provided that such an alien is both unmarried and less than 18 years of age, and provided further that any dispute with respect to whether an individual is a legal guardian will be resolved on the basis of U.S. law.

* * * * *

(g) * * *

(2) * * *

(i) Immigration judges will review negative credible fear findings as provided in 8 CFR 1208.30(g)(2).

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 4. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227.

■ 5. Section 212.5 is amended by adding a new paragraph (e)(2)(iii) to read as follows:

§ 212.5 Parole of aliens into the United States.

* * * *

(e) * * *

(2) * * *

(iii) Any alien granted parole into the United States so that he or she may transit through the United States in the course of removal from Canada shall have his or her parole status terminated upon notice, as specified in 8 CFR 212.5(e)(2)(i), if he or she makes known to an immigration officer of the United States a fear of persecution or an intention to apply for asylum. Upon termination of parole, any such alien shall be regarded as an arriving alien, and processed accordingly by the Department of Homeland Security.

* * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 6. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32.7.

■ 7. Section 235.3 is amended by revising the first sentence of paragraph (b)(4) to read as follows:

§ 235.3 Inadmissible aliens and expedited removal.

* * * *

(b) * * *

(4) * * * If an alien subject to the expedited removal provisions indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by an asylum officer in accordance with 8 CFR 208.30. * * *

* * * *

Dated: November 19, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–26239 Filed 11–26–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE**8 CFR Parts 1003, 1208, 1212, 1235, and 1240**

[EOIR No. 142F; AG Order No. 2740–2004]

RIN 1125–AA46

Asylum Claims Made by Aliens Arriving From Canada at Land Border Ports-of-Entry

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without substantial change the proposed rule to implement the December 5, 2002, Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries (“bilateral Agreement with Canada” or “Agreement”). The Agreement bars certain aliens who are arriving from Canada, or in transit during removal from Canada, from applying for asylum and related protections in the United States. In the context of expedited removal proceedings, the Department of Homeland Security (“DHS”) will conduct a threshold screening interview to determine whether the Agreement applies to an alien. The DHS final rule is published elsewhere in this **Federal Register**. The role of the Executive Office of Immigration Review (“EOIR”) is limited to an evaluation of how the Agreement applies to aliens whom DHS has chosen to place in removal proceedings.

DATES: This rule is effective December 29, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Beth Keller, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:**Introduction**

On March 8, 2004, the Department of Justice (“Department”) and DHS promulgated proposed rules implementing the Agreement. See 69 FR 10627 (March 8, 2004). This final rule adopts the Department’s proposed rule without significant change. The proposed rule described procedures implementing the Agreement in removal proceedings under section 240 of the Immigration and Nationality Act (“Act”).

The Agreement covers certain aliens who are arriving at U.S.-Canada land border ports-of-entry or arriving in

transit through the U.S. during removal by the Canadian government and who express a fear of persecution or torture. Subject to several specific exceptions, the Agreement provides for the United States to return such arriving aliens to Canada, the country of last presence, to seek protection under Canadian law, rather than applying in the United States for the protective claims of asylum, withholding of removal, or protection under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“Convention Against Torture” or “CAT”). Therefore, aliens covered by the Agreement will be allowed to seek asylum and related protections in one country or the other, but not in both.

The Agreement specifically recognizes that Canada offers a generous system of refugee protection, and has a tradition of assisting refugees and displaced persons abroad. The Agreement also ensures that asylum seekers returned to Canada will have access to a full and fair procedure for determining their protection claims before they can be removed to a third country.

As implemented in the United States, the Agreement will operate as follows. First, a United States Citizenship and Immigration Services (“USCIS”) asylum officer will conduct a threshold screening interview in the context of expedited removal proceedings. The DHS final rule, published elsewhere in this edition of the **Federal Register**, and the DHS proposed rule, published at 69 FR 10620 (March 8, 2004), address this process in more detail. To summarize, the asylum officer will conduct a threshold screening interview to determine whether an arriving alien who is subject to the Agreement meets any of its exceptions, or whether the alien should be returned to Canada for consideration of his or her protection claims in that country.

If the asylum officer determines that the alien qualifies for an exception to the Agreement, the asylum officer will then proceed immediately to a consideration of whether the alien has a credible fear of persecution or torture if returned to his or her country. The existing credible fear process of section 235(b) of the Act will apply to those aliens, including the potential for review by an immigration judge.

On the other hand, if the asylum officer determines that an arriving alien does not meet an exception to the Agreement and should be returned to Canada for consideration of his or her asylum or other protection claims under Canadian law, the asylum officer’s

decision will not be reviewed by an immigration judge. These aliens are not eligible to apply for asylum via the credible fear process, by operation of the Agreement and section 208(a)(2)(A) of the Act.

Finally, this rule recognizes that DHS may choose, in certain cases, to place an arriving alien into removal proceedings under section 240 of the Act, rather than expedited removal under section 235 of the Act. The immigration judges will apply the terms of the Agreement with respect to the alien. In that case, if the immigration judge determines that the Agreement is applicable and orders the alien removed, the alien will be returned to Canada to seek protection under Canadian law. This rule also provides that aliens whom DHS places in removal proceedings and who are ineligible to apply for protection by operation of the Agreement may, nevertheless, apply for any other form of relief from removal for which they may be eligible. See 8 CFR 1240.11(g)(4).

Public Comments

The public was provided a 60-day comment period that ended on May 7, 2004. The Department received comments from the United Nations High Commissioner for Refugees, three non-governmental organizations, and an interested individual. The comments covered a broad range of issues, and included arguments for both expanding the rule, and for making it more restrictive. The comments also included some general opposition to the Agreement itself.¹ The DHS final rule published elsewhere in this edition of the **Federal Register** addresses public comments received in response to the DHS proposed rule.

Several commenters asserted that there should be a provision permitting independent review of an asylum officer's negative threshold determination, or that the evaluation should be conducted as part of the credible fear determination, which would include review by an immigration judge. In contrast, one commenter took the position that positive threshold determinations should be automatically reviewed by an immigration judge, but there should be no review of negative determinations. Other comments related to the procedures to be applied when the Agreement is applied in removal proceeding under section 240 of the Act.

Several commenters were concerned about precluding aliens covered by the Agreement from applying for withholding of removal and protection under the Convention Against Torture. The commenters also raised issues related to the administration of the Agreement's exceptions, procedures for asylum seekers returned to the United States under the Agreement, requests for reconsideration of decisions made by the Canadian government to return asylum seekers to the United States, the inadmissibility of aliens subsequent to removal to Canada, and the possibility of accepting motions to reopen or reconsider filed by asylum seekers after they are returned to Canada.

These and other comments about the proposed rule are summarized by subject matter and responded to below. After careful review and consideration of all comments, the Department will retain the structure of the proposed rule without modification except for a few minor technical changes and corrections.

A. The Threshold Screening Interview

As outlined in the DHS proposed rule and summarized above, the Agreement will be implemented by DHS in expedited removal proceedings by means of a "threshold screening interview." During this interview, an asylum officer will question aliens who are subject to the Agreement to determine whether they meet one of the Agreement's exceptions. See 8 CFR 208.30(e)(6). Aliens in expedited removal proceedings who do not meet one of the exceptions will be returned to Canada without initiation of the credible fear process or involvement of the Department's immigration judges. Several commenters asserted that the asylum officer's decision in the threshold screening interview should be subject to independent review by an immigration judge. The Department declines to adopt this suggestion.

In the supplementary information to the Department's proposed rule, the Department explained that, compared to the myriad of issues that can arise in a credible fear interview, the matters in a threshold screening interview are narrow in scope. See 69 FR at 10630. The commenters contest this characterization, and assert that many complicated issues could arise. Specifically, the commenters gave examples of age determination of "unaccompanied minors," and of whether an asylum seeker has a qualifying relative under the relevant Agreement exceptions.

The Department remains confident that asylum officers will be able to

adequately address the issues that could arise during the threshold screening interview, and that further review by an immigration judge is unnecessary, regardless of whether the ultimate determination is positive or negative. Asylum officers are trained personnel who must regularly make factual and legal determinations. Additionally, the DHS final rule has been amended to require that a supervisory asylum officer must concur in any negative threshold determination by an asylum officer. These requirements ensure a comprehensive review at the screening level, and one which comports with due process.

Relatedly, several commenters asserted that any determination under the Agreement should be part of the credible fear interview process, and that the proposed screening process would controvert the existing statutory and regulatory scheme governing the credible fear process. The commenters argue that an assessment under the Agreement is really a question of eligibility for asylum and related relief, and, under current 8 CFR 208.30(e), once credible fear is established, any question of eligibility for relief must occur in removal proceedings.

The Department has concluded that the threshold screening interview is not inconsistent with the Immigration and Nationality Act. See 8 U.S.C. 1158(d)(5)(B). The threshold factual determinations under the Agreement—e.g., whether the alien is under the age of 18 or has a qualifying relative in the United States—relate only to the applicability of the terms of the Agreement, which is expressly authorized by section 208(a)(2)(A) of the Act, not to a determination whether the alien has suffered past persecution or faces future persecution or torture if returned to his or her country. In short, the purpose of the determinations under the Agreement is not to evaluate the merits of the alien's claims for asylum or other protections, but instead relate to which forum will consider the merits of those claims. There is no requirement under the Agreement that an immigration judge review a decision that an alien is ineligible to apply for asylum in the United States. An asylum officer's determination that the alien should be returned to Canada under the Agreement means that the alien will then pursue his or her protection claims in Canada under Canadian law rather than in the United States, pursuant to section 208(a)(2)(A). Although the current version of the regulations referenced by commenters does not permit asylum officers to apply the asylum bars during the credible fear

¹ The Department notes that the public was provided an opportunity to express their views about the proposed Agreement during a meeting at the former Immigration and Naturalization Service. See 67 FR 46212 (July 12, 2002). The Agreement is now final.

process, the threshold screening process created in the DHS rules is separate and distinct from the credible fear process. Further, with respect to this concern about the inconsistency between the "threshold screening interview" and existing regulatory provisions, the Department and DHS rules, after notice to the public and opportunity for comment, are amending these existing regulations under authorized rulemaking procedures.

The Department also notes that, under the DHS rule, once an alien satisfies any of the exceptions under the Agreement, an asylum officer will then make a credible fear determination relating to the alien's protection claims. *See* 8 CFR 208.30(e)(6) and 235.3(b)(4). As with any other credible fear determination, the alien will be able to seek a review of any adverse decision by an immigration judge.

The commenters also refer to section 235(b)(1)(A)(ii) of the Act, which states that immigration officers shall refer an arriving alien for a credible fear interview before an asylum officer if that alien indicates an intention to apply for asylum or expresses a fear of persecution. The Act generally requires that an arriving alien be given a credible fear interview if the alien expresses either an intention to apply for asylum under section 208 of the Act or a fear of persecution. In particular, section 208(a)(1) of the Act recognizes the right of an arriving alien to present a claim for asylum, specifically by means of the credible fear process under section 235(b) of the Act. However, section 208(a)(2)(A) of the Act provides that the right to apply for asylum as stated in section 208(a)(1) of the Act shall not apply in the case of an alien who can be removed to a safe third country pursuant to a bilateral or multilateral agreement. That is, aliens who can be removed to a safe third country under this process do not have a right to apply for asylum in the United States. Since, as noted in section 208(a)(1) of the Act, the credible fear process is the means by which arriving aliens present their claim for asylum, this necessarily means that aliens who can be removed to a safe third country do not have a statutory right to a credible fear review. Accordingly, an arriving alien who is subject to the bilateral Agreement with Canada, and does not qualify for an exception to that Agreement, would not have the right to present a claim for asylum through the credible fear process, including immigration judge review. Rather, in accord with the Act, the alien would be returned to Canada so that Canadian officials can consider

the merits of his or her protection claims under Canadian law.

Finally, as the Department discussed in the supplementary information to the proposed rule, permitting immigration judge review of an asylum officer's determination to return the alien to Canada under the Agreement would likely result in prolonging the detention of arriving aliens who otherwise could be returned promptly to Canada to pursue their asylum claims there. *See* 69 FR at 10630.

For the foregoing reasons, the Department believes that the threshold screening interview to determine if an arriving alien should be returned to Canada should remain separate from the credible fear process, which relates to the merits of an alien's claims of past or future persecution. The Department acknowledges the legal sufficiency of the threshold screening interview approach specified in the DHS rule and declines to adopt the commenters' suggested changes to this approach.

B. Consideration of the Agreement in Removal Proceedings

One commenter sought clarification as to whether certain provisions normally applicable in removal proceedings would apply to arriving aliens whom DHS has chosen to place in removal proceedings. The Department notes that individuals placed in removal proceedings pursuant to section 240 of the Act who are subject to the terms of the Agreement will be subject to the usual statutory and regulatory provisions applicable in removal proceedings before an immigration judge.

The commenter specifically requested the issuance of regulatory or field guidance for the immigration judges to make clear that a reasonable request for a continuance to obtain evidence for Agreement-related issues should be granted. The Department declines to take this action. The regulations governing removal proceedings provide that the immigration judge has the discretion to deny a request for a continuance, or to grant one when "good cause" is shown. *See* 8 CFR 1003.29. This rule would apply to any removal proceeding where the applicability of the Agreement is at issue. The parties therefore have an established procedure by which to make a request for a continuance, and the immigration judge will adjudicate such requests on a case-by-case basis.

One commenter questioned whether individuals placed in removal proceedings will be permitted to appeal the findings of an immigration judge under the Agreement to the Board of

Immigration Appeals ("Board"). The Board has jurisdiction to review appeals from all decisions of immigration judges in removal proceedings. *See* 8 CFR 1003.1(b)(3) and 1240.15. This would include a decision of an immigration judge concerning the applicability of the Agreement.

C. Withholding of Removal and Convention Against Torture Claims

Several commenters challenged the provision of the proposed rule that states that aliens who are ineligible to apply for asylum in the United States under the Agreement are also precluded from applying for withholding of removal or protection under the Convention Against Torture. The commenters assert that section 208(a)(2)(A) of the Act only provides for safe third country agreements as a bar to asylum, and does not extend to withholding of removal or protection under CAT.

As the Department pointed out in the supplementary information to the proposed rule, there is nothing in section 241(b)(3)(A) of the Act, or in Article 3 of CAT, and their respective implementing regulations, which prevents the United States from removing an alien to a safe third country so that the alien can pursue his or her protection claims in that country. *See* 69 FR at 10631. In this discussion, we explained that the specific terms of the Agreement are consistent with the United States' obligation not to return an individual to a country where the person would face persecution or torture. *See id.*

The Department agrees that withholding of removal under section 241(b)(3)(A) of the Act, and withholding or deferral of removal under CAT, are mandatory forms of relief for aliens who establish that they are entitled to such relief. However, it is essential to keep in mind that, in order to be entitled to such relief, an alien must demonstrate that it is more likely than not that he or she would be persecuted, or tortured, in the particular removal country. That is, withholding or deferral of removal relates only to the country as to which the alien has established a likelihood of persecution or torture—the alien may nonetheless be returned, consistent with CAT and section 241(b)(1) and (b)(2) of the Act, to other countries where he or she would not face a likelihood of persecution or torture.

In the context of aliens covered by the Agreement, the United States and Canada have acknowledged that Canada is a safe third country where aliens will have resort to its asylum system, and where they will have access to a full and

fair procedure for determining their claims for protection against persecution or torture if returned to any country in which they fear such harm. Canada is a safe third country, and in the absence of a showing that an alien would face the likelihood of persecution or torture in Canada, the United States clearly would not be in violation of its international obligations (as those obligations are codified in the Act and its implementing regulations) by returning such an alien to Canada.² Thus this rule is fully consistent with the legal requirements under section 241(b)(3) of the Act and CAT.

The commenters also assert that Canada's mere accession to CAT is an insufficient basis to exclude aliens from seeking CAT relief, arguing that the Department and DHS rules somehow set a precedent for a "safe country of origin" list that is a step beyond the safe third country concept. They argue that adjudication of refugee claims should not be precluded based upon a blanket determination that a country is "safe." In support of their argument, the commenters state that aliens presently seek CAT protection from countries that are signatories to CAT, mentioning those countries by name.

The Department is not persuaded by this line of argument, because the provisions of this rule only apply with respect to a safe third country agreement that satisfies all of the requirements of section 208(a)(2)(A) of the Act. At present the only such Agreement is between the United States and Canada. The Agreement was created in recognition of that country's relationship with the United States, and other specific factors. These include Canada's generous refugee system, tradition of assisting refugees and displaced persons, and agreement to provide each refugee status claimant access to a full and fair refugee status determination procedure as a means to guarantee the protections of the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, and the Convention Against Torture.

Additionally, one commenter argued that returning an alien to Canada under the Agreement would constitute

"indirect" refoulement in violation the United States' international obligation to protect refugees. The commenter argues that returning the asylum seeker to Canada may indirectly constitute refoulement if Canadian authorities subsequently send the alien back to the place of feared persecution. This rule, however, only deals with returning an individual to Canada pursuant to the terms of the Agreement, where the alien will have a full opportunity to pursue their claims for protection. As previously stated, returning an alien to a safe third country is fully consistent with the United States' obligations not to return an individual to a country where the person would face persecution or torture.

D. Exceptions to the Agreement

One commenter expressed several specific concerns about the exceptions provided for by the Agreement, and these suggestions will be addressed in turn. The Department initially points out that the exceptions to the Agreement are found in the DHS final rule at 8 CFR 208.30(e)(6)(iii), and are incorporated by reference into this final rule at 8 CFR 1240.11(g)(3). The DHS rule provides a detailed discussion of the exceptions.

1. Family Unity Provisions

The commenter recommended that under the family unity provisions, the term "spouse" should be interpreted to include a common-law spouse. DHS has not expanded the definition of spouse; similarly, the Department will not undertake this action. The Department does point out that the Act and case law have addressed the definition of "spouse" under the immigration law. See, e.g., section 101(a)(35) of the Act; *Matter of H-*, 9 I&N Dec. 640 (BIA 1962) (recognizing the general rule that the validity of a marriage is determined by the law of the place where it is contracted or celebrated). The parties are free to present any proper arguments regarding the interpretation of the term "spouse" before the immigration judge in the course of removal proceedings.

The commenter also recommended that "de facto" relatives be considered eligible "anchor" relatives if the individual serves or has served as the alien's primary source of emotional or material support, regardless of their relationship to the alien. As explained in the supplementary information to the DHS final rule, the definition of "family member" was the subject of much negotiation in the context of the Agreement, and DHS has declined to further expand the definition in its final rule. The Department accordingly declines to make this change.

On the other hand, one commenter stated that the family unity exceptions in the Agreement are too broad, and that they should include a provision requiring family members to assume full financial responsibility for any alien falling under an exception. The commenter also expressed other objections to the exceptions, arguing for example that minors should not be treated any differently than adults. The Department declines to narrow or limit any exceptions to the Agreement, just as the Department has declined to expand upon them.

2. Valid Visa Exception

One commenter expressed concern about the exception for asylum seekers who arrive in the United States pursuant to a validly issued United States visa or other valid admission document. The commenter effectively noted that DHS may consider such documents, even if genuine, to support a charge of fraud in violation of section 212(a)(6)(C) of the Act if they were procured by applicants whose true intentions were to enter the United States to apply for asylum. The commenter sought clarification as to whether such United States visas would be considered "validly issued" under the exception to the Agreement. The DHS has not amended its rule in this area; however, the supplementary information to the DHS final rule states that for the limited purposes of applying the exception to the Agreement, USCIS will issue and apply operational guidance interpreting the term "validly issued" without regard to the asylum seeker's subjective intent. If an alien is placed into removal proceedings under section 240 of the Act, the parties may raise any issues concerning the interpretation of this exception before the immigration judge in the course of removal proceedings. The Department notes that the factual basis for a possible finding of inadmissibility under section 212(a)(6)(C) of the Act will be scrutinized, because such a finding may permanently bar an alien from admission. See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994).

3. Public Interest Exception

One commenter raised several issues concerning the application of the public interest exception for aliens in removal proceedings. For example, the commenter recommended that minors who have a parent or legal guardian in the United States and do not meet any of the specific exceptions to the Agreement should be considered under the public interest exception. The DHS rule provides that an asylum officer may

² The commenters do not appear to be challenging the designation of Canada as a safe third country. We note that Article 2 of the Agreement provides that the Agreement does not apply to refugee claimants who are citizens of Canada or the United States or to aliens who, not having a country of nationality, are habitual residents of Canada or the United States. If an alien has any additional arguments about why return to Canada is not appropriate under the Agreement, they could be raised with DHS in the context of the public interest exception.

decide in the public interest to allow an alien covered by the Agreement to pursue a claim for asylum or other protection even though the alien does not meet a specific exception to the Agreement. If the alien is in removal proceedings, DHS may file a written notice of its decision before the immigration judge. *See* 8 CFR 240.11(g)(3). The Attorney General has decided that the decision to invoke this authority will be left solely within the discretion of DHS and will not be within the discretion of the immigration judges to review or adjudicate in the first instance. The Department therefore declines to expand or amend the public interest definition as has been suggested by the commenter. We note that the supplementary information to the DHS rule concluded that the public interest exception is best administered through operational guidance and on a case-by-case basis. In addition, DHS has stated in the preamble to its rule that it will be sensitive to the unique issues facing minors and will proceed carefully in those cases.

The commenter also recommended that the proposed rule establish a procedure between the Department and DHS to ensure that DHS fully considers the application of the public interest exception in those cases being adjudicated before an immigration judge. The Department declines to accept the commenter's recommendation. This rule provides that an immigration judge may consider asylum issues regarding an alien who otherwise would be barred by the Agreement if DHS notifies the immigration judge that it has invoked the public interest exception. If an issue arises in removal proceedings related to the public interest exception, and it is within the jurisdiction of the immigration judge to address, the parties may raise the matter during the proceedings under the existing rules.

E. Procedures for Asylum Seekers Returned to the United States

One commenter sought an explanation as to how asylum seekers returned to the United States from Canada under the Agreement will be received and processed. The commenter understood that these returnees, without lawful status in the United States, will be processed as if apprehended in the interior of the United States and thus will be placed in removal proceedings, rather than being treated as arriving aliens subject to expedited removal.

The manner in which asylum seekers returned to the United States from Canada under the Agreement will be received and processed is within the

province of DHS. *See, e.g., Matter of Bahta*, 22 I&N Dec. 1381, 1391 (BIA 2000) (addressing the former Immigration and Naturalization Service's fundamental authority to exercise procedural discretion on whether to commence removal proceedings). The supplementary information to the DHS final rule provides a discussion of how these asylum seekers will be received and processed.

The commenter recommended that, if DHS decides to detain an asylum seeker returned under the Agreement, immigration judges should either order the release of the individual or set a low bond if the person does not pose a danger to the community and his or her identity has been established.

The Department declines to adopt special rules in this situation. In general, an alien whom DHS has chosen to place in removal proceedings before an immigration judge will be subject to the established procedures governing custody and bond determinations. *See* 8 CFR 236.1, 1003.19, and 1236.1(d). Those procedures do not apply, however, with respect to arriving aliens whom DHS has placed in expedited removal under section 235 of the Act. *See also* 8 CFR 235.3(c) (arriving aliens remain subject to detention as arriving aliens even if they are placed into removal proceedings under section 240 of the Act, but may be paroled by DHS). An arriving alien's custody status is not subject to review by an immigration judge. *See* 8 CFR 1003.19(h)(2)(i)(B); *Matter of Oseiwusu*, 22 I&N Dec. 19 (BIA 1998).

The commenter further expressed concern about a possible surge of asylum seekers to the United States-Canadian ports-of-entry before the implementation of the Agreement, which would result in the Canadian authorities being overwhelmed with requests and having to "direct back" aliens to the United States with re-scheduled Canadian interviews. This has reportedly happened in the past, and one consequence was that asylum seekers were detained in the United States and unable to return to Canada for their interviews. The commenter recommended that, with respect to asylum seekers placed in removal proceedings "as a result of a Canadian direct-back, and absent any serious security concerns," immigration judges either release these individuals on their own recognizance or set a low bond so that they can return to Canada to attend their scheduled hearings. The commenter also recommended that the removal proceedings of such individuals be administratively closed

while they pursue their refugee claims in Canada.

The Department declines to accept the commenter's recommendations. Because the Agreement does not contemplate that special consideration be given to such aliens, DHS will in the first instance decide how to deal with these individuals in the exercise of its enforcement discretion. If the aliens are placed into removal proceedings before an immigration judge, they will have recourse to existing procedures, including procedures for custody and bond redeterminations, and requests for administrative closure. For a more complete discussion of how these aliens may be processed should this situation arise, *see* the **SUPPLEMENTARY INFORMATION** section in the DHS final rule published elsewhere in this **Federal Register**.

F. Reconsideration by Canada for Asylum Seekers Returned to the United States

One commenter has encouraged Canada to establish a mechanism to reconsider cases, based on new evidence or changed circumstances, after a person has been returned to the United States under the Agreement. The commenter seeks an explanation as to how the Department would assist Canadian authorities if such a reconsideration was sought. The commenter specifically recommends that, in the event Canadian authorities seek the alien's presence at the United States-Canadian border to reconsider a claim, the immigration judge should order the release or appropriately lower the bond of that alien, and administratively close the alien's case if he or she is admitted into Canada to pursue a refugee claim.

The Agreement does not address the issue of reconsideration of claims after they are adjudicated by either country. The Department will not speculate about what future developments in this area might occur. If Canadian officials do seek to reconsider the case of an alien who is in removal proceedings, the initial determination on how to respond would be made by DHS, not by the immigration judge. The parties to the proceedings may present their positions concerning the alien's detention in the course of any custody review properly before the immigration judge. Further, any request for administrative closure of a removal proceeding should be addressed on a case-by-case basis. *See generally Matter of Gutierrez*, 21 I&N Dec. 479, 480 (BIA 1996) (administrative closure is used to temporarily remove a case from the docket, and is not permitted if opposed by either party).

The Department therefore declines to accept the commenter's recommendation.

G. Inadmissibility of Aliens Removed to Canada Under the Agreement

One commenter recommended that an alien who is returned to Canada under the Agreement should not subsequently be found inadmissible to the United States under section 212(a)(9)(A)(i) of the Act (providing that any alien who has been ordered removed under section 235(b)(1) of the Act, or at the end of removal proceedings under section 240 of the Act initiated upon the alien's arrival, is inadmissible for 5 years after the date of such removal).

The Department notes that the applicability of the Agreement does not change the fact that an alien has been ordered removed in the context of expedited removal proceedings or removal proceedings under section 240 of the Act. The Department finds no reason why section 212(a)(9)(A) of the Act, or any related provisions concerning aliens removed from the United States, would not apply in the case of an alien subject to the Agreement who is subject to expedited removal or is ordered removed to Canada by an immigration judge. As for other arriving aliens who have been ordered removed, the alien may seek DHS' consent to reapply for admission, pursuant to section 212(a)(9)(A)(iii) of the Act.

H. Requests for Reconsideration for Asylum Seekers Returned to Canada

One commenter recommended that the immigration judge and the Board permit requests by the individual asylum seeker, or the Canadian government, to reconsider a decision that an alien did not qualify for an exception to the Agreement, even after an alien has been removed to Canada.

The Department declines to accept the commenter's recommendation. The rules governing motions for reopening and reconsideration do not provide authority for third parties, such as the Canadian government, to file motions in proceedings before the immigration judge or the Board. See 8 CFR 1003.2(a) and 1003.23(b). In addition, the regulations provide that a motion to reopen or reconsider shall not be made by or on behalf of a person who is the subject of removal, deportation, or exclusion proceedings subsequent to his or her departure from the United States. See 8 CFR 1003.2(d) and 1003.23(b). The Department declines to make any amendments to these existing regulations.

The commenter requested that, at a minimum, individuals returned to Canada be permitted to resubmit asylum claims at the border, assuming they are not detained. With respect to an alien who already has been returned to Canada under the Agreement in order to seek protection under Canadian law, allowing such an alien to return once again to the United States and resubmit his or her asylum claims after being denied relief in Canada would undermine a general premise of the Agreement, which is that a covered alien is able to seek protection in one country or the other, but not both. If such an alien later returns to a U.S.-Canada land border port-of-entry seeking protection, he or she would remain subject to the Agreement and be removed to Canada again unless he or she was able to establish an exception to the Agreement.

I. Miscellaneous Issues

The Department also received several miscellaneous comments from one commenter who asserted that the United States has too many illegal immigrants (which drives up various costs), that battered women should stay in their own countries and work to change laws there, and that this rule is a "major rule" that will cost taxpayers millions of dollars.

In response, it is the Department's long-standing position that America is a welcoming country to persons who come here lawfully—whether they come here as immigrants or non-immigrants (including as refugees from human rights abuses)—and that lawful immigration benefits this country. However, the Department and other agencies of the United States government vigorously enforce American immigration laws against illegal immigration. The Department disagrees that this rule is a "major rule" under the Small Business Regulatory Enforcement Fairness Act or that it is "economically significant" within the meaning of Executive Order 12866. This rule simply implements a statutorily-authorized agreement between the United States and Canada that allocates responsibility between the United States and Canada for processing claims of certain asylum seekers.

Finally, the Department has added one minor conforming amendment at 8 CFR 1235.3(b)(4) to accommodate DHS' use of the threshold screening process in applying the Agreement. For more details concerning the DHS amendment to 8 CFR 235.3(b)(4), see the DHS final rule also appearing in this **Federal Register**. This rule makes a conforming amendment to 8 CFR 1235.3(b)(4) to

cross-reference the provisions of the DHS rule rather than restating them. The Department is also correcting a typographical error to the part heading of 8 CFR 1235.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individual aliens, as it relates to claims of asylum. It does not affect small entities, as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Attorney General has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been submitted to the Office of Management and Budget for review. In particular, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this regulation justify its costs.

The rule would implement a bilateral Agreement that allocates responsibility between the United States and Canada for processing claims of certain asylum-seekers, enhancing the two nations' ability to manage, in an orderly fashion,

asylum claims brought by persons crossing our common border. The rule applies to certain individuals in removal proceedings who apply for asylum. This rule simply adds another factor for immigration judges to consider in removal proceedings. Therefore, the “tangible” costs of this rulemaking to the U.S. Government are minimal. Applicants who are found to be subject to the bilateral Agreement with Canada will be returned to Canada to seek asylum, saving the U.S. Government the cost of adjudicating their asylum claims.

The cost to asylum-seekers who, under the rule, will be returned to Canada are the costs of pursuing an asylum claim in Canada, as opposed to the United States. There is no fee to apply for asylum in Canada and, under Canadian law, asylum-seekers are provided social benefits for which they are not eligible in the United States. Therefore, the tangible costs of seeking asylum in Canada are no greater than they are in the United States. The “intangible” costs to asylum-seekers who would be returned to Canada under the rule are the costs of potential separation from support networks they may be seeking to join in the United States. However, the Agreement contains broad exceptions based on principles of family unity that would allow many of those with family connections in the United States to seek asylum in the United States under existing regulations.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised

recordkeeping or reporting requirements.

Family Assessment Statement

The Attorney General has reviewed this regulation and assessed this action in accordance with the criteria specified by section 654(c)(1) of the Treasury General Appropriations Act, 1999, Public Law 105–277, Div. A. The Attorney General has determined that it will not affect family well-being as that term is defined in section 654.

The separate final rule published by the Department of Homeland Security explains that an alien arriving at U.S.-Canada land border port-of-entry may qualify for an exception to the bilateral Agreement with Canada, which otherwise requires individuals to seek protection in the country of last presence (Canada), by establishing a relationship to a family member in the United States who has lawful status in the United States, other than a visitor, or is 18 years of age or older and has an asylum application pending. The DHS proposed rule addresses issues relating to family well-being in connection with that rule.

This rule provides that the immigration judges will apply the definition of “family member” used in the Agreement and DHS rule, in those cases where DHS has chosen to place an alien who is subject to the Agreement into removal proceedings under section 240 of the Act. However, that is expected to occur only very rarely. In any other case, where DHS does not choose to place an arriving alien into removal proceedings under section 240 of the Act, this rule has no effect on family well-being, because the immigration judges will not be involved. DHS determinations made under the Agreement will not be reviewed by the Department of Justice.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, and Reporting and recordkeeping requirements.

8 CFR Part 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, and Reporting and recordkeeping requirements.

8 CFR Part 1235

Administrative practice and procedure, Aliens, Immigration, and Reporting and recordkeeping requirements.

8 CFR Part 1240

Administrative practice and procedure and Aliens.

■ Accordingly, chapter V of title 8 of the Code of Federal Regulations is amended as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386; 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 2. Section 1003.42 is amended by adding new paragraph (h) to read as follows:

§ 1003.42 Review of credible fear determinations.

* * * * *

(h) *Safe third country agreement.* (1) *Arriving alien.* An immigration judge has no jurisdiction to review a determination by an asylum officer that an arriving alien is not eligible to apply for asylum pursuant to a bilateral or multilateral agreement (the Agreement) under section 208(a)(2)(A) of the Act and should be returned to a safe third country to pursue his or her claims for asylum or other protection under the laws of that country. See 8 CFR 208.30(e)(6). However, in any case where an asylum officer has found that an arriving alien qualifies for an exception to the Agreement, an immigration judge does have jurisdiction to review a negative credible fear finding made thereafter by the asylum officer as provided in this section.

(2) *Aliens in transit.* An immigration judge has no jurisdiction to review any determination by DHS that an alien being removed from Canada in transit through the United States should be returned to Canada to pursue asylum claims under Canadian law, under the terms of a safe third country agreement with Canada.

* * * * *

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 3. The authority citation for part 1208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282.

■ 4. Section 1208.4 is amended by adding new paragraph (a)(6) to read as follows:

§ 1208.4 Filing the application.

* * * * *

(a) * * *

(6) *Safe third country agreement.* Immigration judges have authority to consider issues under section 208(a)(2)(A) of the Act, relating to the determination of whether an alien is ineligible to apply for asylum and should be removed to a safe third country pursuant to a bilateral or multilateral agreement, only with respect to aliens whom DHS has chosen to place in removal proceedings under section 240 of the Act, as provided in 8 CFR 1240.11(g). For DHS regulations relating to determinations by asylum officers on this subject, see 8 CFR 208.30(e)(6).

* * * * *

■ 5. Section 1208.30 is amended by:

■ a. Revising paragraphs (a) and (e); and by

■ b. Removing and reserving paragraphs (c), (d), (f), and (g)(1).

The revisions read as follows:

§ 1208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B), asylum officers have exclusive jurisdiction to make credible fear determinations, and the immigration judges have exclusive jurisdiction to review such determinations.

* * * * *

(e) *Determination.* For the standards and procedures for asylum officers in conducting credible fear interviews and in making positive and negative credible fear determinations, see 8 CFR 208.30. The immigration judges will review such determinations as provided in paragraph (g)(2) of this section and 8 CFR 1003.42.

* * * * *

PART 1212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 6. The authority citation for part 1212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103.

■ 7. Section 1212.5 is revised to read as follows:

§ 1212.5 Parole of aliens into the United States.

Procedures and standards for the granting of parole by the Department of Homeland Security can be found at 8 CFR 212.5.

PART 1235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 8. The authority citation for part 1235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note; 1103; 1183; 1201; 1224; 1225; 1226; 1228.

■ 9. The heading for part 1235 is revised to read as above.

■ 10. Section 1235.3 is amended by revising paragraph (b)(4) introductory text and paragraph (b)(4)(i) to read as follows:

§ 1235.3 Inadmissible aliens and expedited removal.

* * * * *

(b) * * *

(4) *Claim of asylum or fear of persecution or torture.* (i) The DHS regulations at 8 CFR 235.3(b)(4) provide for referring an alien to an asylum officer if the alien indicates an intention to apply for asylum or expresses a fear of persecution or torture or a fear of return to his or her country.

* * * * *

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 11. The authority citation for part 1240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; sec. 1101, Pub. L. 107–269, 116 Stat. 2135.

■ 12. Section 1240.11 is amended by adding a new paragraph (g), to read as follows:

§ 1240.11 Ancillary matters, applications.

* * * * *

(g) *Safe third country agreement.* (1) The immigration judge has authority to apply section 208(a)(2)(A) of the Act, relating to a determination that an alien

may be removed to a safe third country pursuant to a bilateral or multilateral agreement (Agreement), in the case of an alien who is subject to the terms of the Agreement and is placed in proceedings pursuant to section 240 of the Act. In an appropriate case, the immigration judge shall determine whether under the Agreement the alien should be returned to the safe third country, or whether the alien should be permitted to pursue asylum or other protection claims in the United States.

(2) An alien described in paragraph (g)(1) of this section is ineligible to apply for asylum, pursuant to section 208(a)(2)(A) of the Act, unless the immigration judge determines, by preponderance of the evidence, that:

(i) The Agreement does not apply to the alien or does not preclude the alien from applying for asylum in the United States; or

(ii) The alien qualifies for an exception to the Agreement as set forth in paragraph (g)(3) of this section.

(3) The immigration judge shall apply the applicable regulations in deciding whether the alien qualifies for any exception under the Agreement that would permit the United States to exercise authority over the alien's asylum claim. The exceptions under the Agreement are codified at 8 CFR 208.30(e)(6)(iii). The immigration judge shall not review, consider, or decide any issues pertaining to any discretionary determination on whether the alien should be permitted to pursue an asylum claim in the United States notwithstanding the general terms of the Agreement, as such discretionary public interest determinations are reserved to DHS. However, an alien in removal proceedings who is otherwise ineligible to apply for asylum under the Agreement may apply for asylum if DHS files a written notice in the proceedings before the immigration judge that it has decided in the public interest to allow the alien to pursue claims for asylum or withholding of removal in the United States.

(4) An alien who is found to be ineligible to apply for asylum under section 208(a)(2)(A) of the Act is ineligible to apply for withholding of removal pursuant to section 241(b)(3) of the Act and the Convention against Torture. However, the alien may apply for any other relief from removal for which the alien may be eligible. If an alien who is subject to section 208(a)(2)(A) of the Act is ordered removed, the alien shall be ordered removed to the safe third country in which the alien will be able to pursue his or her claims for asylum or

protection against persecution or torture
under the laws of that country.

Dated: November 22, 2004.

John Ashcroft,

Attorney General.

[FR Doc. 04-26238 Filed 11-26-04; 8:45 am]

BILLING CODE 4410-30-P



Federal Register

**Monday,
November 29, 2004**

Part IV

The President

**Proclamation 7848—National Family
Week, 2004**

**Proclamation 7849—Thanksgiving Day,
2004**

Presidential Documents

Title 3—**Proclamation 7848 of November 23, 2004****The President****National Family Week, 2004****By the President of the United States of America****A Proclamation**

Strong families are the foundation of our society. They provide stability for our citizens and instill responsibility and values in our children. During National Family Week, we underscore our commitment to supporting families and recognize the significance of family to our country.

Families have an important role in teaching our Nation's young people to understand the consequences of their actions and to recognize that the decisions they make today could affect the rest of their lives. In times of change, the family values of compassion, reverence, and integrity serve as steady guides. My Administration is standing with American families because children should have the opportunity to grow up in a stable home.

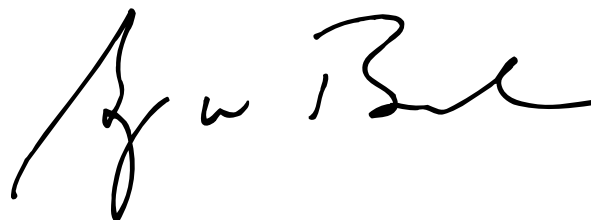
To help families, I was proud last month to sign the Working Families Tax Relief Act of 2004. Because of this legislation, more than 90 million Americans will have a lower tax bill next year. With more of their own money, parents can save for retirement or a child's education, or invest in a home or small business. For many American families, the most valuable commodity is extra time. I have called on the Congress to give individuals the voluntary options of comp-time and flex-time as an alternative to overtime pay so that they may better juggle the demands of work and family.

As we celebrate family this week, our Nation expresses its gratitude for the families whose loved ones serve in our Armed Forces. These brave military men and women are working to defend our country and spread freedom so that all Americans are safe and secure. We pray for them and for their families. And we will always remember the courage and selfless commitment of those who have paid the ultimate price for our security and freedom.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 21 through November 27, 2004, as National Family Week. I invite the States, communities, and all the people of the United States to join together in observing this week with appropriate ceremonies and activities to honor our Nation's families.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of November, in the year of our Lord two thousand four, and of the

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

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first name "G" being particularly large and stylized.

[FR Doc. 04-26442

Filed 11-26-04; 8:45 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 7849 of November 23, 2004

Thanksgiving Day, 2004

By the President of the United States of America

A Proclamation

All across America, we gather this week with the people we love to give thanks to God for the blessings in our lives. We are grateful for our freedom, grateful for our families and friends, and grateful for the many gifts of America. On Thanksgiving Day, we acknowledge that all of these things, and life itself, come from the Almighty God.

Almost four centuries ago, the Pilgrims celebrated a harvest feast to thank God after suffering through a brutal winter. President George Washington proclaimed the first National Day of Thanksgiving in 1789, and President Lincoln revived the tradition during the Civil War, asking Americans to give thanks with "one heart and one voice." Since then, in times of war and in times of peace, Americans have gathered with family and friends and given thanks to God for our blessings.

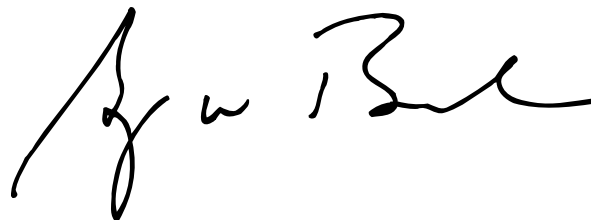
Thanksgiving is also a time to share our blessings with those who are less fortunate. Americans this week will gather food and clothing for neighbors in need. Many young people will give part of their holiday to volunteer at homeless shelters and food pantries. On Thanksgiving, we remember that the true strength of America lies in the hearts and souls of the American people. By seeking out those who are hurting and by lending a hand, Americans touch the lives of their fellow citizens and help make our Nation and the world a better place.

This Thanksgiving, we express our gratitude to our dedicated firefighters and police officers who help keep our homeland safe. We are grateful to the homeland security and intelligence personnel who spend long hours on faithful watch. And we give thanks for the Americans in our Armed Forces who are serving around the world to secure our country and advance the cause of freedom. These brave men and women make our entire Nation proud, and we thank them and their families for their sacrifice.

On this Thanksgiving Day, we thank God for His blessings and ask Him to continue to guide and watch over our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, November 25, 2004, as a National Day of Thanksgiving. I encourage all Americans to gather together in their homes and places of worship to reinforce the ties of family and community and to express gratitude for the many blessings we enjoy.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of November, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first name "George" and last name "Bush" clearly distinguishable.

[FR Doc. 04-26443

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McDonnell Douglas; comments due by 12-10-04; published 10-26-04 [FR 04-23930]

MD Helicopters, Inc.; comments due by 12-6-04; published 10-6-04 [FR 04-22264]

Raytheon; comments due by 12-7-04; published 10-22-04 [FR 04-23728]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:

Motor carrier, broker, freight forwarder, and hazardous materials proceedings; practice rules; comments due by 12-6-04; published 10-20-04 [FR 04-23393]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Gas and hazardous liquid pipelines direct assessment standards; comments due by 12-6-04; published 10-21-04 [FR 04-23551]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes and procedure and administration:

Stapled foreign corporation; definition and tax treatment; comments due by 12-6-04; published 9-7-04 [FR 04-20244]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-

6043. This list is also available online at http://www.archives.gov/federal_register/public_laws/public_laws.html.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made

available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

S. 2986/P.L. 108-415

To amend title 31 of the United States Code to increase the public debt limit. (Nov. 19, 2004; 118 Stat. 2337)

H.J. Res. 114/P.L. 108-416

Making further continuing appropriations for the fiscal

year 2005, and for other purposes. (Nov. 21, 2004; 118 Stat. 2338)

Last List November 9, 2004

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-052-00001-9)	9.00	4Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869-052-00002-7)	35.00	¹ Jan. 1, 2004
4	(869-052-00003-5)	10.00	Jan. 1, 2004
5 Parts:			
1-699	(869-052-00004-3)	60.00	Jan. 1, 2004
700-1199	(869-052-00005-1)	50.00	Jan. 1, 2004
1200-End	(869-052-00006-0)	61.00	Jan. 1, 2004
6	(869-052-00007-8)	10.50	Jan. 1, 2004
7 Parts:			
1-26	(869-052-00008-6)	44.00	Jan. 1, 2004
27-52	(869-052-00009-4)	49.00	Jan. 1, 2004
53-209	(869-052-00010-8)	37.00	Jan. 1, 2004
210-299	(869-052-00011-6)	62.00	Jan. 1, 2004
300-399	(869-052-00012-4)	46.00	Jan. 1, 2004
400-699	(869-052-00013-2)	42.00	Jan. 1, 2004
700-899	(869-052-00014-1)	43.00	Jan. 1, 2004
900-999	(869-052-00015-9)	60.00	Jan. 1, 2004
1000-1199	(869-052-00016-7)	22.00	Jan. 1, 2004
1200-1599	(869-052-00017-5)	61.00	Jan. 1, 2004
1600-1899	(869-052-00018-3)	64.00	Jan. 1, 2004
1900-1939	(869-052-00019-1)	31.00	Jan. 1, 2004
1940-1949	(869-052-00020-5)	50.00	Jan. 1, 2004
1950-1999	(869-052-00021-3)	46.00	Jan. 1, 2004
2000-End	(869-052-00022-1)	50.00	Jan. 1, 2004
8	(869-052-00023-0)	63.00	Jan. 1, 2004
9 Parts:			
1-199	(869-052-00024-8)	61.00	Jan. 1, 2004
200-End	(869-052-00025-6)	58.00	Jan. 1, 2004
10 Parts:			
1-50	(869-052-00026-4)	61.00	Jan. 1, 2004
51-199	(869-052-00027-2)	58.00	Jan. 1, 2004
200-499	(869-052-00028-1)	46.00	Jan. 1, 2004
500-End	(869-052-00029-9)	62.00	Jan. 1, 2004
11	(869-052-00030-2)	41.00	Feb. 3, 2004
12 Parts:			
1-199	(869-052-00031-1)	34.00	Jan. 1, 2004
200-219	(869-052-00032-9)	37.00	Jan. 1, 2004
220-299	(869-052-00033-7)	61.00	Jan. 1, 2004
300-499	(869-052-00034-5)	47.00	Jan. 1, 2004
500-599	(869-052-00035-3)	39.00	Jan. 1, 2004
600-899	(869-052-00036-1)	56.00	Jan. 1, 2004
900-End	(869-052-00037-0)	50.00	Jan. 1, 2004

Title	Stock Number	Price	Revision Date
13	(869-052-00038-8)	55.00	Jan. 1, 2004
14 Parts:			
1-59	(869-052-00039-6)	63.00	Jan. 1, 2004
60-139	(869-052-00040-0)	61.00	Jan. 1, 2004
140-199	(869-052-00041-8)	30.00	Jan. 1, 2004
200-1199	(869-052-00042-6)	50.00	Jan. 1, 2004
1200-End	(869-052-00043-4)	45.00	Jan. 1, 2004
15 Parts:			
0-299	(869-052-00044-2)	40.00	Jan. 1, 2004
300-799	(869-052-00045-1)	60.00	Jan. 1, 2004
800-End	(869-052-00046-9)	42.00	Jan. 1, 2004
16 Parts:			
0-999	(869-052-00047-7)	50.00	Jan. 1, 2004
1000-End	(869-052-00048-5)	60.00	Jan. 1, 2004
17 Parts:			
1-199	(869-052-00050-7)	50.00	Apr. 1, 2004
200-239	(869-052-00051-5)	58.00	Apr. 1, 2004
240-End	(869-052-00052-3)	62.00	Apr. 1, 2004
18 Parts:			
1-399	(869-052-00053-1)	62.00	Apr. 1, 2004
400-End	(869-052-00054-0)	26.00	Apr. 1, 2004
19 Parts:			
1-140	(869-052-00055-8)	61.00	Apr. 1, 2004
141-199	(869-052-00056-6)	58.00	Apr. 1, 2004
200-End	(869-052-00057-4)	31.00	Apr. 1, 2004
20 Parts:			
1-399	(869-052-00058-2)	50.00	Apr. 1, 2004
400-499	(869-052-00059-1)	64.00	Apr. 1, 2004
500-End	(869-052-00060-9)	63.00	Apr. 1, 2004
21 Parts:			
1-99	(869-052-00061-2)	42.00	Apr. 1, 2004
100-169	(869-052-00062-1)	49.00	Apr. 1, 2004
170-199	(869-052-00063-9)	50.00	Apr. 1, 2004
200-299	(869-052-00064-7)	17.00	Apr. 1, 2004
300-499	(869-052-00065-5)	31.00	Apr. 1, 2004
500-599	(869-052-00066-3)	47.00	Apr. 1, 2004
600-799	(869-052-00067-1)	15.00	Apr. 1, 2004
800-1299	(869-052-00068-0)	58.00	Apr. 1, 2004
1300-End	(869-052-00069-8)	24.00	Apr. 1, 2004
22 Parts:			
1-299	(869-052-00070-1)	63.00	Apr. 1, 2004
300-End	(869-052-00071-0)	45.00	Apr. 1, 2004
23	(869-052-00072-8)	45.00	Apr. 1, 2004
24 Parts:			
0-199	(869-052-00073-6)	60.00	Apr. 1, 2004
200-499	(869-052-00074-4)	50.00	Apr. 1, 2004
500-699	(869-052-00075-2)	30.00	Apr. 1, 2004
700-1699	(869-052-00076-1)	61.00	Apr. 1, 2004
1700-End	(869-052-00077-9)	30.00	Apr. 1, 2004
25	(869-052-00078-7)	63.00	Apr. 1, 2004
26 Parts:			
§§ 1.0-1.160	(869-052-00079-5)	49.00	Apr. 1, 2004
§§ 1.61-1.169	(869-052-00080-9)	63.00	Apr. 1, 2004
§§ 1.170-1.300	(869-052-00081-7)	60.00	Apr. 1, 2004
§§ 1.301-1.400	(869-052-00082-5)	46.00	Apr. 1, 2004
§§ 1.401-1.440	(869-052-00083-3)	62.00	Apr. 1, 2004
§§ 1.441-1.500	(869-052-00084-1)	57.00	Apr. 1, 2004
§§ 1.501-1.640	(869-052-00085-0)	49.00	Apr. 1, 2004
§§ 1.641-1.850	(869-052-00086-8)	60.00	Apr. 1, 2004
§§ 1.851-1.907	(869-052-00087-6)	61.00	Apr. 1, 2004
§§ 1.908-1.1000	(869-052-00088-4)	60.00	Apr. 1, 2004
§§ 1.1001-1.1400	(869-052-00089-2)	61.00	Apr. 1, 2004
§§ 1.1401-1.1503-2A	(869-052-00090-6)	55.00	Apr. 1, 2004
§§ 1.1551-End	(869-052-00091-4)	55.00	Apr. 1, 2004
2-29	(869-052-00092-2)	60.00	Apr. 1, 2004
30-39	(869-052-00093-1)	41.00	Apr. 1, 2004
40-49	(869-052-00094-9)	28.00	Apr. 1, 2004
50-299	(869-052-00095-7)	41.00	Apr. 1, 2004
300-499	(869-052-00096-5)	61.00	Apr. 1, 2004

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
500-599	(869-052-00097-3)	12.00	⁵ Apr. 1, 2004	72-80	(869-052-00151-1)	62.00	July 1, 2004
600-End	(869-052-00098-1)	17.00	Apr. 1, 2004	81-85	(869-052-00152-0)	60.00	July 1, 2004
27 Parts:				86 (86.1-86.599-99)	(869-052-00153-8)	58.00	July 1, 2004
1-199	(869-052-00099-0)	64.00	Apr. 1, 2004	86 (86.600-1-End)	(869-052-00154-6)	50.00	July 1, 2004
200-End	(869-052-00100-7)	21.00	Apr. 1, 2004	87-99	(869-052-00155-4)	60.00	July 1, 2004
28 Parts:				100-135	(869-052-00156-2)	45.00	July 1, 2004
0-42	(869-052-00101-5)	61.00	July 1, 2004	136-149	(869-052-00157-1)	61.00	July 1, 2004
43-End	(869-052-00102-3)	60.00	July 1, 2004	150-189	(869-052-00158-9)	50.00	July 1, 2004
29 Parts:				190-259	(869-052-00159-7)	39.00	July 1, 2004
0-99	(869-052-00103-1)	50.00	July 1, 2004	260-265	(869-052-00160-1)	50.00	July 1, 2004
100-499	(869-052-00104-0)	23.00	July 1, 2004	266-299	(869-052-00161-9)	50.00	July 1, 2004
500-899	(869-052-00105-8)	61.00	July 1, 2004	300-399	(869-052-00162-7)	42.00	July 1, 2004
900-1899	(869-052-00106-6)	36.00	July 1, 2004	400-424	(869-052-00163-5)	56.00	⁸ July 1, 2004
1900-1910 (§§ 1900 to 1910.999)	(869-052-00107-4)	61.00	July 1, 2004	425-699	(869-052-00164-3)	61.00	July 1, 2004
1910 (§§ 1910.1000 to end)	(869-052-00108-2)	46.00	⁸ July 1, 2004	700-789	(869-052-00165-1)	61.00	July 1, 2004
1911-1925	(869-052-00109-1)	30.00	July 1, 2004	790-End	(869-052-00166-0)	61.00	July 1, 2004
1926	(869-052-00110-4)	50.00	July 1, 2004	41 Chapters:			
1927-End	(869-052-00111-2)	62.00	July 1, 2004	1, 1-1 to 1-10		13.00	³ July 1, 1984
30 Parts:				1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
1-199	(869-052-00112-1)	57.00	July 1, 2004	3-6		14.00	³ July 1, 1984
200-699	(869-052-00113-9)	50.00	July 1, 2004	7		6.00	³ July 1, 1984
700-End	(869-052-00114-7)	58.00	July 1, 2004	8		4.50	³ July 1, 1984
31 Parts:				9		13.00	³ July 1, 1984
0-199	(869-052-00115-5)	41.00	July 1, 2004	10-17		9.50	³ July 1, 1984
200-End	(869-052-00116-3)	65.00	July 1, 2004	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
32 Parts:				18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
1-39, Vol. I		15.00	² July 1, 1984	18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1-39, Vol. II		19.00	² July 1, 1984	19-100		13.00	³ July 1, 1984
1-39, Vol. III		18.00	² July 1, 1984	1-100	(869-052-00167-8)	24.00	July 1, 2004
1-190	(869-052-00117-1)	61.00	July 1, 2004	101	(869-052-00168-6)	21.00	July 1, 2004
191-399	(869-052-00118-0)	63.00	July 1, 2004	102-200	(869-052-00169-4)	56.00	July 1, 2004
400-629	(869-052-00119-8)	50.00	⁸ July 1, 2004	201-End	(869-052-00170-8)	24.00	July 1, 2004
630-699	(869-052-00120-1)	37.00	⁷ July 1, 2004	42 Parts:			
700-799	(869-052-00121-0)	46.00	July 1, 2004	1-399	(869-050-00169-1)	60.00	Oct. 1, 2003
800-End	(869-052-00122-8)	47.00	July 1, 2004	400-429	(869-052-00172-4)	63.00	Oct. 1, 2004
33 Parts:				430-End	(869-050-00171-3)	64.00	Oct. 1, 2003
1-124	(869-052-00123-6)	57.00	July 1, 2004	43 Parts:			
125-199	(869-052-00124-4)	61.00	July 1, 2004	1-999	(869-050-00172-1)	55.00	Oct. 1, 2003
200-End	(869-052-00125-2)	57.00	July 1, 2004	1000-end	(869-050-00173-0)	62.00	Oct. 1, 2003
34 Parts:				44	(869-050-00174-8)	50.00	Oct. 1, 2003
1-299	(869-052-00126-1)	50.00	July 1, 2004	45 Parts:			
300-399	(869-052-00127-9)	40.00	July 1, 2004	1-199	(869-052-00177-5)	60.00	Oct. 1, 2004
400-End	(869-052-00128-7)	61.00	July 1, 2004	200-499	(869-052-00178-3)	34.00	Oct. 1, 2004
35	(869-052-00129-5)	10.00	⁶ July 1, 2004	500-1199	(869-050-00177-2)	50.00	Oct. 1, 2003
36 Parts				1200-End	(869-050-00178-1)	60.00	Oct. 1, 2003
1-199	(869-052-00130-9)	37.00	July 1, 2004	46 Parts:			
200-299	(869-052-00131-7)	37.00	July 1, 2004	1-40	(869-050-00179-9)	46.00	Oct. 1, 2003
300-End	(869-052-00132-5)	61.00	July 1, 2004	41-69	(869-050-00180-2)	39.00	Oct. 1, 2003
37	(869-052-00133-3)	58.00	July 1, 2004	70-89	(869-050-00181-1)	14.00	Oct. 1, 2003
38 Parts:				90-139	(869-050-00182-9)	44.00	Oct. 1, 2003
0-17	(869-052-00134-1)	60.00	July 1, 2004	*140-155	(869-052-00185-6)	25.00	Oct. 1, 2004
18-End	(869-052-00135-0)	62.00	July 1, 2004	156-165	(869-050-00184-5)	34.00	Oct. 1, 2003
39	(869-052-00136-8)	42.00	July 1, 2004	166-199	(869-050-00185-3)	46.00	Oct. 1, 2003
40 Parts:				200-499	(869-050-00186-1)	39.00	Oct. 1, 2003
1-49	(869-052-00137-6)	60.00	July 1, 2004	500-End	(869-050-00187-0)	25.00	Oct. 1, 2003
50-51	(869-052-00138-4)	45.00	July 1, 2004	47 Parts:			
52 (52.01-52.1018)	(869-052-00139-2)	60.00	July 1, 2004	0-19	(869-050-00188-8)	61.00	Oct. 1, 2003
52 (52.1019-End)	(869-052-00140-6)	61.00	July 1, 2004	20-39	(869-050-00189-6)	45.00	Oct. 1, 2003
53-59	(869-052-00141-4)	31.00	July 1, 2004	40-69	(869-050-00190-0)	39.00	Oct. 1, 2003
60 (60.1-End)	(869-052-00142-2)	58.00	July 1, 2004	70-79	(869-050-00191-8)	61.00	Oct. 1, 2003
60 (Apps)	(869-052-00143-1)	57.00	July 1, 2004	80-End	(869-050-00192-6)	61.00	Oct. 1, 2003
61-62	(869-052-00144-9)	45.00	July 1, 2004	48 Chapters:			
63 (63.1-63.599)	(869-052-00145-7)	58.00	July 1, 2004	1 (Parts 1-51)	(869-050-00193-4)	63.00	Oct. 1, 2003
63 (63.600-63.1199)	(869-052-00146-5)	50.00	July 1, 2004	1 (Parts 52-99)	(869-050-00194-2)	50.00	Oct. 1, 2003
63 (63.1200-63.1439)	(869-052-00147-3)	50.00	July 1, 2004	2 (Parts 201-299)	(869-050-00195-1)	55.00	Oct. 1, 2003
63 (63.1440-63.8830)	(869-052-00148-1)	64.00	July 1, 2004	3-6	(869-050-00196-9)	33.00	Oct. 1, 2003
64-71	(869-052-00150-3)	29.00	July 1, 2004	7-14	(869-050-00197-7)	61.00	Oct. 1, 2003
				15-28	(869-050-00198-5)	57.00	Oct. 1, 2003
				29-End	(869-050-00199-3)	38.00	⁹ Oct. 1, 2003
				49 Parts:			
				1-99	(869-050-00200-1)	60.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
100-185	(869-050-00201-9)	63.00	Oct. 1, 2003
186-199	(869-050-00202-7)	20.00	Oct. 1, 2003
200-399	(869-050-00203-5)	64.00	Oct. 1, 2003
400-599	(869-050-00204-3)	63.00	Oct. 1, 2003
600-999	(869-052-00207-1)	19.00	Oct. 1, 2004
1000-1199	(869-050-00206-0)	26.00	Oct. 1, 2003
1200-End	(869-048-00207-8)	33.00	Oct. 1, 2003

50 Parts:

1-16	(869-050-00208-6)	11.00	Oct. 1, 2003
17.1-17.95	(869-050-00209-4)	62.00	Oct. 1, 2003
17.96-17.99(h)	(869-050-00210-8)	61.00	Oct. 1, 2003
17.99(i)-end	(869-050-00211-6)	50.00	Oct. 1, 2003
18-199	(869-050-00212-4)	42.00	Oct. 1, 2003
200-599	(869-050-00213-2)	44.00	Oct. 1, 2003
600-End	(869-050-00214-1)	61.00	Oct. 1, 2003

CFR Index and Findings

Aids	(869-052-00049-3)	62.00	Jan. 1, 2004
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Complete 2004 CFR set	1,342.00	2004
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Individual copies	2.00	2004
Complete set (one-time mailing)	298.00	2003
Complete set (one-time mailing)	298.00	2002

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

⁶ No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

⁷ No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

⁸ No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

⁹ No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.