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Washington, DC
(3 blocks north of Union Station Metro)

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Presidential Documents

Title 3—

The President

Proclamation 7303 of May 4, 2000

National Day of Prayer, 2000

By the President of the United States of America

A Proclamation

Throughout our Nation's history, Americans have come before God with humble hearts to ask forgiveness, to seek wisdom, and to offer thanksgiving and praise. The framers of our democracy, on a quest for freedom and equality, were fueled by an abiding faith in a just and loving God, to whom they turned often for guidance and strength.

Succeeding generations of Americans, striving to preserve that freedom in the face of challenges posed by enemies abroad or conflict at home, also turned their hearts and minds to God in prayer. Today, whether celebrating the special moments in our lives, searching for strength and meaning in the face of problems or grief, or simply giving thanks for the blessing of a new day, Americans continue to use the powerful medium of prayer.

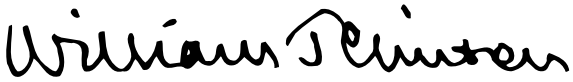
Now more than ever, Americans treasure our religious freedom, which embraces the many diverse communities of faith that have infused our society and our cultural heritage through more than two centuries. Millions of Americans gratefully sustain the tradition of prayer in churches, synagogues, temples, mosques, and other houses of worship across our country.

And we continue to rely on our faith as a pillar of strength, even in this era of unprecedented peace and prosperity. We pray for the spirit of reconciliation, so that we may overcome the divisions of race, religion, culture, and background that have scarred our society in recent years. We pray for the spirit of compassion so that we will reach out to others who have not shared equally in this world's bounteous blessings—those here at home who struggle for economic and educational opportunity and those around the globe whose lives have been darkened by the shadows of poverty, oppression, natural disaster, or disease. And we must always pray for wisdom—the wisdom to raise children with strong values and loving hearts; the wisdom to live in harmony with our environment and to preserve its health and beauty for the benefit of future generations; and the wisdom to keep America the world's greatest hope for freedom, peace, and human dignity in the 21st century.

The Congress, by Public Law 100–307, has called on our citizens to reaffirm the role of prayer in our society and to honor the religious diversity our freedom permits by recognizing annually a ''National Day of Prayer.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 4, 2000, as a National Day of Prayer. I encourage the citizens of this great Nation to pray, each in his or her own manner, seeking strength from God to face today's challenges, seeking guidance for tomorrow's uncertainties, and giving thanks for the rich blessings that our country has enjoyed throughout its history.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AI35

Family and Medical Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on the Family and Medical Leave Act of 1993 to ensure that both employees' and agencies' rights are protected and their responsibilities fulfilled.

EFFECTIVE DATE: June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Jo Ann Perrini, (202) 606–2858, FAX (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: Title II of the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103–3, February 5, 1993) provides an eligible Federal employee with a total of 12 administrative workweeks of unpaid leave during any 12-month period for: (a) The birth of a son or daughter and care of the newborn; (b) the placement of a child with the employee for adoption or foster care; (c) the care of the employee's spouse, son or daughter, or parent with a serious health condition; or (d) a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. The Office of Personnel Management (OPM) published final regulations (61 FR 64441) in subpart L of part 630 of title 5, Code of Federal Regulations, to implement Title II of the FMLA. The final regulations became effective on January 6, 1997. The Department of Labor (DOL) is responsible for implementing Title I of the FMLA for non-Federal employees, and its final regulations were published in 29 CFR part 825 (60 FR 2180, January 6, 1995).

On August 13, 1998, OPM published proposed regulations (63 FR 43325) to address the many questions and concerns that continue to be received by OPM on employees' and agencies' obligations under the FMLA. We received comments from five Federal agencies, one professional association, one labor organization, and one individual, for a total of eight comments. In addition, we met with the labor organization to discuss its concerns. A summary of the comments received and the changes made in the regulations are presented below.

Invoking Entitlement to Family and Medical Leave

The proposed regulations stated that an employee may not retroactively invoke his or her entitlement to family and medical leave. Three agencies and the individual strongly supported this change. The labor organization and the professional association opposed the proposed regulations because they viewed them as inconsistent with OPM's regulation at 5 CFR 630.1206, which allows an employee to notify his or her agency as soon as is practicable if the need for FMLA leave is not foreseeable (*e.g.*, a medical emergency). The labor organization explained that in medical emergencies, it may be impracticable to provide notification until after the leave is taken.

As stated in OPM's proposed regulations, there is a major difference between Title I and Title II of the FMLA in terms of the responsibility of an employer versus an employee to invoke entitlement to FMLA leave. Under DOL's regulations implementing Title I of the FMLA for non-Federal employees, the employer is required to designate leave, paid or unpaid, as FMLA leave and to give notice of such designation to the employee. In contrast, under OPM's regulations implementing Title II of the FMLA for Federal employees, the employee is responsible for invoking his or her entitlement to FMLA leave, and the employee may choose whether to substitute paid leave, as appropriate, for leave without pay under the FMLA. Under 5 CFR 630.1203(h), an agency may not subtract leave from the 12-week FMLA leave entitlement unless the agency has obtained confirmation from the employee of his or her intent to invoke entitlement to FMLA leave.

The requirement that an employee must initiate action to take FMLA leave is consistent with all other Federal leave policies and programs in that the employee is responsible for requesting leave or other time off from work. We believe it is Congress' intent to provide Federal employees with an entitlement to FMLA leave in a fair and equitable manner while minimizing the impact of such leave on an employing agency. The legislative history establishes an intent to authorize the use of leave ''to be taken'' under the FMLA—*i.e.*, on a prospective basis. If necessary, an employee may invoke his or her entitlement to FMLA leave on the day of the emergency. In the final regulations, we have added a sentence to 5 CFR 630.1203(b) to state that an employee may not retroactively invoke his or her entitlement to family and medical leave.

We realize that unique situations may require some flexibility in meeting this requirement. Therefore, 5 CFR 630.1203(b) of the final regulations provides that if an employee or his or her personal representative is physically or mentally incapable of invoking the employee's entitlement to FMLA leave during the entire period in which the employee is absent from work for an FMLA-qualifying purpose, the employee may retroactively invoke his or her entitlement to FMLA leave within 2 workdays after returning to work. (This change is consistent with DOL's regulations at 29 CFR 825.208(e)(1).) In such cases, the incapacity of the employee must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to the agency explaining the inability of the personal representative to contact the agency and invoke the employee's entitlement to FMLA leave during the entire period in which the employee was absent from work for an FMLA-qualifying purpose.

The professional association objected to the current practice of requiring employees to provide 30 calendar days' notice of their intent to take FMLA leave. The association further stated that by not allowing employees to seek entitlement to FMLA leave retroactively, OPM is barring employees from using

FMLA leave when they need it most, *e.g.*, in a family medical emergency.

Under 5 U.S.C. 6382(e), if the need for leave is foreseeable, employees are required to provide not less than 30 calendar days' notice of their intent to use leave under the FMLA. If leave needs to begin in less than 30 calendar days, the employee must give such notice as is practicable. OPM's regulations at 5 CFR 630.1206 require an employee to provide 30 calendar days' notice when the need for leave is foreseeable (*e.g.*, an expected birth or planned medical treatment). If the need for leave is not foreseeable (*e.g.*, a medical emergency or the unexpected availability of a child for adoption or foster care), and the employee cannot provide 30 calendar days' notice of his or her need for leave, the employee must provide notice within a reasonable period of time appropriate to the circumstances involved. Finally, if the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the FMLA leave cannot be denied or delayed. Since the law and current regulations require notification of the need for FMLA leave and allow flexibility for emergency situations, no substantive changes were made in the final regulations. However, we have modified 5 CFR 630.1206 (a), (c), and (d) to make clear that ''days'' refers to ''calendar days.''

Additional Evidence

The proposed regulations would have permitted an agency to require that a request for leave under the FMLA be supported by evidence that is administratively acceptable to the agency. This provision was proposed in response to agency requests to obtain additional evidence to support a claim that an employee cared for a spouse, son or daughter, or parent with a serious health condition during an absence coinciding with the period in which the employee requested FMLA leave. Existing OPM regulations permit an agency to require an employee to provide evidence that is administratively acceptable when requesting leave for (1) the birth of a son or daughter of the employee and the care of such son or daughter and (2) the placement of a son or daughter with the employee for adoption or foster care.

Two agencies fully supported this change. The individual recommended that all requests for FMLA leave be supported by medical evidence, if at all possible. In contrast, the professional association and the labor organization opposed our proposal because they believe the phrase ''administratively acceptable to the agency'' is too broad and leaves the door open for agency abuse. Both the professional association and the labor organization stated that this change would present an additional hardship for employees undergoing a major crisis. The labor organization believes OPM's regulations at 5 CFR 630.1207 already establish a medical certification process through which an agency may require an employee to submit evidence in support of requested leave for an employee's serious health condition or that of a family member. The labor organization further noted that under 5 U.S.C. 6307, a medical certification that meets the requirements of the statute ''shall be deemed sufficient.''

After careful consideration, we agree that the regulations should not permit an agency to require an employee to submit documentation that may be overly burdensome and beyond what is deemed sufficient by statute. When an agency suspects employee fraud, it may contact its Office of the Inspector General for further investigation. The changes proposed in 5 CFR 630.1206(f) were not adopted.

Medical Certification

The proposed regulations would have required an employee to provide written medical certification of a serious health condition no later than 15 workdays after the date the agency requests such medical certification. Section 630.1207(g) of the proposed regulations provided that if an employee was unable to provide the requested medical certification before FMLA leave must begin, the agency would be required to grant provisional leave pending final written medical certification that was to be received no later than 15 workdays after the date the FMLA leave began. OPM proposed these time limits to ensure that the entitlements provided under the FMLA are provided to all Federal employees in a fair and consistent manner.

Two agencies agreed with OPM's proposed change. The individual remarked that 10 workdays would be preferable to 15 because 10 days would coincide with a biweekly pay period and payroll start dates. In contrast, both the professional association and the labor organization stated that OPM's 15-workday time limit was too stringent. The labor organization also objected that the proposed regulation would not guarantee an employee at least 15 workdays to provide medical certification. The labor organization noted that in cases where the health care provider does not complete the medical certification even after repeated efforts, the employee would be penalized for circumstances that are beyond his or her control. The labor organization further suggested that OPM adopt DOL's regulation at 29 CFR 825.305(b), which states that an ''employee must provide the requested certification to the employer (which must allow at least 15 calendar days after the employer's request) unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.'' The professional association believes the agency should be prohibited from requesting medical certification until the ''emergency'' situation has ceased.

We believe it is Congress' intent that, in all circumstances, employees be required to provide complete medical certification, when requested by an agency, within a reasonable period in view of the circumstances involved. We recognize that the proposed regulation would not permit any flexibility for an employee who was unable to provide medical certification within 15 workdays due to circumstances beyond his or her control. Therefore, as suggested by the labor organization, we have revised our regulation to model DOL's regulation. We have revised 5 CFR 630.1207(g) to require employees to provide medical certification of a serious health condition no later than 15 calendar days after the date the agency requests the medical certification. However, to accommodate situations in which more flexibility may be needed, we have added a sentence to 5 CFR 630.1207(g) to provide that if it is not practicable under the particular circumstances to provide the requested medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the medical certification was requested by the agency.

In most cases, we believe 15 calendar days constitutes an ample amount of time within which an employee can obtain written medical certification. Establishing a time limit of 30 calendar days in all cases for which an employee must provide medical certification provides a needed balance between guaranteeing employees ample time to provide required medical certification and affirming agencies' authority to determine whether FMLA leave is appropriate. If an employee does not provide the requested medical certification, the absence is not FMLA

leave and the agency may charge the employee as absent without leave (AWOL) or allow the employee to request annual leave, sick leave, or leave without pay, as appropriate, for the period of absence.

The labor organization also suggested that OPM revise its regulations to require an agency to request medical certification at the time the employee gives notice of the need for leave or within 2 business days thereafter, or, in the case of unforeseen leave, within 2 business days after the leave commences. The labor organization believes this would put both the employer and the employee on notice of the time frame during which a request for medical certification would normally be appropriate. The labor organization believes this addition would strike an appropriate balance between the obligations and rights of the employer and the employee.

The requirement to provide medical certification for a serious health condition within 15 calendar days cannot begin until after the date the agency requests such medical certification. Employees will *not* receive any additional benefits from requiring agencies to request medical certification within 2 workdays after the employee's notice of FMLA leave. Therefore, we do not believe this additional requirement is necessary.

Insufficient Notification and Medical Certification

The proposed regulations stated that an employee who does not comply with the notification requirements in § 630.1206, and who does not provide medical certification signed by the health care provider that includes all the information required by law and OPM's regulations at § 630.1207(b), is not entitled to FMLA leave. Further, the employee would not receive any of the employment and benefit protections of the FMLA. Two agencies fully supported this proposal. The labor organization stated that it would support this section if employees' interests were adequately protected as reflected in the organization's other recommendations. The labor organization believes this provision will put employees on notice of the consequences of their failure to meet their responsibilities. We believe the changes we have discussed above will provide adequate protection to all employees. Therefore, we have revised 5 CFR 630.1208(l) to state that a employee who does not comply with the notification requirements in § 630.1206, and who does not provide medical certification signed by the health care provider that includes all the information required by law and OPM's regulations at § 630.1207(b), is not entitled to FMLA leave.

Holidays

The proposed regulations stated that any holiday that occurs during the period in which an employee is on family and medical leave will be counted toward the 12-week FMLA entitlement. One agency supported this proposal and recommended adding the phrase ''and any periods of administrative dismissal'' to include all periods of authorized absence. One agency and the labor organization objected to this proposal because no other employee is charged leave on a holiday. The labor organization remarked that a Federal employee has a separate entitlement to Federal holidays and that to count holidays toward the 12-week FMLA period would diminish the employee's entitlement to those holidays. The labor organization also expressed the view that counting holidays within an employee's FMLA leave period would have a disproportionate impact on those employees who need FMLA leave for a continuous period of weeks as compared to those who use FMLA leave intermittently.

DOL's regulations permit the counting of holidays against the 12-week entitlement to FMLA leave. In 29 CFR 825.200(f), DOL's regulations provide that for purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, DOL's regulations further explain that if an employer's business activity has temporarily ceased and employees are not expected to report for work (e.g., a school closing 2 weeks for the Christmas/New Year's holiday or an employer closing a plant for retooling or repairs), the days the employer's activities have ceased do not count against an employee's 12-week entitlement to FMLA leave.

The law (5 U.S.C. 6302(a)) provides that days of leave are days on which an employee would otherwise work and receive pay and are exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order. Upon further consideration, we have determined that FMLA leave may be charged only on days on which an employee is scheduled to be in a duty status. Therefore, we have revised 5 CFR 630.1203(e) to state that any holidays authorized under 5 U.S.C. 6103 or by Executive order and nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave will *not* be counted toward the 12-week entitlement to family and medical leave. OPM's regulations are consistent with Congress' intent to better enable Federal employees to benefit from the leave provided by the FMLA.

''Stacking'' of Leave

An agency requested guidance on an employee's entitlement to annual and sick leave in addition to leave under the FMLA—i.e., the ''stacking'' of leave. The 12 workweeks of unpaid leave under the FMLA are in addition to any annual leave, sick leave, or other paid leave or compensatory time off available to an employee, and an employee may choose to take FMLA leave in combination with any other available leave. We have advised agencies that the best way to manage the ''stacking'' of leave is to encourage communication between supervisors and employees. A supervisor must inform employees of their entitlements and responsibilities under the FMLA. When an employee requests leave for a personal or family medical situation, the supervisor may want to ask up front whether the employee is invoking his or her entitlement to FMLA leave.

Although a supervisor generally cannot deny sick leave if the employee provides medical certification, he or she can deny annual leave or leave without pay if there is a need for the employee to be at work. While the taking of annual leave is a right of an employee, it is subject to the right of the supervisor to schedule the time at which annual leave may be taken. If an employee requests leave for any of the four FMLA-qualifying purposes, the supervisor may ask whether the employee is invoking his or her entitlement to FMLA leave. If the employee invokes entitlement to FMLA leave, he or she may choose to substitute his or her annual leave, or sick leave as appropriate, for leave without pay under the FMLA. As a result, both the supervisor and the employee are successful in meeting their needs.

SF–71, Request for Leave or Approved Absence

One agency recommended that the SF–71, Request for Leave or Approved Absence, include a block for granting FMLA provisional leave pending receipt of final medical certification and that the block should also include a statement that the employee must provide the requested medical

certification not later than 15 workdays after the date the agency requests the certification. The agency believes this would further assist employees and supervisors in meeting their obligations under the FMLA.

In our continuing effort to improve the Federal leave system and in response to agencies' recommendations, OPM is considering further improvements in the SF–71. We will provide agencies with information on the availability of revised forms through OPM's web site at *http://www.opm.gov.*

Miscellaneous Changes

Sections 630.1201(b)(1)(ii)(B) and (b)(3)(i) of title 5, Code of Federal Regulations, are being revised as requested by the Department of Veterans Affairs to identify employees of the Veterans Health Administration who are covered by Title II of the FMLA.

An agency suggested that 5 CFR 630.1203(a) be revised to clarify that medical conditions associated with pregnancy or childbirth must meet the requirements for using FMLA leave for a serious health condition. Under 5 CFR 630.1203(a), an employee has an absolute entitlement to unpaid leave under the FMLA for the birth of a child and care of the newborn. In addition, paragraph (1)(ii)(B) of the definition of ''serious health condition'' in 5 CFR 630.1202 specifically includes pregnancy and prenatal care. Finally, if an employee elects to substitute sick leave for unpaid leave under the FMLA, OPM's regulation at 5 CFR 630.401 authorizes the use of sick leave for pregnancy and childbirth. For these reasons, we have not adopted the agency's suggestion in the final regulations.

An agency suggested that in order to avoid confusion, OPM should specify throughout 5 CFR part 630, subpart L, whether ''days'' means workdays or calendar days. We agree and have edited the regulations to state ''calendar days,'' where appropriate.

An agency suggested that OPM require that the medical certification be signed personally by the health care provider. We believe this suggestion may place an unnecessary burden on the employee and the health care provider. Therefore, we have not adopted this suggestion.

Finally, we are taking this opportunity to correct an improper citation and to clarify § 630.1207(i).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

Family Assessment Certification

I certify that these regulations would strengthen the stability of the family, help families meet their responsibilities, and increase the disposable income of families in accordance with section 654 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) of Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

Subpart L—Family and Medical Leave

2. Sections 630.1201(b)(1)(ii)(B) and 630.1201(b)(3)(i) are revised to read as follows:

§ 630.1201 Purpose, applicability, and administration.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1);

* * * * *

(3) * * *

(i) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1) is be governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs;

* * * * *

3. In § 630.1203, paragraph (b) is revised, a new sentence is added at the end of paragraph (e), and the first sentence in paragraph (h) is revised to read as follows:

§ 630.1203 Leave entitlement.

* * * * *

(b) An employee must invoke his or her entitlement to family and medical leave under paragraph (a) of this section, subject to the notification and medical certification requirements in §§ 630.1206 and 630.1207. An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an employee and his or her personal representative are physically or mentally incapable of invoking the employee's entitlement to FMLA leave *during the entire period* in which the employee is absent from work for an FMLA-qualifying purpose under paragraph (a) of this section, the employee may retroactively invoke his or her entitlement to FMLA leave within 2 workdays after returning to work. In such cases, the incapacity of the employee must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to the agency explaining the inability of his or her personal representative to contact the agency and invoke the employee's entitlement to FMLA leave during the entire period in which the employee was absent from work for an FMLA-qualifying purpose. An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave under paragraph (a) of this section.

* * * * *

(e) * * * Any holidays authorized under 5 U.S.C. 6103 or by Executive order and nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave may not be counted toward the 12-week entitlement to family and medical leave.

* * * * *

(h) An agency may not put an employee on family and medical leave and may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to

invoke entitlement to leave under paragraph (b) of this section. * * *

§ 630.1206 [Amended]

4. In § 630.1206 , paragraphs (a), (c), and (d), the word ''calendar'' is added before the words ''days'' and ''days'.''

5. In § 630.1207, the second sentence in paragraph (a) is removed; paragraphs (h), (i) and (j) are redesignated as paragraphs (i), (j), and (k); a new paragraph (h) is added; and the newly redesignated paragraph (j) is revised to read as follows:

§ 630.1207 Medical certification.

* * * * *

(h) An employee must provide the written medical certification required by paragraphs (a), (d), (e), and (g) of this section, signed by the health care provider, no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such medical certification.

* * * * *

(j) At its own expense, an agency may require subsequent medical recertification on a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes relating to pregnancy, chronic conditions, or long-term conditions, as these terms are used in the definition of *serious health condition* in § 630.1202.

* * * * *

6. In § 630.1208, paragraph (l) is added to read as follows:

§ 630.1208 Protection of employment and benefits.

* * * * *

(l) An employee who does not comply with the notification requirements in § 630.1206 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1207(b) is not entitled to family and medical leave.

[FR Doc. 00–11385 Filed 5–5–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–076–2]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County, CA, and that the quarantine and restrictions are no longer necessary. This portion of Los Angeles County, CA, was the last remaining area in California quarantined for the Oriental fruit fly. Therefore, as a result of this action, there are no longer any areas in the continental United States quarantined for the Oriental fruit fly.

DATES: This interim rule was effective May 2, 2000. We invite you to comment on this docket. We will consider all comments that we receive by July 7, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–076–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–076–2.

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

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Wilmer E. Snell, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8747.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruits, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks that can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on September 22, 1999, and published in the **Federal Register** on September 28, 1999 (64 FR 52213–52214, Docket No. 99–076–1), we quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Oriental fruit fly has been eradicated from the quarantined portion of Los Angeles County, CA. The last finding of Oriental fruit fly in this area was October 19, 1999.

Since then, no evidence of Oriental fruit fly infestation has been found in this area. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in Los Angeles County, CA. Therefore, we are removing Los Angeles County, CA, from the list of quarantined areas in § 301.93–3(c). Oriental fruit fly infestations are not known to exist anywhere else in the continental United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for

publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove an unnecessary regulatory burden on the public. A portion of Los Angeles County, CA, was quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, immediate action is necessary to remove the quarantine on Los Angeles County, CA, and to relieve the restrictions on the interstate movement of regulated articles from that area.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule relieves restrictions on the interstate movement of regulated articles from a portion of Los Angeles County, CA.

Within the previously quarantined portion of Los Angeles County, CA, there are approximately 219 entities that will be affected by this rule. All would be considered small entities. These include 1 airport, 5 caterers, 2 certified farmer's markets, 2 community gardens, 154 fruit sellers, 1 grower, 1 landfill, 52 nurseries, and 1 swap meet. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the Oriental fruit fly.

Done in Washington, DC, this 2nd day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–11374 Filed 5–5–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[TD 8879]

RIN 1545–AV71; RIN 1545–AT18

Kerosene Tax; Aviation Fuel Tax; Taxable Fuel Measurement and Reporting; Tax on Heavy Trucks and Trailers; Highway Vehicle Use Tax; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to Treasury Decision 8879, which was published in the **Federal Register** on Friday, March 31, 2000 (65 FR 17149). The corrections relate to the kerosene excise tax.

DATES: These corrections are effective March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 4101 and 6427 of the Internal Revenue Code.

Need for Correction

As published, TD 8879 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 48 is corrected by making the following correcting amendments:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 48.4101–1 is amended by:

1. Redesignating paragraphs (c)(1)(v) and (c)(1)(vi) as paragraphs (c)(1)(vi) and (c)(1)(vii), respectively;

2. Adding paragraph (c)(1)(v);

3. Removing the language ''(c)(1)(vi)'' from paragraph (l)(2) and adding the language ''(c)(1)(vii)'' in its place. The addition reads as follows:

§ 48.4101–1 Taxable fuel; registration.

* * * * *

(c) * * * (1) * * *

(v) A refiner;

* * * * *

§ 48.4101–2T [Removed]

Par. 3. Section 48.4101–2T is removed.

Par. 4. Section 48.6427–11(e)(2)(iii) is revised to read as follows:

§ 48.6427–11 Kerosene; claims by registered ultimate vendors (blending).

* * * * *

(e) * * *

(2) * * *

(iii) *Model certificate.*

CERTIFICATE OF BUYER FOR PRODUCTION OF A COLD WEATHER BLEND (To support vendor's claim for a credit or payment under section 6427 of the Internal Revenue Code.)

_____(Buyer) certifies the following under penalties of perjury:

Name of buyer

The kerosene to which this certificate applies will be used by Buyer to produce a blend of kerosene and diesel fuel in an area described in a declaration of extreme cold and the blend will be sold for use or used for heating purposes.

This certificate applies to ____ percent of Buyer's purchase from _____ (name, address, and employer identification number of seller) on invoice or delivery ticket number ____.

If Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing.

_____

Title of person signing

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–11469 Filed 5–5–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–00–080]

RIN 2115—AA97

Security Zone; Vicinity of Atlantic Fleet Weapons Training Facility, Vieques, PR and Adjacent Territorial Sea

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the U.S. Navy, the Coast Guard is establishing a temporary security zone covering the area of territorial sea and land adjacent to the bombing and gunnery range (Impact Area) at the naval installation on the eastern end of Vieques Island, Puerto Rico. The security zone is needed to protect the bombing and gunnery range, and adjacent land and waters at the Navy's Atlantic Fleet Weapons Training Facility on Vieques Island, PR, to ensure against destruction, injury, or loss of uninterrupted use. Only authorized vessels are permitted to enter or remain within the security zone.

DATES: This rule is effective from 12:01 a.m. May 4, 2000 until 11:59 p.m. May 13, 2000.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD07–00–080] and are available for inspection or copying at the Seventh Coast Guard District office, 909 SE First Avenue, Room 918, Miami, FL 33131, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Steve Andersen at (305) 415–6950.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In order to protect the interests of national security, and in accordance with the Presidential Directive of January 31, 2000, the President has directed the conduct of Navy Training at the Atlantic Fleet Weapons Training Facility on Vieques Island, PR. Immediate action is needed to ensure the uninterrupted use by the U.S. Navy of the Training Facility on Vieques, including the adjacent land and waters, and to protect that facility from destruction or injury. The Coast Guard is promulgating the security zone regulations to prevent interference with the conduct of the Navy's exercises for the duration of the security zone. As a result, the enforcement of the security zone is a function directly involved in, and necessary to, the Navy training exercise. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

Even if the requirements of 5 U.S.C. 553 would otherwise be applicable, the Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to the public interest. There is an imminent need to use the naval installation bombing and gunnery range and the adjacent waters for exercises scheduled to commence in the near term, and the exercises being conducted by the Navy further the national security interests of the United States. Moreover, the conduct of notice and comment rulemaking proceedings and compliance with advance notice requirements present significant public safety concerns that outweigh the public interest in compliance with these provisions. Public rulemaking proceedings and advance publication could provoke consequences that would pose a risk of harm to the public, military personnel, and law enforcement personnel charged with enforcement of the security zone and interfere with the commencement and completion of the training exercises. This regulation is geographically and temporally tailored to meet the needs of national security with a minimal burden on the public.

Background and Purpose

The Atlantic Fleet Weapons Training Facility is located on the eastern end of Vieques Island, PR. Use of this naval installation is important to achieving acceptable levels of military readiness in accordance with established training standards and requires training exercises conducted with inert ordnance. Such training exercises cannot be safely or effectively conducted if there are unauthorized persons inside the training areas or if the installation is damaged or personnel are injured. The U.S. Army Corps of Engineers has established a danger zone in the vicinity of the bombing and gunnery target area, 33 CFR 334.1470, that is in effect during these training exercises. The Army Corps has also established a restricted area off the coast of the naval facility, 33 CFR 334.1480.

In order to further the interests of national security, and in accordance with the Presidential directive of

January 31, 2000, the President has directed the conduct of Navy Training at the Atlantic Fleet Weapons Training Facility on Vieques Island, Puerto Rico. The restricted area and danger zone do not provide the degree of security required for the naval facility before and during the next use of the facility, scheduled to commence in the near term. That use will entail training exercises, all conducted with inert ordnance. These operations cannot be conducted if unauthorized personnel or vessels are present inside the security zone. Therefore, to ensure against the destruction, injury or loss of uninterrupted use of the naval installation at Vieques, including the adjacent land and waters, the Coast Guard is establishing this security zone.

This security zone is established pursuant to the authority of subpart D of part 165 of Title 33 of the Code of Federal Regulations and the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations. See E.O. 10173, as amended. The security zone is needed to protect the bombing and gunnery range, and the adjacent facilities and water, at Vieques Island, PR against destruction, injury, or loss of uninterrupted use. Pursuant to this regulation, no vessel or person will be allowed to enter or remain in the security zone unless specifically authorized to do so by the District Commander or his designated representatives. The District Commander or his designated representatives may grant permission for a vessel to enter or remain within the security zone when operations permit and may condition that permission as appropriate.

Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Although the security zone covers an area out to three miles from shore, the zone will be in effect for a limited amount of time. The vessel traffic in the area normally consists of a small number of commercial fishing vessels and other vessels transiting the area. These vessels are not allowed to enter or transit the zone during these training exercises under existing Army Corps of Engineer regulations (33 CFR 334.1470 and 33 CFR 334.1480). These vessels can redirect their transit around the zone with only minor delays in time and distance.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the vicinity of the Naval installation at Vieques, PR and fishing vessels which normally fish the area. These vessels are not allowed to enter or transit the zone during these training exercises under existing Army Corps of Engineer regulations (33 CFR 334.1470 and 334.1480). This security zone will not have a significant economic impact on a substantial number of these small entities. Although the security zone will cover an area out to three miles from shore, the zone will be in effect only for a limited amount of time.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we will assist small entities in understanding this rule and how it affects them. Small entities may call the person identified in **FOR FURTHER INFORMATION CONTACT**.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard anticipates this temporary rule will be categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C. The environmental analysis checklist and Categorical Exclusion Determination will be prepared and submitted after establishment of this temporary security zone, and will be available in the docket. This temporary rule only ensures the protection of Naval assets and the uninterrupted use of the area for scheduled Naval operations. Standard Coast Guard manatee and turtle watch measures will be in effect during Coast Guard patrols of the security zone. Deep-water routes will be used where practical. Lookouts will be posted to avoid collision with turtles and manatees. If a collision occurs, notification will be made to the U.S. Fish & Wildlife Service at Boqueron, Puerto Rico (787–851–7297). The

Categorical Exclusion Determination will be available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T–07–080 is added to read as follows:

§ 165.T07–080 Security Zone; Vieques Island, PR.

(a) *Location.* The following area is established as a security zone: An area of water and land measured from the mean high water line on the naval installation out to 3 nautical miles along the east end of Vieques Island extending from Santa Maria (18°09′29″ N, 065° 25′23″ W) due north 3 nautical miles to position 18°12′29″ N, 065°25′23″ W, then easterly around Vieques Island, remaining three nautical miles from the coast, to a point 3 nautical miles south of the eastern edge of Puerto Mosquito (18°02′34″ N, 065°26′26″ W) then due north to the eastern edge of Puerto Mosquito (18°05′34″ N, 065°26′26″ W), including the rocks, cays, and small islands within.

(b) *Regulations.*

(1) In accordance with the general regulations in § 165.33 of this part:

(i) No person or vessel may enter or remain in this zone without the permission of the District Commander or designated representatives,

(ii) All persons within this zone shall obey any direction or order of the District Commander or designated representatives,

(iii) The District Commander or designated representatives may take possession and control of any vessel in this zone,

(iv) The District Commander or designated representatives may remove any person, vessel, article or thing from this zone,

(v) No person may board, or take or place any article or thing on board, any vessel in this zone without the permission of the District Commander or designated representatives; and,

(vi) No person may take or place any article or thing upon any waterfront facility in this security zone without the permission of the District Commander or designated representatives.

(2) The District Commander or designated representatives may grant permission for individual vessels to enter or remain within this security zone when permitted by operational conditions and may place conditions upon that permission. Vessels permitted to enter or remain in this zone must radio the patrol commander upon entering and departing the zone.

(c) *Enforcement.* Vessels or persons violating this section are subject to the penalties set out in 50 U.S.C. 192 and 18 U.S.C. 3571:

(1) Seizure and forfeiture of the vessel;

(2) A monetary penalty of not more than $250,000; and

(3) Imprisonment for not more than 10 years.

(d) *Dates.* This section is effective from 12:01 a.m. May 4, 2000 until 11:59 p.m. May 13, 2000.

(e) *Authority.* In addition to the authority in part 165, this section is also authorized under authority of Executive Order 10173, as amended.

Dated: April 28, 2000.

G.W. Sutton,

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

[FR Doc. 00–11511 Filed 5–4–00; 11:18 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–6585–5]

RIN 2060–AE86

National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production; Synthetic Organic Chemical Manufacturing Industry; Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and final rule.

SUMMARY: The EPA is taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Polyether Polyols Production; Synthetic Organic Chemical Manufacturing Industry (also known as Hazardous Organic NESHAP, or HON); Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries. For all four of these NESHAP, this direct final rule amends the definition of *equipment leaks* to add the term ''connectors'' to the list of equipment that is subject to the equipment leak provisions in those NESHAP.

The remainder of this direct final rule corrects referencing errors and several equations which contained printing errors in the final NESHAP for Polyether Polyols Production (hereafter referred to as ''subpart PPP''). This direct final rule amends the description of a process change and the description of excess emissions; the requirements pertaining to submission of a request for extension of a compliance date; the storage vessel monitoring requirements; the definition of the terms *epoxide, polyether polyol,* and *Group 2 wastewater stream;* the conditions required during performance testing for batch process vents; which compounds are considered to be organic hazardous air pollutants (HAPs) for the purposes of both the maintenance wastewater and the process wastewater requirements; the information requirements for start-up, shutdown, and malfunction reports; the dates on which initial notifications are due; and the reporting requirements for other reports to clarify those requirements.

In addition to the direct final rule, in compliance with the Paperwork Reduction Act (PRA), EPA is amending as a final rule the Office of Management and Budget (OMB) approval table to list the OMB control number issued under the PRA for information collection requirements for subpart PPP.

DATES: The amendments to 40 CFR part 9 are effective on May 8, 2000. The direct final rule amendments to 40 CFR part 63 are effective on July 7, 2000 without further notice, unless the EPA receives adverse comments by June 7, 2000, or by June 22, 2000 if a public hearing is requested. See the proposed rule in this issue of the **Federal Register** for information on the hearing. If we receive such comments, and those comments apply to an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw only those provisions on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective on July 7, 2000 and which provisions are being withdrawn.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information

Center (6102), Attention Docket numbers A–90–20, A–92–37, A–93–48, and/or A–96–38 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. *Docket.* Docket numbers A–90–20 and (the HON); A–92–37 (Epoxy Resins Production and Non-Nylon Polyamides Production); A–93–48 (Petroleum Refineries); and A–96–38 (Polyether Polyols Production) contain supporting information used in developing the standards. The dockets are located at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5608, electronic mail address: rosensteel.bob@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying docket materials. Docket indexes are also available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at http://www.epa.gov/airprogm/oar/docket/faxlist.html. *Comments.* Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket numbers A–90–20, A–92–37, A–93–48, and/or A–96–38. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 944, Durham, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter. *World Wide Web.* In addition to being available in the docket, an electronic copy of this action is also available through the World Wide Web (WWW). Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

Categories and entities potentially affected by this action include:

Category	Standard Industrial Classification (SIC) codes	North American Industrial Classification System (NAICS) codes	Examples of regulated entities
Industry	2865 and 2869	325110, 325188, 325192, 325193, 325199, and 325120.	Synthetic organic chemical manufacturing industry (SOCMI) units (*e.g.*,producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F).
Industry	2821	325211	Epoxy resins and non-nylon polyamide resins.
Industry	2911	324110	Petroleum refineries.
Industry	2843 and 2869	325199 and 325613	Producers of polyether polyols and polyether monools.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulations affected by these rules. To determine whether your facility is regulated by these rules, you should carefully examine all of the applicability criteria in 40 CFR part 63, subparts F, W, CC, and PPP. If you have any questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 5, 2000. Under section 307(b)(2) of the CAA, the requirements that are the subject of this direct final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Also under section 307(b)(1) of the CAA, judicial review of the final rule amendment to part 9 in this action is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 7, 2000. Under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

I. Why Are We Publishing These Amendments as a Direct Final Rule?

In the direct final rule portion of this action, we are correcting printing and referencing errors. We are also revising and slightly reorganizing certain paragraphs, and we are making minor amendments to certain definitions. These changes provide clarification on a variety of provisions ranging from applicability to recordkeeping. In all instances, we believe that these changes have the potential to reduce the burden on both owners and operators of affected sources and on the State or local agency implementing the rule, although we are unable to quantify reductions in hours for these amendments. For these reasons, we view these amendments as noncontroversial and anticipate no adverse comments, and we are publishing these amendments in a direct final rule.

If an adverse comment applies to an amendment, paragraph, or section of this direct final rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw only those provisions on which we received adverse comments. In the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for any provisions in this direct final rule on which we receive adverse comments. The EPA will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of this direct final rule is withdrawn, all public comments received will be addressed in a subsequent final rule based on the proposal in the ''Proposed Rules'' section of this **Federal Register**. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time. The nature of the changes contained in this direct final rule are such that it will benefit both industry and the States for these changes to become effective sooner, rather than later, as will be described in more detail below.

II. What Amendments Are We Making To Reflect OMB Approval of the Information Collection Request (ICR) for the NESHAP for Polyether Polyols Production?

This final rule amends the table of currently approved Information Collection Request (ICR) control numbers issued by OMB. This final rule updates the table to list those information requirements promulgated under the NESHAP for Polyether Polyols Production, which appeared in the **Federal Register** on June 1, 1999 (64 FR 29420). The affected regulations are codified at 40 CFR part 63, subpart PPP. We will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act and OMB's implementing regulations at 5 CFR part 1320. The ICR itself was subject to public notice and comment prior to OMB's approval of the ICR. Further, because amendment of the table in part 9 is technical in nature, we believe that another notice and comment period for this amendment is unnecessary. For these reasons, we believe that there is good cause under the Administrative Procedure Act (5 U.S.C. § 553(b) to amend this table without prior notice and comment.

III. What Amendments Are We Making to the Equipment Leak Definition That Affect Subparts F, W, CC, and PPP?

In these rules, we are amending the definition of *equipment leak* in subparts F, W, CC, and PPP of 40 CFR part 63. In each of these NESHAP, the definition of *equipment leak* listed several sources from which emissions of organic HAP constitute a leak. However, ''connectors'' are not included in the list of sources of emissions that are included in the definition of the term *equipment leak* in any of those NESHAP.

Affected sources subject to any of those four subparts are required to comply with the NESHAP for equipment leaks (40 CFR part 63, subpart H). In subpart H, § 63.169 contains standards for pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service. Section 63.174 (of 40 CFR part 63, subpart H) contains standards for connectors in gas/vapor service and in light liquid service. The fact that there are specific provisions in subpart H applicable to connectors clearly demonstrates that we always intended emissions from connectors to be considered equipment leaks. In addition, the definition of *equipment* in § 63.161 of subpart H includes connectors, providing further evidence that the definition of *equipment leak* should include connectors. Therefore, we are amending the definition of *equipment leak* in subparts F, W, CC, and PPP by adding the term ''a connector'' to the list of equipment in each of those definitions.

IV. What Amendments Are We Making to Subpart PPP?

Although this action amends portions of four separate subparts of 40 CFR part 63 (*i.e.*, subparts F, W, CC, and PPP), the primary focus of the amendments in this action is subpart PPP, which was promulgated on June 1, 1999 (64 FR 29420). This direct final rule contains amendments and technical corrections to the requirements in subpart PPP.

Several equations in the promulgated version of subpart PPP were printed incorrectly. This direct final rule amends the erroneous symbols in equations numbered 1, 2, 4, 5, 7, 10, and 13, to produce the originally intended equations.

This direct final rule also corrects references in several sections of subpart PPP. References are being corrected in this direct final rule in the following paragraphs: § 63.1422(b); § 63.1426(d)(3)(ii); § 63.1428(g)(3)(i); § 63.1430(e)(1)(vi) and (vii); § 63.1432(h) and (l); § 63.1433(a)(5), (7), and (8); § 63.1435(c); § 63.1439(e)(5)(iv) and (e)(7)(ii), and in the definition of *Group 2 wastewater stream.*

Two terms which are used in subpart PPP but were not defined in the final rule were added to the list in § 63.1423(a) that incorporates the definitions from other subparts. Specifically, *oil-water separator or organic-water separator* and *responsible official* were added to the list and their definitions in subparts G and A, respectively, were referenced.

In addition, the June 1, 1999 final rule contained references to 40 CFR part 63, subpart I in both §§ 63.1422(h) and 63.1434(c). This was an error because subpart I does not apply to polyether polyols producers. Therefore, both §§ 63.1422(h) and 63.1434(c) are removed and reserved in this direct final rule.

The provisions in § 63.1420(g) specify how changes or additions to plant sites impact whether an affected source is a new affected source or an existing affected source. Paragraph (g)(2) in § 63.1420 addresses adding emission points or making process changes to an existing affected source. The provisions in § 63.1420(g)(2)(i) specify that a process change or addition to an existing affected source that meets the definition of reconstruction and that occurred after September 4, 1997 causes

the entire affected source to become a new affected source. After promulgation of subpart PPP, we realized that these provisions were not consistent with our reconstruction policy for 40 CFR part 63 standards, which is contained in the general provisions for part 63 (40 CFR part 63, subpart A). The general provisions clearly distinguish between ''replacements'' and ''additions.'' The definition of *reconstruction* in the general provisions only addresses the ''replacement'' of equipment, while § 63.5(b)(6) of the general provisions addresses additions. At promulgation, these two concepts were combined in the language for § 63.1420(g)(2)(i), creating confusion and making the subpart PPP requirements inconsistent with the our general policy on ''replacements'' and ''additions.'' Therefore, in this direct final rule we are revising the provisions in § 63.1420(g)(2) to clearly distinguish how the replacement of components should be handled by owners and operators, and how the addition of new components should be handled, with respect to applicability to the new or existing source requirements. In summary, if the replacement of components at an existing affected source meets the definition of reconstruction, then the affected source becomes a new affected source. If an addition is made to an existing affected source, then the addition becomes part of the existing affected source.

Paragraph (g)(3) in § 63.1420 describes how to distinguish a process change from a change that is not considered to be a ''process change,'' according to the 40 CFR part 63, subpart PPP requirements. We are amending § 63.1420(g)(3) by removing the last phrase (which referred to the equipment configuration and operating conditions documented in the notification of compliance status report required by § 63.1439(e)(5)), because not all equipment configurations and operating conditions are required to be reported in the notification of compliance status report. The phrase that was removed implied that unless a configuration or condition was described in the notification of compliance status report, equipment in that configuration or condition would automatically be considered to be a ''process change.'' It was not our intent that every possible equipment configuration or condition be described in the notification of compliance status report. In addition, the phrase ''changes that are not within the equipment configuration'' was replaced with the phrase ''changes that do not alter the equipment configuration,'' for reasons similar to those described above.

Paragraph (h) in § 63.1420 addresses the applicability of subpart PPP during periods of start-up, shutdown, malfunction, or nonoperation. Paragraph (h)(1) in § 63.1420 specifies that the emission limitations in subpart PPP do not apply during these periods. However, paragraphs § 63.1420(h)(3) and (4) contain requirements specific to periods of start-up, shutdown, and malfunction. Therefore, paragraph § 63.1420(h)(1) in the direct final rule has been amended to indicate that the emission limitations in the subpart do not apply during periods of start-up, shutdown, or malfunction, except as provided in § 63.1420(h)(3) and (4).

Also, § 63.1420(h)(4) requires that you must prevent or minimize excess emissions during periods of start-up, shutdown, and malfunction, and provides a description of what constitutes ''excess emissions.'' In these direct final amendments, we are changing this description from ''emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction,'' to ''emissions greater than those allowed by the emission limitation which would apply during operational periods other than start-up, shutdown, and malfunction.'' We are making this change because we believe that the new wording is more consistent with our original intent, which was that owners or operators take steps to minimize emissions during start-up, shutdown, and malfunction. Further, we believe the revision in this direct final rule is clearer and more specific than the promulgated language.

Paragraph (e) of § 63.1422 includes the provisions for requesting a compliance extension. In the promulgated rule, this paragraph stated that a request for compliance must be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of § 63.1422. However, there are compliance dates specified in other paragraphs of subpart PPP. For instance, § 63.1420(g)(2)(i) of this direct final requires that new emission points comply with the existing source requirements by 120 days after the day of initial start-up. We intended that the compliance extension provisions in § 63.1422(e) apply to these other compliance dates, as well as to the compliance dates in § 63.1420(b) through (d). Therefore, this direct final rule adds a phrase to make it clear that you can request a compliance extension for compliance dates that are specified in sections of subpart PPP other than § 63.1420(b) through (d).

The promulgated definition of *epoxide* in subpart PPP includes a description of what an epoxide is (i.e., a chemical compound consisting of a three-membered cyclic ether). The definition also states that only emissions of ethylene oxide and propylene oxide are regulated under subpart PPP. After promulgation of subpart PPP, we became aware of another *epoxide,* ''epichlorohydrin,'' that is used to make polyether polyols. Under the promulgated definition of epoxide, emissions of epichlorohydrin would be exempt from control. This is inconsistent with section 112(b), (c), and (d) of the CAA. Therefore, we have added epichlorohydrin to Table 4 (Known Organic HAP from Polyether Polyols Products) and have amended the definition of *epoxide* to include epichlorohydrin in the list of epoxides that are subject to the provisions of subpart PPP.

In the promulgated NESHAP, the definition of *polyether polyol* excludes hydroxyethyl cellulose. At the time of promulgation of subpart PPP, we intended that this product, which meets the basic criteria of a polyether polyol, would be covered by the Miscellaneous Cellulose NESHAP, which we are currently developing. However, in the development of the Miscellaneous Cellulose NESHAP, we have become aware of other cellulose ether products that meet the definition of *polyether polyol.* Therefore, in this direct final rule we have revised the definition of *polyether polyol* to exclude the entire family of cellulose ethers, not just hydroxyethyl cellulose.

The promulgated version of subpart PPP requires compliance with the HON requirements for storage vessels, with the exceptions listed in § 63.1432. Section 63.1432 requires that records of all times when the storage tank is being filled be kept, in addition to the records required in § 63.123 of the HON. In this direct final rule, we are making clarifications to the rule at § 63.1432(q). Our intent was that the requirement to keep records of times when the storage vessel is being filled should only apply to storage vessels using a combustion, recovery, or recapture device, where the applicable monitoring plan does not specify continuous monitoring. The amended language in § 63.1432(q) should make this distinction clear.

For the purposes of both the maintenance wastewater and the process wastewater requirements in subpart PPP, we are amending § 63.1433(a)(1) and (2) and (b)(1), in order to clarify which compounds are considered ''organic HAP.'' The language in § 63.1433(a)(1) is

inadequate, while the language in § 63.1433(a)(2) and § 63.1433(b)(1) is unnecessarily complicated and difficult to interpret. The amendments in this direct final rule should make those requirements much easier to follow.

This direct final rule also clarifies the conditions required during performance testing for process vents from batch unit operations. Section 63.1426, paragraph (c)(3)(i)(B), which contains requirements specific to process vents from batch unit operations, states that performance testing may be conducted during either absolute worst-case conditions or hypothetical worst-case conditions. However, § 63.1437(a)(1) which contains general performance testing requirements for all emission sources, lists only absolute worst-case conditions as an option for performance testing at process vents from batch unit operations. This direct final rule corrects § 63.1437(a)(1) by revising that paragraph to state that performance testing at both absolute and hypothetical worst-case conditions is acceptable for process vents from batch unit operations.

Additionally, this direct final rule amends the information requirements associated with start-up, shutdown, and malfunction reports in § 63.1439(b)(1)(ii). The promulgated NESHAP requires the start-up, shutdown, and malfunction report to include all of the information recorded under § 63.1439(b)(1)(i)(A) through (B), and to contain the name, title, and signature of the owner or operator, or other responsible official certifying the report's accuracy. However, this is a good deal more information than is required to be specified in the general provisions in § 63.10(d)(5)(i). We have decided that as long as the information recorded under § 63.1439(b)(1)(i)(A) through (B) is recorded, that information need not be submitted to the Administrator. Therefore, this direct final rule references the start-up, shutdown, and malfunction reporting requirements in § 63.10(d)(5)(i) and no longer includes such a long list of information to report under § 63.1439(b)(1)(ii).

This direct final rule also removes the requirement that existing sources submit an Initial Notification report. The promulgated rule lists two separate due dates in different sections of the rule for the Initial Notification report. Section 63.1439, paragraph (e)(3)(ii)(A), states that the due date for the Initial Notification report for existing sources is June 1, 2000, but Table 8 shows the date as 120 days after June 1, 1999. Neither of those two dates is appropriate, in that the first date is too soon after promulgation of subpart PPP, while the other date is too late, since it was after the due date of the Notification of Compliance Status report for equipment leaks (April 29, 2000, or 150 days after the December 1, 1999 compliance date). To be useful, the Administrator (or the delegated authorities) needs to receive the Initial Notification report with sufficient time to prepare for receipt of the Notification of Compliance Status reports. Since this direct final rule will not take effect until after the date that the Notification of Compliance Status report for equipment leaks is due for existing sources, we do not believe that the submittal of an Initial Notification report is beneficial. Therefore, we have removed all requirements related to the Initial Notification report for existing sources. The specific changes are to § 63.1439(e)(3) and Table 8 of subpart PPP.

This direct final rule also inserts some introductory language pertinent to the other reports that are due in § 63.1439(e)(7) and reorganizes and renumbers the subsections of that paragraph. We are amending Table 1 of subpart PPP to clarify that although § 63.10(d)(5)(i) from the general provisions applies to subpart PPP affected sources, § 63.10(d)(5)(ii) (which requires immediate start-up, shutdown, or malfunction reports) does not.

V. What Are the Administrative Requirements for These Rules?

A. Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that these amendments are not a ''significant regulatory action'' because they do not meet any of the above criteria. Consequently, these rules were not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132

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.'' Under section 6 of 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 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 regulation.

This direct 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. Thus, the requirements of section 6 of Executive Order 13132 do not apply to this direct final rule.

C. 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 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 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.'' These rules do not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate an affected source. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these rules.

D. Executive Order 13045

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 the 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 Order has the potential to influence the regulation. These rules fall into that category only in part: the minimum rule stringency for subpart PPP is set according to a congressionally-mandated, technology-based lower limit called the ''floor,'' while a decision to increase the stringency beyond this floor can be based on risk considerations. Thus, Executive Order 13045 applies to these rules only to the extent that the Agency may consider the inherent toxicity of a regulated pollutant, and any differential impact such a pollutant may have on children's health, in deciding whether to adopt control requirements more stringent than the floor level in subpart PPP.

These rules are not subject to Executive Order 13045 because they are not economically significant as defined in Executive Order 12866. No children's risk analysis was performed for these rules because no alternative technologies exist that would provide greater stringency at a reasonable cost. Therefore, the results of any such analysis would have no impact on the stringency decision.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or in the private sector in any 1 year. Thus, today's rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these rules contain no regulatory requirements that might significantly or uniquely affect small governments, because they contain no requirements that apply to such governments or impose obligations on them. Therefore, today's rules are not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

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.

For purposes of assessing the impacts of this direct final on small entities, small entity is defined as : (1) A small business that has less than 750 employees and is unaffiliated with a larger domestic entity; (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 impacts of these rules on small entities, we have concluded that these actions will not have a significant economic impact on a substantial number of small entities. Consistent with Small Business Administrative (SBA) size standards, a polyether polyols production facility is classified as a small entity if it has less than 750 employees and is unaffiliated with a larger domestic entity. On that basis, 7 of the 36 polyether polyol production facilities are classified as small entities (i.e., having fewer than 750 employees). The EPA determined that none of these seven small entities will experience an increase in costs that is greater than one percent of revenues, as a result of these rules. This does not qualify as a significant economic impact on a substantial number of small businesses.

G. Paperwork Reduction Act

The information collection requirements in the final rule were submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been

prepared by EPA (ICR No. 1811.01), but, at promulgation, that ICR had not yet been approved by OMB. However, since promulgation the OMB has approved the ICR, and this final rule amends the table of currently approved ICR control numbers issued by OMB and updates the table to accurately display those information requirements not previously approved. The information collection requirements that are made effective by this action under OMB control number 2060–0415 were contained in ICR number 1811.01.

Today's final rule will have no impact on the information collection burden estimates made previously. The direct final amendments clarify the intent of the subpart PPP and correct inadvertent omissions and minor drafting errors. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, (15 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 would be 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 the Agency decides not to use available and applicable voluntary consensus standards.

During the rulemaking, the Agency searched for voluntary consensus standards that might be applicable. The search has identified no applicable voluntary standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to these rules.

I. The 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 July 7, 2000.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

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

Dated: April 20, 2000.

Carol M. Browner,

Administrator,

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control no.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * *	
63.1420–63.1439	2060–0415

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

PART 63—[AMENDED]

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

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

* * * * *

Subpart F—[AMENDED]

* * * * *

4. Section 63.101 is amended by revising the definition of *equipment leak*, to read as follows:

§ 63.101 Definitions.

* * * * *

Equipment leak means emissions of organic hazardous air pollutants from a connector, pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, surge control vessel, bottoms receiver, or instrumentation system in organic hazardous air pollutant service as defined in § 63.161.

* * * * *

Subpart W—[AMENDED]

5. Section 63.522 is amended by revising the definition of equipment leaks, to read as follows:

§ 63.522 Definitions.

* * * * *

Equipment leaks means emissions of hazardous air pollutants from a connector, pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, or instrumentation system in organic hazardous air pollutant service.

* * * * *

Subpart CC—[AMENDED]

6. Section 63.641 is amended by revising the definition of *equipment leak*, to read as follows:

§ 63.641 Definitions.

* * * * *

Equipment leak means emissions of organic hazardous air pollutants from a connector, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, or instrumentation system *in organic hazardous air pollutant service* as defined in this section. Vents from wastewater collection and conveyance systems (including, but not limited to wastewater drains, sewer vents, and sump drains), tank mixers, and sample valves on storage tanks are not equipment leaks.

* * * * *

Subpart PPP—[AMENDED]

* * * * *

7. Section 63.1420 is amended by:

a. Revising paragraph (e)(3) introductory text;

b. Revising paragraph (e)(9);

c. Revising paragraph (g)(1)(i) introductory text;

d. Revising paragraph (g)(2) introductory text;

e. Revising paragraph (g)(2)(i) introductory text;

f. Revising paragraph (g)(2)(i)(A);

g. Revising paragraph (g)(2)(ii);

h. Adding paragraph (g)(2)(iii);

i. Revising paragraph (g)(3);

j. Revising paragraph (g)(4);

k. Revising paragraph (h)(1); and

l. Revising paragraph (h)(4).

The revisions and additions read as follows:

§ 63.1420 Applicability and designation of affected sources.

* * * * *

(e) * * *

(3) *Annual applicability determination for non-PMPUs that have produced a polyether polyol.* Once per year beginning June 1, 2004, the owner or operator of each flexible operation unit that is not designated as a PMPU, but that has produced a polyether polyol at any time in the preceding 5-year period or since the date that the unit began production of any product, whichever is shorter, shall perform the evaluation described in paragraphs (e)(3)(i) through (iii) of this section. However, an owner or operator that does not intend to produce any elastomer product in the future, in accordance with paragraph (e)(9) of this section, is not required to perform the evaluation described in paragraphs (e)(3)(i) through (iii) of this section.

* * * * *

(9) *PMPUs terminating production of all polyether polyols.* If a PMPU terminates the production of all polyether polyols, and the owner or operator does not anticipate the production of any polyether polyols in the future in that PMPU, the process unit is no longer a PMPU and is not subject to this subpart after notification is made to the Administrator. This notification shall be accompanied by a rationale for why it is anticipated that no polyether polyols will be produced in the process unit in the future.

* * * * *

(g) * * *

(1) * * *

(i) If a group of one or more PMPUs is added to a plant site, the added group of one or more PMPUs and their associated equipment, as listed in paragraph (a)(4) of this section, shall be a new affected source and shall comply with the requirements for a new affected source in this subpart upon initial start-up or by June 1, 1999, whichever is later, if the added group of one or more PMPUs meets the criteria specified in paragraph (g)(1)(i)(A) of this section and either meets the criteria in paragraph (g)(1)(i)(B) or (C) of this section.

* * * * *

(2) *Adding emission points or making process changes to existing affected sources.* The provisions of paragraphs (g)(2)(i), (ii), and (iii) of this section apply to the owner or operator that adds emission points or makes process changes to an existing affected source.

(i) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (g)(2)(i)(A) and (B) of this section are met, the entire affected source shall be a new affected source and shall comply with the requirements for a new affected source upon initial start-up or by June 1, 1999, whichever is later.

(A) The replacement of components meets the definition of reconstruction in § 63.1423(b). For purposes of determining whether the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct an entire affected source, the equivalent capital cost shall be the entire potentially affected source; and

* * * * *

(ii) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (g)(2)(i)(A) and (B) of this section are not met and that replacement of components creates one or more emission points (*i.e.,* either newly created Group 1 emission points or emission points that change from Group 2 to Group 1) or causes any other emission point to be added (*i.e.,* Group 2 emission points, heat exchange systems subject to § 63.1435, or equipment leak components subject to § 63.1434), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance upon initial start-up or by the appropriate compliance date specified in § 63.1422 (*i.e.,* December 1, 1999 for most equipment leak components subject to § 63.1434, and June 1, 2002 for emission points other than equipment leaks), whichever is later.

(iii) If an addition or process change (not including a process change that solely replaces components) is made that creates one or more Group 1 emission points (*i.e.,* either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or causes any other emission point to be added (*i.e.,* Group 2 emission points, heat exchange systems subject to § 63.1435, or equipment leak components subject to § 63.1434), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance by initial start-up or by the appropriate compliance date specified in § 63.1422 (*i.e.,* December 1, 1999 for most equipment leak components subject to § 63.1434, and June 1, 2002 for emission points other than equipment leaks), whichever is later.

(3) *Determining what are and are not process changes.* For purposes of paragraph (g) of this section, examples of process changes include, but are not limited to, additions in process equipment resulting in changes in production capacity; production of a product outside the scope of the compliance demonstration; or whenever there is a replacement, removal, or addition of recovery equipment. For purposes of paragraph (g) of this section, process changes do not include: process upsets, unintentional temporary process changes, and changes that do not alter the equipment configuration and operating conditions.

(4) *Reporting requirements for owners or operators that change or add to their plant site or affected source.* An owner or operator that changes or adds to their plant site or affected source, as discussed in paragraphs (g)(1) and (g)(2) of this section, shall submit a report as specified in § 63.1439(e)(7)(iii).

(h) * * *

(1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to

which this subpart applies. These emission limitations shall not apply during periods of start-up, shutdown, or malfunction, except as provided in paragraphs (h)(3) and (4) of this section. During periods of start-up, shutdown, or malfunction, the owner or operator shall follow the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.6(e)(3). However, if a start-up, shutdown, malfunction, or period of nonoperation of one portion of an affected source does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission point shall still be required to comply with the applicable emission limitations of this subpart during the start-up, shutdown, malfunction, or period of nonoperation. For example, if there is an overpressure in the reactor area, a storage vessel that is part of the affected source would still be required to be controlled in accordance with the storage tank provisions in § 63.1432. Similarly, the degassing of a storage vessel would not affect the ability of a process vent to meet the emission limitations for process vents in §§ 63.1425 through 63.1430.

* * * * *

(4) During start-ups, shutdowns, and malfunctions when the emission limitations of this subpart do not apply pursuant to paragraphs (h)(1) through (3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph, the term ''excess emissions'' means emissions greater than those allowed by the emissions limitation which would apply during operational periods other than start-up, shutdown, and malfunction. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Use of back-up control techniques is not required, but is allowed, if available.

* * * * *

8. Section 63.1422 is amended by revising paragraph (b), by revising paragraph (e) introductory text, and removing and reserving paragraph (h) as follows:

§ 63.1422 Compliance dates and relationship of this rule to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after September 4, 1997 shall be in compliance with this subpart upon initial start-up or by June 1, 1999, whichever is later.

* * * * *

(e) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing affected source up to 1 additional year to comply with section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application, or to the Administrator as a separate submittal, or as part of the Precompliance Report. Requests for extensions shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of this section, or as specified elsewhere in this subpart. The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to this subpart.

* * * * *

(h) [Reserved]

9. Section 63.1423 is amended by adding in alphabetical order the terms *oil-water separator or organic-water separator* and *responsible official in paragraph (a)* and by revising the definitions of *epoxide, equipment leak, Group 2 wastewater stream,* and *polyether polyol in paragraph (b)* as follows:

§ 63.1423 Definitions.

(a) * * *

Oil-water separator or organic-water separator (subpart G)

* * * * *

Responsible official (subpart A)

* * * * *

(b) * * *

Epoxide means a chemical compound consisting of a three-membered cyclic ether. Only emissions of epoxides listed in Table 4 of this subpart (*i.e.,* ethylene oxide, propylene oxide, and epichlorohydrin) are regulated by the provisions of this subpart.

Equipment leak means emissions of organic HAP from a connector, pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, surge control vessel, bottoms receiver, or instrumentation system in organic HAP service.

* * * * *

Group 2 wastewater stream means any process wastewater stream at an existing affected source or new affected source that does not meet the definition (in this section) of a Group 1 wastewater stream.

* * * * *

Polyether polyol means a compound formed through the polymerization of EO or PO or other cyclic ethers with compounds having one or more reactive hydrogens (*i.e.,* a hydrogen atom bonded to nitrogen, oxygen, phosphorus, sulfur, etc.) to form polyethers (i.e., compounds with two or more ether bonds). This definition of *polyether polyol* excludes cellulose ethers (such as methyl cellulose, carboxymethyl cellulose, hydroxyethyl cellulose, hydroxy ethyl cellulose, and hydroxypropyl methyl cellulose) and materials regulated under 40 CFR part 63, subparts F, G, and H (the HON), such as glycols and glycol ethers.

* * * * *

10. Section 63.1426 is amended by:

a. Revising Equation 1 (in paragraph (c)(3)(i)(B)(*3*)(*i*));

b. Revising Equation 2 (in paragraph (c)(3)(ii)(A));

c. Revising Equations 4 and 5 (in paragraph (c)(5)(ii)(A));

d. Revising paragraph (d)(3)(ii); and

e. Revising Equation 7 in paragraph (e)(1).

The revisions read as follows:

§ 63.1426 Process vent requirements for determining organic HAP concentration, control efficiency, and HAP emission reduction for a PMPU.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) * * *

(*3*) * * *

(*i*) * * *

$$E = \sum_{i=1}^{n} P_i MW_i \times \frac{(V)(t)}{(R)(T)} \times \frac{P_T}{P_T - \sum_{j=1}^{m} \left(P_j\right)} \qquad \text{[Equation 1]}$$

* * * * *

(ii) * * *

(A) * * *

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{[Equation 2]}$$

* * * * *

(5) * * *

(ii) * * *

(A) * * *

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{[Equation 4]}$$

* * * * *

(d) * * *

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

(2) * * *

$$RED_{PMPU} = \left(\frac{\sum_{i=1}^{n}\left(E_{unc,\,i}\right)\left(\frac{R_i}{100}\right)}{\sum_{i=1}^{n}\left(E_{unc,\,i}\right) + \sum_{j=1}^{m}\left(E_{unc,\,j}\right)}\right) * 100 \qquad \text{[Equation 7]}$$

(3) * * *

(ii) The owner or operator shall determine the hourly uncontrolled organic HAP emissions from each process vent from a continuous unit operation in accordance with paragraph (c)(5)(ii) of this section, except that the emission rate shall be determined at the location specified in paragraph (d)(3)(i) of this section.

* * * * *

11. Section 63.1427 is amended:

a. By revising paragraph (e)(1) and Equation 10;

b. By revising Equation 13 in paragraph (h);

c. By revising paragraph (j)(2)(iii); and

d. By removing and reserving paragraph (j)(2)(iv).

The revisions read as follows:

§ 63.1427 Process vent requirements for processes using extended cookout as an epoxide emission reduction technique.

* * * * *

(e) * * *

(1) The owner or operator shall determine the percent epoxide emission reduction for the batch cycle using Equation 10.

$$R_{batchcycle} = \left[\frac{E_{e,u} - \left(E_{e,\,E}\right)\left(1 - \frac{R_{addon,\,i}}{100}\right) - \left(E_{e,\,o}\right)\left(1 - \frac{R_{addon,\,j}}{100}\right)}{E_{e,\,u}}\right] * 100 \qquad \text{[Equation 10]}$$

Where:

$R_{batchcycle}$ = Epoxide emission reduction for the batch cycle, percent.

$E_{e,E}$ = Epoxide emissions at the end of the ECO determined in accordance with paragraph (d)(1) of this section, kilograms.

$R_{addon,i}$ = Control efficiency of combustion, recovery, or recapture device that is used to control epoxide emissions after the ECO, determined in accordance with the provisions of § 63.1426(c), percent.

$E_{e,o}$ = Epoxide emissions that occur before the end of the ECO, determined in accordance with the provisions of § 63.1426(d), kilograms.

$R_{addon,j}$ = Control efficiency of combustion, recovery, or recapture device that is used to control epoxide emissions that occur before the end of the ECO, determined in accordance with the provisions of § 63.1426(c), percent.

$E_{e,u}$ = Uncontrolled epoxide emissions determined in accordance with paragraph (c)(1) of this section, kilograms.

* * * * *

(h) * * *

$$\text{Time}\left(P_{half}1\right) - \text{Time}\left(P_{half}2\right) < 20\%\ T_{AVG} \qquad \text{[Equation 13]}$$

Where:

$P_{half}1$ = Half the total pressure of the epoxide for product 1.

Time ($P_{half}1$) = Time when the pressure has fallen to half its total pressure for product 1.

$P_{half}2$ = Half the total pressure of the epoxide for product 2.

Time ($P_{half}2$) = Time when the pressure has fallen to half its total pressure for product 2.

T_{AVG} = The average time to cookout to the point where the epoxide pressure is 25 percent of the epoxide pressure at the end of the feed step for products 1 and 2.

* * * * *

(j) * * *

(2) * * *

(iii) If a combustion, recovery, or recapture device is used to reduce emission in conjunction with ECO, the owner or operator shall record the information specified in § 63.1430(d) and comply with the monitoring provisions in § 63.1429.

* * * * *

12. Section 63.1428 is amended by revising paragraph (g)(3)(i) as follows:

§ 63.1428 Process vent requirements for group determination of PMPUs using a nonepoxide organic HAP to make or modify the product.

* * * * *

(g) * * *

(3) * * *

(i) If the redetermination described in paragraph (g)(2) of this section indicates that the group status of the combination of process vents from batch unit operations in a PMPU that are associated with the use of nonepoxide organic HAP to make or modify the product changes from Group 2 to Group 1 as a result of the process change, the owner or operator shall submit a report as specified in § 63.1439(e)(6)(iii)(D)(*1*) and shall comply with Group 1 combination of batch process vents provisions in this subpart, as specified in § 63.1425(c)(1).

* * * * *

13. Section 63.1430 is amended by revising paragraphs (e)(1)(vi) and (vii) as follows:

§ 63.1430 Process vent reporting and recordkeeping requirements.

* * * * *

(e) * * *

(1) * * *

(vi) If the combination of all process vents from batch unit operations associated with the use of an organic HAP to make or modify the product is subject to the Group 1 batch process vent control requirements for nonepoxide HAP emissions from making or modifying the product in § 63.1425((c)(1), none of the records in paragraphs (e)(1)(i) through (v) of this section are required.

(vii) If the total annual emissions from the combination of process vents from batch unit operations associated with the use of an organic HAP to make or modify the product are less than 11,800 kg per year, only the records in paragraphs (e)(1)(i) and (ii) of this section are required.

* * * * *

14. Section 63.1432 is amended by revising paragraphs (h), (l), and (q) as follows:

§ 63.1432 Storage vessel provisions.

* * * * *

(h) When the HON storage vessel requirements in §§ 63.120(d)(3)(i), 63.120(d)(5), and 63.122(g)(2) use the term ''range,'' the term ''level'' shall apply instead for the purposes of this subpart.

* * * * *

(l) When the HON Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.120 and 63.122, the Periodic Report requirements contained in § 63.1439(e)(6) shall apply for the purposes of this subpart.

* * * * *

(q) In addition to the records required by § 63.123, the owner or operator of each storage vessel that is complying with § 63.119(e) and that has an applicable monitoring plan in accordance with § 63.120(d)(2) that does not specify continuous monitoring, shall maintain records of all times when the storage tank is being filled (i.e., when the liquid level in the storage vessel is being raised). These records shall consist of documentation of the time when each filling period begins and ends.

15. Section 63.1433 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(2);

c. Revising paragraph (a)(5);

d. Revising paragraph (a)(7);

e. Revising paragraph (a)(8); and

f. Revising paragraph (b)(1).

The revisions and additions read as follows:

§ 63.1433 Wastewater provisions.

(a) * * *

(1) Owners and operators of affected sources are not required to comply with the HON new source wastewater requirements in § 63.132(b)(1) and § 63.132(d) for the purposes of this subpart. Owners or operators of all new affected sources, as defined in this subpart, shall comply with the HON requirements for existing sources in §§ 63.132 through 63.149, with the exceptions noted in paragraphs (a)(2) through (20) of this section.

(2) The provisions of paragraphs (a)(2)(i), (ii), and (a)(10)(iii) of this section clarify the organic HAP that an owner or operator shall consider when complying with the requirements of §§ 63.132 through 63.149.

(i) Owners and operators are exempt from all requirements in §§ 63.132 through 63.149 that pertain solely and exclusively to organic HAP listed on Table 8 of 40 CFR part 63, subpart G.

(ii) When the HON requirements in §§ 63.132 through 63.149 refer to Table 9 compounds, the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.1423 and that are listed in Table 9 of 40 CFR part 63, subpart G, for the purposes of this subpart.

(iii) When §§ 63.132 through 63.149 refer to compounds in Table 36 of 40 CFR part 63, subpart G, or compounds in List 1 or List 2 of Table 36 of 40 CFR part 63, subpart G, the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.1423 and that are listed on Table 36 of 40 CFR part 63, subpart G, for the purposes of this subpart.

* * * * *

(5) When the HON process wastewater reporting requirements in § 63.146(a) require the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(f) or (g), the owner or operator requesting to monitor alternative parameters shall follow the procedures specified in § 63.1439(f) for the purposes of this subpart.

* * * * *

(7) When §§ 63.132 through 63.149 refer to an ''existing source,'' the term *existing affected source,* as defined in § 63.1420(a)(2), shall apply for the purposes of this subpart.

(8) When the HON requirements in §§ 63.132 through 63.149 refer to a ''new source,'' the term *new affected source,* as defined in § 63.1420(a)(3), shall apply for the purposes of this subpart.

* * * * *

(b) * * *

(1) When the HON maintenance wastewater provisions in § 63.105(a) refer to ''organic HAPs listed in Table 9 of subpart G of this part,'' the owner or operator is only required to consider compounds that meet the definition of *organic HAP* in § 63.1423 and that are listed in Table 9 of 40 CFR part 63, subpart G, for the purposes of this subpart.

* * * * *

16. Section 63.1434 is amended by removing and reserving paragraph (c).

17. Section 63.1435 is amended by revising paragraph (c) as follows:

§ 63.1435 Heat exchanger provisions.

* * * * *

(c) When the HON heat exchange system requirements in § 63.104(c)(3) specify the monitoring plan retention requirements, and when § 63.104(f)(1) refers to the record retention requirements in § 63.103(c)(1), the provisions of the general recordkeeping and reporting requirements in § 63.1439(a) and the applicable provisions of the General Provisions in 40 CFR part 63, subpart A, as specified in Table 1 of this subpart, shall apply for the purposes of this subpart.

* * * * *

18. Section 63.1437 is amended by revising paragraph (a)(1) introductory text as follows:

§ 63.1437 Additional requirements for performance testing.

(a) * * *

(1) Performance tests shall be conducted according to the general provisions' performance testing requirements in § 63.7(e)(1) and (2), except that for all emission sources except process vents from batch unit operations, performance tests shall be conducted during maximum representative operating conditions for the process achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) or (iii) of this section to occur. For process vents from batch unit operations, performance tests shall be conducted either at absolute worst-case conditions or hypothetical worst-case conditions, as defined in § 63.1426(c)(3)(i)(B), that are achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) or (iii) of this section to occur.

* * * * *

19. Section 63.1439 is amended by:

a. Revising paragraph (b)(1)(ii);

b. Revising paragraph (e)(3) introductory text;

c. Removing and reserving paragraph (e)(3)(ii)(A);

d. Revising paragraph (e)(5)(iv); and

e. Revising paragraph (e)(7).

The revisions read as follows:

§ 63.1439 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) * * *

(ii) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of according to the general provisions' Periodic Reporting schedule specified in § 63.10(d)(5)(i). The reports shall include the information specified in § 63.10(d)(5)(i).

* * * * *

(e) * * *

(3) *Initial Notification.* The owner or operator of a new affected source shall submit a written Initial Notification to the Administrator containing the information described in paragraph (e)(3)(i) of this section according to the schedule in paragraph (e)(3)(ii) of this section. The General Provisions' Initial Notification requirements in § 63.9(b)(2), (3), and (6) shall not apply for the purposes of this subpart.

* * * * *

(5) * * *

(iv) The parameter monitoring levels for flexible operation units, and the basis on which these levels were selected, or a demonstration that these levels are appropriate at all times, as specified in § 63.1420(e)(5)(ii)(A).

* * * * *

(7) *Other reports.* Other reports shall be submitted as specified in paragraphs (e)(7)(i) through (iii) of this section.

(i) For storage vessels, the notifications of inspections required by § 63.1432 shall be submitted, as specified in the HON storage vessel provisions in § 63.122(h)(1) and (2).

(ii) When the conditions at § 63.1420(e)(3)(iii), (e)(9), or (e)(10) are met, reports of changes to the primary product for a PMPU or process unit, as required by § 63.1420(e)(3)(iii), (e)(9), or (e)(10)(iii), respectively, shall be submitted.

(iii) Owners or operators of PMPU or emission points (other than equipment leak components subject to § 63.1434) that are subject to provisions for changes or additions to plant sites in § 63.1420(g)(1) or (2) shall submit a report as specified in paragraphs (e)(7)(iii)(A) and (B) of this section.

(A) Reports shall include:

(*1*) A description of the process change or addition, as appropriate;

(*2*) The planned start-up date and the appropriate compliance date, according to § 63.1420(g)(1) or (2); and

(*3*) Identification of the group status of emission points (except equipment leak components subject to the requirements in § 63.1434) specified in paragraphs (e)(7)(iii)(A)(*3*)(*i*) through (*iii*) of this section, as applicable.

(*i*) All the emission points in the added PMPU, as described in § 63.1420(g)(1).

(*ii*) All the emission points in an affected source designated as a new affected source under § 63.1420(g)(2)(i).

(*iii*) All the added or created emission points as described in § 63.1420(g)(2)(ii) or (iii).

(*4*) If the owner or operator wishes to request approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, alternative controls, or wishes to establish parameter monitoring levels according to the procedures contained in § 63.1438(c) or (d), a Precompliance Report shall be submitted in accordance with paragraph (e)(7)(iii)(B) of this section.

(B) Reports shall be submitted as specified in paragraphs (e)(7)(iii)(B)(*1*) through (*3*) of this section, as appropriate.

(*1*) Owners or operators of an added PMPU subject to § 63.1420(g)(1) shall submit a report no later than 180 days prior to the compliance date for the PMPU.

(*2*) Owners or operators of an affected source designated as a new affected source under § 63.1420(g)(2)(i) shall submit a report no later than 180 days prior to the compliance date for the affected source.

(*3*) Owners and operators of any emission point (other than equipment leak components subject to § 63.1434) subject to § 63.1420(g)(2)(ii) or (iii) shall submit a report no later than 180 days prior to the compliance date for those emission points.

* * * * *

20. Tables 1, 4, and 8 to subpart PPP of part 63 are revised as follows:

TABLE 1 OF SUBPART PPP.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

Reference	Applies to subpart PPP	Explanation
63.1(a)(1)	Yes	§ 63.1423 specifies definitions in addition to or that supersede definitions in § 63.2.
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes	§ 63.1422(f) through (k) of this subpart and § 63.160(b) identify those standards which overlap with the requirements of subparts PPP and H and specify how compliance shall be achieved.
63.1(a)(4)	Yes	Subpart PPP (this table) specifies the applicability of each paragraph in subpart A to subpart PPP.
63.1(a)(5)	No	Reserved.
63.1(a)(6)–(8)	Yes.	
63.1(a)(9)	No.	Reserved.
63.1(a)(10)	Yes.	

TABLE 1 OF SUBPART PPP.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

Reference	Applies to subpart PPP	Explanation
63.1(a)(11)	Yes.	
63.1(a)(12)–(14)	Yes.	
63.1(b)(1)	No	§ 63.1420(a) contains specific applicability criteria.
63.1(b)(2)	Yes.	
63.1(b)(3)	Yes.	
63.1(c)(1)	Yes	Subpart PPP (this table) specifies the applicability of each paragraph in subpart A to subpart PPP.
63.1(c)(2)	No	Area sources are not subject to subpart PPP.
63.1(c)(3)	No	Reserved.
63.1(c)(4)	Yes.	
63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications overridden by this table.
63.1(d)	No	Reserved.
63.1(e)	Yes.	
63.2	Yes	§ 63.1423 specifies those subpart A definitions that apply to subpart PPP.
63.3	Yes.	
63.4(a)(1)–(3)	Yes.	
63.4(a)(4)	No	Reserved.
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)(1)	Yes	Except the terms ''source'' and ''stationary source'' should be interpreted as having the same meaning as ''affected source.''
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes	Except § 63.1420(g) defines when construction or reconstruction is subject to new source standards.
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except that the initial notification requirements in § 63.1439(e)(3) shall apply instead of the requirements in § 63.9(b).
63.5(b)(5)	Yes.	
63.5(b)(6)	Yes	Except that § 63.1420(g) defines when construction or reconstruction is subject to the new source standards.
63.5(c)	No	Reserved.
63.5(d)(1)(i)	Yes.	
63.5(d)(1)(ii)	Yes	Except that § 63.5(d)(1)(ii)(H) does not apply.
63.5(d)(1)(iii)	No	§ 63.1439(e)(5) and § 63.1434(e) specify notification of compliance status requirements.
63.5(d)(2)	No.	
63.5(d)(3)	Yes	Except § 63.5(d)(3)(ii) does not apply, and equipment leaks subject to § 63.1434 are exempt.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except that where § 63.9(b)(2) is referred to, the owner or operator need not comply.
63.6(a)	Yes.	
63.6(b)(1)	Yes.	
63.6(b)(2)	Yes.	
63.6(b)(3)	Yes.	
63.6(b)(4)	Yes.	
63.6(b)(5)	Yes.	
63.6(b)(6)	No	Reserved.
63.6(b)(7)	No.	
63.6(c)(1)	Yes	§ 63.1422 specifies the compliance date.
63.6(c)(2)	No.	
63.6(c)(3)	No	Reserved.
63.6(c)(4)	No	Reserved.
63.6(c)(5)	Yes.	
63.6(d)	No	Reserved.
63.6(e)	Yes	Except as otherwise specified for individual paragraphs (below), and § 63.6(e) does not apply to Group 2 emission points.
63.6(e)(1)(i)	No	This is addressed by § 63.1420(h)(4).
63.6(e)(1)(ii)	Yes.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	Yes.	
63.6(e)(3)(i)	Yes	For equipment leaks (subject to § 63.1434), the start-up, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to combustion, recovery, or recapture devices and is optional for other equipment. The start-up, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.[a]
63.6(e)(3)(i)(A)	Yes	This is also addressed by § 63.1420(h)(4).
63.6(e)(3)(i)(B)	Yes.	
63.6(e)(3)(i)(C)	Yes.	
63.6(e)(3)(ii)	Yes.	

TABLE 1 OF SUBPART PPP.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

Reference	Applies to subpart PPP	Explanation
63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in § 63.1439(b)(1).
63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in § 63.1439(b)(1).
63.6(e)(3)(v)	No	Requirement is specified in § 63.1439(b)(1).
63.6(e)(3)(vi)	Yes.	
63.6(e)(3)(vii)	Yes.	
63.6(e)(3)(vii) (A)	Yes.	
63.6(e)(3)(vii) (B)	Yes	Except the plan shall provide for operation in compliance with § 63.1420(i)(4).
63.6(e)(3)(vii) (C)	Yes.	
63.6(e)(3)(viii)	Yes.	
63.6(f)(1)	Yes.	
63.6(f)(2)	Yes	Except 63.7(c), as referred to in § 63.6(f)(2)(iii)(D) does not apply, and except that § 63.6(f)(2)(ii) does not apply to equipment leaks subject to § 63.1434.
63.6(f)(3)	Yes.	
63.6(g)	Yes.	
63.6(h)	No	Subpart PPP does not require opacity and visible emission standards.
63.6(i)(1)	Yes.	
63.6(i)(2)	Yes.	
63.6(i)(3)	Yes.	
63.6(i)(4)(i)(A)	Yes.	
63.6(i)(4)(i)(B)	No	Dates are specified in § 63.1422(e) and § 63.1439(e)(4)(i) for all emission points except equipment leaks, which are covered under § 63.182(a)(6)(i).
63.6(i)(4)(ii)	No.	
63.6(i)(5)–(14)	Yes.	
63.6(i)(15)	No	Reserved.
63.6(i)(16)	Yes.	
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)	No	§ 63.1439(e) (5) and (6) specify the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
63.7(a)(3)	Yes.	
63.7(b)	No	§ 63.1437(a)(4) specifies notification requirements.
63.7(c)	No	Except if the owner or operator chooses to submit an alternative nonopacity emission standard for approval under § 63.6(g).
63.7(d)	Yes.	
63.7(e)(1)	Yes	Except that all performance tests shall be conducted during worst case operating conditions.
63.7(e)(2)	Yes.	
63.7(e)(3)	No	Subpart PPP specifies requirements.
63.7(e)(4)	Yes.	
63.7(f)	Yes	Since a site-specific test plan is not required, the notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3) approval or disapproval of the alternative test method shall not be tied to the site-specific test plan.
63.7(g)	Yes	Except the notification of compliance status report requirements in § 63.1439(e)(5) shall apply instead of those in § 63.9(h). In addition, equipment leaks subject to § 63.1434 are not required to conduct performance tests.
63.7(h)	Yes	Except § 63.7(h)(4)(ii) is not applicable, since the site-specific test plans in § 63.7(c)(2) are not required.
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No	Reserved.
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subpart PPP specifies locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)	Yes.	
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with § 63.1439(b)(1)(i)(B); for equipment leaks, comply with § 63.181(g)(2)(ii).
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	§ 63.1438 specifies monitoring requirements; not applicable to equipment leaks, because § 63.1434 does not require continuous monitoring systems.
63.8(c)(5)–(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)–(3)	Yes.	
63.8(f)(4)(i)	Yes	Except the timeframe for submitting request is specified in § 63.1439(f) or (g); not applicable to equipment leaks, because § 63.1434 (through subpart H of this part) specifies acceptable alternative methods.

TABLE 1 OF SUBPART PPP.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

Reference	Applies to subpart PPP	Explanation
63.8(f)(4)(ii)	Yes.	
63.8(f)(4)(iii)	Yes.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	Subpart PPP does not require CEMs.
63.8(g)	No	Data reduction procedures specified in § 63.1439(d) and (h); not applicable to equipment leaks.
63.9(a)	Yes.	
63.9(b)	No	The initial notification requirements are specified in § 63.1439(e)(3).
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No	§ 63.1437(a)(4) specifies notification deadline.
63.9(f)	No	Subpart PPP does not require opacity and visible emission standards.
63.9(g)	No.	
63.9(h)	No	§ 63.1439(e)(5) specifies notification of compliance status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	No	§ 63.1439(a) specifies record retention requirements.
63.10(b)(2)	No	Subpart PPP specifies recordkeeping requirements.
63.10(b)(3)	Yes.	
63.10(c)	No	§ 63.1439 specifies recordkeeping requirements.
63.10(d)(1)	Yes.	
63.10(d)(2)	No	§ 63.1439(e)(5) and (6) specify performance test reporting requirements; not applicable to equipment leaks.
63.10(d)(3)	No	Subpart PPP does not require opacity and visible emission standards.
63.10(d)(4)	Yes.	
63.10(d)(5)(i)	Yes	Except that reports required by § 63.10(d)(5)(i) shall be submitted at the same time as Periodic Reports specified in § 63.1439(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points.
63.10(d)(5)(ii)	No.	
63.10(e)	No	§ 63.1439 specifies reporting requirements.
63.10(f)	Yes.	
63.11	Yes.	
63.12	Yes	Except that the authority of § 63.177 (for equipment leaks) will not be delegated to States.
63.13–63.15	Yes.	

[a] The plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points.

* * * * *

TABLE 4 OF SUBPART PPP.—KNOWN ORGANIC HAP FROM POLYETHER POLYOL PRODUCTS

Organic HAP/chemical name [CAS No.]
1,3 Butadiene (106990)
Epichlorohydrin (106898)
Ethylene Oxide (75218)
n-Hexane (110543)
Methanol (67561)
Propylene Oxide (75569)
Toluene (108883)

CAS No. = Chemical Abstracts Service Registry Number.

* * * * *

TABLE 8 TO SUBPART PPP.—ROUTINE REPORTS REQUIRED BY THIS SUBPART

Reference	Description of report	Due date
§ 63.1439(b) and subpart A of this part	Refer to § 63.1439(b), Table 1 of this subpart, and to subpart A of this part.	Refer to subpart A of this part.
§ 63.1439(e)(3)	Initial notification	New affected sources w/ initial start-up at least 90 days after June 1, 1999: submit the application for approval of construction or reconstruction in lieu of the initial notification report. New affected sources w/ initial start-up prior to 90 days after June 1, 1999:by 90 days after June 1, 1999.
§ 63.1439(e)(4)	Precompliance Report [a]	Existing affected sources: 12 months prior to compliance date. New affected sources: with the application for approval of construction or reconstruction.
§ 63.1439(e)(5)	Notification of Compliance Status [b]	Within 150 days after the compliance date.
§ 63.1439(e)(6)	Periodic Reports	Semiannually, no later than 60 days after the end of each 6-month period. See § 63.1439(e)(6)(i) for the due date for this report.
§ 63.1439(e)(6)(iii)	Quarterly reports for sources with excursions (upon request of the Administrator).	No later than 60 days after the end of each quarter.
§ 63.506(e)(7)(i)	Storage Vessels Notification of Inspection	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.

[a] There may be two versions of this report due at different times; one for equipment subject to § 63.1434 and one for other emission points subject to this subpart.

[b] There will be two versions of this report due at different times; one for equipment subject to § 63.1434 and one for other emission points subject to this subpart.

* * * * *

[FR Doc. 00–10418 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 520, 530 and 535

[Docket No. 99–10]

Ocean Common Carriers Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations implementing the Shipping Act of 1984 to clarify the definition of ''ocean common carrier'' to reflect the Commission's interpretation of the term. As a result, only common carriers that operate vessels in at least one United States trade will be subject to these rules.

DATES: This rule becomes effective August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Room 1018, Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission initiated this proceeding by Notice of Proposed Rule (''NPR'') published in the **Federal Register** on June 25, 1999. 64 FR 34183. The NPR noted that the Commission was proposing to amend several of its regulations to clarify the definition of ''ocean common carrier'' contained in section 3(16) of the Shipping Act of 1984 (''Shipping Act''), 46 U.S.C. app. § 1702(16), as amended by the Ocean Shipping Reform Act of 1998 (''OSRA''), P.L. 105–258, 112 Stat. 1902, to reflect the Commission's then-interpretation of that term. In essence, the proposed rule defined ''ocean common carrier'' to include only common carriers that operate vessels serving ports in at least one United States trade.

The NPR solicited comment on the proposed rule from the public, and the Commission received comments from: (1) The Ocean Carrier Working Group (''OCWG''); (2) Maersk, Inc.; (3) Samskip Hf (''Samskip''); (4) the Council of European & Japanese National Shipowners' Associations (''CENSA''); (5) the Calcutta, East Coast of India and Bangladesh Conference and Waterman Steamship Corporation (''India Carriers'');(6) the National Industrial Transportation League (''NITL''); (7) the American International Freight Association & Transportation Intermediaries Association (''AIFA/TIA''); and (8) Ocean World Lines, Inc. (''OWL'').

The NPR

The NPR noted that the Commission had previously proposed a new definition for the term ''ocean common carrier'' in the context of the rulemaking governing agreements which was undertaken to implement OSRA. Docket No. 98–26, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984,* 64 FR 11236, March 8, 1999. However, the Commission received only two comments on that particular proposal and subsequently decided to provide the public an additional opportunity to comment through this proceeding. The NPR then stated that the heart of the matter was how to distinguish between ocean common carriers (''OCCs'') and non-vessel-operating common carriers (''NVOCCs''). The distinction is significant under the Shipping Act because only OCCs can enter into and file agreements with the Commission and receive antitrust immunity therefor. In addition, only OCCs can offer service contracts to shippers, although NVOCCs can enter into service contracts as shippers.

The NPR conceded that at first glance the defining of an OCC as a ''vessel operator'' does not appear to be ambiguous. However, the Commission stated that its staff has encountered

several complex situations in attempting to apply the term, *e.g.,* where and when vessels operated and what type of vessels are employed. In this regard, the NPR noted that various bureaus have interpreted the Shipping Act to require that an OCC must operate a vessel calling at a U.S. port, and that if a carrier is an OCC in one trade, it should be considered an OCC for all U.S. trades. The proposed rule therefore codified this approach and stated:

> *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

The NPR noted that this multi-trade approach avoids making interpretations as to a carrier's status on a trade-by-trade basis, which would be administratively impractical and might prompt a less efficient redeployment of vessels. The proposal was also intended to clarify that companies that operate vessels solely outside the U.S. are not deemed to be OCCs. The NPR suggested that the proposal was consistent with legislative intent that a ''vessel operator'' be one whose vessels call at U.S. ports and all other common carriers should be classified as NVOCCs.

The NPR further stated that if the definition of OCC included carriers that operate vessels only in foreign-to-foreign trades, it could expand the scope of antitrust immunity and also remove certain carriers from NVOCC financial responsibility requirements in U.S. trades even though they have no vessels or assets in the U.S. Lastly, the NPR concluded, based on principles of statutory construction, that when Congress used the term ''vessel'' in the definition of OCC, it likely was referring to those vessels specified in the definition of ''common carrier,'' *i.e.,* those that operate on the high seas between the U.S. and a foreign country.

Comments on Proposed Rule

A. OCWG

The OCWG agrees with the Commission that the distinction between OCCs and NVOCCs is significant. It also supports continuation of the Commission's past practice that a common carrier that operates a vessel in one U.S. trade is an OCC for all U.S. trades. It contends that this practice is consistent with the Shipping Act and, as a practical matter, has worked well in the past, presenting no problems.

The OCWG submits that the proposed rule would require members of vessel sharing agreements (''VSAs'') to deploy vessels in the U.S. solely to meet regulatory requirements, something the Commission has indicated it wishes to avoid, citing the NPR at 5. The OCWG asserts that various types of VSAs have grown significantly, and offer more efficient and frequent service at lower cost. It contends that it is possible, for a variety of operational factors, that the parties may decide that all of the vessels of a member be deployed in non-U.S. trades and it will only serve the U.S. via the vessels of its fellow members. The OCWG concludes that such a carrier would not be considered an OCC and would have to withdraw from the U.S. portion of the agreement or restructure its service.

The OCWG therefore suggests a modified definition. It would allegedly preserve the ability of VSAs to function efficiently, while at the same time maintaining a distinction between carriers that commit assets to a service in U.S. trades and those that do not.

Next, the OCWG argues that the proposed definition should not change the applicable law regarding transshipment agreements. It contends that for over 50 years the Commission has held that a person may be an OCC, within the meaning of the Shipping Act and its predecessor legislation, without having a vessel call directly at a U.S. port, citing *Restrictions on Transshipment at Canal Zone,* 2 U.S.M.C. 675 (1943). It notes further that in adopting OSRA, Congress did not change the statutory definition of ''common carrier'' and contends, therefore, that there is no statutory basis for the change in law being proposed by the Commission.

In addition, the OCWG maintains that the proposed change would overturn longstanding Commission precedent that a carrier providing a portion of a through vessel service to or from the U.S. qualifies as an OCC even though its vessels do not call at a U.S. port, citing *Transshipment & Apportionment Agreements from Indonesian Ports to U.S. Atlantic & Gulf Ports,* 10 F.M.C. 183 (1964); and *Transshipment and Through Billing Arrangements Between East Coast Ports of South Thailand and U.S. Atlantic and Gulf Ports,* 10 F.M.C. 201 (1966). These carriers therefore urge the Commission to clarify in the supplemental information that a common carrier offering a through bill of lading to or from the U.S. that operates a vessel on which part of the service is provided meets the definition of OCC, even if its vessels do not call directly at a U.S. port. The OCWG further notes that these carriers would be subject to tariff publication and other regulatory requirements of the Shipping Act and would maintain the distinction between carriers that commit assets to a service to or from the U.S. and those that do not. Lastly, the OCWG argues that the proposed approach would have the effect of removing all transshipment agreements from the scope of the Commission's jurisdiction and require the Commission to repeal 46 C.F.R. § 535.306.

B. Maersk

Maersk observes that the Commission's proposed definition would exclude feeder operators providing foreign-to-foreign transportation from the definition of OCC. It suggests that the final rule should accommodate such activity. In addition, Maersk believes that a carrier signatory to a vessel sharing agreement (''VSA'') should be considered an OCC when another carrier participating in the agreement contributes ships making U.S. port calls.

C. Samskip

Samskip, a self-defined vessel-operating common carrier, argues that the proposed rule overturns Commission precedent that carriers providing a portion of vessel service to or from the U.S. qualify as OCCs even though their vessels do not actually call at U.S. ports. It suggests, therefore, that the supplemental information to the final rule state that a common carrier which offers a through bill of lading and operates a vessel on which part of the service is provided is an OCC, even if the vessels it operates do not call directly at a U.S. port. Lastly, Samskip urges the Commission to adopt a definition of OCC that provides that a common carrier that becomes an OCC by virtue of carriage in a transshipment situation should be considered an OCC for purposes of entering into slot chartering and vessel space sharing agreements with other OCCs.

D. CENSA

CENSA supports that portion of the proposed rule that states that a carrier operating a vessel in one U.S. trade is an OCC for all U.S. trades. However, CENSA believes that the requirement that a carrier must have at least one vessel calling at a U.S. port may exclude two categories of carriers—those involved in VSAs and transshipment arrangements.

CENSA contends that most OCCs are parties to one or more forms of VSAs—space charters, slot charters, and alliances—many of which are global in

scope. CENSA submits that it is possible that a VOCC member of a VSA will deploy its vessels in non-U.S. trades, but will serve the U.S. via the vessels of the agreement members. CENSA believes that under the proposed definition such a carrier would not be an OCC and would consequently have to withdraw from the U.S. portion of the agreement or restructure its service to have a vessel call at a U.S. port. It suggests amending the definition to include a VOCC that contributes vessels to a VSA.

CENSA further asserts that longstanding Commission precedent holds that carriers that provide a portion of vessel service to or from the U.S. qualify as OCCs even though their vessels do not call at U.S. ports. CENSA suggests that there is no need to overrule this precedent and that Congress is presumed to have been aware of it when it adopted the definition of ''common carrier'' in OSRA.

E. India Carriers

The India Carriers contend that the proposed rule would classify a carrier which operates oceangoing vessels as an NVOCC, if the vessels did not call at U.S. ports. They believe that this contradicts the definition of NVOCC in the Shipping Act—*i.e.,* a common carrier that does not operate the vessels by which the ocean transportation is provided. They further submit that an OCC that serves the U.S. trades by slot-chartering space on another carrier's vessels, but issues its own bills of lading, would be held to be a ''shipper'' under the proposed definition. This, they argue, could confuse the traditional liability relationship between shipper and carrier under the Carriage of Goods by Sea Act (''COGSA''), 46 U.S.C. 1310–1315.

The India Carriers also argue that the proposed rule would exclude carriers that operate vessels as only part of their U.S. service, thereby overturning longstanding precedent. In addition, they contend that the rationalization of vessel space through various cooperative agreements allows carriers to provide service more efficiently and at a reduced cost. The proposed rule allegedly might prompt carriers to redeploy vessels solely to satisfy a regulatory requirement.

The India Carriers note that vessels operating under slot charters or other VSAs are presently subject to the Commission's regulatory requirements, including that they publish tariffs. They also contend that FMC or court judgments could be enforced by requiring carriers who offer through service but do not call at U.S. ports to maintain a bond or other guarantee similar to that required of NVOCCs.

F. NITL

NITL supports the interpretation that a carrier that operates a vessel in a single trade is an OCC in all trades. It maintains that the plain language of the statute does not require a trade-by-trade analysis and to do so would lead to inefficiencies. NITL is concerned, however, about the exclusion of carriers that do not offer direct port calls but instead offer indirect ocean transportation by way of VSAs or similar arrangements.

NITL asserts that the proposed definition is narrower than the statutory definition, which simply defines an OCC as a ''vessel-operating common carrier'' and does not restrict the trade lanes in which the vessel can operate. NITL contends that there is no support for the Commission's assertion that the ''vessel'' in the definition of OCC was likely the vessels specified in the definition of ''common carrier.'' NITL further states that under that definition a common carrier does not need to operate a vessel; it must merely ''utilize'' a vessel in U.S. trades for part or all of the transportation. It concludes that the ''other part'' of the transportation can be wholly outside the U.S., *i.e.,* foreign-to-foreign. It further contends that the plain language of the statute, unchanged by the passage of OSRA, does not restrict the provision of OCC service to only those carriers that make direct calls at U.S. ports.

NITL also finds the proposed definition inconsistent with the policy objective of OSRA, particularly section 2(4), which requires the FMC to administer the law in a manner that promotes competitive and efficient ocean transportation services and relies to a greater extent on the marketplace. It notes that carriers may decide that the U.S. market is more efficiently and economically served through a VSA and claims that the Commission's narrow definition of OCC would prevent some VOCCs from offering such services to shippers through service contracts.

Ultimately, NITL believes the FMC should maintain the existing statutory definition of OCC in its regulations and should broadly construe it. It contends that there is nothing in the Shipping Act or OSRA that indicates that Congress intended a more narrow definition.

G. AIFA/TIA

AIFA/TIA supports the proposed definition as providing necessary, clear, and precise guidance to the ocean transportation industry. It notes that the definition of ''common carrier'' in section 3(6) of the Shipping Act refers to a person who provides transportation by water and utilizes a vessel for all or part of that transportation, and that an OCC is defined simply as ''a vessel-operating common carrier.'' AIFA/TIA submits that the Commission should put these two definitions together and issue a statement that an entity that otherwise meets the definition of common carrier and operates a single vessel on a single route between a single U.S. port and a single foreign port, over either the high seas or the Great Lakes, must be treated as an OCC for all of its operations in U.S. trades. This interpretation would allegedly extend the status of OCC to the largest possible universe of operators.

AIFA/TIA also does not object to proposals that carriers involved in nonexclusive transportation agreements also should be accorded OCC status even if they have no operations directly between a U.S. and foreign port.

H. OWL

OWL, one of the largest NVOCCs in the world, proposes a significant change in the traditional carrier/shipper relationship between VOCC and NVOCC. Instead of obtaining space from a vessel owner by a service contract, OWL presents a scenario in which an NVOCC would obtain space via a slot charter with a VOCC. Under such circumstances, OWL argues that the NVOCC would no longer be a shipper, vis-a-vis the VOCC, and would instead be a co-venturer, who should likewise be permitted to hold itself out to the public as an OCC in the trade lanes. OWL thus suggests a bifurcated approach to the definition of OCC: (1) The Commission's multi-trade approach for vessel operators in one or more trade lanes; and (2) a trade-by-trade approach for NVOCCs slot chartering with VOCCs.

OWL's proposal is premised on the assumption that a slot charter between a VOCC and an NVOCC provides the NVOCC with sufficient operational interest or nexus in the voyages to warrant classification as an OCC in that trade. If the Commission decides otherwise, then OWL asserts that the Commission should not allow a VOCC in one trade to become a VOCC in another by virtue of a slot charter. At the very least, OWL submits that the FMC should set out guidelines similar to those recently adopted by the U.S. Customs Service (''Customs'') which require a slot or time-chartering common carrier to have significant responsibility or involvement in the actual operation of the vessels before being considered a VOCC.

OWL concedes that slot charters would be inherently risky for NVOCCs, but it is willing to face those risks in order to be able to offer service guarantees (*i.e.,* service contracts) to its underlying shipper clients. It contends further that the enhanced competition of new entrants would outweigh any possible adverse impact of possibly broadening the scope of antitrust immunity. OWL also believes that the Commission's concerns about its and shippers' ability to arrest or attach a vessel are unfounded. It suggests that the best way to protect shippers is by requiring adequate insurance or a surety bond, such as it already possesses.

OWL contends that there is no statute, code or policy that would prohibit it from obtaining space on vessels by means of space charters, and the fact that such space charters are not within the scope of the Shipping Act does not mean they are prohibited. In this regard, OWL references a decision of the European Commission (''EC'') relating to the Trans-Atlantic Conference Agreement (''TACA''). *Commission Decision of 16 September 1998 Relating to a Proceeding Pursuant to Articles 85 and 86 of the EC Treaty.* (Case No. I/35.134) (''EC Decision''). That decision discussed two types of NVOCCs—(1) those that operate vessels in another trade, and (2) those that do not operate vessels anywhere. The EC stated that neither type competes with VOCCs in terms of quality of service, but the first is able to compete on price. OWL further asserts that the EC Decision recognizes three types of common carriers: (1) A VOCC in the trade; (2) VOCCs in another trade; and (3) NVOCCs. It submits that the critical distinction is not that the second owns vessel in another trade, but that it has the ability to compete with VOCCs on price through its space charter arrangements. OWL seeks this ability to compete on price by means of space charters and be deemed an OCC.

OWL further contends that the term ''vessel operator'' is growing increasingly ambiguous in light of vessel sharing and consortia agreements. It submits that the Commission has not faced the difficult question of what degree of involvement is required to be considered a vessel operator and has instead taken a rudimentary approach of defining a VOCC as a common carrier that operates a vessel somewhere in the U.S.

OWL notes that Customs has struggled with the definition of VOCC for the past 25 years in the context of the Sixth Proviso to the Jones Act, 46 U.S.C. app. 883, that exempts coastwise movements of empty containers owned or leased by the ''owner or operator'' of a vessel transporting those containers for its own use in the foreign commerce of the U.S. In this regard, Customs has issued several rulings dealing with carriers involved in slot charter agreements. In 1977, Customs purportedly issued a ruling holding that a time charterer was not a vessel operator and, in 1983, expanded this position to slot charterers. In that case, Customs allegedly looked at one trade lane without reference to status in other lanes. In 1999, Customs reviewed a joint service agreement between Italian Line and d'Amico Line. It determined that both were VOCCs because they shared operational control under the agreement.

The Final Rule

General Discussion

For the reasons set forth below, and in full consideration of all of the comments, the Commission has decided to adopt the proposed rule as the final rule. As a result, the term ''ocean common carrier'' will include only those common carriers who actually operate a vessel in at least one United States trade. In addition, if a common carrier is an ocean common carrier in one U.S. trade, it can act as an ocean common carrier in all U.S. trades.

This decision is fully supported by a straightforward reading of the relevant definitions contained in the Shipping Act. Section 3(16) of the Shipping Act defines an ''ocean common carrier'' as ''a vessel-operating common carrier.'' And, section 3(6) of the Shipping Act defines a ''common carrier'', in part, as:

> * * * a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—
>
> (A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and
>
> (B) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country. * * *

When these two definitions are read together, it is logical to conclude that the vessels operated by an ocean common carrier are those referenced in the common carrier definition, *i.e.,* those ''operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.''

The Commission recognizes that the definition of common carrier refers to one who ''utilizes, for all or part of that transportation'' a vessel operating between the U.S. and a foreign country. Congress employed the word ''utilize'' so that the definition of common carrier could encompass both ocean common carriers and NVOCCs; the very definition of ocean common carrier as ''vessel-operating common carrier'' indicates that Congress intended ocean common carriers actually to operate, not merely utilize, vessels. The reference to ''all or a part of the transportation'' simply reflects the fact that a common carrier can offer port-to-port transportation or point-to-point through transportation, using inland carriers for the latter.

The final rule is also consistent with Congress' intent to delineate between ocean common carriers and NVOCCs. In adopting the Shipping Act, Congress clearly wanted to distinguish between those common carriers that operate vessels and those that do not. The former are ocean common carriers and the latter are NVOCCs. As the House Committee on Merchant Marine and Fisheries noted with respect to H.R. 1878:

> The Shipping Act does not contain a definition of ''non-vessel-operating common carrier.'' One is added to this bill so that the distinction may be made between those carriers that operate vessels and those that do not. Both types are included in the term ''common carrier.''
>
> The term ''ocean common carrier'' is based on the definition of ''common carrier by water in foreign commerce'' in section 1 of the Shipping Act with the added provision that the carrier must operate the vessel providing the transportation by water.

H.R. Rep. No. 53, 98th Cong., 1st Sess. 29 (1983) (''House Report''). *See also,* S. Rep. No. 3, 98th Cong., 1st Sess. 20 (1983) (''Senate Report''). In addition, Congress wanted to ensure that carriers operating solely through ports of contiguous nations not be included in the definition of ''common carrier.'' *See,* House Report at 29; Senate Report at 19. Congress' concern not to establish the Commission's jurisdiction over carriers operating through ports in countries contiguous to the United States reflects its overall determination not to expand the Commission's jurisdiction, and with it, the conferring of antitrust immunity, to carriers operating solely between foreign ports.

As noted in the preamble to the NPR, Congress viewed vessel operators as those whose vessels call at U.S. ports and classified all other common carriers in U.S. commerce as non-vessel-operating common carriers. For example, in its report on the Shipping Act, the Senate Commerce, Science, and Transportation Committee observed:

> The Committee strongly believes that it is in our national interest to permit cooperation among carriers serving our foreign trades to permit efficient and reliable service. * * * Our carriers need; a stable, predictable, and profitable trade with a rate of return that warrants reinvestment and a commitment to serve the trade; greater security in investment. * * *

Senate Report at 9. We continue to believe that Congress intended to provide antitrust immunity and other special privileges and protections only to those carriers that have made the financial commitment to provide vessel service in United States trades.

The importance of the distinction between OCC and NVOCC was noted in the preamble to the proposed rule: an OCC can be a party to agreements filed with the Commission and receive antitrust immunity therefor, and can enter into service contracts with shippers. An NVOCC can do neither. Moreover, NVOCCs are subject to a financial responsibility requirement, with foreign NVOCCs subject to higher amounts under the scale promulgated by Commission regulation. Thus, there is ample incentive for NVOCCs to characterize themselves as OCCs, and this could inure to the detriment of their shipper customers who would otherwise have been protected by an NVOCC's financial responsibility.

The Commission continues to be concerned about the effect of the definition of ocean common carrier on the scope of antitrust immunity envisioned by Congress under the Shipping Act. If the definition of OCC somehow included carriers that operated vessels only in foreign-to-foreign trades, this could substantially expand the scope of antitrust immunity beyond that contemplated by Congress. In this regard, we note the longstanding judicial policy of narrowly construing antitrust exemptions. See, *Federal Maritime Commission* v. *Seatrain Lines, Inc.,* 411 U.S. 726, 733 (1973).

Vessel Sharing Arrangements

Several of the commenters (Maersk, CENSA, OCWG, India Carriers and NITL) suggest that the definition of OCC should be extended to include shipping lines who are parties to VSAs serving U.S. ports but who themselves do not call at U.S. ports. While the term VSA is undefined by the commenters, they suggest it is virtually any cooperative arrangement among OCCs. These commenters note that VSAs have grown over the years and are likely to continue to grow. These arrangements often permit carriers to offer more efficient and frequent service to the shipping public and at a lower cost. The OCWG further contends that a variety of operational and other factors will dictate how a member of a VSA will deploy its vessels in non-U.S. trades and that such a carrier may choose to serve U.S. trades solely with vessel space obtained on its partners' ships.

Some commenters suggest that the proposed definition could discourage the formation of VSAs or prevent the parties from maximizing the benefits of such cooperation by redeploying vessels out of U.S. trades. Maersk, CENSA and the OCWG thus propose an exception to the proposed definition for a vessel operating common carrier that contributes vessels to a VSA that serves the U.S. NITL likewise believes that VSAs should be encouraged, but suggests that this could be accomplished simply by maintaining the existing statutory definition and by broadly construing it. Lastly, OWL argues that if the Commission does not adopt its proposal concerning NVOCC space chartering, then parties to VSAs should be considered OCCs only if they have significant responsibility or involvement in the actual day-to-day operations of the vessels.

While the intended benefit of the exception urged by some of the commenters is to facilitate formation and operation of efficient VSAs, there are several problems with this approach. First, it appears to address a mostly theoretical concern. Commenters do not identify, nor is the Commission aware of, any instances where entities are planning to operate major VSAs with parties who are not in the U.S. trades, or where current, vessel-operating members of VSAs are contemplating withdrawing vessel service from U.S. trades and proposing to serve the U.S. only through space-sharing arrangements with fellow VSA members. In addition, this type of arrangement would expand the reach of antitrust immunity well beyond that envisioned by Congress when it recently passed OSRA. Since 1984, the only carriers that could enter into agreements subject to the Act and receive antitrust immunity were ''ocean common carriers.'' The inclusion of VSA participants in the OCC definition would effectively confer antitrust immunity to carriers who do not make a commitment to serve the U.S. trades by operating their own vessels.

In addition to these very serious policy-based concerns, the carriers' proposal raises other technical or legal problems, and may generate further confusion or ambiguity. Since the term VSA is undefined, but seems to include an almost unlimited range of carrier relationships, the proposed exemption would appear to encompass a broad and indefinite class of foreign companies. Also, it refers to a vessel sharing agreement that ''operates'' vessels. However, VSAs do not collectively operate vessels—their individual carrier members do so. Moreover, if the members are subject to an arrangement that covers more than the U.S. trades, those non-U.S. portions of the arrangement would not be in the VSA and filed with the Commission.[1] The Commission could be left unable to determine the full extent of any such arrangement or ascertain whether the carrier involved is a vessel operator in some non-U.S. trade, and not an NVOCC or some other entity unlawfully seeking VOCC status. Lastly, this proposal provides no protection to the shipping public who might use the services of such a carrier in its U.S. service. The carrier would have no attachable assets in the U.S. and might not have an agent for service of process in the U.S. to receive the claims of injured parties. This too would appear to contravene OSRA's general objective of providing more, not fewer, protections to U.S. interests utilizing foreign entities, as reflected in the strengthened ocean transportation intermediary (''OTI'') and controlled carrier provisions, for example.

For the reasons stated above, the Commission is not adopting the carrier proposal concerning VSAs. This does not mean that a VSA member without ships calling at a U.S. port would be precluded from offering a common carriage service to the U.S. However, it would simply have to offer its service as an NVOCC. It could then enter into service contracts with OCCs, but could not offer its own service contracts or fix rates with other vessel operators in a trade.

The Commission is fully cognizant of the new policy objective added to the Shipping Act by OSRA—*i.e.,* promoting the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace. The Commission further believes that there may be arrangements between common carriers that offer more efficient and rationalized services, while at the same time providing shippers with more service options and lower costs for their ocean

[1] In *Transpacific Westbound Rate Agreement* v. *Federal Maritime Comm'n,* 951 F.2d 950 (9th Cir. 1991), the court upheld the Commission's decision that it did not have jurisdiction over foreign-to-foreign portions of agreements that also had U.S.-to-foreign portions. As a result, foreign-to-foreign portions of agreements are generally not filed with the Commission, even for informational purposes.

transportation, and that some of these arrangements may be precluded by the final rule as a result of specific statutory constraints limiting the Commission's flexibility in interpreting the Shipping Act. We appreciate commenters' arguments regarding efficient operations. We fully support and wish to encourage arrangements and operations that enhance efficiency and competition. However, we do not think it appropriate to adopt an overly broad exception to address what, to date, is only a hypothetical problem. We would remind the carriers that the Commission would, as always, give serious consideration to any petition for rulemaking, reconsideration of this rule, or an exemption.

Transshipment Arrangements

Transshipment agreements are arrangements between ocean common carriers by which one carrier serving a port of origin and the other carrier serving a port of destination provide transportation between such ports via an intermediate port at which the cargo is transferred from one carrier to the other. *See* 46 CFR 535.306(a). Nonexclusive transshipment agreements are exempt from the filing requirements of the Shipping Act, 46 CFR 535.306(b),[2] but exclusive transshipment agreements must still be filed with the Commission.

Several commenters have raised concerns about the effect of the proposed rule on the status of vessel operator parties to transshipment agreements who do not directly serve the United States. They contend that the rule would overturn longstanding Commission precedent that such carriers are considered to be OCCs. As a result, Maersk has proposed an additional exception to include feeder operators in the rule, while Samskip and the OCWG suggest that the Commission can address the issue in the supplemental information to the final rule without further amending the actual definition.

Beginning in 1943, in the *Canal Zone* case, the Commission's predecessor found that ocean carriers moving cargo from Colombia or Ecuador to the Canal Zone and then transferring that cargo to carriers moving it to the U.S., under through bills of lading, were ''engaged in the transportation by water of property between the United States and a foreign country'' and consequently were ''common carriers by water'' subject to the Shipping Act, 1916. This position was reaffirmed and further explicated by the Commission in 1966, in the two *Transshipment Cases.* In the first case, the Commission found carriers moving cargo from Indonesian outports to the U.S. under a through bill of lading who transshipped the cargo at a base port to be common carriers by water, and stated:

> Where there exists a unitary contract of affreightment such as a through bill of lading by which two or more carriers or conferences of carriers hold themselves out to transport cargo from a specified foreign port to a point in the United States with transshipment at one or more intermediate points from one carrier to another, each of the carriers so involved is ''engaged in'' transporting cargo by water from a foreign country to the United States.

10 F.M.C. at 191. The Commission reached a similar conclusion in the second *Transshipment* case, 10 F.M.C. 201 (1966), where carriers moving cargo from Thailand to Singapore were also held to be subject to the 1916 Act.

The Commission does not believe that these cases are controlling today. The *Transshipment* cases were decided under the 1916 Act, which defined ''common carrier by water in foreign commerce'' to mean ''a common carrier engaged in the transportation by water of passengers or property between the United States * * * and a foreign country.'' When Congress enacted the Shipping Act it chose different language to define ''common carrier'' in section 3(6), 46 U.S.C. app. 1702(6), and separately defined ''ocean common carrier'' and ''non-vessel-operating common carrier.'' In light of the fact that the Commission decided the *Transshipment* cases prior to the statutory distinction being drawn between NVOCCs and OCCs, the Commission finds that the *Transshipment* cases are non-controlling as to these issues and declines to adopt the commenters' recommendations with regard thereto. As noted in the House Report, the difference between a ''common carrier by water'' and an ''ocean common carrier'' is that the latter has ''the added provision that the carrier must operate the vessel,'' a significant distinction. Thus, the *Transshipment* cases are probably controlling as to whether someone is a ''common carrier,'' but irrelevant to ''ocean common carrier'' status.

Avoidance of OTI Responsibilities

The NPR raised concerns about permitting vessel operators in foreign-to-foreign trades to be considered OCCs in U.S. trades by virtue of VSA or transshipment arrangements. In particular, it noted that this could remove certain companies from the scope of the NVOCC bonding requirement even though they have no vessels or assets in the U.S. that can be attached to satisfy a Commission or U.S. court judgment. NPR at 6. As noted earlier, there is a very strong incentive under the Shipping Act, as modified by OSRA, for NVOCCs to want to be considered OCCs. They can then offer confidential service contracts to their shipper customers and avoid the costs of maintaining a bond as required by the Act and the Commission's regulations. Some NVOCCs are likely to engage in complex machinations to be considered OCCs under some of the proposals suggested by certain commenters. This is not some idle threat or hypothetical fear—even before passage of OSRA many NVOCCs were simply holding themselves out as OCCs.[3] Now, post-OSRA, a review of the carriers holding themselves out as VOCCs on the Commission's web page reveals that many of these carriers may well be NVOCCs, a matter for probable enforcement action. In addition, it appears that some carriers that may have at one time served U.S. ports with their own vessels are continuing to hold themselves out as OCCs even though they have withdrawn these vessels from service.

Multi-trade Approach

Almost all of the commenters support the Commission's multi-trade approach to determining OCC status—if a carrier is an OCC in one U.S. trade, it will be considered an OCC for all U.S. trades. NITL suggests that this approach is supported by the plain language of the statute. The OCWG notes that this is simply a continuation of past Commission practice and avoids having to make status determinations on a trade-by-trade basis. It further argues that making such determinations on a trade-by-trade basis would be impractical and inefficient. As reflected by the endorsement of the commenters, the Commission's position in this regard is a sound one, and the Commission will continue the multi-trade approach to determining OCC status in the final rule.

OWL's Proposal

OWL's proposal to consider NVOCCs who space charter from VOCCs to be considered OCCs on a trade-by-trade basis is most problematic. At the very

[2] Nonexclusive transshipment agreements do not prohibit either carrier from entering into similar agreements with other carriers.

[3] In Docket No. 98–31, *Publication of Inactive or Inaccurate Ocean Common Carrier Tariffs,* order served May 19, 1999, the Commission found that 13 NVOCCs operating in the Far East trades held themselves out to be VOCCs.

least, such a proposal is outside the scope of the proposed rule and would require additional notice and comment were the Commission inclined to pursue such an approach. But, more importantly, OWL's proposal does not appear to be a proper matter for a rulemaking proceeding. OWL is not asking that the Commission explicate some statutory or regulatory provision. Instead, it is asking the Commission to rewrite the Shipping Act to give certain NVOCCs the ability to offer service contracts to their shipper customers. Regardless of whether this is sound policy, Congress recently and very consciously chose not to permit such activity when it enacted OSRA. The Commission will not now do what Congress declined to do.

Effective Date

It appears that there may be some vessel operators currently holding themselves out as ocean common carriers even though they do not operate vessels that directly serve U.S. ports. The Commission understands that these carriers may have been confused about the legitimacy of such services, in light of the Commission's pre-1984 policies implementing the 1916 Shipping Act. Regardless of the validity of this position, the Commission appreciates the situation these carriers are in and desires to give them sufficient time to restructure their services in accordance with the final rule. As a result, the final rule will not become effective for 90 days. And, of course, the rule will not be enforced retroactively as to such carriers.

It is also possible that some of these carriers operating as OCCs may have entered into service contracts with shippers that may still be effective. At the very least, our decision here should operate as the type of *force majeure* situation that would warrant the termination of such contracts without any penalty to the shipper. If the parties to such contracts wish to continue operating under them, the Commission believes that this would not be possible since the carrier would no longer be considered an ocean common carrier, but rather would be an NVOCC. However, a similar arrangement might possibly be reflected in the common carrier's tariff rates or perhaps as a time/volume rate.

Amendment to Part 515

In the final rule of Docket No. 98–28, *Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries,* adding section 515 to part 46 CFR, the Commission stated in the supplementary information section that payment against financial responsibility should only be made on ''final'' judgments; however, it mistakenly failed to add the word ''final'' in the actual language of § 515.23(b)(2). In response to petitions for reconsideration of the final rule in 46 CFR 515, the Commission ordered the correction of this oversight to be made in the instant rulemaking proceeding in order to preserve resources. Therefore, in accordance with the Commission's decision in Docket No. 98–28, we are amending 46 CFR 515.23(b)(2) to add the word ''final.''

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. In its Notice of Proposed Rulemaking, the Commission stated its intention to certify this rulemaking because the proposed changes affect only ocean common carriers and passenger vessel operators, entities the Commission has determined do not come under the programs and policies mandated by the Small Business Regulatory Enforcement Fairness Act. As no commenter refuted this determination, the certification remains unchanged.

List of Subjects

46 CFR Part 515

Exports; Freight forwarders; Non-vessel-operating common carriers; Ocean transportation intermediaries; Licensing requirements; Financial responsibility requirements; Reporting and recordkeeping requirements.

46 CFR Part 520

Common carrier; Freight; Intermodal transportation; Maritime carriers; Reporting and recordkeeping requirements.

46 CFR Part 530

Freight; Maritime carriers; Reporting and recordkeeping requirements.

46 CFR Part 535

Administrative practice and procedure; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, for the reasons set forth above, Parts 515, 520, 530, and 535 of Subchapter C of Title 46 Code of Federal Regulations, are amended as follows:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

2. In § 515.2 revise paragraph (m) to read as follows:

§ 515.2 Definitions

* * * * *

(m) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

3. Revise § 515.23(b)(2) to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

* * * * *

(b) * * *

(2) If the parties fail to reach an agreement in accordance with paragraph (b)(1) of this section within ninety (90) days of the date of the initial notification of the claim, the bond, insurance, or other surety shall be available to pay any final judgment for damages obtained from an appropriate court. The financial responsibility provider shall pay such judgment for damages only to the extent they arise from the transportation-related activities of the ocean transportation intermediary ordinarily within 30 days, without requiring further evidence related to the validity of the claim; it may, however, inquire into the extent to which the judgment for damages arises from the ocean transportation intermediary's transportation-related activities.

* * * * *

PART 520—CARRIER AUTOMATED TARIFF SYSTEMS

1. The authority citation for part 520 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1702, 1707–1709, 1712, 1716; and sec. 424 of Pub. L. 105–383, 112 Stat. 3411.

2. In § 520.2 revise the definition of ocean common carrier to read as follows:

§ 520.2 Definitions

* * * * *

Ocean common carrier means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1704, 1705, 1707, 1716.

2. In § 530.3 revise paragraph (n) to read as follows:

§ 530.3 Definitions.

* * * * *

(n) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

PART 535—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHERS SUBJECT TO THE SHIPPING ACT OF 1984

1. The authority citation for part 535 is amended to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707; 1709–1710, 1712 and 1714–1718; Pub. L. 105–383, 112 Stat. 3411.

2. Revise § 535.101 to read as follows:

§ 535.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 19 of the Shipping Act of 1984 (''the Act''), and the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902.

3. In § 535.104 revise paragraph (u) to read as follows:

§ 535.104 Definitions.

* * * * *

(u) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–11338 Filed 5–5–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–126]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service clarifies the method by which quarterly line count data will be incorporated in the new high-cost mechanism for purposes of calculating and targeting support amounts. It also clarifies that, until the Commission adopts new line count input values, forward-looking costs for universal service support purposes shall be estimated using the line count input values adopted in the Tenth Report and Order. Finally, it clarifies that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers.

DATES: Effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Katie King, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Twentieth Order Reconsideration, CC Docket No. 96–45; FCC 00–126, released on April 7, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. In this Order, we clarify certain aspects of the new high-cost universal service support mechanism for non-rural carriers adopted in the *Ninth Report and Order*, 64 FR 67416 (December 1, 1999), on October 21, 1999. Specifically, we clarify the method by which quarterly line count data will be incorporated in the new high-cost mechanism for purposes of calculating and targeting support amounts.

We also clarify that, until the Commission adopts new line count input values, forward-looking costs for universal service support purposes shall be estimated using the line count input values adopted in the *Tenth Report and Order,* 64 FR 67372 (December 1, 1999). This clarification does not alter the methodology adopted in the *Ninth Report and Order* except to account for line growth when the wire center line count data reported quarterly by the carriers differs from the input values used to estimate forward-looking cost.

Finally, we clarify that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers.

II. Discussion

2. In general, there are four stages in the forward-looking high-cost mechanism for non-rural carriers where line count information is required: (1) To estimate forward-looking costs of providing supported services; (2) to determine statewide support amounts; (3) to target those statewide support amounts to individual wire centers; and (4) to determine the per-line support amounts in individual wire centers.

In addition, the interim hold-harmless provision uses line counts to target carrier-by-carrier hold-harmless support amounts to individual wire centers. The interim hold-harmless provision also uses line counts to determine the per-line support amounts in individual wire centers. As discussed, we provide specific guidance on how these line counts are used in the four stages of the forward-looking mechanism and the interim hold-harmless provision.

3. *Estimating Forward-Looking Costs.* We clarify that the line counts used in the model to estimate forward-looking economic costs shall be used to calculate average forward-looking costs in all the cost calculations in the methodology adopted in the *Ninth Report and Order* for determining support. This approach is consistent with the Commission's and the Federal-State Joint Board's decision to use a cost model. The model estimates the forward-looking costs of providing the supported services in each wire center served by non-rural carriers. We clarify that model lines shall be used in

determining the wire center average cost per line, the statewide average cost per line, the nationwide average cost per line, and the national cost benchmark.

The statewide average cost per line is determined by adding the costs in the wire centers in the state and dividing by the number of non-rural model lines in the state. Similarly, the nationwide average cost per line is determined by adding the costs in all states and dividing by the total number of non-rural model lines. The national benchmark equals 135 percent of the nationwide average cost.

4. *Calculating Statewide Support Amounts.* We clarify that, to the extent that the reported line counts differ from the line counts used in the model to estimate forward-looking costs, statewide support amounts shall be adjusted to reflect any changes between the number of model lines and the number of reported lines. This ensures that the new mechanism provides sufficient support and that support is portable. We shall incorporate the number of lines reported by non-rural carriers on a quarterly basis in calculating statewide support amounts. Statewide support amounts shall be determined by calculating the average per-line support amount in the state and multiplying this support amount by the number of lines reported by non-rural carriers in the state.

5. This clarification of the methodology can be illustrated by using the example in the *Ninth Report and Order* illustrating the targeting of forward-looking support. We assume, in that example, that there are 30 lines in the state, the average cost per line is $30 and thus the total statewide cost as estimated by the model is $900. We assume further that the national benchmark equates to $25 per line. Using the statewide methodology adopted in the *Ninth Report and Order*, the total amount of support provided to carriers in the state would be ($30 − $25)×30 lines×76%=$114 or $3.80 per line of untargeted support. In order to adjust the total statewide support amount to reflect quarterly line counts, we clarify that the average per-line amount of untargeted support shall be multiplied by the number of lines reported by non-rural carriers in the state. For example, assume that non-rural carriers in the state report that they have 35 lines, rather than the 30 lines used in the model to estimate forward-looking costs. Basing support on reported lines, the statewide support amount would be $3.80×35=$133, rather than $3.80×30=$114.

6. *Targeting Forward-Looking Support.* After statewide forward-looking support is calculated as described, that statewide support amount must be targeted to individual wire centers. Under this targeting approach, we clarify that the line counts used in the model to estimate forward-looking economic costs shall be used to target support to high-cost wire centers. This approach is consistent with the Commission's and the Federal-State Joint Board's decision to use a cost model. The model estimates the forward-looking costs of providing the supported services in each wire center served by non-rural carriers. From this information, we identify the high-cost wire centers. Although we do not alter the targeting methodology adopted in the *Ninth Report and Order,* we now clarify that the model is used to estimate relative costs among wire centers, rather than relative support amounts. We also clarify how the per-line targeted support amount should be calculated.

7. As discussed, we have concluded that support amounts should be adjusted to reflect the number of lines reported by non-rural carriers, in those situations when the number of lines used in the model to estimate forward-looking costs differs from the number of reported lines. The example used to illustrate targeting in the *Ninth Report and Order* was based on the assumption that the number of model lines and the number of reported lines did not differ, so we clarify how the targeting calculations will be made, even if the line counts differ. In identifying high-cost wire centers for purposes of targeting support, instead of using pro rata factors based on wire center scale support, we will calculate ratios based on the wire center's cost above the national cost benchmark. As explained, this approach does not change support amounts.

8. This clarification of the methodology is best provided by using the example in the *Ninth Report and Order* to illustrate the targeting of forward-looking support and the example for determining statewide support discussed. Assume that the estimated total cost of $900 in the state is derived from the costs in three wire centers as follows:

Wire Center 1 has 10 lines, with an average cost of $20 per line, and a total cost in the wire center of $200;
Wire Center 2 has 10 lines, with an average cost of $30 per line, and a total cost of $300; and
Wire Center 3 has 10 lines, with an average cost of $40 per line, and a total cost of $400.

As in the example, the statewide average cost per line is $30, the national benchmark is $25, and the statewide support amount is based on an average untargeted support amount of $3.80 per line. Because the number of lines reported by non-rural carriers in the State is assumed to be 35, the statewide support amount is $133. The proportion of the statewide support amount targeted to each wire center is determined by first calculating the ratio of the wire center's estimated cost above the benchmark to the total cost above the benchmark in the State. Therefore, the estimated costs above the benchmark would be as follows:

Wire Center 1 has an average cost below the benchmark, so the cost above the benchmark is $0;
Wire Center 2 has an estimated cost above the benchmark of ($30 − $25)×10 model lines=$50;
Wire Center 3 has an estimated cost above the benchmark of ($40 − $25)×10 model lines=$150; and the total estimated cost above the benchmark in the State is $0+$50+$150=$200.

Then the ratios used to determine the percentage of statewide support each wire center will receive are calculated as follows:

Wire Center 1 receives $0/$200=0%; Wire Center 2 receives $50/$200=25%; and Wire Center 3 receives $150/$200=75%.

Thus, of the $133 of support the State receives, Wire Center 1 receives $0 support; Wire Center 2 receives 25%×$133=$33.25; and Wire Center 3 receives 75%×$133=$99.75.

9. We clarify that we shall use the number of reported lines, rather than model lines, to calculate the targeted per-line support amount available in the wire center. Otherwise, support amounts could differ depending upon whether the line is provided by an incumbent local exchange carrier or by a competitive eligible telecommunications carrier.

Using the example, we know that, of the $133 statewide support amount, $33.25 is targeted to Wire Center 2, and $99.75 targeted to Wire Center 3. Assume that the 35 reported lines are distributed as follows:

Wire Center 1 has 15 reported lines;
Wire Center 2 has 6 reported lines; and
Wire Center 3 has 14 reported lines.

Dividing the support amounts available in each wire center, by the number of reported lines results in the following per-line support amounts:

Wire Center 1 receives $0 per line;
Wire Center 2 receives $33.25/6=$5.54 per line; and
Wire Center 3 receives $99.75/14=$7.125 per line.

This methodology produces a competitively neutral result, whereas, using model lines to calculate the per-line support would not. This can be illustrated with one of the wire centers in the example. If model lines were used to calculate the per-line support amount in Wire Center 3, the per-line amount would be $99.75/10=$9.975. If the incumbent local exchange carrier were serving all lines, the incumbent, in effect, would be receiving $99.75/14=$7.125 per line. If a competitor were serving one line and receiving $9.975 in support, the incumbent local exchange carrier would receive $6.905 per line for serving the remaining 13 lines (($99.75 − $9.975=$89.775)/13). To ensure that all non-rural carriers in a wire center receive the same per-line support amount for the lines they serve, we clarify that the total wire center support amount shall be divided by the number of reported lines in that wire center.

10. *Targeting Hold-Harmless Support.* We similarly clarify how hold-harmless support is targeted to high-cost wire centers. Although hold-harmless support is not based upon costs estimated by the model, it is consistent with our decision to target hold-harmless support to high-cost wire centers to use model lines in identifying high-cost wire centers, as we do for targeting forward-looking support. In addition, we clarify that the portable per-line amount of targeted hold-harmless support shall be determined by dividing the total hold-harmless support amount targeted to the wire center by the number of lines reported in that wire center.

11. We use the example presented in the *Ninth Report and Order* to illustrate the targeting of hold-harmless support. We use model lines to determine relative costs among wire centers and reported lines to determine the per-line support amount available in each wire center. We assume that a State has a single carrier with three wire centers in the State. Assume that the model estimates the average forward-looking cost per line in each wire center as follows:

Wire Center 1—$15,
Wire Center 2—$20,
Wire Center 3—$25.

Assume that these cost estimates were based on input values of 10 lines in each wire center. Thus, the statewide average cost per line is ($150+$200+$250)/30 lines=$20. Assume further that the national benchmark equates to $22 per line, and therefore the carrier receives no support under the forward-looking methodology in part 54 of our rules, which averages costs at the statewide level. Also assume that the carrier receives a total of $90 of interim hold-harmless support as determined pursuant to part 36 of our rules.

Under the targeting approach, the hold-harmless support is distributed first to the wire center that the model estimates to have the highest costs in the State until that wire center's average costs, net of support, equal the average costs in the next most expensive wire center. This process continues in a cascading fashion until all support has been distributed. In this example, the first $50 of hold-harmless support would be distributed to Wire Center 3, so that the average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to $250 − $50=$200, an average cost of $200/10 lines=$20 per line. This places Wire Center 3 on equal footing with Wire Center 2, which also has an average cost of $200/10 lines=$20 per line. The remaining hold-harmless support, $90—$50 = $40, would be divided between the wire centers, so that the average cost as estimated by the model, net of hold-harmless support, would be the same in Wire Center 2 and Wire Center 3, that is, $18 per line.

Thus, Wire Center 2 would receive a total of $20 in support and Wire Center 3 would receive a total of $50+$20=$70 in support. The average forward-looking cost in Wire Center 2, net of hold-harmless support, is reduced to $200 − $20=$180, an average cost of $180/10 lines=$18 per line. The average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to $250 − $70=$180, an average cost of $180/10 lines=$18 per line.

Now assume that the carrier reports that Wire Center 2 has 6 lines and that Wire Center 3 has 14 lines. The portable per-line support amount in Wire Center 2 would be $20/6 lines=$3.33 per line. The portable per-line support amount in Wire Center 3 would be $70/14 lines=$5.00 per line.

12. *Reporting Quarterly Line Counts.* As discussed, the line counts used in the model to estimate forward-looking costs are trued-up to 1998 ARMIS line counts. As of December 30, 1999, non-rural incumbent local exchange carriers and competitive eligible telecommunications carriers seeking to receive support are now required to file updated line counts every quarter. USAC shall determine statewide support amounts by calculating the average per-line support amount in the state and multiplying the average support amount by the number of lines reported by non-rural carriers in the State. For the year 2000, forward-looking support will be distributed for the first and second quarters of the year 2000 based on the line counts non-rural carriers filed on December 30, 1999. Similarly, forward-looking support for the third and fourth quarters of the year 2000, will be based on the line counts non-rural carriers file on March 30, 2000, and July 31, 2000, respectively.

13. Although section 54.307(b) of the Commission's rules refers to an annual July 31st deadline for the submission of competitive eligible telecommunications carriers' line count data, we clarify that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers. In the *Ninth Report and Order,* the Commission adopted uniform, mandatory quarterly reporting requirements for all carriers seeking support for serving lines in non-rural areas. To ensure ''equitable, non-discriminatory, and competitively neutral treatment[,]'' support must be available to all eligible telecommunications carriers on a quarterly basis, rather than on an annual basis. Therefore, competitive eligible telecommunications carriers serving lines in non-rural areas may submit line count data under the filing schedule described in § 54.307(c) and receive support on a regular quarterly basis. This approach is consistent with our decision to require uniform quarterly reporting and is essential to ensure portability of support among carriers. We amend § 54.307 accordingly.

III. Procedural Matters

A. Regulatory Flexibility Act Certification

14. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have ''a significant economic impact on a substantial number of small entities,'' and includes the factual basis for such certification. The RFA generally defines ''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). The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

15. In the *Ninth Report and Order,* the Commission certified pursuant to the RFA that the final rules adopted in that order would not have a significant economic impact on a substantial number of small entities. We concluded that the *Ninth Report and Order* adopted a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. In a companion Further Notice of Proposed Rulemaking adopted in this docket, the Commission prepared an IRFA seeking comment on the economic impacts on small entities. No comments were received in response to that IRFA.

16. The rule changes adopted by this order implement our clarifications to the *Ninth Report and Order,* as described in the text of this *Twentieth Order on Reconsideration.* The changes adopted in this order will affect only non-rural LECs. As mentioned, non-rural LECs generally do not fall within the definition of a small business concern. Therefore, we certify pursuant to Section 605(b) of the RFA, that the final rules adopted in this order will not have a significant economic impact on a substantial number of small entities. The Consumer Information Bureau, Reference Information Center, will send a copy of the *Twentieth Order on Reconsideration,* including a copy of this final certification, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA. In addition, this certification and order will be published in the **Federal Register**. Finally, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the *Twentieth Order on Reconsideration,* including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

B. Effective Date of Final Rules

17. We conclude that the amendments to our rules adopted herein shall be effective May 8, 2000. In this order, we make minor amendments to the rules adopted in the *Ninth Report and Order*, which implement a new forward-looking high-cost support mechanism, effective January 1, 2000. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the implementation of the new mechanism. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

IV. Ordering Clauses

18. The authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, and section 1.108 of the Commission's rules, the Twentieth Order on Reconsideration is adopted.

19. Part 54 of the Commission's rules, 47 CFR Part 54, is amended as set forth, effective May 8, 2000.

20. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Twentieth Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otheriwse noted.

2. Amend § 54.307 by revising paragraphs (b) and (c) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

* * * * *

(b) In order to receive support pursuant to this subpart, a competitive eligible telecommunications carrier must report to the Administrator the number of working loops it serves in a service area pursuant to the schedule set forth in paragraph (c) of this section. For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in § 51.5 of this chapter, the carrier must report the number of working loops it serves in the service area. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must report the number of working loops it serves in the service area and the number of working loops it serves in each wire center in the service area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service.

(c) For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in § 51.5 of this chapter, the carrier must submit no later than July 31st of each year the data required pursuant to paragraph (b) of this section as of December 30th of the previous calendar year, and the carrier may update on a quarterly basis the data required pursuant to paragraph (b) of this section according to the schedule. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule.

(1) No later than July 31 of each year, submit data as of December 30th of the previous calendar year;

(2) No later than September 30th of each year, submit data as of March 30th of the existing calendar year;

(3) No later than December 30th of each year, submit data as of July 31st of the existing calendar year;

(4) No later than March 30th of each year, submit data as of September 30th of the previous year.

3. Amend § 54.309 by revising paragraphs (a)(1), (a)(2), (a)(4), (b)(1), (b)(2), (b)(3) and (b)(4) to read as follows:

§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.

(a) * * *

(1) For each State, the Commission's cost model shall determine the statewide average forward-looking economic cost (FLEC) per line of providing the supported services. The statewide average FLEC per line shall equal the total FLEC for non-rural

carriers to provide the supported services in the State, divided by the number of switched lines used in the Commission's cost model. The total FLEC shall equal average FLEC multiplied by the number of switched lines used in the Commission's cost model.

(2) The Commission's cost model shall determine the national average FLEC per line of providing the supported services. The national average FLEC per line shall equal the total FLEC for non-rural carriers to provide the supported services in all States, divided by the total number of switched lines in all States used in the Commission's cost model.

* * * * *

(4) Support calculated pursuant to this section shall be provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark. The total amount of support provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark shall equal 76 percent of the amount of the statewide average FLEC per line that exceeds the national cost benchmark, multiplied by the number of lines reported pursuant to § 36.611, § 36.612, and § 54.307 of this chapter.

* * * * *

(b) * * *

(1) The Commission's cost model shall determine the percentage of the total amount of support available in the State for each wire center by calculating the ratio of the wire center's FLEC above the national cost benchmark to the total FLEC above the national cost benchmark of all wire centers within the State. A wire center's FLEC above the national cost benchmark shall be equal to the wire center's average FLEC per line above the national cost benchmark, multiplied by the number of switched lines in the wire center used in the Commission's cost model;

(2) The total amount of support distributed to each wire center shall be equal to the percentage calculated for the wire center pursuant to paragraph (b)(1) of this section multiplied by the total amount of support available in the state;

(3) The total amount of support for each wire center pursuant to paragraph (b)(2) of this section shall be divided by the number of lines in the wire center reported pursuant to § 36.611, § 36.612, and § 54.307 of this chapter to determine the per-line amount of forward-looking support for that wire center;

(4) The per-line amount of support for each wire center pursuant to paragraph (b)(3) of this section shall be multiplied by the number of lines served by a non-rural incumbent local exchange carrier in that wire center, or by an eligible telecommunications carrier in that wire center, as reported pursuant to § 36.611, § 36.612, and § 54.307 of this chapter, to determine the amount of forward-looking support to be provided to that carrier.

* * * * *

[FR Doc. 00–11100 Filed 5–5–00; 8:45 am]

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Proposed Rules

Federal Register

Vol. 65, No. 89

Monday, May 8, 2000

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.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 917, 926, 944, 950, 952, 961 and 980

[No. 2000–16]

RIN 3069–AA97

Federal Home Loan Bank Advances, Eligible Collateral, New Business Activities and Related Matters

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its Advances Regulation and other regulations to implement the requirements of the Federal Home Loan Bank System Modernization Act of 1999 by: allowing the Federal Home Loan Banks (Banks) to accept from community financial institution members (CFI members) new categories of collateral to secure advances; expanding the purposes for which the Banks may make long-term advances to CFI members; and removing the limit on the amount of a member's advances that may be secured by other real estate-related collateral. The Finance Board also is proposing related and other technical changes to its regulations on General Definitions, Powers and Responsibilities of Bank Boards of Directors and Senior Management, Federal Home Loan Bank Associates, Community Support Requirements, Community Investment Cash Advance Programs and Standby Letters of Credit, and a new regulation on New Business Activities.

DATES: The Finance Board will accept comments on the proposed rule in writing on or before June 7, 2000.

ADDRESSES: Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408–2821, Scott L. Smith, Deputy Director, (202) 408–2991, or Julie Paller, Senior Financial Analyst, (202) 408–2842, Office of Policy, Research and Analysis; or Eric E. Berg, Senior Attorney-Advisor, (202) 408–2589, Eric M. Radenbush, Senior Attorney-Advisor, (202) 408–2932, or Sharon B. Like, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background and Overview of Proposed Rule

A. Historical Benefits of Federal Home Loan Bank System

The Federal Home Loan Bank System (Bank System) comprises twelve regional Banks that are instrumentalities of the United States organized under the authority of the Federal Home Loan Bank Act (Bank Act). *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives; only members of a Bank may own the capital stock of a Bank and only members and certain eligible nonmember borrowers (associates) (such as state housing finance agencies) may obtain access to the products provided by a Bank. *See* 12 U.S.C. 1426, 1430(a), 1430b. Each Bank is managed by its own board of directors and serves the public by enhancing the availability of residential housing finance and community lending credit through its members and associates. *See* 12 U.S.C. 1427. Any eligible institution (typically, an insured depository institution) may become a member of a Bank by satisfying certain criteria and by purchasing a specified amount of a Bank's capital stock. *See* 12 U.S.C. 1424, 1426; 12 CFR part 925.

As government sponsored enterprises (GSEs), the Banks are granted certain privileges that enable them to borrow funds in the capital markets on terms more favorable than could be obtained by private entities, so that the Bank System generally can borrow funds at a modest spread over the rates on U.S. Treasury securities of comparable maturity. The Banks pass along their GSE funding advantage to their members, and ultimately to consumers, by providing secured loans, called advances, and other financial products and services at rates and terms that would not otherwise be available to their members.

The Banks must fully secure advances with eligible collateral. *See* 12 U.S.C. 1430(a). At the time of origination or renewal of an advance, a Bank must obtain a security interest in collateral eligible under one or more of the collateral categories set forth in the Bank Act. *See* 12 U.S.C. 1430(a) (as amended).

Under section 10 of the Bank Act and part 950 of the Finance Board's regulations, the Banks have broad authority to make advances in support of residential housing finance, which includes community lending, defined, in the proposed rule, as providing financing for economic development projects for targeted beneficiaries and, for CFIs, purchasing or funding small business loans, small farm loans or small agri-business loans. *See* 12 U.S.C. 1430(a), (i), (j); 12 CFR parts 900, 950. The Banks also are required to offer two programs, the Affordable Housing Program (AHP) and the Community Investment Program (CIP), to provide subsidized or at-cost advances, respectively, in support of unmet housing finance or targeted economic development credit needs. *See* 12 U.S.C. 1430(i), (j); 12 CFR parts 951, 952. In addition, section 10(j)(10) of the Bank Act authorizes the Banks to establish additional Community Investment Cash Advance (CICA) Programs for targeted community lending, defined as providing financing for economic development projects for targeted beneficiaries. *See* 12 U.S.C. 1430(j)(10); 12 CFR part 952.

B. Expanded Access to Bank System Benefits

On November 12, 1999, the President signed into law the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act) [1] which, among other things, amended the Bank Act by providing smaller lenders with greater access to membership in the Bank System and greater access to Bank advances. The Modernization Act established a category of members consisting of FDIC-insured depository institutions with less than $500,000,000 in average total assets (based on an average of total assets over three years)

[1] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

called community financial institutions, or CFIs,[2] and authorized the Banks to make long-term advances to CFI members for the purposes of providing funds for small businesses, small farms and small agri-businesses. *See* Modernization Act, sections 602, 604(a)(2), 605. The Modernization Act also authorized the Banks to accept from CFI members as security for advances secured loans for small business, agriculture, or securities representing a whole interest in such secured loans. *See id.,* section 604(a)(5)(C).

For all members, the Modernization Act removed the statutory limit on the amount of aggregate outstanding advances that could be secured by ''other real estate-related collateral,'' which had been capped at 30 percent of a member's capital. *See id.*, section 604(a)(5)(B). Banks, therefore, are now authorized to accept other real estate-related collateral as security for advances to any member as long as the collateral has a readily ascertainable value and the Bank is able to perfect a security interest in that collateral. *See* 12 U.S.C. 1430(a)(3)(D) (as amended).

The Finance Board is proposing to amend its regulations to implement the new statutory authorities described above. Because the primary duty of the Finance Board is to ensure that the Banks operate in a safe and sound manner, the proposed rule includes certain safeguards. The Finance Board believes that, because the Banks have had no experience with the new types of nonmortgage-related collateral authorized in the Modernization Act and in this proposed rule, and have made only limited use of ''other real estate-related'' collateral, the Banks will need to build capacity to evaluate the new types of collateral and must exercise caution even in accepting higher volumes of ''other real estate-related'' collateral. Banks will need to learn how to value small business loans and agriculture loans before accepting such loans from CFI members as security for advances. For these reasons, the Finance Board is proposing to treat these activities as new lines of business. Thus, part 980 of the proposed rule would require a Bank, prior to accepting for the first time the new categories of collateral from CFI members, or significantly higher volumes of ''other real estate-related'' collateral, to file a notice with the Finance Board containing information that demonstrates that the Bank has the capacity, sufficiency of experience, and expertise to safely value, discount and manage the risks associated with the particular types of collateral to be accepted. In evaluating a Bank's notice of new collateral activities, the Finance Board intends to encourage conservative discounting of new collateral until the Bank gains experience in valuing such collateral.

Prior to the enactment of the Modernization Act, section 10(e) of the Bank Act restricted access to Bank advances to Bank members that did not meet the qualified thrift lender (QTL) test.[3] These restrictions limited the purposes for which non-QTL members could obtain advances, limited Bank System-wide advances to non-QTL members to 30 percent of total Bank System advances outstanding, and gave QTL members a priority over non-QTL members in obtaining advances. *See* 12 U.S.C. 1430(e)(1), (2) (1994). The Bank Act also established a statutory presumption, for the purpose of determining the minimum amount of Bank capital stock that a member must purchase pursuant to section 6(b) of the Bank Act, that each member has at least 30 percent of its assets in home mortgage loans. *See* 12 U.S.C. 1430(e)(3) (1994). Coupled with the section 6(b) requirement that all members must subscribe to Bank stock equaling at least one percent of the member's aggregate unpaid loan principal, this presumption effectively limited the dollar amount of advances that a non-QTL member could obtain in relation to the amount of Bank stock it had purchased. *See id.*

The Modernization Act repealed section 10(e) of the Bank Act in its entirety, thereby providing access to Bank advances without regard to the percentage of housing-related assets a member holds. *See* Modernization Act, section 604(c). In a recently adopted Interim Final Rule, the Finance Board removed the provisions in its Membership and Advances Regulations containing the additional capital stock purchase requirements and limitations on advances applicable to non-QTL members. *See* 65 FR 13866 (March 15, 2000). The Finance Board is proposing in this rule to remove all remaining references to non-QTL status from its Advances Regulation. *See* 12 CFR 950.1, 950.21 (1999).

C. Related Amendments

The Finance Board also is proposing to revise its regulations to: (1) Amend part 900 (General Definitions) to add a new, broader definition of ''community lending'' that would include, for CFI members, purchasing or funding small business loans, small farm loans and small agri-business loans; (2) add a new section in part 917 (Powers and Responsibilities of Bank Boards of Directors and Senior Management) to set forth the responsibilities of a Bank's board of directors regarding member products policies; (3) add a new part 926 (Federal Home Loan Bank Associates) to address separately the eligibility requirements for associates that currently are contained in part 950; (4) replace the term ''community lending'' with the term ''targeted community lending'' in part 944 (Community Support Requirements) and part 952 (Community Investment Cash Advance Programs) to differentiate ''targeted community lending'' referred to in those parts from the broader definition of ''community lending'' proposed in part 900; (5) make technical and conforming changes to the collateral provisions in part 961 (Standby Letters of Credit); and (6) add a new part 980 (New Business Activities) setting forth the standards and procedures under which a Bank may engage in new business activities, including the acceptance of new types of collateral.

II. Analysis of Proposed Rule

A. Modernization Act Amendments Establishing Newly Eligible Collateral

1. New CFI-Eligible Collateral

a. Collateral eligible as security for advances to CFI members or their affiliates. The Modernization Act amended the Bank Act to allow CFI members to pledge new types of collateral as security for advances, specifically, secured loans for small business or agriculture, or securities representing a whole interest in such secured loans. *See* Modernization Act, section 604(a)(5)(C). Proposed § 950.7(b)(1) implements this amendment by authorizing the Banks to accept from CFI members or their affiliates as security for advances, small business loans, small farm loans or small agri-business loans fully secured by collateral other than real estate, or securities representing a whole interest in such loans, provided that (i) the loans

[2] The Finance Board recently adopted an Interim Final Rule that amended the Finance Board's Membership Regulation to implement the Modernization Act amendments regarding membership in the Bank System. *See* 65 FR 13866 (March 15, 2000).

[3] The ''qualified thrift lender'' test is set forth in section 10(m) of the Home Owners' Loan Act, 12 U.S.C. 1467a(m), and applies directly only to savings associations. Originally enacted in 1987, the QTL test was intended to ensure that savings associations remained committed to the business of providing housing-related loans. Failure to meet the test subjected both the savings association and its holding company to certain statutory penalties, including reduced access to Bank advances for the association. In 1989, Congress revised the QTL test and the penalties for failing to meet it, including more severe restrictions on access to Bank advances for savings associations, as well as for commercial banks, that did not meet the test.

have a readily ascertainable liquidation value and can be freely liquidated in due course; and (ii) the Bank can perfect a security interest in such collateral (CFI-eligible collateral). Proposed § 950.7(b)(1) also requires that, prior to accepting any such CFI-eligible collateral, a Bank shall meet the new business activity requirements of part 980 of the proposed rule, described below. This requirement is intended to ensure that a Bank has the capacity to value, discount and manage the newly eligible collateral prior to making advances secured by such collateral.

Proposed § 950.7(b)(1) does not explicitly refer to secured loans for agriculture, as does the Modernization Act. *See* Modernization Act, section 604(a)(5)(C). Instead, the Finance Board has interpreted ''agriculture loans'' to mean small farm loans and small agri-business loans, and substituted these terms, in the text of proposed § 950.7(b)(1). These terms also appear in proposed § 950.3, which sets forth the authorized purposes of long-term Bank advances, so their use in proposed § 950.7(b)(1) is consistent with the Finance Board's general policy of employing uniform terminology in its regulations whenever possible.

Although the Finance Board could authorize the Banks to accept all secured agriculture loans as collateral from CFI members, the Finance Board is proposing, by interpreting agriculture loans to mean small farm loans and small agri-business loans, to allow only secured ''small'' agriculture loans to be included as eligible collateral. The Finance Board believes that permitting the Banks to accept as collateral only ''small'' agriculture loans is consistent with both the Banks' mission of assisting members with community lending and with the Modernization Act's emphasis on small institutions' lending to small enterprises. *See* Modernization Act, sections 602, 604(a)(3), 604(a)(5)(C).

Proposed § 950.7(b)(1) excludes loans secured by real estate because these types of loans are included in proposed § 950.7(a)(4).

In view of the greater risks inherent in non-mortgage, CFI-eligible collateral, the Finance Board, for safety and soundness reasons, considered whether limits or restrictions should be established on the types of collateral that could secure such loans or securities pledged by a CFI member or affiliate to secure an advance. For example, small business loans secured by accounts receivable or inventory, or small farm loans secured by crops or livestock, which may present greater risks than other types of secured small business or small farm loans, could have been excluded from the forms of eligible collateral. However, the Finance Board has chosen not to impose limits or restrictions in the proposed rule, but instead to require the Banks to have policies and capacity to value the collateral, whatever it may be. The Finance Board believes that proposed § 950.10(a), which requires that each Bank determine the value of collateral in accordance with the Bank's member products policy (established pursuant to proposed § 917.4), should minimize the Banks' exposure to risk in accepting CFI-eligible collateral. The Finance Board expects such policies, if they are properly developed and implemented, to take the appropriate risk factors into account in their valuation and discounting procedures. Of course, the policies, and the Banks' activities in this regard, also would be subject to examination by the Finance Board and to the new activities requirements of proposed part 980, discussed below. Accordingly, the proposed rule does not establish limits on the types of collateral that may secure such loans or securities pledged by a CFI member or affiliate. The Finance Board specifically requests comment on whether certain types of CFI-eligible collateral should be prohibited as eligible collateral on the basis of risk.

b. Types of collateral—Definitions of ''small business loans,'' ''small farm loans'' and ''small agri-business loans''. To facilitate the safe and sound implementation of the Banks' authority to accept new types of collateral to secure advances to CFI members, the Finance Board is proposing to amend § 950.1 by defining the terms ''small business loans,'' ''small farm loans'' and ''small agri-business loans.'' For loans below a prescribed aggregate amount, the proposed definitions use loan size as a proxy for business size. For loans above the ceiling amount, business data specific to the borrowing enterprise (such as annual gross receipts) would determine whether a loan fits within the definition.

The business size approach provides greater accuracy, but may result in costs that deter CFI members from fully employing Banks as a funding source for loans to the small businesses and small farms in their communities. The loan size approach is less precise, but has the advantage of lower implementation costs, since it involves information already available to Federally regulated financial institutions in the reports they are required to file with their primary federal regulator.

The Finance Board believes that the proposed definitions represent an appropriate compromise between these two approaches that will allow CFI members to use Bank System funding to finance the small businesses and small farms in their communities, as authorized by the Modernization Act. *See* Modernization Act, section 604(a)(5)(C).

(i) ''Small business loans''

Proposed § 950.1 defines ''small businesses loans'' as either: (1) Loans (including the aggregate of all loans to a particular borrower) with an original amount of not more than $1 million that are reported on either Schedule SB of the Thrift Financial Report filed by savings associations as ''permanent mortgage loans secured by nonfarm, nonresidential properties'' or ''nonmortgage, nonagricultural commercial loans,'' or Schedule RC–C, Part II of the Report of Condition and Income (Call Report) filed by insured commercial banks and FDIC-supervised savings banks as ''loans secured by nonfarm nonresidential properties'' or ''commercial and industrial loans to U.S. addresses''; or (2) loans for which the CFI, on a case-by-case basis, documents that the borrower meets the eligibility standards for a small business concern under the Small Business Administration's (SBA) regulations at 13 CFR part 121, or any successor provisions.

The Finance Board considered several possible definitions of a small business loan. One possible definition is a loan to a business that meets the eligibility standards for a small business concern under the Small Business Act and SBA regulations.[4] The Small Business Act defines an eligible small business as one that is independently owned and operated and not dominant in its field of operation. *See* 15 U.S.C. 632. The Small Business Act also states that in determining what is a small business, the definition shall vary from industry to industry to adequately reflect industry differences. *See id.* § 632(a)(3). The SBA developed size standards that define the maximum size of an eligible small business, based either on ''annual receipts'' or number of employees. 13 CFR 121.201. SBA regulations define ''annual receipts'' as total income plus

[4] Under the Small Business Act, the size of a manufacturing concern is determined on the basis of average employment, the size of a business concern providing services is determined on the basis of annual gross receipts over a period of not less than 3 years, and the size of other business concerns is determined on the basis of business data over a period of not less than 3 years. See 15 U.S.C. 632(b)(2)(C)(1996), The Small Business Administration implements these statutory standards with industry specific size regulations under 13 CFR part 121.

the cost of goods sold. 13 CFR 121.104. The size standards are based on Standard Industrial Classification (SIC) code, and generally are as follows:

Industry	Size
Retail and Service	$3.5 to $21.5 million
Construction	$7.0 to $17.0 million
Agriculture	$0.5 to $9.0 million
Wholesale	No more than 100 employees
Manufacturing	500 to 1,500 employees

When affiliations exist with other companies, the primary business activity must be determined both for the applicant business as well as for the entire affiliated group. 13 CFR 121.103.

The Finance Board recognizes that member institutions are not apt to compile the type of information necessary to determine whether a business borrower qualifies as a small business under the SBA definition, and that requiring that such information be collected would impose additional costs on CFI members. Thus, the Finance Board considered other alternatives, including a definition of a small business based on the reporting requirements for loans to small businesses and small farms promulgated by the Federal Financial Institutions Examination Council (FFIEC).[5]

Section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires the Federal banking agencies to annually collect from insured depository institutions such information on small business and small farm lending as the agencies may need to assess the availability of credit to these sectors of the economy.[6] Section 122 of FDICIA does not specify the types of information that the agencies must collect on small business and small farm loans, but it does indicate that the reporting requirement may be implemented by collecting data on the total number and aggregate dollar amount of loans to small businesses and agricultural loans to small farms. Section 122 of FDICIA also suggests that information on charge-offs and loan income be collected, but FFIEC determined that such information would not add sufficient value to the assessment of credit availability to justify the cost to institutions of reporting the information. *See* 57 FR 21410 (May 20, 1992).

On May 20, 1992, FFIEC published proposed reporting requirements on small business and small farm lending. *See id.* Because the terms ''small business'' and ''small farm'' were not defined in FDICIA, FFIEC proposed to use annual sales as the basis upon which to identify small businesses and small farms. Businesses and farms with annual sales of less than $10 million and $500,000, respectively, were deemed to be ''small.'' *See id.*

Many of the comment letters received from institutions indicated that the implementation costs of the proposed FFIEC data collection would be excessive. *See* 57 FR 54235, 54237. A comparison of the expected costs with the expected benefits of the information led FFIEC to consider whether other reporting alternatives might be available that would allow institutions to report information of comparable value at a lower cost to the industry. *See id.*

Based on these considerations, FFIEC decided to use loan size as a proxy for business and farm size. As a rationale for using this approach, FFIEC, in the Supplemental Information section of the adopting release, indicated that it had reviewed data reported in the 1989 National Survey of Small Business Finances, a survey of firms with fewer than 500 employees, and concluded that the data indicated a strong correlation between size of business and loan size. In addition, several of the commentators had recommended that loan size be used as a proxy for business size. *See id.*

FFIEC decided to use the original amount of the loan rather than the current balance because an institution's loans with balances below a certain amount would include loans of varying original amounts to all sizes of borrowers that have been partially repaid.

As a rationale for the upper limit of $1 million for small business loans, FFIEC stated that more loans above this loan size category would tend to be made to larger businesses than in the category of loans of $1 million or less. In addition, FFIEC indicated that the more than 9,500 institutions with less than $100 million in assets would generally be constrained by their lending limits from making loans to businesses that would be considered ''large.'' *See id.* at 54238.

The final FFIEC rule also requires financial institutions to report business loans with original amounts of $100,000 or less, more than $100,000 through $250,000, and more than $250,000 through $1 million. *See id.*

The Finance Board is proposing to define a small business loan based on the loan size standards established by the FFIEC agencies. Because this information on loan size is readily available to financial institutions, this approach will avoid burdensome costs to CFI members that might deter such members from using Banks as a funding source for loans to small businesses. The Finance Board also recognizes that applying only the FFIEC standard would exclude loans that exceed $1 million to businesses that meet the eligibility standards for a small business concern under the SBA's regulations. 13 CFR 121.104. To allow such loans to be eligible to secure advances to CFI members, the proposed definition of ''small business loans'' includes a qualifying alternative that does not impose a loan size restriction if the CFI member can document on a case-by-case basis that the borrower meets the eligibility standards for a small business concern under the SBA's regulations.

The Finance Board expects that CFI members initially will rely on the part of the proposed definition of small business loans that emphasizes loan size. However, over time, CFI members would have the opportunity to implement procedures to establish a borrower's size based on the SBA's regulatory standards, and thereby be in a position to rely on that part of the definition that does not restrict loan size. The Finance Board requests comment on whether there may be any other appropriate methods of categorizing or defining small business loans.

(ii) ''Small Farm Loans''

Proposed § 950.1 defines ''small farm loans'' as either: (1) Loans (including the aggregate of all loans to a particular borrower) with an original amount of not more than $500,000 that are reported on either Schedule SB of the Thrift Financial Report filed by savings associations as ''loans secured primarily by farms,'' or Schedule RC–C, Part II of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks as ''loans secured by farmland (including farm residential and other improvements)''; or (2) loans for which the CFI, on a case-by-case basis, documents that the borrowers meet the eligibility standards for a small business concern under the SBA's regulations at 13 CFR part 121, or any successor provisions.

As with the proposed definition of ''small business loans,'' the proposed

[5] FFIEC is a formal interagency body empowered to prescribe uniform principals, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Coporation, the National Credit Union Adminstration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and to make recommendations to promote uniformity in the supervision of financial institutions. *See* 12 U.S.C. 3301 *et. seq.*

[6] Section 122 of FDICIA (Pub. L. No. 102–242, 105 Stat. 2251 (12 U.S.C. 1817 note)).

definition of ''small farm loans'' represents a compromise between the precision of the SBA's regulations, which include size parameters for farm enterprises,[7] and the practicality of FFIEC's standards for small farm loans. Accordingly, the definition of ''small farm loans'' is identical to the definition of ''small business loans,'' except for the items referred to on Schedule SB and Schedule RC–C, and the upper limit of $500,000, which corresponds to the upper limit FFIEC applies to small farm loans. The particular schedule items referenced in the definition of ''small farm loans'' are the items in the schedules that most closely correlate to small farm activity and lending.

As a rationale for the upper limit of $500,000 for small farm loans, the notice accompanying FFIEC's final rule stated that data from the Second Quarter 1992 Agricultural Finance Databook prepared by the Federal Reserve Board (Databook) indicates that less than five percent of all non-real estate loans to farmers in recent years are made in amounts of $100,000 or more. See 57 FR 54238. The Databook also estimated that, in 1991, the average size of non-real estate loans to farmers with original amounts of $100,000 or more was $540,000. *See id.* Thus, FFIEC determined that a $1 million loan size cutoff for small farm loans would likely capture an extremely high percentage of all farm loans. FFIEC concluded that a loan size cutoff of $500,000 would be appropriate in order to reduce the likelihood that loans that have been made to large farms are reported as part of an institution's loans to small farms. *See id.*

The FFIEC final rule also requires financial institutions to report farm loans with original amounts of $100,000 or less, more than $100,000 through $250,000, and more than $250,000 through $500,000. *See id.* The Finance Board requests comment on whether there may be any other appropriate methods of categorizing or defining small farm loans.

(iii) ''Small agri-business loans''

Proposed § 950.1 defines ''small agri-businesses loans'' as either: (1) Loans (including the aggregate of all loans to a particular borrower) with an original amount of not more than $500,000 that are reported on either Schedule SB of the Thrift Financial Report filed by savings associations as ''nonmortgage, commercial loans to finance agricultural production and other nonmortgage commercial loans to farmers,'' or Schedule RC–C, Part II of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks as ''loans to finance agricultural production and other loans to farmers''; or (2) loans for which the CFI, on a case-by-case basis, documents that the borrowers meet the eligibility standards for a small business concern under the SBA's regulations at 13 CFR part 121, or any successor provisions.

The proposed definition of ''small agri-business loans'' is identical to the definition of ''small farm loans'' except for the items referred to on Schedule SB and Schedule RC–C, which more closely correlate to small agri-business activity and lending. As with the proposed definitions of ''small business loans'' and ''small farm loans'', the proposed definition of ''small agri-business loans'' represents a compromise between the SBA size standards for agricultural businesses,[8] and FFIEC's standards for small agri-business loans, as identified by the schedule items referenced in the definition. The Finance Board requests comment on whether there may be any other appropriate methods of categorizing or defining small agri-business loans.

c. *Change in CFI Status.* Proposed § 950.7(b)(2) addresses how a Bank should deal with a CFI member that has advances outstanding secured by CFI-eligible collateral that loses its CFI status. Proposed § 950.7(b)(2) prohibits a Bank from accepting as security for new advances CFI-eligible collateral from a member that no longer qualifies as a CFI member. However, in order to prevent a situation where a member must quickly obtain alternative funding, proposed § 950.7(b)(2) provides that a Bank shall not require a member that loses its CFI status and has outstanding advances secured by CFI-eligible collateral to repay such advances prior to the stated maturities, or to provide substitute collateral, eligible under paragraphs (a)(1) through (5), based solely on the member's change in CFI status.

Proposed § 950.7(b)(2) also authorizes a Bank to allow such member to renew maturing advances secured by CFI-eligible collateral for up to 6 months. This is intended to provide the member with sufficient time to wind down advances and replace them with other funding in an orderly fashion. It is not uncommon for members to obtain short-term advances that frequently renew for additional terms. In that case, the member could have difficulty securing alternative funding if all or most of its advances mature within a short period of time. The Finance Board specifically requests comment on whether allowing renewals of such advances is appropriate and, if so, whether allowing renewals for up to 6 months would provide sufficient time for members to obtain alternative funding.

2. Cash or Deposits in a Bank

Current § 950.9 of the Advances Regulation (redesignated as § 950.7 in the proposed rule) sets forth the types of eligible collateral that a Bank may accept to secure advances. The Modernization Act revised section 10(a)(3) of the Bank Act to add ''cash'' to the types of eligible collateral. *See* Modernization Act, section 604(a)(5)(A). Proposed § 950.7(a)(3) implements this change by adding cash as eligible collateral.

3. Other Real Estate-Related Collateral

The Modernization Act amended section 10(a)(4) of the Bank Act by removing the limit on the dollar amount of advances that may be secured other real estate-related collateral, which had been set at 30 percent of the member's capital. *See* Modernization Act, section 604(a)(5)(B). Section 950.7(a)(4) of the proposed rule implements this change by removing the 30 percent limitation. Proposed § 950.7(a)(4)(iii), however, provides that a Bank shall not make total advances to all members secured by other real estate-related collateral in an aggregate amount that would exceed 25% of the highest level of advances previously secured by such collateral, until the Bank has met the new business activity requirements of proposed part 980.

The Finance Board specifically requests comment on what the appropriate threshold should be for triggering the new business activity requirement with respect to the use of other real estate-related collateral, and whether there should be any other limits on the use of such collateral to ensure that the Banks' lending against this type of collateral is done in a safe and sound manner. The Finance Board also specifically requests comment on whether members should be required to pledge all available collateral under proposed §§ 950.7(a)(1) through (3) prior to pledging other real estate-related collateral under paragraph (4) in order to prevent members from using only their least liquid collateral to secure Bank advances. While each Bank has the discretion to include such a requirement in its member products policy, it may be appropriate for the Finance Board to require that such a provision be included in such policies, especially in light of the Modernization Act authorization for the Finance Board to review, and increase, the Banks'

[7] *See* 13 CFR 121.201.

[8] See 13 CFR 121.201.

standards for other real estate-related collateral. *See* Modernization Act, section 604(a)(7).

Current § 950.9(a)(4)(i)(A) of the Advances Regulation requires other real estate-related collateral to have a readily ascertainable value. The Finance Board believes that the liquidation value of collateral, and the ability to liquidate the collateral quickly, is a more appropriate measure of the value of other real estate-related collateral securing an advance, particularly given the lifting of the 30 percent cap. Accordingly, proposed § 950.7(a)(4)(i)(A) provides that other real estate-related collateral have a readily ascertainable liquidation value and be able to be freely liquidated in due course. This change also is proposed in § 950.7(b)(1)(i).

4. Removal of Combination Business or Farm Property From Definition of ''Residential Real Property''

Under current § 950.1, the term ''residential real property'' is defined to include combination business or farm property, where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property or, in the case of a CFI, combination business or farm property on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property. 12 CFR 950.1. This provision was intended to allow mortgage loans on such properties to qualify as eligible collateral and be included in a member's total residential housing assets for the purpose of qualifying for membership and obtaining long-term advances. The Modernization Act's removal of the statutory limit on the amount of advances that may be secured by other real estate-related collateral appears to have eliminated the necessity of allowing combination business or farm property to be counted under the mortgage loan category of eligible collateral. In addition, the Modernization Act's removal of the requirement that CFI members have 10 percent of their assets in residential mortgage loans to qualify for membership and the expansion of the purposes for which advances may be made to CFI members also reduce the significance of counting such combination properties as residential mortgage loans. Accordingly, the Finance Board has proposed removing combination business or farm property from the definition of ''residential real property'' in § 950.1. The Finance Board specifically requests comment on whether there are any reasons to retain combination business or farm property in the definition of ''residential real property.''

B. New Business Activity Requirement

As discussed above, the proposed changes in types and amounts of collateral that may be pledged to secure advances will present new management challenges for the Banks. In order to ensure that entering into these and other new types of business activities will not create safety and soundness concerns, the Finance Board is proposing to add a new part 980 to its regulations. Proposed § 980.3 requires a Bank to provide at least 60 days prior written notice to the Finance Board of any new business activity that the Bank wishes to undertake—including the acceptance of increased volumes of other real estate-related collateral and of new CFI-eligible collateral for the first time—so that the Finance Board may disapprove, examine or impose restrictions on such activities, as necessary, on a case-by-case basis. In addition to the acceptance of new or increased volumes of collateral, proposed § 980.1 defines a ''new business activity'' as any business activity undertaken, transacted, conducted or engaged in by a Bank that has not been previously approved by the Finance Board, including: (1) A business activity that has not been undertaken previously by that Bank, or was undertaken previously under materially different terms and conditions; (2) a business activity that entails risks not previously and regularly managed by that Bank, its members, or both, as appropriate; or (3) a business activity that involves operations not previously undertaken by that Bank. The test of what constitutes a new business activity for a particular Bank is intended to focus attention on worthy new activities. The prior notice requirement would apply to any Bank desiring to pursue a new activity, even if another Bank has already undertaken the same activity. With respect to accepting either newly eligible collateral or significantly higher volumes of other real estate-related collateral, the written notice required by proposed § 980.3(b) must include: a description of the classes or amounts of collateral proposed to be accepted by the Bank; a copy of the Bank's member products policy; a copy of the Bank's procedures for determining the value of the collateral in question; and a demonstration of the Bank's capacity, personnel, technology, experience and expertise to value, discount and manage the risks associated with the collateral in question. This requirement is intended to ensure that a Bank has the capacity to value, discount and manage the additional collateral prior to making advances secured by such collateral.

C. Clarification of Other Collateral Provisions in Existing Regulation

1. Securities Representing Equity Interests in Eligible Collateral

Current § 950.9(a)(5) of the Advances Regulation provides that a Bank may accept as collateral any security, such as mutual fund shares, the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as: (i) eligible collateral under paragraph (a)(1) (mortgage loans and privately issued mortgage-backed securities) or paragraph (a)(2) (agency securities); or (ii) cash or cash equivalents. As discussed above, cash is now included as eligible collateral under paragraph (a)(3). Accordingly, for greater clarity, a reference to paragraph (a)(3) is included in proposed § 950.7(a)(5)(i) and the reference to cash in paragraph (a)(5)(ii) is removed.

The current Advances Regulation does not include a definition of ''cash equivalents.'' Proposed § 950.1 defines ''cash equivalents'' as investments that: (1) Are readily convertible into known amounts of cash; (2) have a remaining maturity of 90 days or less at the acquisition date; and (3) are held for liquidity purposes. This definition would codify a Finance Board regulatory interpretation (Regulatory Interpretation 2000–RI–1 (March 6, 2000)) that allowed a Bank to accept as collateral under § 950.7(a)(5), shares of mutual funds that enter into certain limited types of repurchase agreements. For cash management purposes, mutual funds typically hold securities, pursuant to repurchase agreements, that represent short-term investments as part of their daily cash management activities. A mutual fund's ability to enter into such repurchase agreements, typically with a maturity of less than 90 days, allows the excess cash in the fund to be invested without losing liquidity or incurring price risk. Even mutual funds with particularly restrictive investment limitations, such as those limited to mortgage loans, government securities, and agency securities, typically use repurchase agreements to maintain a liquidity position and manage the fund.

The Financial Accounting Standards Board (FASB) defines ''cash equivalents'' for financial reporting purposes as short-term, highly liquid investments that are both: (a) readily convertible into cash; and (b) so near their maturity that they present

insignificant risk of changes in value because of changes in interest rates. *See* FAS 95 Paragraphs 8–10. FASB also states that, generally, only investments with original maturities of three months or less qualify under that definition. *See id.*

The proposed definition of ''cash equivalents'' is derived from the FASB definition, but would adapt it by requiring that investments have a remaining maturity of 90 days or less at the acquisition date, because this standard is more practical to implement than a requirement that investments be so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. In addition, a requirement that the investments be held for liquidity purposes is being included in the proposed definition. The Banks will be required to determine on a case-by-case basis whether this requirement has been met.

Other real estate-related collateral under current § 950.9(a)(4) was not originally included in current § 950.9(a)(5)(i) because the dollar amount of advances that could be secured by other real estate-related collateral was limited to 30 percent of the member's capital and the Finance Board believed this limitation would result in monitoring complexities that would make the inclusion of other real estate-related collateral in § 950.9(a)(5)(i) impractical. *See* 64 FR 16618 (April 6, 1999). As discussed above, the Modernization Act amended section 10(a)(4) of the Bank Act by removing the 30 percent cap on other real estate-related collateral. *See* Modernization Act, section 604(a)(5)(B). Since this impediment has been eliminated, proposed § 970.7(a)(5)(i) includes a reference to other real estate-related collateral under proposed § 950.7(a)(4).

2. Bank Restrictions on Eligible Collateral

Section 9 of the Bank Act provides that the Banks have discretion to deny, or to approve with conditions, a request for an advance, and section 10(a)(1) confers on the Banks the authority to determine whether collateral is sufficient to fully secure an advance. *See* 12 U.S.C. 1429, 1430(a)(1). Current § 950.9(b) of the Advances Regulation grants a Bank the discretion to further restrict the types of eligible collateral it will accept as security for advances based on the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria. 12 CFR 950.9(b). The Finance Board believes that the discretionary authority conferred on the Banks by current § 950.9(b) is unnecessary in light of the Banks' statutory authority, and because the factors listed in current § 950.9(b) are ordinarily considered in valuing collateral. Accordingly, the Finance Board proposes to remove current § 950.9(b).

3. Pledge of Advances Collateral by Affiliates

The Bank Act does not directly address the acceptance of eligible collateral from an affiliate, apart from section 10(e) of the Bank Act, which gives a priority to any security interest granted by a member or its affiliates, subject to certain exceptions. *See* 12 U.S.C. 1430(e). Implicit in Congress' inclusion of collateral pledged by an affiliate in the so-called ''superlien provision'' is the authority for the Banks to accept collateral from members' affiliates. Accordingly, the Finance Board has determined that Congress has authorized the Banks to accept collateral not only from a wholly-owned subsidiary, but from any affiliate of a member, and is proposing to state that expressly in proposed § 950.7(f).

Proposed § 950.7(f)(1) requires that the pledge of collateral by an affiliate of a member used to secure advances to the member shall either directly secure the member's obligation to repay the advances, or secure a surety or other agreement under which the affiliate has assumed, along with the member, a primary co-obligation to repay the advances made to the member. Because the Bank Act requires that each advance be fully secured, *see* 12 U.S.C. 1430(a), a guaranty by an affiliate of a member's obligation, backed by the eligible assets held by the affiliate, would not meet the requirements of the Bank Act or the proposed rule, as the collateral would then be securing the affiliate's secondary obligation and not the advance itself. As provided by proposed § 950.7(f)(1), however, where the affiliate enters into a surety arrangement under which it assumes a primary joint and several co-obligation to repay the advance made to the member, and fully secures this primary surety obligation with eligible collateral, such collateral would be considered as securing the advance itself, as required by the statute.

Proposed § 950.7(f)(2) requires the Bank to obtain from an affiliate, and maintain, a legally enforceable security interest pursuant to which the Bank's legal rights and privileges with respect to the collateral are functionally equivalent in all material respects to those that the Bank would possess if the member were to pledge the same collateral directly. The Bank would be required to have on file adequate documentation demonstrating this functional equivalence. The Finance Board anticipates that Banks that decide to accept collateral from affiliates of members will need to make this determination on a case-by-case basis, after careful legal review and analysis, taking into consideration the structure of the transaction and the law of the state that governs the transaction.

These proposed regulatory additions represent a modification of an earlier proposal on third-party collateral that was published for comment by the Finance Board, but that was subsequently withdrawn. In December 1998, the Finance Board published a proposed rule to amend the Advances Regulation (at that time designated as 12 CFR part 935), that, among other things, would have permitted the Banks to accept pledges of eligible collateral from a member's ''qualifying investment subsidiary'' (QIS) if the Bank were able to obtain and maintain a security interest in the collateral pursuant to which its rights and privileges were functionally equivalent to those that the Bank would possess if the member were to pledge the collateral directly. Under the December 1998 proposed rule, the term ''qualifying investment subsidiary'' would have included business entities that: (1) Are wholly owned by a member; (2) are operated solely as passive investment vehicles on behalf of that member; and (3) hold only cash equivalents and assets that are eligible collateral under §§ 935.9(a)(1) and (2) of the Advances Regulation. *See* 63 FR 67625 (Dec. 8, 1998).

In proposing the December 1998 amendments, the Finance Board intended to codify into regulation a series of Finance Board regulatory interpretations regarding the acceptance of eligible collateral held by a real estate investment trust and state security corporation subsidiaries. However, in response to the proposed rule, a large number of commenters questioned the Finance Board's proposal to address only pledges of collateral from a narrow class of wholly-owned subsidiaries, while ignoring collateral arrangements with other types of affiliates that may be permissible under the Bank Act. In light of these comments, the Finance Board removed the QIS provisions from the text of the final rule pending further analysis of the issue. *See* 64 FR 16618 (April 6, 1999).

In conjunction with new § 950.7(f), the proposed rule would amend § 950.1 by defining an ''affiliate'' as any business entity that controls, is controlled by, or is under common

control with, a member. The proposed definition of ''affiliate'' is intended to limit the scope of eligible third-party collateral to assets over which the member exercises control or shares control.

4. Bank Advances Policy

The proposed rule removes existing § 950.3 of the Finance Board's Advances Regulation. That section requires each Bank's board of directors to adopt and review a policy on advances and outlines some basic criteria for the content of the advances policy. The Finance Board is proposing to move the requirement for the Bank's board of directors to adopt and periodically re-adopt an advances or credit policy to new § 917.4, ''Bank Member Products Policy.'' The Finance Board believes it would make for a more logical presentation in its regulations to have all of the requirements for Bank policies contained in one regulatory part (part 917), rather than to have such requirements scattered throughout its regulations. The proposed requirements for Bank member products policies are discussed in section F. 2., below.

5. Removal of Non-QTL Definitions

Proposed § 950.1 deletes the following qualified thrift lender (QTL)-related definitions from the Advances Regulation: definitions of the terms ''Actual thrift investment percentage'' or ''ATIP''; ''Non-Qualified Thrift Lender Member''; ''Qualified Thrift Lender'' or ''QTL''; and ''Qualified Thrift Lender test'' or ''QTL test.'' 12 CFR 950.1. These terms are being removed to conform the Advances Regulation to the Modernization Act, which repealed all non-QTL advances provisions in the Bank Act. *See* Modernization Act, section 604(c).

D. Modernization Act Amendment to Long-term Advances Purpose Provision for CFI Members

Section 10(a) of the Bank Act formerly provided that all long-term advances shall be made only for the purpose of providing funds for residential housing finance. *See* 12 U.S.C. 1430(a) (1994). This purpose is set forth in current § 950.14(a), and is implemented by use of a proxy test set forth in current § 950.14(b). 12 CFR 950.14(a), (b). Specifically, current § 950.14(b)(1) provides that, before funding a long-term advance (*i.e.,* an advance with a maturity greater than five years), a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of the member's ''residential housing finance assets.'' 12 CFR 950.1, 950.14(b)(1). ''Residential housing finance assets'' are defined in current § 950.1 to mean any of the following: (1) Loans secured by residential real property; (2) mortgage-backed securities; (3) participations in loans secured by residential real property; (4) loans or investments financed by advances made pursuant to a CICA program; (5) loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or (6) any loans or investments which the Finance Board, in its discretion, otherwise determines to be residential housing finance assets. 12 CFR 950.1. Current § 950.14(b)(1) requires a Bank to determine the total book value of the member's residential housing finance assets using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member. 12 CFR 950.14(b)(1). This proxy test was determined by the Finance Board to be an operationally feasible compliance monitoring mechanism for residential housing finance assets to implement the statutory requirement that long-term advances be only for residential housing finance purposes. *See* 57 FR 45338 (Oct. 1, 1992).

The Modernization Act amended section 10(a) of the Bank Act to provide that a Bank may make long-term advances not only for the purpose of providing funds for residential housing finance, but also for the purpose of providing funds to any CFI for small businesses, small farms and small agri-businesses. *See* Modernization Act, section 604(a)(3). Accordingly, the proposed rule amends current § 950.14 by adding this new purpose in redesignated § 950.3. Proposed § 950.3(a) provides that a Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or existing residential housing finance assets, which include, for CFI members, small business loans, small farm loans and small agri-business loans.

Instead of the statutory terms ''small businesses,'' ''small farms'' and ''small agri-businesses,'' proposed § 950.3 utilizes the terms ''small business loans,'' ''small farm loans'' and ''small agri-business loans,'' which the Finance Board is proposing to define for purposes of identifying the new types of collateral that Banks are authorized to accept from CFI members. *See* Modernization Act, section 604(a)(5)(C). The Finance Board believes that a single set of terms that would apply to both CFI-eligible collateral and the new purposes for which Banks may make advances to CFI members will reduce confusion and otherwise provide an efficient means of implementing the new authorities conferred on the Banks in regard to their CFI members. Further, the Modernization Act provides that the terms ''small business,'' ''small farm'' and ''small agri-business'' shall have the meanings given to those terms by regulation of the Finance Board. *See* Modernization Act, section 604(a)(7). Accordingly, the Finance Board is interpreting the statutory phrase ''providing funds to any community financial institution for small businesses, small farms, and small agri-businesses'' to mean making advances to CFI members for small business loans, small farm loans and small agri-business loans. Proposed § 950.3(b)(1) maintains the proxy test in its current form. However, proposed revisions to certain definitions will have the effect of including small business loans, small farm loans and small agri-business loans in the denominator of the proxy test for CFI members.

Specifically, the proposed rule would amend § 900.1 by adding a new definition of ''community lending,'' which would apply, wherever it appears, in all of the Finance Board's regulations. The term ''community lending'' currently is defined in § 952.3 of the CICA Regulation as ''providing financing for economic development projects for targeted beneficiaries.'' 12 CFR 952.3. The definition of ''community lending'' proposed for § 900.1 would add to that definition, ''and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter.'' This addition to the definition implements changes made by the Modernization Act and supports the Finance Board's belief that CFI lending to small businesses, small farms and small agri-businesses is community lending. For purposes of the CICA and Community Support Regulations, the current definition of ''community lending,'' redesignated in this proposed rule as ''targeted community lending,'' would continue to apply.

Concurrently, the Finance Board is proposing to amend the definition of ''residential housing finance assets'' to change the element that currently reads ''Loans or investments financed by advances made pursuant to a CICA program'' to ''Loans or investments qualifying under the definition of community lending in § 900.1 of this chapter.''

Thus, by operation of the revised definitions of ''residential housing

finance assets'' and ''community lending,'' the proxy test calculation of the total book value of residential housing assets will include, for CFI members, small business loans, small farm loans and small agri-business loans. This result implements section 604(a)(5)(C) of the Modernization Act, which authorizes a Bank to make long-term advances to CFIs for the purpose of providing financing for small businesses, small farms and small agri-businesses. *See* Modernization Act, section 604(a)(5)(C).

Current § 950.14(b)(1) allows a Bank to determine the total book value of residential housing financial assets using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member. 12 CFR 950.14(b)(1). Proposed § 950.3(b)(1) adds to this list ''other reliable documentation'' made available by the member. This revision is intended to give the Banks more flexibility in the form of documentation they use in administering the proxy test, as long as the data supplied by the member is reliable.

E. Clarification of Other Advances Provisions in Current Regulation

1. Pricing

The Finance Board is taking this opportunity to clarify a provision of the Advances Regulation dealing with the pricing of advances. Current § 950.6(b)(1) requires each Bank to price its advances to members taking into account two factors: (1) The marginal cost to the Bank of raising matching maturity funds in the marketplace; and (2) the administrative and operating costs associated with making such advances to members. 12 CFR 950.6(b)(1). A separate provision, current § 950.8(b)(1), provides that each Bank shall establish and charge a prepayment fee pursuant to a specified formula which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date. 12 CFR 950.8(b)(1). These provisions do not clearly indicate whether Banks must consider the costs of associated options and the administrative costs of funding advances with such options in pricing an advance. Further, because current § 950.6(b)(1) merely requires the Bank ''to take into account'' the marginal cost to the Bank of raising matching maturity funds in the marketplace, and the administrative and operating costs associated with making such advances to members, the current rule allows a Bank to price an advance below its marginal cost of funds, a practice the Finance Board could find to be an unsafe and unsound practice in some circumstances and one the Finance Board wishes to discourage.

Therefore, redesignated § 950.5(b)(1) of the proposed rule prohibits a Bank from pricing an advance below the Bank's marginal cost of funds, which is to include the cost of any embedded options, plus the administrative and operating costs associated with making the advance when funding an advance with similar maturity and options characteristics.

Proposed § 950.5(b)(3)(i) provides that the aforementioned prohibition would not apply to a Bank's CICA programs. This is intended to provide the Banks with maximum flexibility in designing and offering AHP and other CICA programs. Proposed § 950.5(b)(3)(ii) provides that the proposed prohibition also would not apply to any other advances that are volume limited and specifically approved by a Bank's board of directors. This exception is intended to allow a Bank to price targeted advances at below the cost of funds for some special purpose that does not meet all of the criteria for CICA advances. It is intended that the special purpose involve some social benefit, such as providing relief from a natural disaster. The proposed exception would also allow a Bank to conduct market testing of alternative pricing strategies for advances.

2. Convertible Advances Disclosure

Current § 950.6(d)(1) of the Advances Regulation provides that a Bank that offers a putable advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable advance funding, and that such disclosure should include detail sufficient to describe such risks. 12 CFR 950.6(d)(1). A convertible advance is similar to a putable advance in that it carries risks associated with a triggering event, usually a shift in a designated interest rate index. Accordingly, redesignated § 950.5(d)(1) of the proposed rule makes the current disclosure requirements for putable advances applicable to convertible advances as well. Current § 950.6(d)(2) is not proposed to be revised because replacement funding is not an issue for convertible advances, as convertible advances involve only a change in the stated interest rate, not the repayment of funds. The Finance Board requests comment on whether there are other appropriate requirements for putable or convertible advances.

F. Other Technical Changes

1. Federal Home Loan Bank Associates—Part 926

Eligibility requirements for associates (nonmember borrowers), including application procedures and requirements for advances to associates, currently are contained in the Advances Regulation. *See* 12 CFR 950.22, 950.23. For the sake of greater organizational clarity, the proposed rule sets forth the associate eligibility requirements and advances requirements in separate regulations, by moving the associate eligibility requirements to a new part 926 under subpart B. No substantive changes are being proposed for subpart B.

As part of a continuing effort to revise and achieve consistency in regulatory nomenclature regarding nonmember borrowers, the proposed rule would amend the text, where appropriate, to refer to nonmember borrowers who are eligible under 10b of the Bank Act, 12 U.S.C. 1430b, to obtain advances from the Banks, as associates. The definition of ''associate'' was recently added to 12 CFR 900.1, which contains definitions of terms that apply to all parts of the Finance Board's regulations. Accordingly, the proposed rule would change the title of subpart B to ''Advances to Associates.'' Since the term ''associates'' is defined in § 900.1, the Finance Board is not proposing that it be defined in any of the individual parts addressed by this rulemaking.

2. Bank Member Products Policy—Section 917.4

In its recently adopted final rule, Powers and Responsibilities of Bank Boards of Directors and Senior Management, the Finance Board consolidated all of the requirements for the Bank's board of directors' operational policies into one regulatory part, part 917, rather than have such requirements scattered throughout its regulations.[9] Proposed § 917.4 would add to that part a new requirement for adoption by a Bank's board of directors of a member products policy that would combine the requirements for an advances policy from current § 950.3(a), with the requirements for a standby letter of credit policy from current § 961.5(a), into one policy. The proposed member products policy also would address other products that the Banks may offer, such as acquired member assets.

[9] The Finance Board adopted part 917, ''Powers and Responsibilities of Bank Boards of Directors and Senior Management,'' as a final rule at its March 22, 2000 Board of Directors meeting.

Under proposed § 917.4(b), a Bank's member products policy would be required to address the following items: the credit underwriting criteria to be applied to advances (including renewals) and standby letters of credit; collateralization (including levels, valuation and discounts) for advances and standby letters of credit; advances-related fees (including any schedules or formulas pertaining to such fees); standards and criteria for pricing member products (including differential pricing of advances pursuant to § 950.4(b)(2)); criteria regarding the pricing of standby letters of credit (including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any CICA programs under part 952); the maintenance of appropriate systems, procedures and internal controls; and the maintenance of appropriate operational and personnel capacity.

A Bank's member products policy also must provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with § 975.6(b).

Under proposed § 917.4(a)(2), each Bank's board of directors would be required to review the Bank's member products policy annually, amend the policy as appropriate, and re-adopt the policy, including interim amendments, not less often than every three years.

References to the ''advances policy'' in other sections of the Finance Board's current regulations are proposed to be changed to references to the ''member products policy.''

3. Bank Credit Mission—Removal of Section 950.2

In the Finance Board's recently adopted final rule on parts 900, 917 and 940, the Finance Board revised part 940 to add a new definition of the mission of the Banks.[10] Accordingly, the proposed rule removes existing § 950.2 of the Finance Board's Advances Regulation, which states the primary credit mission of the Banks and how the Banks must fulfill such mission, as no longer necessary.

4. Community Support Requirements and Community Investments Cash Advance Programs—Parts 944 and 952

As discussed previously, the proposed rule would amend part 944 and § 952.3 by re-designating the term ''community lending'' as ''targeted community lending,'' with no substantive change to the corresponding definition. This revision is intended to differentiate CICA community lending, which is targeted, from the broader term ''community lending'' that the Finance Board proposes to add to § 900.1. The broader definition of ''community lending'' in § 900.1 would include, for CFIs, purchasing or funding small business loans, small farm loans and small agri-business loans, as defined in § 950.1 of this chapter.

5. Standby Letters of Credit—Part 961

The proposed rule would amend part 961 to update cross-references to reflect the reorganization of Finance Board regulations, change references from nonmember mortgagees to associates and make other technical and conforming changes.

III. Paperwork Reduction Act

This proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 33 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* at 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Parts 900, 917, 926, 944, 950, 952, 961 and 980

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby proposes to amend title 12, chapter IX, parts 900, 917, 926, 944, 950, 952, 961 and 980, Code of Federal Regulations, as follows:

PART 900—GENERAL DEFINITIONS

1. The authority citation for part 900 is revised to read as follows:

Authority: 12 U.S.C. 1422, 1422b(a)(1).

2. Amend § 900.1 by adding, in alphabetical order, definitions of ''community financial institution'', ''community financial institution asset cap'', and ''community lending'', to read as follows:

§ 900.1 Definitions applying to all regulations.

* * * * *

Community financial institution or CFI means an institution—

(1) The deposits of which are insured under the Federal Deposit Insurance Act; and

(2) That has, as of the date of the transaction at issue, less than the community financial institution asset cap in total assets, based on an average of total assets over the three years preceding that date.

Community financial institution asset cap means, for 2000, $500 million. Beginning in 2001 and for subsequent years, the cap shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted cap.

Community lending means providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter.

* * * * *

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

3. The authority citation for part 917 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1427, 1432(a), 1436(a), 1440.

4. Add § 917.4 to read as follows:

§ 917.4 Bank member products policy.

(a) *Adoption and review of member products policy.* (1) *Adoption.* Beginning 90 days after the effective date of this section, each Bank's board of directors shall have in effect at all times a policy that addresses the Bank's management of products offered by the Bank to members and associates, including but not limited to advances, letters of credit and acquired member assets, consistent with the requirements of the Act, paragraph (b) of this section, and all applicable Finance Board regulations and policies.

[10] Section 940.2 was adopted as a final rule by the Finance Board at its March 22, 2000 Board of Directors meeting as part of the rulemaking for part 917, ''Powers and Responsibilities of Federal Home Loan Bank Boards of Directors and Senior Management.''

(2) *Review and compliance*. Each Bank's board of directors shall:

(i) Review the Bank's member products policy annually;

(ii) Amend the member products policy as appropriate; and

(iii) Re-adopt the member products policy, including interim amendments, not less often than every three years.

(b) *Member products policy requirements*. In addition to meeting any other requirements set forth in this chapter, each Bank's member products policy shall:

(1) Address credit underwriting criteria to be applied in evaluating applications for advances, standby letters of credit, and renewals;

(2) Address appropriate levels of collateralization, valuation of collateral and discounts applied to collateral values for advances and standby letters of credit;

(3) Address advances-related fees to be charged by each Bank, including any schedules or formulas pertaining to such fees;

(4) Address standards and criteria for pricing member products, including differential pricing of advances pursuant to § 950.4(b)(2) of this chapter, and criteria regarding the pricing of standby letters of credit, including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any of the Banks' CICA programs under part 952 of this chapter;

(5) Provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with the requirements of § 975.6(b) of this chapter;

(6) Address the maintenance of appropriate systems, procedures and internal controls; and

(7) Address the maintenance of appropriate operational and personnel capacity.

5. Revise the heading of subchapter D to read as follows:

SUBCHAPTER D—FEDERAL HOME LOAN BANK MEMBERS AND ASSOCIATES

6. In subchapter D, add a new part 926 to read as follows:

PART 926—FEDERAL HOME LOAN BANK ASSOCIATES

Sec.

926.1 Definitions.
926.2 Bank authority to make advances to associates.
926.3 Associate eligibility requirements.
926.4 Satisfaction of eligibility requirements.
926.5 Associate application process.
926.6 Appeals.

Authority: 12 U.S.C. 1422b(a), 1430b.

§ 926.1 Definitions.

As used in this part:

Advance has the meaning set forth in § 950.1 of this chapter.

Governmental agency means the governor, legislature, and any other component of a federal, state, local, tribal, or Alaskan native village government with authority to act for or on behalf of that government.

HUD means the Department of Housing and Urban Development.

State housing finance agency or *SHFA* means:

(1) A public agency, authority, or publicly sponsored corporation that serves as an instrumentality of any state or political subdivision of any state, and functions as a source of residential mortgage loan financing in that state; or

(2) A legally established agency, authority, corporation, or organization that serves as an instrumentality of any Indian tribe, band, group, nation, community, or Alaskan Native village recognized by the United States or any state, and functions as a source of residential mortgage loan financing for the Indian or Alaskan Native community.

§ 926.2 Bank authority to make advances to associates.

Subject to the provisions of the Act and part 950 of this chapter, a Bank may make advances to an entity that is not a member of the Bank if the Bank has certified the entity as an associate under the provisions of this part.

§ 926.3 Associate eligibility requirements.

(a) *General.* A Bank may certify as an associate any applicant that meets the following requirements, as determined using the criteria set forth in § 926.4:

(1) The applicant is approved under title II of the National Housing Act (12 U.S.C. 1707, *et seq.*);

(2) The applicant is a chartered institution having succession;

(3) The applicant is subject to the inspection and supervision of some governmental agency;

(4) The principal activity of the applicant in the mortgage field consists of lending its own funds; and

(5) The financial condition of the applicant is such that advances may be safely made to it.

(b) *State housing finance agencies.* In addition to meeting the requirements in paragraph (a) of this section, any applicant seeking access to advances as a SHFA pursuant to § 950.17(b)(2) of this chapter shall provide evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations describing the applicant's structure and responsibilities, that the applicant is a state housing finance agency as defined in § 926.1.

§ 926.4 Satisfaction of eligibility requirements.

(a) *HUD approval requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and § 926.3(a)(1) that it be approved under title II of the National Housing Act if it submits a current HUD Yearly Verification Report or other documentation issued by HUD stating that the Federal Housing Administration of HUD has approved the applicant as a mortgagee.

(b) *Charter requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and § 926.3(a)(2) that it be a chartered institution having succession if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations under which the applicant was created, that:

(1) The applicant is a government agency; or

(2) The applicant is chartered under state, federal, local, tribal, or Alaskan Native village law as a corporation or other entity that has rights, characteristics, and powers under applicable law similar to those granted a corporation.

(c) *Inspection and supervision requirement.* (1) An applicant shall be deemed to meet the inspection and supervision requirement in section 10b(a) of the Act and § 926.3(a)(3) if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, relevant statutes and/or regulations, that, pursuant to statute or regulation, the applicant is subject to the inspection and supervision of a federal, state, local, tribal, or Alaskan native village governmental agency.

(2) An applicant shall be deemed to meet the inspection requirement if there is a statutory or regulatory requirement that the applicant be audited or examined periodically by a governmental agency or by an external auditor.

(3) An applicant shall be deemed to meet the supervision requirement if the governmental agency has statutory or regulatory authority to remove an applicant's officers or directors for cause or otherwise exercise enforcement or administrative control over actions of the applicant.

(d) *Mortgage activity requirement.* An applicant shall be deemed to meet the mortgage activity requirement in section 10b(a) of the Act and § 926.3(a)(4) if it provides documentary evidence satisfactory to the Bank, such as a financial statement or other financial

documents that include the applicant's mortgage loan assets and their funding liabilities, that it lends its own funds as its principal activity in the mortgage field. For purposes of this paragraph, lending funds includes, but is not limited to, the purchase of whole mortgage loans. In the case of a federal, state, local, tribal, or Alaskan Native village government agency, appropriated funds shall be considered an applicant's own funds. An applicant shall be deemed to satisfy this requirement notwithstanding that the majority of its operations are unrelated to mortgage lending if its mortgage activity conforms to this requirement. An applicant that acts principally as a broker for others making mortgage loans, or whose principal activity is to make mortgage loans for the account of others, does not meet this requirement.

(e) *Financial condition requirement.* An applicant shall be deemed to meet the financial condition requirement in § 926.3(a)(5) if the Bank determines that advances may be safely made to the applicant. The applicant shall submit to the Bank copies of its most recent regulatory audit or examination report, or external audit report, and any other documentary evidence, such as financial or other information, that the Bank may require to make the determination.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

§ 926.5 Associate application process.

(a) *Authority.* The Banks are authorized to approve or deny all applications for certification as an associate, subject to the requirements of the Act and this part. A Bank may delegate the authority to approve applications for certification as an associate only to a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) *Application requirements.* An applicant for certification as an associate shall submit an application that satisfies the requirements of the Act and this part to the Bank of the district in which the applicant's principal place of business, as determined in accordance with part 925 of this chapter, is located.

(c) *Bank decision process.* (1) *Action on applications.* A Bank shall approve or deny an application for certification as an associate within 60 calendar days of the date the Bank deems the application to be complete. A Bank shall deem an application complete, and so notify the applicant in writing, when it has obtained all of the information required by this part and any other information it deems necessary to process the application. If a Bank determines during the review process that additional information is necessary to process the application, the Bank may deem the application incomplete and stop the 60-day time period by providing written notice to the applicant. When the Bank receives the additional information, it shall again deem the application complete, so notify the applicant in writing, and resume the 60-day time period where it stopped.

(2) *Decision on applications.* The Bank or a duly delegated committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development shall approve, or the board of directors of a Bank shall deny, each application for certification as an associate by a written decision resolution stating the grounds for the decision. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and the Finance Board with a copy of the Bank's decision resolution.

(3) *File.* The Bank shall maintain a certification file for each applicant for at least three years after the date the Bank decides whether to approve or deny certification or the date the Finance Board resolves any appeal, whichever is later. At a minimum, the certification file shall include all documents submitted by the applicant or otherwise obtained or generated by the Bank concerning the applicant, all documents the Bank relied upon in making its determination regarding certification, including copies of statutes and regulations, and the decision resolution.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

§ 926.6 Appeals.

(a) *General.* Within 90 calendar days of the date of a Bank's decision to deny an application for certification as an associate, the applicant may submit a written appeal to the Finance Board that includes the Bank's decision resolution and a statement of the basis for the appeal with sufficient facts, information, analysis, and explanation to support the applicant's position. Appeals shall be sent to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, with a copy to the Bank.

(b) *Record for appeal.* Upon receiving a copy of an appeal, the Bank whose action has been appealed shall provide to the Finance Board a complete copy of the applicant's certification file maintained by the Bank under § 926.5(c)(3). Until the Finance Board resolves the appeal, the Bank shall promptly provide to the Finance Board any relevant new materials it receives. The Finance Board may request additional information or further supporting arguments from the applicant, the Bank, or any other party that the Finance Board deems appropriate.

(c) *Deciding appeals.* Within 90 calendar days of the date an applicant files an appeal with the Finance Board, the Finance Board shall consider the record for appeal described in paragraph (b) of this section and resolve the appeal based on the requirements of the Act and this part.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

PART 944—COMMUNITY SUPPORT REQUIREMENTS

7. The authority citation for part 944 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), 1429, and 1430.

8. Amend part 944 by removing the term ''community lending'' wherever it appears, and, in its place, adding the term ''targeted community lending''.

§ 944.6 [Amended]

9. Amend § 944.6(b)(2) by removing the term ''nonmember borrowers'' and, in its place, adding the term ''associates''.

PART 950—ADVANCES

10. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

11. The table of contents for part 950 is revised to read as follows:

Subpart A—Advances to Members

Sec.
950.1 Definitions.
950.2 Authorization and application for advances; obligation to repay advances.
950.3 Purpose of long-term advances; proxy text.
950.4 Limitations on access to advances.
950.5 Terms and conditions for advances.
950.6 Fees.

950.7 Collateral.
950.8 Banks as secured creditors.
950.9 Pledged collateral; verification.
950.10 Collateral valuation; appraisals.
950.11 Capital stock requirements; unilateral redemption of excess stock.
950.12 Intradistrict transfer of advances.
950.13 Special advances to savings associations.
950.14 Advances to the Savings Association Insurance Fund.
950.15 Liquidation of advances upon termination of membership.

Subpart B—Advances to Associates

950.16 Scope.
950.17 Advances to associates.

12. Amend § 950.1 by:

a. Adding, in alphabetical order, a definition of ''affiliate'';

b. Adding, in alphabetical order, a definition of ''cash equivalents'';

c. Removing the definitions of ''Actual thrift investment percentage'' or ''ATIP'', ''combination business or farm property'', ''Non-Qualified Thrift Lender member'', ''Qualified Thrift Lender'' or ''QTL'', and ''Qualified Thrift Lender test'' or ''QTL test'';

d. Amending the definition of ''Community Investment Cash Advance'' or ''CICA'' by removing the term ''community lending'', and, in its place, adding the term ''targeted community lending'';

e. Revising paragraph (4) of the definition of ''residential housing finance assets'';

f. Amending the definition of ''residential real property'' by removing paragraph (1)(v); and

g. Adding, in alphabetical order, definitions of ''small agri-business loans'', ''small business loans'', and ''small farm loans'', to read as follows:

§ 950.1 Definitions.

* * * * *

Affiliate means any business entity that controls, is controlled by, or is under common control with, a member.

* * * * *

Cash equivalents means investments that—

(1) Are readily convertible into known amounts of cash;

(2) Have a remaining maturity of 90 days or less at the acquisition date; and

(3) Are held for liquidity purposes.

* * * * *

Residential housing finance assets means any of the following:

* * * * *

(4) Loans or investments qualifying under the definition of ''community lending'' in § 900.1 of this chapter;

* * * * *

Small agri-business loans means loans:

(1) With an original amount (including the aggregate of all loans to a particular borrower) of not more than $ 500,000 that are reported on either: Schedule SB of the Thrift Financial Report filed by savings associations as ''nonmortgage, commercial loans to finance agricultural production and other nonmortgage commercial loans to farmers,'' or Schedule RC–C, Part II of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks as ''loans to finance agricultural production and other loans to farmers;'' or

(2) For which the CFI, on a case-by-case basis, documents that the borrower meets the eligibility standards for a small business concern under the Small Business Administration's regulations at 13 CFR part 121, or any successor provisions.

Small business loans means loans:

(1) With an original amount (including the aggregate of all loans to a particular borrower) of not more than $1,000,000 that are reported on either: Schedule SB of the Thrift Financial Report filed by savings associations as ''permanent mortgage loans secured by nonfarm, nonresidential properties'' or ''nonmortgage, nonagricultural commercial loans,'' or Schedule RC–C, Part II of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks as ''loans secured by nonfarm, nonresidential properties,'' or ''Commercial and industrial loans to U.S. addresses;'' or

(2) For which the CFI, on a case-by-case basis, documents that the borrower meets the eligibility standards for a small business concern under the Small Business Administration's regulations at 13 CFR part 121, or any successor provisions.

Small farm loans means loans:

(1) With an original amount (including the aggregate of all loans to a particular borrower) of not more than $500,000 that are reported on either: Schedule SB of the Thrift Financial Report filed by savings associations as ''loans secured primarily by farms,'' or Schedule RC–C, Part II of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks as ''loans secured by farmland (including farm residential and other improvements);'' or

(2) For which the CFI, on a case-by-case basis, documents that the borrower meets the eligibility standards for a small business concern under the Small Business Administration's regulations at 13 CFR part 121, or any successor provisions.

* * * * *

13. Remove § 950.2.

14. Remove § 950.3.

15. Section 950.4 is redesignated as § 950.2.

16. Section 950.14 is redesignated as § 950.3, and the heading and paragraphs (a) and (b)(1) are revised to read as follows:

§ 950.3 Purpose of long-term advances; proxy test.

(a) A Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or existing residential housing finance assets, which include, for CFI members, small business loans, small farm loans and small agri-business loans.

(b)(1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the most recent Thrift Financial Report, Report of Condition and Income, financial statement or other reliable documentation made available by the member.

* * * * *

17. Section 950.5 is redesignated as § 950.4.

18. Section 950.6 is redesignated as § 950.5, and paragraphs (b)(1), (b)(2)(ii), (b)(3), (d)(1) and (d)(3) are revised to read as follows:

§ 950.5 Terms and conditions for advances.

* * * * *

(b) *Advance pricing.* (1) *General.* A Bank shall not price its advances to members below:

(i) The marginal cost to the Bank of raising matching term and maturity funds in the marketplace, including embedded options; and

(ii) The administrative and operating costs associated with making such advances to members.

(2) * * *

(ii) Each Bank shall include in its member products policy required by § 917.4 of this chapter, standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3) *Exceptions.* The advance pricing policies contained in paragraph (b)(1) of this section shall not apply in the case of:

(i) A Bank's CICA programs; and

(ii) Any other advances that are volume limited and specifically approved by the Bank's board of directors.

* * * * *

(d) *Putable or convertible advances.* (1) *Disclosure.* A Bank that offers a putable or convertible advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable or convertible advance funding. The disclosure should include detail sufficient to describe such risks.

(2) *Replacement funding for putable advances.* If a Bank terminates a putable advance prior to the stated maturity date of such advance, the Bank shall offer to provide replacement funding to the member.

* * * * *

19. Section 950.8 is resdesignated as § 950.6, and paragraphs (a) and (b)(1) are revised to read as follows:

§ 950.6 Fees.

(a) *Fees in member products policy.* All fees charged by each Bank and any schedules or formulas pertaining to such fees shall be included in the Bank's member products policy required by § 917.4 of this chapter. Any such fee schedules or formulas shall be applied consistently and without discrimination to all members.

(b) *Prepayment fees.* (1) Except where an advance product contains a prepayment option, each Bank shall establish and charge a prepayment fee pursuant to a specified formula which makes the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

* * * * *

20. Section 950.9 is redesignated as § 950.7, paragraphs (a) introductory text, (a)(3), (a)(4), (b) and (c) are revised, and paragraphs (a) (5) and (f) are added, to read as follows:

§ 950.7 Collateral.

(a) *Eligible security for advances to all members.* At the time of origination or renewal of an advance, each Bank shall obtain from the borrowing member or, in accordance with paragraph (f) of this section, an affiliate of the borrowing member, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

* * * * *

(3) *Cash or deposits.* Cash or deposits in a Bank.

(4) *Other real estate-related collateral.* (i) Other real estate-related collateral provided that:

(A) Such collateral has a readily ascertainable liquidation value and can be freely liquidated in due course; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not make total advances to all members secured by other real estate-related collateral in an aggregate amount that would exceed the highest level of total advances secured by such collateral that the Bank has previously made by more than 25 percent until it has met the new business activity requirements of part 980 of this chapter.

(5) *Securities representing equity interests in eligible advances collateral.* Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as:

(i) Eligible collateral under paragraphs (a)(1), (2), (3) or (4) of this section; or

(ii) Cash equivalents.

(b) *Additional collateral eligible as security for advances to CFI members or their affiliates.* (1) *General.* Subject to the limitations set forth in part 980 of this chapter, a Bank is authorized to accept from CFI members or their affiliates as security for advances small business loans, small farm loans or small agri-business loans fully secured by collateral other than real estate, or securities representing a whole interest in such loans, provided that:

(i) Such collateral has a readily ascertainable liquidation value and can be freely liquidated in due course; and

(ii) The Bank can perfect a security interest in such collateral.

(2) *Change in CFI status.* A Bank may not accept as security for new advances collateral under this section from a member that loses its CFI status. A Bank shall not require a member that loses its CFI status and has outstanding advances secured by collateral under this section to repay such advances prior to the stated maturities or to provide substitute collateral eligible under paragraphs (a)(1) through (5) of this section, based solely on the member's change in status, and may allow such member to renew maturing advances secured by collateral under this section for up to 6 months.

(c) *Additional advances collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraphs (a) or (b) of this section or section 10 of the Act (12 U.S.C. 1430).

* * * * *

(f) *Pledge of advances collateral by affiliates.* Assets held by an affiliate of a member that are eligible as collateral under paragraphs (a) or (b) of this section may be used to secure advances to that member only if:

(1) The collateral is pledged to secure either:

(i) The member's obligation to repay advances; or

(ii) A surety or other agreement under which the affiliate has assumed, along with the member, a primary obligation to repay advances made to the member; and

(2) The Bank obtains and maintains a legally enforceable security interest pursuant to which the Bank's legal rights and privileges with respect to the collateral are functionally equivalent in all material respects to those that the Bank would possess if the member were to pledge the same collateral directly, and such functional equivalence is supported by adequate documentation.

21. Section 950.10 is redesignated as § 950.8.

22. Section 950.11 is redesignated as § 950.9.

23. Section 950.12 is redesignated as § 950.10, and is revised to read as follows:

§ 950.10 Collateral valuation; appraisals.

(a) *Collateral valuation.* Each Bank shall determine the value of collateral securing the Bank's advances in accordance with the collateral valuation procedures set forth in the Bank's member products policy established pursuant to § 917.4 of this chapter.

(b) *Fair application of procedures.* Each Bank shall apply the collateral valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) *Appraisals.* A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

24. Section 950.15 is redesignated as § 950.11.

25. Section 950.17 is redesignated as § 950.12.

26. Section 950.18 is redesignated as § 950.13.

27. Section 950.20 is redesignated as § 950.14 and transferred to subpart A.

28. Section 950.19 is redesignated as § 950.15.

29. The heading of Subpart B is revised to read as follows:

Subpart B—Advances to Associates

30. Section 950.21 is redesignated as § 950.16, and is revised to read as follows:

§ 950.16 Scope.

Except as otherwise provided in §§ 950.14 and 950.17, the requirements of subpart A apply to this subpart.

31. Sections 950.22 and 950.23 are removed.

32. Section 950.24 is redesignated as § 950.17, and is amended by:

a. Removing the words ''nonmember mortgagee'' and ''nonmember mortgagees'', wherever they appear, and, in their place, adding the words ''associate'' and ''associates'', respectively; and

b. In paragraph (b)(2)(i) introductory text, removing the term ''§ 950.22(d)'', and, in its place, adding the term ''§ 926.3(b)'';

c. In paragraph (b)(2)(i)(B), removing the terms ''§ 950.9(a)(3)'' and ''§ 950.22(d)'', and in their place, adding the terms ''§ 950.7(a)(3)'' and ''§ 926.3(b),'' respectively; and

d. Revising paragraph (b)(2)(i)(C), to read as follows:

§ 950.17 Advances to associates.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) The real estate-related collateral described in § 950.7(a)(4), provided that such collateral is comprised of mortgage loans on one-to-four family or multifamily residential property.

* * * * *

PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

33. The authority citation for part 952 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

34. Amend § 952.3 by removing the definition of ''nonmember borrower''.

35. Amend part 952 by:

a. Removing the term ''community lending'', wherever it appears, and, in its place, adding the term ''targeted community lending''; and

b. Removing the terms ''nonmember borrower'' and ''nonmember borrowers'', wherever they appear, and, in their place, adding the terms ''associate borrower'' and ''associate borrowers'', respectively.

PART 961—STANDBY LETTERS OF CREDIT

36. The authority citation for part 961 continues to read as follows:

Authority: 12 U.S.C. 1422b, 1429, 1430, 1430b, 1431.

37. Amend § 961.1 by:

a. Removing the definition of ''community lending'';

b. Removing the definition of ''nonmember mortgagee'';

c. Removing the definition of ''nonmember SHFA'';

d. Adding the definition of ''SHFA associate''; and

e. Removing the definition of ''small business'', to read as follows:

§ 961.1 Definitions.

* * * * *

SHFA associate means an associate that is a ''state housing finance agency,'' as that term is defined in § 926.1 of this chapter, and that has met the requirements of § 926.3(b) of this chapter.

* * * * *

38. Amend part 961 by:

a. Removing the terms ''nonmember mortgagee'' and ''nonmember mortgagees'', wherever they appear, and, in their place, adding the terms ''associate'' and ''associates'', respectively; and

b. Removing the terms ''nonmember SHFA'' and ''nonmember SHFAs'', wherever they appear, and, in their place, adding the terms ''SHFA associate'' and ''SHFA associates'', respectively.

39. Amend § 961.2 by revising paragraphs (a)(2), (c)(1), and (c)(2)(i), to read as follows:

§ 961.2 Standby letters of credit on behalf of members.

(a) * * *

(2) To assist members in facilitating community lending;

* * * * *

(c) *Eligible collateral.* (1) Any standby letter of credit issued or confirmed on behalf of a member may be secured in accordance with the requirements for advances under § 950.7(a) of this chapter.

(2) * * *

(i) Collateral eligible to secure advances under § 950.7(b)(1) of this chapter, regardless of whether the applicant is a community financial institution;

* * * * *

40. Amend § 961.3 by:

a. In the introductory text of paragraph (a), removing the term ''§§ 950.24(b)(1)(i) or (ii)'' and, in its place, adding the term ''§§ 950.17(b)(1)(i) or (ii)'';

b. Revising paragraph (a)(2); and

c. In paragraph (b), removing the term ''950.24(b)(2)(i)(A), (B) or (C)'' and, in its place, adding the term ''950.17(b)(2)(i)(A), (B) or (C)'', to read as follows:

§ 961.3 Standby letters of credit on behalf of associates.

(a) * * *

(2) To assist associates in facilitating community lending;

* * * * *

41. Amend § 961.4 by removing the term ''§§ 969.5. 950.24(b)(2)(i)(B) or 950.24(d)'' in paragraph (a)(1) and, in its place, adding the term ''§§ 950.17(b)(2)(i)(B), 950.17(d), or 969.2''.

42. Amend § 961.5 by:

a. Revising paragraph (a); and

b. In paragraph (b)(2), removing the reference to ''§§ 950.9(b), 950.9(d), 950.9(e), 950.10, 950.11 and 950.12'', and, in its place, adding a reference to §§ 950.7(d), 950.7(e), 950.8, 950.9 and 950.10'', to read as follows:

§ 961.5 Additional provisions applying to all standby letters of credit.

(a) *Requirements.* Each standby letter of credit issued or confirmed by a Bank shall:

(1) Contain a specific expiration date, or be for a specific term; and

(2) Require approval in advance by the Bank of any transfer of the standby letter of credit from the original beneficiary to another person or entity.

* * * * *

43. In subchapter J, add a new part 980 to read as follows:

PART 980—NEW BUSINESS ACTIVITIES

Sec.

980.1 Definitions.
980.2 Limitation on Bank authority to undertake new business activities.
980.3 New business activity notice requirement.
980.4 Commencement of new business activities.
980.5 Notice by the Finance Board.
980.6 Finance Board consent.
980.7 Examinations; requests for additional information.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1431(a), 1432(a).

§ 980.1 Definitions.

As used in this part:

New business activity means any business activity undertaken, transacted, conducted, or engaged in by

a Bank that has not been previously undertaken, transacted, conducted, or engaged in by that Bank, or was previously undertaken, transacted, conducted, or engaged in under materially different terms and conditions, and that:

(1) Involves the acceptance of collateral enumerated under §§ 950.7(a)(4)(i) and (ii) of this chapter in an amount greater than that set forth in § 950.7(a)(4)(iii);

(2) Involves the acceptance of classes of collateral enumerated under § 950.7(b) of this chapter for the first time;

(3) Entails risks not previously and regularly managed by that Bank, its members, or both, as appropriate; or

(4) Involves operations not previously undertaken by that Bank.

§ 980.2 Limitation on Bank authority to undertake new business activities.

No Bank shall undertake any new business activity except in accordance with the procedures set forth in this part.

§ 980.3 New business activity notice requirement.

At least sixty days prior to undertaking a new business activity, a Bank shall submit to the Finance Board a written notice containing the following information:

(a) *General requirements.* Except as provided in paragraph (b) of this section, a Bank's notice of new business activity shall include:

(1) An opinion of counsel citing the statutory, regulatory, or other legal authority for the new business activity;

(2) A good faith estimate of the anticipated dollar volume of the activity over the short-and long-term;

(3) A full description of:

(i) The purpose and operation of the proposed activity;

(ii) The market targeted by the activity;

(iii) The delivery system for the activity;

(iv) The effect of the activity on the housing, or relevant community lending, market; and

(4) A demonstration of the Bank's capacity, through staff, or contractors employed by the Bank, sufficiency of experience and expertise, to safely administer and manage the risks associated with the new activity;

(5) An assessment of the risks associated with the activity, including the Bank's ability to manage these risks and the Bank's ability to manage the risks associated with increasing volumes of the new activity; and

(6) The criteria that the Bank will use to determine the eligibility of its members or associates to participate in the new activity.

(b) *New collateral activities.* If a proposed new business activity relates to the acceptance of collateral under § 950.7 of this chapter, a Bank's notice of new business activity shall include:

(1) A description of the classes or amounts of collateral proposed to be accepted by the Bank;

(2) A copy of the Bank's member products policy, adopted pursuant to § 917.4 of this chapter;

(3) A copy of the Bank's procedures for determining the value of the collateral in question, established pursuant to § 950.10 of this chapter; and

(4) A demonstration of the Bank's capacity, personnel, technology, experience and expertise to value, discount and manage the risks associated with the collateral in question.

§ 980.4 Commencement of new business activities.

A Bank may commence a new business activity:

(a) Sixty days after receipt by the Finance Board of the notice of new business activity under § 980.3, if the Finance Board has not issued to the Bank a notice of disapproval, a notice of intent to examine, or a request for additional information under § 980.5; or

(b) Immediately upon issuance by the Finance Board of a letter of approval under § 980.6.

§ 980.5 Notice by the Finance Board.

(a) *Issuance.* Within sixty days after receipt of a notice of new business activity under § 980.3, the Finance Board may issue to a Bank a notice that:

(1) Disapproves the new business activity;

(2) Instructs the Bank not to commence the new business pending further consideration by the Finance Board;

(3) Declares an intent to examine the Bank;

(4) Requests additional information including but not limited to the requests listed in § 980.7;

(5) Establishes conditions for the Finance Board's approval of the new business activity, including but not limited to the conditions listed in § 980.7; or

(6) Contains other instructions or information that the Finance Board deems appropriate under the circumstances.

(b) *Effect.* Following receipt of a notice issued pursuant to paragraph (a) of this section, a Bank may not undertake any new business activity that is the subject of the notice until the Bank has received the Finance Board's consent pursuant to § 980.6.

§ 980.6 Finance Board consent.

The Finance Board may at any time provide consent for a Bank to undertake a particular new business activity and setting forth the terms and conditions that apply to the activity, with which the Bank shall comply if the Bank undertakes the activity in question.

§ 980.7 Examinations; requests for additional information.

(a) *General.* Nothing in this part shall limit in any manner the right of the Finance Board to conduct any examination of any Bank.

(b) *Requests for additional information and conditions for approval.* With respect to a new business activity, nothing in this part shall limit the right of the Finance Board at any time to:

(1) Request further information from a Bank concerning a new business activity; and

(2) Require a Bank to comply with certain conditions in order to undertake, or continue to undertake, the new business activity in question, including but not limited to:

(i) Successful completion of pre-or post-implementation safety and soundness examinations;

(ii) Demonstration by the Bank of adequate operational capacity, including the existence of appropriate policies, procedures and controls;

(iii) Demonstration by the Bank of its ability to manage the risks associated with accepting increasing volumes of particular collateral, or holding increasing volumes of particular assets, including the Bank's capacity reliably to value, discount and market the collateral or assets for liquidation;

(iv) Demonstration by the Bank that the new business activity is consistent with the housing finance and community lending mission of the Banks and the cooperative nature of the Bank System; and

(v) Finance Board review of any contracts or agreements between the Bank and its members or associates.

Dated: March 22, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–11078 Filed 5–5–00; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 307

Extension of Time for Comments Concerning Regulations Implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: The Federal Trade Commission (the ''Commission'') has extended the date by which comments must be submitted concerning the review of its regulations (''smokeless tobacco regulations'' or ''the regulations'') implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986 (''Smokeless Tobacco Act''). This document informs prospective commenters of the change and sets a new date of July 21, 2000 for the end of the comment period.

DATES: Comments must be submitted on or before July 21, 2000.

ADDRESSES: Written comments should be identified as ''16 CFR Part 307'' and sent to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580. The Commission requests that the original comment be filed with five copies, if feasible. The Commission also requests, if possible, that the comments be submitted in electronic form on a computer disc. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) The disc label should identify the commenter's name and the name and version of the word processing program used to create the document.

Alternatively, the Commission will accept comments submitted to the following E-Mail address: ''SMOKELESS@ftc.gov''.

All comments will be placed on the public record and will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, during normal business days from 8:30 a.m. to 5:00 p.m., at the Public Reference Room, Room H–130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580. In addition, comments will be placed on the Internet at the FTC web site: http://www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Rosemary Rosso (202) 326–3076, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, E-Mail (for questions or information only): rrosso@ftc.gov.

SUPPLEMENTARY INFORMATION: On March 7, 2000, the Commission published in the **Federal Register** a Request for Comment on its regulations (''smokeless tobacco regulations'' or ''the regulations'') implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986 (''Smokeless Tobacco Act''), 16 CFR part 307, as part of its regulatory review program. 65 FR 11944. The regulations set forth the manner in which smokeless tobacco manufacturers, importers, and packagers must display and rotate the three health warnings mandated by the Smokeless Tobacco Act. The Federal Register Notice (''notice'') posed twelve questions in all; some were general regulatory review questions, while others asked about material issues that are specific to the smokeless tobacco regulations. The notice requested commenters to provide answers where possible, and specifically asked for consumer research, studies or other data to support comments submitted to the Commission. Pursuant to the Federal Register Notice, the comment period ended on April 24, 2000.

Staff has received a request for an extension of the comment period from the Massachusetts Department of Public Health. The Department indicates that it is currently investigating issues that relate to smokeless tobacco warnings and requests additional time to compile relevant information for the Commission's consideration.

The Commission is mindful of the need to deal with this matter as expeditiously as possible. However, the Commission is also aware that some of the issues raised by the Federal Register Notice may be complex and it welcomes as much substantive input as possible to facilitate its decisionmaking process. Accordingly, in order to provide sufficient time for these and other interested parties to prepare useful comments, the Commission has decided to extend the deadline for comments until July 21, 2000.

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Authority: 15 U.S.C. 1401–1410.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–11455 Filed 5–5–00; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–42741; File No. S7–12–00]

RIN 3235–AH69

Electronic Submission of Securities Trading Data by Exchange Members, Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing for comment Rule 17a–25 under Section 17 of the Securities Exchange Act of 1934. Proposed Rule 17a–25 would require brokers and dealers to submit electronically to the Commission, upon request, information on customer and firm securities trading. The Commission designed the proposal to improve its capacity to analyze electronic submissions of trading data and thereby facilitate Commission enforcement investigations and other trading reconstructions.

DATES: Comments must be received on or before June 7, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–12–00; this file number should be included in the subject line if e-mail is used. All comment letters received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Alton Harvey, Office Chief, at (202) 942–4167; or Anitra Cassas, Attorney, at (202) 942–0089, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction and Executive Summary

In the course of its enforcement and market regulatory activities, the Securities and Exchange Commission (''Commission'') regularly requests securities trading records from broker-dealers. For many decades, the

Commission requested this data by mailing questionnaire forms (known as ''blue sheets'' because of the color on which the forms were printed) to broker-dealers to be manually completed and mailed back to the Commission. In the late 1980s, as the volume of trading and securities transactions dramatically increased, the Commission and the securities self-regulatory organization (''SROs'') worked together to develop and implement a system with a universal electronic format to replace the less efficient manual process. This system is commonly known as the ''electronic blue sheet'' or ''EBS'' system.

In general, the Commission uses the EBS system to obtain securities transaction information for one of two purposes: (1) to assist in the investigation of possible federal securities law violations, primarily involving insider trading or market manipulation; and (2) to conduct market reconstructions, primarily following significant market volatility.[1]

Since its inception, the EBS system has been an effective tool for most investigations, which usually require analyses of trading in only one or two stocks over a limited time period. When used for large scale investigations or market reconstructions involving numerous stocks during peak trading volume periods, however, data provided by the EBS system has not met certain of the Commission's needs. Specifically, the current EBS system format does not provide information that is needed by the Commission to effectively aggregate trading by market participants who trade through multiple accounts with more than one broker-dealer.

To ensure the continued effectiveness of the Commission's enforcement and regulatory programs, the Commission is therefore proposing to enhance certain aspects of the EBS system to take into account evolving trading strategies used by institutional and professional traders. Proposed Rule 17a–25 [2] would codify the requirement that brokers and dealers electronically submit to the Commission, upon request by the Commission staff, information on customer and proprietary securities trading necessary for the Commission's enforcement or regulatory programs. [3] Specifically, proposed Rule 17a–25 would require firms to supply specific information already covered by the existing EBS system. For proprietary transactions, firms would be required upon request to report standard data elements such as security symbol, date executed, amount traded, type of transaction, transaction price, account number, location where the transaction was executed, and identification information for the parties on either side of the transaction. For customer transactions, standard data elements would also include the customer name, address, branch office number, registered representative number, type of order, date account opened, taxpayer identification number, employer name, and the role of the intermediary (agent or principal) if any.

Proposed Rule 17a–25 would also require firms, upon request, to supply three additional data elements that would assist the Commission in aggregating transactions by entities trading through multiple accounts. [4] In addition, the rule would require broker-dealers, upon request, to provide and keep current, information needed to process data requests in a timely manner (*e.g.*, name, address, telephone and fax number, and e-mail address for each designated contact person responsible for receiving and processing EBS requests from the Commission).

Proposed Rule 17a–25 is intended to accomplish three objectives. First, the proposed rule would codify the requirement for broker-dealers to electronically submit securities trading data when requested by the Commission staff. Second, the rule is designed to improve the effectiveness of the Commission's enforcement and regulatory programs by providing the additional information necessary to aggregate the securities transactions of institutional and professional traders who maintain multiple accounts at more than one broker-dealer. Finally, by requiring broker-dealers to provide current contact person information, the proposed rule would significantly improve the Commission's ability to process securities trading data requests in a timely manner.

II. Discussion of Proposed Rule 17a–25

A. Background

The securities industry has witnessed tremendous change in the past two decades, both in the types of market participants and in the variety of trading strategies and products. In particular, increasing numbers of institutional and professional traders now conduct their securities trading through multiple sub-accounts maintained at different broker-dealers. These market participants include institutional investors such as pension funds, insurance companies, foundations, endowments, mutual funds, and hedge funds.

For over a decade, the Commission's primary tool for identifying buyers and sellers of securities in enforcement or other regulatory inquiries has been the EBS system. When an inquiry is opened, the Commission staff sends requests for trading data to the most active clearing firms in the relevant security. Firms are requested to submit, within ten business days, information concerning transactions by all proprietary and customer accounts that bought or sold a security or securities during a specified review period. For each account, firms must identify, among other things: the name and address of the account; the account type (proprietary or customer); the date of the trades; the types of trades (buy, sell, or sell short); the amount traded; and the transaction price. Firms use software to scan their account records and download the appropriate information into the standard EBS format. Firms then transmit that electronic file to the Securities Industry Automation Corporation (''SIAC''), which in turn routes the file electronically to the Commission's mainframe computer.[5]

The EBS system has performed effectively as an enforcement tool for analyzing trading in one or two securities over a limited time period. Given the increasing complexity of trading strategies, however, the Commission believes that enhancements to the EBS system are necessary to improve the Commission's ability to analyze trading in more complex market-wide trading reconstructions, as well as in investigations involving activities in multiple securities during heavy trading periods. Specifically, new data elements would assist the Commission in aggregating transactions by entities trading through multiple accounts.

The Commission believes that an enhanced EBS system would also provide a more efficient and cost-effective way to conduct timely and accurate reviews of the activities of large traders for regulatory or enforcement purposes, than would further efforts to

[1] The surveillance and enforcement staffs of othe SROs also routinely use the EBS system to obtain trading data from member firms for investigations into trading abuses such as insider trading or market manipulation.

[2] 17 CFR 240.17a–25.

[3] Section 17(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') requires registered broker-dealers to make, keep, furnish, and disseminate records and reports prescribed by Commission rule ''as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of'' the Exchange Act. 15 U.S.C. 78q(a)(1).

[4] *See* Part II.B.2, *infra.*

[5] If an SRO's surveillance or enforcement staff issues the data request, SIAC routes the EBS data from the broker-dealer to the appropriate SRO.

design and implement the large trader reporting system authorized by the Market Reform Act of 1990, and incorporated into section 13(h) of the Exchange Act.[6] Although the Commission proposed Rule 13h–1 for comment in 1991[7] to implement the large trader reporting system, and re-proposed a revised version of the rule in 1994,[8] the Commission has not proceeded with further development of this system in light of commenters' concerns.[9]

One of the primary objectives of the Market Reform Act of 1990 and proposed Rule 13h–1 was the enhancement of the Commission's ability to perform accurate and timely reconstructions of trading by large traders. The Commission believes that proposed Rule 17a–25 would accomplish this objective without imposing significant new burdens on broker-dealers or institutional investors. Under the current proposal, no major changes would be necessary for broker-dealer systems. The Commission preliminarily believes that all of the broker-dealers that are likely to handle large trader accounts already have in place systems to collect and transmit electronic reports over the existing EBS system. In addition, the Commission believes that the additional data elements contemplated by proposed Rule 17a–25 are readily available in broker-dealer systems and can be captured and electronically reported with only minor modifications to the firms' existing EBS software.

B. Description of Proposed Recordkeeping and Reporting Requirements

Section 17(a)(1) of the Exchange Act requires broker-dealers to make, keep, furnish, and disseminate records and reports prescribed by the Commission ''as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of'' the Exchange Act.[10] Rules 17a–3 and 17a–4 under the Exchange Act specify minimum requirements with respect to the records that must be maintained by broker-dealers, as well as the periods during which such records and other documents relating to a broker-dealer's business must be preserved.[11]

Proposed Rule 17a–25 would apply to entities currently subject to Rules 17a–3 and 17a–4. This includes any member of a national securities exchange who directly deals in a securities business with non-members of a national securities exchange. Proposed Rule 17a–25 would also apply to any broker or dealer who conducts a securities business through any member of a national securities exchange, or is registered pursuant to Section 15 of the Exchange Act.[12]

The proposed rule is largely patterned after existing SRO rules that require member firms to use the EBS system to submit the customer and proprietary trading data that the SROs request in connection with their market surveillance or enforcement inquiries.[13] The SRO rules, which have been in place for ten years,[14] require the same standard transaction information to be submitted that would be required pursuant to proposed Rule 17a–25(a). The universal EBS format permits the SROs and the Commission to conduct timely and thorough surveillance and enforcement inquiries with minimal regulatory burdens on reporting broker-dealers.

1. Standard Transaction Information

Proposed Rule 17a–25 would not impose additional recordkeeping requirements for broker-dealers; broker-dealers already maintain all of the information required for the proposed electronic reports pursuant to Exchange Act Rules 17a–3 and 17a–4. These elements include: (1) clearing house number or alpha symbol used by the broker-dealer submitting the data; (2) clearing house number(s) or alpha symbol(s) of the broker-dealer(s) on the opposite side to the trade; (3) the security identifier; (4) execution date; (5) quantity executed; (6) transaction price; (7) account number; and (8) identity of the exchange or market where each transaction was executed.[15] If transactions are for customer accounts (as opposed to proprietary accounts), the following additional elements are included: (9) customer name, address, and related account information; and (10) if a transaction is effected for a customer of another member, broker or dealer, whether the other member, broker or dealer was acting as principal or agent on the transaction(s).[16]

2. Additional Transaction Information

Proposed Rule 17a–25 would also set forth requirements for broker-dealers to provide, upon request, additional data elements that are needed to aggregate trading by institutional and professional traders that often use multiple accounts maintained at different broker-dealers. In preliminary discussions with the securities industry, the Commission staff has identified several additional data elements, discussed below, which would be useful in analyzing this type of trading through multiple accounts. These data elements should be readily available in broker-dealer systems, and only minor modifications to the firms' existing EBS software should be necessary to capture and report these data elements. We also believe that, because only a limited number of broker-dealers are likely to handle transactions for the types of entities that use multiple accounts at different broker-dealers (we estimate that less than 100 firms are likely to fall into this category), the potential costs to the securities industry for necessary EBS software modifications should be limited.

(a) Prime Brokerage Identifiers

It is common for an institutional investor to route its buy or sell orders in securities through different broker-dealers, who will then forward the transactions to a single broker-dealer that is designated as the institution's ''prime broker.'' The prime broker maintains a master account for the institution that simplifies recordkeeping and oversight of the institution's trading activity.

When an institution uses a prime brokerage arrangement, it is often

[6] 15 U.S.C. 78m(h).

[7] *See* Securities Exchange Act Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991).

[8] *See* Securities Exchange Act Release No. 33608 (February 9, 1994), 59 FR 7917 (February 17, 1994).

[9] When proposed Rule 13h–1 was published for comment in 1991 and re-published in 1994, the Commission received numerous comments from the securities industry, potential large traders, and market commentators that the large trader reporting system would be unduly burdensome and costly. Public comments also raised concerns that a large trader registration system might cause large international investors to conduct their U.S. equity trading activities through foreign brokers and markets. Commenters also believed that the comprehensive system envisioned by Section 13(h) could prove difficult to implement and maintain, and most likely would not expedite trading reconstructions to the extent contemplated in 1990.

[10] 15 U.S.C. 78q(a)(1).

[11] 17 CFR 240.17a–3 and 240.17a–4.

[12] 15 U.S.C. 78o.

[13] *See, e.g.,* Rule 410A of the New York Stock Exchange (NYSE); Rule 153A of the American Stock Exchange (Amex); Rule 15.7 of the Chicago Board Options Exchange (CBOE); Rule 8211 of the National Association of Securities Dealers, Inc. (NASD); and Rule 785 of the Philadelphia Stock Exchange (Phlx).

[14] *See* Securities Exchange Act Release Nos. 25859 (June 27, 1988), 53 FR 25029 (July 1, 1988) (approving both the NYSE and Amex's rules for the electronic submission of trading data); 26235 (November 1, 1988), 53 FR 44688 (November 4, 1988) (approving the CBOE's rule for the electronic submission of trading data); 26539 (February 13, 1989), 54 FR 7318 (February 17, 1989) (approving the NASD's rule for the electronic submission of trading data); and 27170 (August 23, 1989), 54 FR 37066 (approving the Phlx's rule for the electronic submission of trading data).

[15] 17 CFR 240.17a–3 and 240.17a–4.

[16] *Id.*

difficult for the Commission to identify instances when the same transaction may be reported twice in EBS submissions—once in the report by the executing broker-dealer and again in the report by the broker-dealer acting as prime broker. Broker-dealers employ different means to identify prime brokerage accounts in EBS submissions. For example, some broker-dealers identify the primer broker or an account executive at the prime broker in the account address field. Other broker-dealers do not indicate that an account's transactions involved a prime broker. As a result, some trades may be inadvertently double-counted when the Commission performs trading analyses.

Two new data elements in proposed Rule 17a–25 are designed to provide uniformity in identifying transactions involving a prime brokerage arrangement. First, if a broker-dealer effected trades for an institutional account but forwarded this account's transactions to a prime broker, this would have to be reflected in one of the new data fields in the enhanced EBS reports. This requirement is set forth in sub-paragraph (1)(i) under paragraph (b) of proposed Rule 17a–25. Second, if a broker-dealer acted as the prime broker for an institutional account, this also would have to be reflected in the new EBS data field. This requirement is set forth in sub-paragraph (1)(ii) under paragraph (b) of proposed Rule 17a–25.

These new data elements would permit the Commission staff to better analyze this type of increasingly frequent institutional activity and to avoid inadvertently double-counting such transactions.[17]

(b) Average Price Account Identifiers

Broker-dealers often use their ''average price accounts'' as a mechanism to buy or sell large amounts of a given security for their institutional customers. Under this arrangement, a broker-dealer's average price account may buy or sell a security in small increments throughout a trading session, and then transfer the accumulated long or short position to one or more institutional accounts for a volume-weighted average price after the market close.

As with transactions involving prime brokerage arrangements, there currently is no uniformity in how broker-dealers identify these transactions in EBS submissions. As a result, the Commission's trading analyses may inadvertently double-count such transactions—once in the EBS submission for the firm's average price account, and again in the EBS submission for the institutional account receiving positions from the average price account. Two additional data elements in proposed Rule 17a–25 are designed to provide uniformity in identifying transactions involving average price accounts.

First, if an institutional account's transactions involved transfers from the broker-dealer's average price accounts, this would have to be reflected in one of the new data fields in the enhanced EBS format. This requirement is set forth in sub-paragraph (2) (i) under paragraph (b) of proposed Rule 17a–25. Similarly, if the account covered by an EBS submission were itself an average price account, this also would have to be reflected in a new field in the enhanced EBS format. This requirement is set forth in sub-paragraph (2) (ii) under paragraph (b) of proposed Rule 17a–25.[18]

(c) Identifiers Used by Depository Institutions

Many of the largest institutional investors in U.S. equity securities process their transactions through the Depository Trust Company (''DTC'') or similar organizations. Pursuant to paragraph (b)(3) of proposed Rule 17a–25, if a broker-dealer effected trades for an institutional account and processed these transactions through a depository institution, the account's depository identifier would have to be reflected in one of the new data fields in the enhanced EBS reports. The inclusion of a depository account identifier in EBS reports would greatly expedite efforts by the Commission staff to aggregate institutional trading when conducting a complex trading reconstruction involving multiple securities over an extended trading period.[19]

3. Information to Facilitate Data Requests

A recurring problem with the EBS system has been the time delay in ensuring that data requests from the Commission staff are directed to the appropriate personnel at broker-dealers. Currently, the Commission staff initiates a data request by mailing a standard letter to the compliance personnel at any firm that was active in the selected security during the designated review period. Due to frequent staff turnover and reorganizations at broker-dealers, however, the correct compliance official at the firm often does not receive the request. Under certain circumstances, such as when a compliance officer has recently left the firm or is out of the office, it may be several days before a request reaches the appropriate staff person, thereby unnecessarily delaying the Commission's inquiry.

The Commission believes that requiring broker-dealers to supply the Commission with up-to-date information about personnel responsible for processing EBS requests would expedite the process. The Commission currently stores EBS contact person information in an electronic database. This database, however, is often incorrect because firms fail to notify the Commission that contact persons have changed. Accordingly, paragraph (c) of the proposed rule would require broker-dealers to submit, upon request, certain information about their contact persons and to keep this information current with the Commission. The Commission contemplates initially making such requests only to broker-dealers that have recently received EBS requests from the Commission.[20]

4. Other Information

The Commission is specifically requesting comment on other types of information that may be useful in analyzing trading in more complex market-wide trading reconstructions, as well as in investigations involving trading in multiple securities during very active markets. For example, execution times would be useful in trading reconstructions, particularly those that focus on trading during critical time periods during sharp market swings. To date, however, execution times have not been included in EBS reports because this information generally has not been available through broker-dealer account records systems (''back office'' records) that are used to prepare EBS reports (although execution time information may be available in other broker-dealer recordkeeping systems). Some representatives of the securities industry have indicated to the

[17] The Commission is specifically requesting comment on prime brokerage identifiers; *see* Section III, *infra*.

[18] The Commission is specifically requesting comment on average price account identifiers; *see* Section III, *infra*.

[19] The Commission is specifically requesting comment on depository account identifiers; *see* Section III, *infra*.

[20] The Commission has determined that the most efficient means of obtaining EBS contact information from the appropriate broker-dealers is by request rather than imposing a general reporting obligation on all broker-dealers. Thousands of broker-dealers who clear their trades through other firms never receive EBS data requests from the Commission. In addition, firms who do not trade with the public or are otherwise extremely inactive traders are rarely asked to supply trading data. Accordingly, the Commission believes it would be most cost-effective to build its database of EBS contacts based on the staff's experience with the types of broker-dealers that are likely to be recipients of future data requests.

Commission staff that, at least for transactions effected through automated order-routing systems, ''order sequence'' identifiers [21] could be used for EBS reports in lieu of actual execution times.

The inclusion of order sequence identifiers in EBS reports would enable the Commission staff to derive order entry times for particular trades. Once such trades are isolated, the transactions' order sequence numbers could be matched with timed order entry reports captured by either the broker-dealer's internal systems or with timed audit trails and related SRO reports. In view of the large number of institutional and professional trades that are routed and executed using automated systems, particularly program trading activity, the capture of the appropriate order sequence identifiers in EBS reports could greatly expedite trading reconstructions in which precise timing of particular trading activity is critical. The Commission is therefore soliciting comments concerning the feasibility of, and costs associated with, capturing order sequence identifiers in EBS reports.

In addition, information captured by the NASD's Order Audit Trail System (''OATS'') and the NYSE's proposed order tracking system [22] could be useful to the Commission in its trading analyses. For example, these systems generally capture the date and time of origination or receipt of the order and information on when the order is transmitted to another department within the member firm, to another member firm, or to a non-member. The Commission is, therefore, soliciting comments concerning the feasibility of, and costs associated with, capturing this type of information for Commission enforcement and trading reconstruction efforts.

C. Exemptions

The Commission recognizes that, particularly for some small broker-dealers, it may sometimes be appropriate to exempt a firm from some of the reporting requirements of proposed Rule 17a–25. The Commission would rely on its general exemptive authority under Section 36 of the Exchange Act [23] to exempt particular broker-dealers when the application of the reporting requirements of proposed Rule 17a–25 would not be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the rule.

III. Request for Comments

The Commission invites interested persons to submit written comments on all aspects of proposed Rule 17a–25. The Commission specifically requests comments from broker-dealers on the feasibility of capturing and reporting the new data elements discussed above for activity by entities that use multiple accounts at broker-dealers. In particular, the Commission requests comments on whether prime brokerage and average price account identifiers are likely to prevent double counting, and whether there are other methods to identify and address this problem. The Commission also is seeking comments on the proposal to have EBS reports include, upon request, an institutional account's depository identifier. Furthermore, the Commission is soliciting comments concerning the feasibility of, and costs associated with, proposing additional data elements in EBS reports that would assist the Commission in determining when particular orders to buy or sell stocks have been entered. Finally, the Commission is soliciting comments from broker-dealers on the costs associated with providing and updating EBS contact person information. Commenters should also discuss if there are ways that any of the costs associated with proposed Rule 17a–25 could be reduced. Comments should be submitted by June 7, 2000.

IV. Paperwork Reduction Act

Certain provisions of proposed Rule 17a–25 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995, [24] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: Rule 17a–25, Electronic Submission of Securities Trading Data by Exchange Members, Brokers and Dealers. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Summary of Collection of Information under Proposed Rule 17a–25

Proposed Rule 17a–25 would set forth the obligation of registered broker-dealers to electronically submit securities trading data in a standardized format when requested by the Commission staff for enforcement and other regulatory purposes. The proposed rule would also require the electronic submission of trading information to include, upon request, new data elements that will improve the Commission's ability to analyze securities transactions by entities that trade through multiple accounts maintained at different broker-dealers. The rule would also require broker-dealers to submit and, keep current, contact person information for EBS requests.

B. Proposed Use of Information

The Commission would use the information collected pursuant to proposed Rule 17a-25 for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

C. Respondents

While proposed Rule 17a-25 would apply to all of the approximately 7,700 broker-dealers that are currently registered with the Commission, most provisions would apply only to the 5,500 broker-dealers who do business with the general public. Based on its experience, the Commission believes that the requirement for submission of new data elements for trade data concerning entities that use multiple accounts at broker-dealers would affect a significantly smaller number of broker-dealers, estimated at less than 100 firms. [25]

D. Total Annual Reporting and Recordkeeping Burden

Proposed Rule 17a-25 should not impose additional burdens on the vast majority of the broker-dealers. Most of the requirements of the proposed rule involve collections of information that broker-dealers already maintain in compliance with existing regulations. In addition, virtually all of these firms already have systems in place that are routinely used to submit data to the Commission or SROs over the EBS system. The Commission staff will work with the few broker-dealers who might

[21] Firms use these identifiers to trace orders routed through automated systems. These identifiers are also routinely captured by some audit trail systems and other recordkeeping systems, such as the NYSE's daily program trading reports from member firms.

[22] *See* SR–NYSE–99–51.

[23] 15 U.S.C. 78mm. Procedures for Filing applications for orders for exemptive relief under Section 36 are found in the Commission's Rules of General Application, 17 CFR 240.0–12.

[24] 44 U.S.C. 3501 *et seq.*

[25] The estimate that less than 100 firms handle transactions from entities that use multiple accounts at broker-dealers is based on the Commission staff's use of the EBS system for several trading reconstructions in the 1990s.

not have EBS systems in place to develop cost-effective means of obtaining requested securities trading data, whether using the EBS system or other mechanisms. In addition, if electronic reporting of securities transaction data is not feasible or is unreasonably expensive for a particular small broker-dealer, the Commission staff will consider using its general exemptive authority under Section 36 of the Exchange Act to issue an exemptive order to the firm.

The Commission believes the proposed rule will present new burdens only to those broker-dealers who have customers trading through multiple accounts. These broker-dealers would need to perform a one-time modification of their EBS-related software to capture and report the new data elements. The cost to these firms is discussed below. In addition, because SIAC serves as an intermediary to route electronic files both to the Commission and the SROs, the analysis below discusses the costs SIAC and the SROs will incur to make their systems compatible with the broker-dealers' systems.

1. Burden-hours for broker-dealers

The annual hour burden of the proposed rule for individual broker-dealers would vary widely because of differences in the levels of activities of the respondents and because of differences in the current recordkeeping systems of the respondents. However, it is estimated that electronic response firms would spend approximately 8 minutes and manual response firms would spend 1½ hours responding to an average blue sheet request. Based on its experience with the EBS system, the Commission estimates that it sends approximately 14,000 electronic blue sheet requests per year, of which approximately 350 are sent to manual response firms. Accordingly, the annual aggregate hour burden for electronic response firms is estimated to be 1,820 hours ($13,650 \times 8 \div 60$). The annual aggregate hour burden for manual response firms is estimated to be 525 hours ($350 \times 90 \div 60$).

In addition, the Commission estimates that it will request 1,400 broker-dealers to supply the contact information identified in proposed Rule 17a–25(f), and the submission should take each broker-dealer approximately 5 minutes to prepare. To be conservative, the Commission estimates that each of these broker-dealers will revise the contact information twice a year, and each revision will also take approximately 5 minutes to prepare (10 minutes total). Accordingly, the annual aggregate burden for supplying the information requested in proposed Rule 17a–25(f) is 350 hours (1400×15 (60). The annual aggregate burden for all respondents to the collection of information requirements of proposed Rule 17a–25 is, therefore, estimated to be 2,695 hours (1,820 + 525 + 350).

2. Capital Cost to Broker-Dealers and SROs

As previously stated, the Commission estimates approximately 100 broker-dealers will have to make modifications to their existing EBS software to capture the additional data elements. On average, each of these broker-dealers will incur capital or start-up costs of $150,000. The Commission also preliminarily believes that there will be no additional costs associated with the operation and maintenance of the modified EBS systems. Accordingly, the total start-up, operating and maintenance cost burden for broker-dealers is estimated to be $15 million ($100 \times \$150,000$).

Based on its discussions with the SROs, the Commission estimates that three SROs will each incur approximately $29, 500 in capital costs to make their systems compatible with the broker-dealers. The Commission preliminary believes that the SROs will not incur additional costs in association with the operation and maintenance of the modified EBS systems.

E. General Information about the Collection of Information

Any collection of information pursuant to proposed Rule 17a–25 would be mandatory. The retention periods for the collection of information are already specified in Rule 17a–4 of the Exchange Act.[26] Any collection of information pursuant to proposed Rule 17a–25 would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

F. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(1) evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility;

(2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(3) enhance the quality, utility, and the clarity of the information to be collected; and

(4) minimize the burden of collection on those who are to respond, including through the use of electronic collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, with reference to File No. S7–12–00. The Commission has submitted the proposed collection of information to OMB for approval. Members of the public should direct any general comments to both the Commission and OMB within 30 days. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–12–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

V. Costs and Benefits of the Proposed Rule

The proposed rule will significantly assist the Commission staff's ability to conduct timely and accurate trading analyses for market reconstructions and complex enforcement inquiries or investigations, as well as inspections and examinations. The current system severely limits the Commission's ability to aggregate transactions effected by entities that use multiple accounts at broker-dealers and can produce trading compilations that double count some transactions effected through multiple accounts. Augmented trading analyses will improve the Commission's ability to monitor the securities markets and increase levels of investor confidence in the markets.

A. Broker-dealers[27]

For purposes of the PRA, the Commission has estimated that the annual aggregate hour burden for all respondents to the collection of information requirements of proposed

[26] 17 CFR 240.17a–4.

[27] Both the time burden and the costs were derived from information supplied by several broker-dealers.

Rule 17a–25 to be 2,695 hours. The total annualized cost burden for those broker-dealers that make modifications to their existing EBS software is estimated to be $15 million in capital or start-up costs. The Commission also anticipates that these broker-dealers will not incur additional costs for the operation and maintenance of the modified EBS systems. The Commission specifically requests comments on whether the annual hour burden, the initial capital or start-up costs, and the costs for the operation and maintenance of broker-dealer EBS systems are reasonable estimates based on reasonable assumptions.

B. SROs

The estimate of total annualized cost burden to the SROs is $88,500.[28] This cost burden is computed by estimating that approximately three SROs will need to modify their systems to receive the new data elements, at an approximate cost of $29,500 per SRO. The Commission specifically requests comments on whether the annualized cost burden is a reasonable estimate.

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed rule, commenters are requested to provide analyses and data relating to the costs and benefits associated with any of the proposals.

VI. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 23 of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule that it adopts. The Commission does not believe the proposed rule would have any anti-competitive effects. We request comment on the anti-competitive effects, if any, of proposed Rule 17a–25. Furthermore, Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. We request comment on these matters in conjunction with the proposed rule.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendment on the economy on an annual basis. If possible, commenters should provide empirical data to support their views.

VII. Summary of Initial Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 concerning proposed Rule 17a–25. The following summarizes the IRFA.

As discussed in the IRFA, the purpose of proposed Rule 17a–25 is to facilitate the collection, analysis and evaluation of relevant trading data for enforcement and other regulatory reviews. In particular, the proposed rule is intended to provide an effective system for reviewing securities transactions of entities that trade through multiple accounts at different broker-dealers. The Commission believes that the proposed rule will protect investors, as well as preserve the fair and orderly operation of the nation's securities markets.

The IRFA also discusses the effect of proposed rule 17a–25 on small broker-dealers.[29] The Commission estimates that approximately 12% of registered broker-dealers, or approximately 1,000 broker-dealers, qualify as small broker-dealers.

The Commission's experience with the EBS system over the last ten years indicates that entities that trade through multiple accounts at different firms generally do not effect their trades through ''small'' broker-dealers. Accordingly, the Commission does not believe that any small broker-dealer would be required to modify its EBS-related software to capture and report the new data elements that are needed to analyze transactions by entities using multiple accounts.

The IRFA further states that proposed Rule 17a–25 would not impose any additional recordkeeping requirements for small broker-dealers. The elements of trade information required for electronic reports to the Commission are already maintained by broker-dealers pursuant to Rules 17a–3 and 17a–4 and SRO rules. In addition, because EBS requests are sent to large clearing firms or those broker-dealers that self-clear, these firms would also generally fall outside the definition of a small broker-dealer.

Small broker-dealers would incur some costs when they report transaction data pursuant to requests by the Commission staff for enforcement purposes. The Commission believes, however, that any new costs associated with the current rule proposal would be minimal. As discussed above, small broker-dealers are already subject to SRO rules that mandate transaction data reports for surveillance or enforcement inquiries. Accordingly, even small broker-dealers are already required to have in place adequate systems and procedures to submit transaction reports to the appropriate SRO; no new systems would need to be developed pursuant to proposed Rule 17a–25. Moreover, the Commission staff has traditionally been flexible when working with small broker-dealers who need to supply transaction reports. In cases in which a small broker-dealer does not already have the capacity to submit data over the EBS system, the Commission staff has accepted manual transmissions. Proposed Rule 17a–25 is not intended to change this flexible approach in obtaining necessary transaction reports from small broker-dealers.

Small broker-dealers would also incur some costs when they are asked to supply information, pursuant to paragraph (c) of proposed Rule 17a–25, about contact persons who would handle transaction data requests from the Commission. The Commission believes, however, that any new costs associated with this requirement would be minimal. Small broker-dealers are already required to have personnel and procedures in place to respond to enforcement or regulatory inquiries from the Commission or the SROs. In addition, because relatively few data requests are submitted by the Commission to small broker-dealers, only a small number of firms in this category would be requested to supply contact person information. Moreover, the costs associated with supplying this type of information appear to be minimal. Firms would simply be required to submit a brief letter or e-mail providing information concerning the appropriate contact person or persons, such as their names, telephone numbers, fax numbers, and e-mail addresses (if any), and to send a follow-up letter or e-mail when this information is no longer accurate.

The IRFA also discusses the various alternatives considered by the Commission in connection with the proposed rule that might minimize the effect on small entities. These include, among others, creating differing compliance or reporting requirements or timetables that take into account the resources available to small entities, and whether such entities could be exempted from the proposed rule, or any part thereof. The Commission has drafted the proposal to be consistent

[28] The estimated cost is based upon discussions with the SROs.

[29] For purposes of the regulatory flexibility analysis, a broker-dealer is considered a small entity if its total capital is less than $500,000, and it is not affiliated with a broker-dealer that has $500,000 or more in total capital. 17 CFR 240.0–10.

with the concerns for small entities. For example, as discussed above, the Commission has often permitted small broker-dealers to submit the trading data in a manual, rather than an electronic, format. The Commission will continue to rely on its exemptive authority under Section 36 of the Exchange Act to grant relief, when necessary, to small broker-dealers from the requirements of the proposed rule. A wholesale exemption from the proposed rule for small broker-dealers, however, would prevent the Commission from fully protecting investors and maintaining the fair and orderly operation of the nation's securities markets.

The Commission encourages the submission of written comments regarding any aspect of the IRFA. In particular, the Commission requests comments on: (1) The number of small broker-dealers that would be affected by the proposed rule, especially the number of small broker-dealers which maintain institutional accounts, and (2) the nature and extent of new costs to small broker-dealers as a result of the proposed rule. Commentators are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Written comments will be considered in preparation of the Final Regulatory Flexibility Analysis if the proposed rule is adopted. Such comments will be placed in the public file designated for the proposed rule. A copy of the IRFA may be obtained by contacting Anitra Cassas, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001, (202) 942–0089.

VIII. Statutory Basis

Proposed Rule 17a–25 under the Exchange Act is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 17(a) and 23(a) of the Act, unless otherwise noted.

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and record-keeping requirements, Securities.

Text of the Proposed Rule

In accordance with the foregoing, Title 17, Chapter II of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.17a–25 is added to read as follows:

§ 240.17a–25 Electronic submission of securities trading data by exchange members, brokers and dealers.

(a) Every member, broker or dealer subject to § 240.17a–3 shall electronically submit to the Commission the data elements specified in this section for transactions that are the subject of a particular request for information made by the Commission:

(1) If the transaction was a proprietary transaction effected or caused to be effected by the member, broker or dealer for any account in which such member, broker or dealer, or person associated with the member, broker or dealer, is directly or indirectly interested, such member, broker or dealer shall submit or cause to be submitted the following information:

(i) Clearing house number, or alpha symbol as used by the member, broker or dealer submitting the data;

(ii) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member(s), broker(s) or dealer(s) on the opposite side of the transaction;

(iii) Identifying symbol assigned to the security;

(iv) Date transaction was executed;

(v) Number of shares, or quantity of bonds or options contracts, for each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an options contract, whether open long or short or close long or short;

(vi) Transaction price;

(vii) Account number; and

(viii) The identity of the exchange or other market where the transaction was executed.

(2) If the transaction was effected or caused to be effected by the member, broker or dealer for any customer account, such member, broker or dealer shall submit or cause to be submitted the following information:

(i) Data elements contained in paragraphs (a)(1)(i) through (a)(1)(viii) of this section;

(ii) Customer name, address(es), branch office number, identification number for the associated person handling the account, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s); and

(iii) If the transaction was effected for a customer of another member, broker or dealer, whether the other member, broker or dealer was acting as principal or agent on the transaction or transactions that are the subject of the Commission's request.

(b) In addition to the trading data elements in paragraph (a) of this section, a member, broker or dealer shall, upon request, submit or cause to be electronically submitted to the Commission the following information for transactions involving entities that trade using multiple accounts:

(1)(i) If part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise forwarded to one or more accounts at another broker-dealer, the data submission to the Commission shall include the clearing house number, or alpha symbol used by the broker-dealer receiving the transaction;

(ii) If part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise received from one or more other broker-dealers, the data submission to the Commission shall include the clearing house number(s), or alpha symbol(s) used by the broker-dealer(s) transferring or otherwise forwarding the transactions.

(2)(i) If part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise received from another account at the reporting broker-dealer, the data submission to the Commission shall include the identifier for this other account;

(ii) If part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise forwarded to one or more other accounts at the reporting broker-dealer, the data submission to the Commission shall include the identifiers for these other accounts; and

(3) If an account's transaction was processed by a depository institution, the data submission to the Commission shall include the identifier assigned to the account by the depository institution.

(c) Every member, broker or dealer subject to § 240.17a–3 shall submit upon request to the Commission and keep current information containing the full name, title, address, telephone number(s), facsimile number(s), and electronic-mail address(es) for each person designated by the member, broker or dealer as responsible for processing securities transaction data requests from the Commission.

(d) Unless otherwise specified by Commission rule or order, the member, broker, or dealer should comply with the format for the electronic submission

of the trading data described in paragraphs (a) and (b) of this section as specified by the self-regulatory organization of which it is a member.

Dated: May 2, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–11405 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116567–99]

RIN 1545–AX67

Definition of Hyperinflationary Currency for Purposes of Section 988; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to hyperinflationary currency for purposes of section 988.

DATES: The public hearing originally scheduled for Wednesday, May 17, 2000, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: Guy Traynor of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on January 13, 2000, (65 FR 2084), announced that a public hearing was scheduled for May 17, 2000 at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 988, of the Internal Revenue Code. The deadline for requests to speak and outlines of oral comments expired on April 20, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of April 24, 2000, no one has requested to speak. Therefore, the public hearing scheduled for May 17, 2000, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–11343 Filed 5–5–00; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AA98

Location of NARA Facilities and Hours of Use

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration proposes to revise its regulation that lists NARA facilities and hours when the public and other Federal agency staff may use the records in those facilities. This proposal updates information on NARA facilities throughout the United States, including the addition of two new facilities and the deletion of a closed NARA facility. Additional revisions include corrections to addresses, providing e-mail addresses for the Presidential libraries, the addition and correction of phone and fax numbers, and, in some cases, modifications to the hours that these facilities are open for research. This proposed rule will affect members of the public who do research at NARA.

DATES: Comments must be received by June 7, 2000.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPLN), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270.

FOR FURTHER INFORMATION CONTACT: Shawn Morton at telephone number 301–713–7360, ext. 253, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: This proposed regulation includes information on several facility changes that have occurred since the last update to 36 CFR part 1253. In 1997, the George Bush Presidential Library was dedicated. The listing for the Bush Library is included in proposed § 1253.3, Presidential Libraries. In 1998, the Military Ocean Terminal, Bayonne, New Jersey, site of the New York Federal Records Center was closed and the NARA—Central Plains Region (Lee's Summit, MO) records center was opened. These changes are reflected in proposed § 1253.6, Records Centers.

Listings of Presidential libraries, records centers, and regional archives are revised to include uniform facility names, corrected addresses, telephone numbers, research hours, and, for Presidential libraries, e-mail addresses. The core hours of research for the libraries, records centers, and regional archives are minimally affected by the revisions found in this proposed rule.

This rule is being issued as a proposed rule with a 30-day comment period because we believe this rule will have no substantive impact on the public using records in NARA facilities.

This proposed rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities. This proposed rule does not have federalism implications.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, NARA proposes to revise part 1253 of title 36, Code of Federal Regulations, to read as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

Sec.
1253.1 National Archives Building.
1253.2 National Archives at College Park.
1253.3 Presidential libraries.
1253.4 Washington National Records Center.
1253.5 National Personnel Records Center.
1253.6 Records centers.
1253.7 Regional archives.

Authority: 44 U.S.C. 2104(a).

§ 1253.1 National Archives Building.

(a) The National Archives Building is located at 700 Pennsylvania Avenue, NW., Washington, DC 20408. Business hours are 8:45 a.m. to 5:15 p.m., Monday through Friday, except Federal holidays when the building is closed. Hours for the Central Research Room and Microfilm Research Room are as follows, except Federal holidays:

(1) Monday and Wednesday, 8:45 a.m. to 5 p.m.;

(2) Tuesday, Thursday, and Friday, 8:45 a.m. to 9 p.m.; and

(3) Saturday, 8:45 a.m. to 4:45 p.m.

(b) The phone number for the research rooms is 800–234–8861.

(c) The location and business hours of the Office of the Federal Register are located in 1 CFR 2.3.

§ 1253.2 National Archives at College Park.

(a) The National Archives at College Park is located at 8601 Adelphi Road, College Park, MD 20740–6001. Business hours are 8:45 a.m. to 5:15 p.m., Monday through Friday, except Federal holidays when the building is closed.

(b) Research complex hours are as follows, except Federal holidays:

(1) Monday and Wednesday, 8:45 a.m. to 5 p.m.;

(2) Tuesday, Thursday, and Friday, 8:45 a.m. to 9 p.m.; and

(3) Saturday, 8:45 a.m. to 4:45 p.m.

(c) The phone number for the research complex is 800–234–8861.

§ 1253.3 Presidential libraries.

The Presidential libraries are open for research from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays when they are closed. NARA recommends that researchers contact the library before visiting for research. The Presidential library museums are open every day except Thanksgiving, December 25, and January 1 (with the exception of the Lyndon Baines Johnson Library that is only closed December 25). For more specific information about museum hours, please contact the libraries directly or visit the NARA web site at http://www.nara.gov/nara/president/address.html. Information for each library is as follows:

(a) Herbert Hoover Library is located at 210 Parkside Dr., West Branch, IA (mailing address: PO Box 488, West Branch, IA 52358–0488). The phone number is 319–643–5301 and the fax number is 319–643–5825. The e-mail address is *library@hoover.nara.gov.*

(b) Franklin D. Roosevelt Library is located at 4079 Albany Post Rd., Hyde Park, NY 12538–1999. The phone number is 914–229–8114 and the fax number is 914–229–0872. The e-mail address is *library@roosevelt.nara.gov.*

(c) Harry S. Truman Library is located at 500 W. US Hwy 24, Independence, MO 64050–1798. The phone number is 816–833–1400 and the fax number is 816–833–4368. The e-mail address is *library@truman.nara.gov.*

(d) Dwight D. Eisenhower Library is located at 200 SE Fourth Street, Abilene, KS 67410–2900. The phone number is 785–263–4751 and the fax number is 785–263–4218. The e-mail address is *library@eisenhower.nara.gov.*

(e) John Fitzgerald Kennedy Library is located at Columbia Point, Boston, MA 02125–3398. The phone number is 617–929–4500 and the fax number is 617–929–4538. The e-mail address is *library@kennedy.nara.gov.*

(f) Lyndon Baines Johnson Library is located at 2313 Red River St., Austin, TX 78705–5702. The phone number is 512–916–5137 and the fax number is 512–916–5171. The e-mail address is *library@johnson.nara.gov.*

(g) Gerald R. Ford Museum is located at 303 Pearl St., Grand Rapids, MI 49504–5353. The phone number is 616–451–9263 and the fax number is 616–451–9570. The e-mail address is *information. museum@fordmus. nara.gov.* Gerald R. Ford Library is located at 1000 Beal Avenue, Ann Arbor, MI 48109–2114. The phone number is 734–741–2218 and the fax number is 734–741–2341. The e-mail address is *library@fordlib.nara.gov.*

(h) Jimmy Carter Library is located at 441 Freedom Parkway, Atlanta, GA 30307–1498. The phone number is 404–331–3942 and the fax number is 404–730–2215. The e-mail address is *library@carter.nara.gov.*

(i) Ronald Reagan Library is located at 40 Presidential Dr., Simi Valley, CA 93065–0699. The phone number is 800–410–8354 and the fax number is 805–522–9621. The e-mail address is *library@reagan.nara.gov.*

(j) George Bush Library is located at 1000 George Bush Drive West, College Station, TX 77845. The phone number is 979–260–9554 and the fax number is 979–260–9557. The e-mail address is *library@bush.nara.gov.*

§ 1253.4 Washington National Records Center.

Washington National Records Center is located at 4205 Suitland Road, Suitland, MD (mailing address: Washington National Records Center, 4205 Suitland Road, Suitland, MD, 20746–8001). The hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays. The phone number is 301–457–7000.

§ 1253.5 National Personnel Records Center.

(a) Military personnel records. NARA—National Personnel Records Center—Military Personnel Records is located at 9700 Page Ave., St. Louis, MO 63132–5100. The hours are 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

(b) Civilian personnel records. NARA—National Personnel Records Center—Civilian Personnel Records is located at 111 Winnebago St., St. Louis, MO 63118–4199. The hours are 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

§ 1253.6 Records Centers.

All records centers are closed on Federal holidays. Information for each center is as follows:

(a) NARA—Northeast Region (Boston) is located at the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452–6399. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–647–8108.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 413–445–6885.

(c) NARA—Mid Atlantic Region (Northeast Philadelphia) is located at 14700 Townsend Rd., Philadelphia, PA 19154–1096. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 215–671–1175.

(d) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, GA 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7063.

(e) NARA—Great Lakes Region (Dayton) is located at 3150 Springboro Rd., Dayton, OH 45439–1883. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 937–225–2852.

(f) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The hours are 8:30 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 773–581–7816.

(g) NARA—Central Plains Region (Kansas City) is located at 2312 E. Bannister Rd., Kansas City, MO 64131–3011. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–926–6920.

(h) NARA—Central Plains Region (Lee's Summit, MO) is located at 200 Space Center Drive, Lee's Summit, MO 64064–1182. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–478–7079.

(i) NARA—Southwest Region (Fort Worth) is located at 501 West Felix St., Bldg. 1, Fort Worth, TX (mailing address: P.O. Box 6216, Fort Worth, TX 76115–0216). The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 817–334–5515.

(j) NARA—Rocky Mountain Region (Denver) is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO (mailing address: PO Box 25307, Denver, CO 80225–0307). The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday. The telephone number is 303–236–0827.

(k) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 650–876–9077.

(l) NARA—Pacific Region (Laguna Niguel, CA) is located at 24000 Avila Rd., 1st Floor East Entrance, Laguna Niguel, CA (mailing address: PO Box 6719, Laguna Niguel, CA 92607–6719). The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 949–360–6334.

(m) NARA—Pacific Alaska Region (Seattle) is located at 6125 Sand Point Way NE, Seattle, WA 98115–7999. The hours are 7:45 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 206–526–6501.

§ 1253.7 Regional archives.

Most regional archives offer extended research room hours for microfilm research only. Information on extended hours is available from individual facilities. Regional archives are closed on Federal holidays. Information on each regional archives facility is as follows:

(a) NARA—Northeast Region (Boston) is located in the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452–6399. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–647–8100.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 413–445–6885.

(c) NARA—Northeast Region (New York City) is located at 201 Varick St., New York, NY 10014–4811. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 212–337–1300.

(d) NARA—Mid Atlantic Region (Center City Philadelphia) is located at 900 Market St. Room 1350, Philadelphia, PA 19107–4292. The hours are 8 a.m. to 5 p.m., Monday through Friday. The telephone number is 215–597–3000.

(e) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, GA 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7474.

(f) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The hours are 8 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 773–581–7816.

(g) NARA—Central Plains Region (Kansas City) is located at 2312 E. Bannister Rd., Kansas City, MO 64131–3060. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–926–6982.

(h) NARA—Southwest Region (Fort Worth) is located at 501 West Felix St., Bldg. 1, Dock 1, Fort Worth, TX (mailing address: P.O. Box 6216, Fort Worth, TX, 76115–0216). The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 817–334–5525.

(i) NARA—Rocky Mountain Region (Denver) is located at Building 48, Denver Federal Center, West 6th Avenue and Kipling Street, Denver, CO (mailing address: PO Box 25307, Denver, CO 80225–0307). The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday. The telephone number is 303–236–0804.

(j) NARA—Pacific Region (Laguna Niguel, CA) is located at 24000 Avila Rd., 1st Floor East Entrance, Laguna Niguel, CA (mailing address: PO Box 6719, Laguna Niguel, CA 92607–6719). The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 949–360–2641.

(k) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The hours are 7:30 a.m. to 4:00 p.m., Monday through Friday. The telephone number is 650–876–9009.

(l) NARA—Pacific Alaska Region (Seattle) is located at 6125 Sand Point Way NE, Seattle, WA 98115–7999. The hours are 7:45 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 206–526–6501.

(m) NARA—Pacific Alaska Region (Anchorage) is located at 654 West Third Avenue, Anchorage, AK 99501–2145. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 907–271–2443.

Dated: May 3, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–11530 Filed 5–5–00; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6585–6]

RIN 2060–AE86

National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production; Synthetic Organic Chemical Manufacturing Industry; Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Polyether Polyols Production; the Synthetic Organic Chemical Manufacturing Industry (also known as the Hazardous Organics NESHAP, or HON); Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries.

This action proposes to correct referencing errors and several equations which contained printing errors in the final NESHAP for Polyether Polyols Production. This action proposes to amend the description of a process change and the description of excess emissions; the requirements pertaining to submission of a request for extension of a compliance date; the storage vessel monitoring requirements; the definition of the terms *epoxide*, *Polyether polyol*, and *Group 2 wastewater stream*; the conditions required during performance testing for batch process vents; which compounds are considered to be organic HAP for the purposes of both the maintenance wastewater and the process wastewater requirements; the information requirements for start-up, shutdown, and malfunction reports; the dates on which initial notification reports are due; and the reporting requirements for other reports to clarify those requirements. For all four NESHAP, the EPA is proposing to amend the definition of *equipment leaks* to add the term ''connectors'' to the list of equipment that is subject to the equipment leak provisions in those NESHAP.

In the ''Rules and Regulations'' section of this **Federal Register**, we are making these corrections in a direct final rule, without prior proposal, because we view these revisions as noncontroversial, and we anticipate no adverse comments. We have explained our reasons for these corrections in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If an adverse comment applies to an amendment, paragraph, or section of this proposed rule, and that provision may be addressed separately from the remainder of the proposed rule, we will withdraw only those provisions on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule in the ''Rules and Regulations'' section of this **Federal Register** is withdrawn, all public comments pertaining to those provisions will be addressed in a

subsequent final rule based on this proposed rule. We will not institute a second comment period on that subsequent final rule. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Written comments must be received by June 7, 2000, unless a hearing is requested by May 18, 2000. If a hearing is requested, written comments must be received by June 22, 2000.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by May 18, 2000, a public hearing will be held on May 22, 2000.

Comments. Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket numbers A–90–20, A–92–37, A–93–48, and/or A–96–38 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

ADDRESSES: *Docket.* Docket numbers A–90–20, A–92–37 (Epoxy Resins Production and Non-Nylon Polyamides Production), A–93–48 (Petroleum Refineries), and A–96–38 (Polyether Polyols Production) contain supporting information used in developing the standards. The dockets are located at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina at 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5608, electronic mail address: rosensteel.bob@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A)) of the Clean Air Act.) An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260-7548 or (202) 260–7549. A reasonable fee may be charged for copying docket materials. Docket indexes are also available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at http://www.epa.gov/airprogm/oar/docket/faxlist.html.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Maria Noell, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, NC 27711, telephone (919) 541–5607, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Maria Noell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket numbers A–90–20, A–92-37, A–93–48, and/or A–96–38. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 944, Durham NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

World Wide Web. In addition to being available in the docket, an electronic copy of this proposed rule is also available through the World Wide Web (WWW). Following signature, a copy of the rule will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially affected by this proposed rule include:

Category	Standard Industrial Classification (SIC) codes	North American Industrial Classification System (NAICS) codes	Examples of regulated entities
Industry	2865 and 2869	325110, 325188, 325192, 325193, 325199, and 325120.	Synthetic organic chemical manufacturing industry (SOCMI) units (e.g., producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F).
Industry	2821	325211	Epoxy resins and non-nylon polyamide resins.
Industry	2911	324110	Petroleum refineries.
Industry	2843 and 2869	325199 and 325613	Producers of polyether polyols and polyether mono-ols.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulations proposed in this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subparts F, W, CC, and PPP. If you have any questions regarding the applicability of these proposed amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What Are the Administrative Requirements for This Action?

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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.

For purposes of assessing the impact of this proposed rule on small entities, small entity is defined as: (1) A small business that has less than 750 employees and is unaffiliated with a larger domestic entity; (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 impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that 7 of the 36 polyether polyol production facilities are classified as small entities (i.e., having fewer than 750 employees). The EPA determined that none of these seven small entities will experience an increase in costs that is greater than one percent of revenues as a result of this proposed rule. This does not qualify as a significant economic impact on a substantial number of small businesses.

For information regarding other administrative requirements for this action, please see the direct final/final rule action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 63

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

Dated: April 20, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–10419 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 239

[FRL–6586–8]

The Territory of the U.S. Virgin Islands; Tentative Determination of Inadequacy of the Virgin Islands Municipal Solid Waste Permit Program; Public Hearings and Public Comment Period

AGENCY: Environmental Protection Agency .

ACTION: Proposed rule.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B) requires States to develop and implement permit programs or other systems of prior approval to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for MSWLFs. For RCRA purposes, pursuant to Section 6903(31), 42 U.S.C. 6903(31), the term ''State'' includes the territory of the Virgin Islands. To implement these statutory provisions, EPA promulgated a State Implementation Final Rule (SIR), 40 CFR Part 239, which provides criteria and procedures for making adequacy determinations of State municipal landfill permit programs.

On October 6, 1993, the U.S. Virgin Islands applied for a determination of program adequacy under section 4005(c)(1)(B) of RCRA. Upon review of the application and certain revisions thereto, EPA on June 16, 1995, published a notice of a tentative determination of adequacy of the Virgin Islands landfill permit program. The notice of tentative determination provided that the Virgin Islands government had committed to amending its existing solid waste regulations so as to conform to federal Part 258 criteria by May, 1996. Two public hearings were subsequently held on the MSWLF application at which EPA received negative comments concerning the Bovoni and Anguilla municipal landfills in the Virgin Islands, which are operated by the government of the Virgin Islands. After further review, EPA requested that the Virgin Islands document the commitment of sufficient resources and budget in order to carry out and sustain improved landfill operations. Thus, provision of an adequate program budget and staff resources, and the promulgation of revised solid waste regulations needed to be accomplished.

Since 1995, EPA has worked with Virgin Islands officials to assist the government in preparing revised solid waste regulations and repeatedly has advised the government of the need to increase the level of resources for its MSWLF permit program. However, the promulgation of revised solid waste regulations by the Virgin Islands government, and the provision of adequate budget and staff resources to carry out program requirements have not occurred to date. Accordingly, by this notice, EPA is now officially promulgating its tentative determination, pursuant to Section 4005(c)(1)(C) of RCRA, that the Virgin Islands municipal landfill permit program is inadequate to assure compliance with the federal landfill criteria.

EPA is providing the public an opportunity to comment on this action, and will also hold two public hearings as described below. If after receipt of public comments and after public hearings to be held in the Virgin Islands, EPA proceeds to a Final Determination of Inadequacy, EPA will then assume enforcement authority for the federal landfill criteria in accordance with RCRA Section 4005(c)(2). Moreover, the Virgin Islands will be denied operational flexibility that is granted approved states, such as utilizing alternate daily cover standards or reducing the frequency of ground water monitoring. In addition, while in unapproved status, since the Virgin Islands is located in a seismic zone, it will be prohibited from siting a new landfill or expanding an existing one.

DATES: Written comments on today's action must be submitted on or before July 24, 2000. Although RCRA does not require EPA to hold a public hearing on

any determination to approve or disapprove a State's MSWLF program, the Region has scheduled two public hearings on this tentative determination. The public hearings have been scheduled, as follows: One public hearing will be held on St. Thomas at 7 p.m. on June 27, 2000 and a second public hearing will be held on St. Croix at 7 p.m. on June 28, 2000. The dates and locations of the public hearings will also be published in the VI Daily News and the St. Croix Avis.

ADDRESSES: For written comments, commenters should send an original and two copies of their comments to: Carl-Axel P. Soderberg, Director, EPA Region 2, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, San Juan, PR 00907–4127, telephone: (787) 729–6951 ext. 222. Comments may also be submitted electronically by sending electronic mail through the Internet to: soderberg.carl@epamail.epa.gov. Comments in electronic format should clearly identify the subject matter. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The St. Thomas public hearing will be held at the Curriculum Center Conference Room at the Department of Education Curriculum Center, 386 Anna's Retreat (located immediately above the Tutu Fire Station and across from the Seventh Day Adventist Church); the St. Croix public hearing will be held in the Curriculum Center Conference Room at the Department of Education Curriculum Center, 21–22 Hospital Street, Christiansted (located between the Central High School and the St. Croix Territorial Court House along Queens Mary Highway).

Information and background documents concerning the Virgin Islands MSWLF program are available for viewing at the EPA Region 2, Caribbean Environmental Protection Division office located at the Federal Building and U.S. Courthouse, 5500 Veterans Drive, Room 142, St. Thomas, U.S. Virgin Islands 00802, telephone number (340) 714–2333; the Enid M. Baa Library & Archives, 20 Dronningens Gade, St. Thomas, Virgin Islands 00802; the Elaine I. Sprauve Library & Museum, Enighed Estate, Cruz Bay, St. John, Virgin Islands 00801; and the Florence Williams Public Library, 49–50 King's Street, Christiansted, St. Croix, Virgin Islands 00820. The background documents include the Virgin Islands MSWLF permit program application; information on the 1995 public hearings concerning the Virgin Islands MSWLF permit program and EPA correspondence with the Virgin Islands Government. The Index to the Administrative Record concerning the Virgin Islands MSWLF program is also available at these locations. Persons who wish to obtain copies of documents from the Administrative Record or who seek additional information, should contact the EPA official listed below.

FOR FURTHER INFORMATION CONTACT: John Filippelli, RCRA Programs Branch, Division of Environmental Planning and Protection, U.S. EPA Region 2, 290 Broadway, New York, NY 10007–1866, telephone (212) 637–4125, facsimile (212) 637–4437, or via the internet: filippelli.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs or other systems of prior approval to ensure that MSWLFs comply with the Federal Criteria under Part 258. RCRA also requires in Section 4005(c)(1)(C) that EPA determine whether State MSWLF permit programs are adequate to comply with the revised Federal Criteria. To fulfill this requirement, the Agency has promulgated a State Implementation Rule (SIR), 40 CFR Part 239—Requirements for State Permit Program Determination of Adequacy (63 FR 57025, October 23, 1998). Part 239 specifies the minimum requirements which State landfill permit programs must satisfy to be determined to be adequate, including: the state must have legally adopted enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF landfill criteria; the state must have an adequate compliance monitoring program and the legal authority to issue permits or other forms of prior approval to all new and existing MSWLFs in its jurisdiction; the State must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA; the State must also demonstrate that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with applicable regulations or its landfill permit.

EPA Regions are authorized to determine whether a State has submitted an ''adequate'' program based on the statute and the regulations summarized above. EPA expects States to meet all of these requirements for its MSWLF program before it gives full approval to a MSWLF program.

As a general matter, the Agency believes that approvals of state programs have an important benefit. Approved State permit programs provide for interaction between State and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent that the State permit program allows such flexibility. EPA notes that regardless of the approval status of a State and the permit status of any facility, the federal landfill criteria apply to all permitted and unpermitted MSWLF facilities. EPA also notes that Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State enforcement program.

B. Territory of the U.S. Virgin Islands

On October 6, 1993, the Territory of the U.S. Virgin Islands submitted a program application for adequacy determination. Subsequently, the Virgin Islands made several revised submissions. EPA has reviewed the application and the revised submissions, and on June 16, 1995 published a **Federal Register** notice of tentative determination that all portions of the U.S. Virgin Islands' Subtitle D program were adequate to provide compliance with the revised Federal Criteria. The June 16, 1995 notice provided that the Virgin Islands expected to revise its solid waste regulations so as to be technically comparable to federal criteria by May, 1996. However, the revised regulations have not as yet been officially promulgated, although substantial preparatory work has been done. In addition, substantial adverse comments on the Virgin Islands' MSWLF permit program were presented during the public comment period and at the public hearings in 1995. EPA subsequently advised the Virgin Islands that it must both demonstrate a commitment of budget and staff resources to enable it to sustain adequate landfill program operations and promulgate revised regulations as prerequisites for obtaining a final EPA determination of program adequacy.

Currently there are two municipal solid waste disposal facilities operating in the U.S. Virgin Islands. One facility is located on St. Thomas and the other on St. Croix. The island of St. John is

currently serviced by a transfer station from which the waste is transported to the St. Thomas landfill for disposal. The Virgin Islands Department of Planning and Natural Resources (DPNR) has responsibility for implementing and enforcing solid waste management regulations, including issuing permits, and undertaking inspections and other enforcement activities. The solid waste landfills presently located in the Territory are operated by the Virgin Islands Department of Public Works (DPW). The Anguilla landfill is owned by the Virgin Islands Port Authority while the Bovoni landfill is owned by the government of the Virgin Islands. The DPNR and DPW entered into a Memorandum of Agreement (MOA) dated January 11, 1995 which committed the two agencies to meeting the requirements of 40 CFR Part 258 at the Virgin Islands landfills. This MOA was submitted to the EPA in conjunction with the application for a program adequacy determination. The DPNR Commissioner also advised EPA that no permits would be issued for the establishment of any private solid waste disposal facility until revised regulations for solid waste landfill management were in place. In addition, DPNR committed to issuing a permit to DPW pursuant to the revised regulations once these revised regulations were adopted. EPA reviewed these items as well as the other contents of the Virgin Islands' application when it made its earlier, initial determination of program adequacy.

On August 1 and August 2, 1995, EPA held two public hearings in the Virgin Islands on its tentative approval decision. Public comments were submitted orally at the hearings and in writing to the EPA. Substantial negative comments were received concerning the Virgin Islands' MSWLF program. EPA accordingly delayed making a final determination of adequacy, and in a February 19, 1996 letter to the DPNR Commissioner, the EPA Regional Administrator recommended delaying the final determination of program adequacy until the revised solid waste regulations meeting 40 CFR part 258 were in place, and other issues were resolved. On February 5, 1997, the DPNR Commissioner agreed to the delay, thus giving the Virgin Islands a further opportunity to promulgate revised regulations and obtain adequate solid waste staff and program resources. On April 3, 1997, the EPA Regional Administrator advised the Governor of the need for the Virgin Islands to adopt revised regulations as well as to update the Virgin Islands Attorney General's certificate as to the adequacy and enforceability of such regulations, and to demonstrate sufficient staff and funding to carry out the permit program. In a February 9, 1998 letter, the EPA Deputy Regional Administrator requested that the DPNR Commissioner establish a schedule of activities needed to promulgate revised regulations, secure funding and hire staff to run the program. On April 23, 1999, the EPA Regional Administrator advised the Governor that adequate solid waste management was one of the highest priority environmental problems in the Virgin Islands. Finally, on August 30, 1999, the EPA Regional Administrator advised the Governor that EPA would begin the official process to make the determination that the Virgin Islands' solid waste permit program is not adequate to meet federal part 258 landfill criteria because the essential prerequisites for program approval had not been put in place.

The U.S. Virgin Islands has not met its commitment to promulgate revised regulations meeting the requirements of 40 CFR part 258. Continued delay in promulgating such solid waste regulations, and obtaining funding and hiring staff for the solid waste program have resulted in a continuation of program deficiencies. The two operating municipal solid waste landfills, Bovoni on St. Thomas and Anguilla on St. Croix are substantially out of compliance with federal criteria. Conditions at the Bovoni landfill on St. Thomas have been determined to pose a potential imminent and substantial endangerment to human health and the environment, and have caused EPA and the Virgin Islands government to negotiate an administrative consent order pursuant to RCRA Section 7003 so as to provide immediate remedial action. In addition, the former Susannaberg landfill was not closed in accordance with part 258 requirements.

EPA has provided substantial technical assistance to the Virgin Islands in the form of providing MSWLF operator training for DPNR and DPW staff; performing reviews of regulatory and design documents; awarding solid waste management assistance grants; conducting groundwater and air monitoring at the landfills; and providing numerous technical documents and publications. EPA has also assisted the Virgin Islands in identifying sources of funding potentially available for staff and program activities and for landfill rehabilitation. Despite these efforts, actions have not been taken by the Virgin Islands to resolve critical outstanding deficiencies in its landfill permit program since EPA's tentative approval on June 16, 1995.

EPA will consider all public comments on this tentative determination of inadequacy that are received during the public comment period and during each public hearing. EPA will review all comments, including any comments offered by the Virgin Islands government, and make a final determination on whether or not to approve the Virgin Islands' permit program and will give notice of its decision in the **Federal Register**. The notice will include a summary of the reasons for the final determination, and responses to all major comments received at the public hearings and during the public comment period.

Administrative Requirements

A. Executive Order 12866: Assessment of Potential Costs and Benefits

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the 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 obligations of recipients thereof; or

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

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

B. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any proposed 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 government jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities: (1) A small entity is as defined in Small Business Administration's (SBA) regulations at 13 CFR § 121.201; (2) a small government jurisdiction is a government of a city, town, school district or other special district with a population of less than 50,000; and (3) a small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed rule will not have a significant economic impact on a substantial number of small entities, since the rule only directly affects the government of the Virgin Islands. The proposed rule will not impose any requirements on small entities. Therefore, no regulatory flexibility analysis has been prepared. Based on the foregoing discussion, I hereby certify that this proposed rule will not have a significant adverse impact on a substantial number of small entities.

C. The Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* as amended, 44 U.S.C. 3501 *et seq.* As described in the preamble, the proposed rule affects only the government of the Virgin Islands, and is an EPA determination based on information previously submitted by the government of the Virgin Islands in its application for approval of its municipal solid waste landfill permit program, pursuant to 40 CFR parts 239 and 258.

D. The Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements.

EPA has determined that this proposed 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 one year. Today's proposed rule concerns an EPA determination with respect to the adequacy of the government of the Virgin Islands municipal solid waste landfill program, pursuant to 40 CFR part 239. Existing Federal and Virgin Islands municipal solid waste regulations remain in effect, and no new Federal mandate is imposed on the Virgin Islands or the private sector under this rule. Section 203 of the UMRA is also inapplicable to this proposed rule because the rule only affects the government of the Virgin Islands and does not contain any regulatory requirements that might significantly or uniquely affect small governments.

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

Executive Order 13045, entitled ''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 E.O. 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. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it is an EPA determination concerning a program application from the government of the Virgin Islands Federal with respect to its municipal solid waste landfill permit program.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No. 104–113, § (d) (15 USC 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. 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 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.''

Under Section 6 of 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 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 proposed regulation.

The proposed rule does not have federalism implications. It will not have 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, as specified in Executive Order 13132. Today's proposed rule solely concerns the territory of the Virgin Island, and EPA has made the determination that E.O. 13132 is therefore inapplicable. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule. EPA notes, however, that the proposed rule does not preempt any law or regulation of the government of the Virgin Islands, nor does it impose any requirements that are inconsistent with the fundamental federalism principles contained in Executive Order 13132. Moreover, as the preamble, above, make clear, there has been extensive consultation by EPA with the government of the Virgin Islands concerning its municipal solid waste landfill permit program prior to today's action.

H. 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 Office of Management and Budget, 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 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.'' This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because there are no federally recognized Indian Tribal governments in the Virgin Islands, and the rule solely affects the government of the Virgin Islands. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this proposed rule.

I. Executive Order 12898: Environmental Justice

Under Executive Order 12898 EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for residents of all communities. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities.

The Agency believes that today's proposed rule will potentially advance environmental justice causes. The process set in motion by this proposed rule allows all potentially affected segments of the population of the Virgin Islands to participate in public hearings and/or to provide public comment on health and environmental concerns that they feel may arise pursuant to the Agency's proposed action. In addition, the purpose of today's proposed rule is to help achieve compliance with 40 CFR Part 258 municipal solid waste landfill criteria, which will provide direct benefit to residents living near the landfill.

Authority: This proposed rule is issued under the authority of Section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6945.

Dated: April 19, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–10770 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL –6602–5]

Community XL (XLC) Site-Specific Rulemaking for Steele County, Minnesota; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to implement a project under the Project XLC program for certain facilities in Steele County, Minnesota. The terms of the project are defined in a draft Final Project Agreement (FPA) which was made available for public review and comment through a **Federal Register** notice on December 29, 1999 (64 FR 73047). In addition, EPA is proposing a site-specific rule, applicable only to the Steele County sponsors who are Participating Industrial Users, to facilitate implementation of the project. By this document, EPA solicits comment on the proposed rule. This proposed site-specific rule is intended to provide regulatory changes under the Clean Water Act (CWA or the Act) to implement the Community XL project, which will result in superior environmental performance.

The proposed site-specific rule would change some of the CWA requirements which apply to the sponsors who are Participating Industrial Users to promote a reduction in the discharge of four priority metals and certain conventional pollutants, a reduction in water usage, and the development of an environmental management system. An incentive-based monitoring approach would be implemented, such that as discharge reduction goals are met, monitoring frequency could be reduced, mass-based limits would replace certain concentration limits, and an alternative Significant Noncompliance (SNC) publication approach would be tested. Monitoring reductions for pollutants determined not to be present in an industry's wastestream would also be authorized.

DATES: *Public Comments:* All public comments on the proposed rule must be received on or before May 30, 2000.

ADDRESSES: *Comments:* Written comments on the proposed rule should be mailed to: Ms. Abeer Hashem, U.S. Environmental Protection Agency, Region V, WC–15J, 77 West Jackson Boulevard, Chicago, IL 60604–3507. Please send an original and two copies of all comments, and refer to Docket for the Steele County Site-Specific Rulemaking.

Viewing Project Materials: A docket containing the proposed rule, draft Final Project Agreement, supporting materials, and public comments is available for public inspection and copying at U.S. EPA, Region V, Water Division, Room Number 15046, 77 West Jackson Boulevard, Chicago, IL 60604–3507. The Office is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. The public

is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning Abeer Hashem at (312) 886–1331. Refer to the Docket for the Steele County Site-Specific Rulemaking. The public may copy a maximum of 100 pages at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the World Wide Web at: *http://www.epa.gov/projectxl/.*

Supporting materials are also available for inspection and copying at U.S. EPA, Headquarters, 401 M Street SW, Room 445 West Tower, Washington, DC 20460 during normal business hours. Persons wishing to view the materials at the Washington, DC location are encouraged to contact Ms. Kristina Heinemann in advance by telephoning (202) 260–5355. In addition supporting materials are available at the Owatonna, MN Public Library, 105 Elm Avenue North, Owatonna, MN 55060. The phone number for the library is 507–444–2460, TDD 507–444–2480.

FOR FURTHER INFORMATION CONTACT: Ms. Abeer Hashem or Mr. Matthew Gluckman, U.S. Environmental Protection Agency, Region V, Water Division, WC–15J or WN–16J, 77 West Jackson Boulevard, Chicago, IL 60604–3507. Ms. Hashem can be reached at (312) 886–1331 and Mr. Gluckman can be reached at (312) 886–6089. Further information on today's action may also be obtained on the world wide web at: http://www.epa.gov/projectxl/.

SUPPLEMENTARY INFORMATION: This proposed site-specific rule sets forth the mechanism through which the sponsors would attempt to reach discharge reduction goals for chromium, copper, nickel, zinc, reach water use reduction goals, and commit to arrange and participate in training for the development of an Environmental Management System (EMS), as outlined in the Steele County Project XLC draft FPA (the document that embodies the parties' intent to implement this project). Today's proposal would facilitate implementation of the draft FPA that has been developed by the Steele County Project Sponsors, EPA, the Steele County Community Advisory Committee (''ACAC''), the Minnesota Pollution Control Agency (''AMPCA''), the Owatonna Waste Water Treatment Facility (OWWTF), the Blooming Prairie Waste Water Treatment Facility (BPWWTF), and other stakeholders. The FPA is available for review in the docket for today's action and on the world wide web at http://www.epa.gov/projectxl/.

The draft FPA addresses the nine Project XLC criteria, and the expectation of EPA that this XLC project will meet those criteria. Those criteria are: (1) Environmental results superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) economic opportunity; (3) stakeholder involvement, support and capacity for community participation; (4) test of innovative, multi-media, pollution prevention strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application (transferability); (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden); and (9) community planning. The draft FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

EPA is proposing today's rule to implement the provisions of this Project XLC initiative that require regulatory changes. However, Minnesota has had an approved state National Pollutant Discharge Elimination System (NPDES) program since June 30, 1974, and an approved State pretreatment program since July 16, 1979. Therefore, the requirements outlined in today's proposed rule would not take effect until Minnesota revises the Owatonna pretreatment program as incorporated in its NPDES permit. EPA would not be the primary regulatory agency responsible for implementing the requirements of this rule. In addition, for the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it would be the corresponding State and local law and corresponding NPDES and Industrial User permits that would actually govern this XL project.

Outline of Today's Document

The information presented in this preamble is organized as follows:

I. Authority
II. Background
A. Overview of Project XL and XLC
B. Overview of the Steele County XLC Project
1. Description of the Steele County Community XL Project
2. What Are the Environmental Benefits of the Project?
3. What Are the Economic Benefits and Paperwork Reduction Deriving From the Project?
4. Stakeholder Involvement
5. What Is the Project Duration and Completion Date?
6. How Will EPA Ensure That Only Appropriate Sponsors Continue To Receive Flexibility Under This Proposal?
7. How May the Project Be Terminated?
III. Rule Description
A. Clean Water Act Requirements, Pre-Treatment Streamlining Proposal and Summary of Regulatory Requirements for the Steele County XL Project
IV. Additional Information
A. How Does This Rule Comply With Executive Order 12866?
B. Is a Regulatory Flexibility Analysis Required?
C. Is an Information Collection Request Required for This Rule Under the Paperwork Reduction Act?
D. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?
E. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?
F. How Does This Rule Comply With Executive Order 13132 on Federalism?
G. How Does This Rule Comply With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?
H. Does This Rule Comply with National Technology Transfer and Advancement Act of 1995 (''ANTTAA'')?

I. Authority

This regulation is being proposed under the authority of sections 307, 308, and 501 of the CWA, 33 U.S.C. 1317, 1318, 1361.

II. Background

A. Overview of Project XL and XLC

Each Project XL pilot—''eXcellence and Leadership'' is described in a Final Project Agreement (FPA). For this Project XL for Communities (XLC), the draft FPA sets forth the intentions of EPA, the Minnesota Pollution Control Agency (MPCA) and the Steele County Community with regard to a project developed under Project XLC, an EPA initiative to allow regulated entities to achieve better environmental results using common sense, cost effective strategies. This regulation will enable implementation of the project.

Project XL was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995) and 60 FR 55569 (November 1, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to that which would be achieved through compliance with current and future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth

while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements on the condition that they produce and demonstrate superior environmental performance. Project XLC, excellence and leadership for communities, was developed to focus on communities and local governments or regional organizations that are interested in creating an XL project. Project XLC encourages potential sponsors to come forward with new approaches to demonstrate community-designed and directed strategies for achieving greater environmental quality consistent with community economic goals.

To participate in Project XLC, applicants must develop alternative pollution reduction strategies pursuant to nine criteria: superior environmental results; stakeholder involvement, support, and capacity for community participation; economic opportunity; test of an innovative multi-media strategy; transferability; feasibility; community planning; identification of monitoring, reporting and evaluation methods; and equitable distribution of environmental risks. Projects must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL and XLC criteria, readers should refer to the three descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995; 60 FR 55569, November 1, 1995; and 62 FR 19872, April 23, 1997). For further discussion as to how the Steele County XL Communities project addresses the XLC criteria, readers should refer to the draft Final Project Agreement and fact sheet that are available from the docket for this action (see **ADDRESSES** section of today's preamble).

Project XL is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute. Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site- or state-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, *e.g.,* section 104 of the CWA.

B. Overview of the Steele County XLC Project

1. Description of the Steele County Community XL Project

Community Based Environmental Regulation

The Steele County XLC pilot project would test the effectiveness of a community based approach to industrial regulated wastewater effluent reductions and water use reduction controls designed to: (1) Result in pollution prevention; (2) meet the objectives of the CWA regulatory program; and (3) be at least as protective of human health and the environment as the current system. This project would pilot a community-based approach to environmental regulation with the goal of achieving a reduction in the discharge of certain metals to the OWWTF, and Biological Oxygen Demand (BOD), Total Suspended Solids (TSS) and Total Kjeldahl Nitrogen (TKN) to the BPWWTF. Other aspects of the pilot program would include water usage reduction, the development and implementation of a storm water and sewer water separation and education plan, and the development of a training and assessment program of an Environmental Management System.

If this first phase of the project is considered by the parties to be successful, a Phase II—consisting in general outline of a multi-media approach to environmental permitting based on overall community performance in the areas of air emissions, solid waste, hazardous waste, chemical storage, and community sustainability—may be considered. Today's proposal does not cover or commit to a second phase of this project.

For the purposes of today's proposed rule, the group of Owatonna sponsors who are Participating Industrial Users includes the following Industrial Users (IUs) in the City of Owatonna: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Gandy Company, Inc.; Josten's Inc.—Southtown Facility; Mustang Manufacturing Company; SPx Corporation, Power Team Division; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company. The final rule may include all or only some of the Industrial Users listed above. Two facilities included in the Owatonna Sponsor group, Viracon-Marcon, Inc. and the Wenger Corporation and one sponsor located in Blooming Prairie, Minnesota, Elf Atochem, are not receiving regulatory flexibility under today's proposed rule and are therefore not included as Participating Industrial Users.

To achieve the objectives of Phase 1 of the Project, part of this project would pilot an incentive-based approach to reduced monitoring requirements. As the Owatonna sponsors who are Participating Industrial Users, as a group meet certain discharge reduction goals, the City could reduce the required frequency of monitoring for any of the Participating Industrial Users. Other aspects of this pilot program would include: (1) Pollutant monitoring could be eliminated where a pollutant is not discharged; (2) in order to encourage water use reduction compliance with a concentration-based standard could be demonstrated by compliance with a mass-based limit; (3) an alternative publication process for Significant Noncompliance (SNC) would be put in place, and (4) sponsors may seek ''No Exposure Certification for Exclusion from NPDES Storm Water Permitting'', which is available under existing regulations (40 CFR 122.26 (g) pursuant to a change in the regulations found at

64 FR 68722 (December 8, 1999)), and does not require flexibility under today's proposal. Each of these elements of the pilot program requiring regulatory flexibility is explained below.

To achieve the objectives of this project the Participating Industrial Users would commit to utilize their best efforts to reach certain discharge reduction goals. Only if these goals are met would regulatory flexibility regarding lesser monitoring requirements than currently required under 40 CFR 403.12(e)(1) be granted. Specifically, the Participating Industrial Users located in Owatonna (or ''City'') would commit to a 20% reduction goal in the amount of nickel, chromium, copper, and zinc (by mass) they discharge to the OWWTF. These reduction goals are for each individual pollutant.

If the first 20% reduction goal is met, a further 20% reduction goal could be set for the remaining project term. If the initial 20% reduction goal is met for all pollutants, the City would be authorized, at its discretion, to reduce the self-monitoring frequency of Owatonna sponsors who are Participating Industrial Users to once per year. After the second metal reduction goal is met, the minimum monitoring frequency could remain once per year. In exercising this discretion, the OWWTF would be required to consider the Participating Industrial User's previous three years of compliance data, and could not reduce monitoring for pollutants where there is a reasonable potential of violating Pretreatment Standards.

This project would focus on the four metals slated for 20% release reductions because they are the metals determined to be discharged at the highest levels to the Owatonna wastewater treatment system relative to applicable water quality and biosolids criteria. In addition, the participants are regulated for these pollutants under categorical pretreatment standards and influence the loading of these pollutants to the Owatonna wastewater treatment system. Specific reductions of other categorically regulated metals are not being pursued under this project because they are released in small quantities relative to applicable environmental criteria. Because certain of these other metals may be present at some of the participant facilities, these metals may not qualify for the elimination of monitoring due to no releases. In such cases, the POTW would need to require continued monitoring of these metals. Through this proposed rule the POTW would be given the discretion to reduce monitoring frequencies for the other categorically regulated metals to the same extent it is being authorized to consider reduced monitoring for the four metals subject to the 20% reduction goals.

This project would also authorize the City to allow a sponsor Participating Industrial User subject to categorical standards to not sample for a pollutant, if it is not expected to be present in its wastestream at levels greater than background levels in its water supply. For such pollutants, the OWWTF would only be required to conduct sampling and analysis once during the term of the Participating Industrial User's permit. The Participating Industrial User would still be subject to the categorical standards for pollutants determined not to be present, and would need to resume monitoring if sampling indicates that a pollutant is present at above-background levels, or at any time at the discretion of the OWWTF.

If the POTW determines that one or more pollutants are not expected to be present at a Participating Industrial User, it could modify the IU's permit to reduce or eliminate the monitoring requirements for the pollutant(s). The Participating Industrial User permit would also require the user to submit, as part of its regular semi-annual monitoring reports, certification that there has been no increase in the pollutant in its wastewater due to its activities. The POTW would sample the Participating Industrial User's effluent for all pollutants in the applicable categorical standard at least once during the term of the IU's permit.

One of the goals of this pilot project would be to facilitate water conservation measures at the sponsors' facilities. The total flow to the OWWTF from the nine Owatonna sponsors who are Participating Industrial Users is 477,000 gallons per day. The Owatonna sponsors commit to a goal in the draft FPA of reducing this flow by 10%. To facilitate meeting this goal this rule proposes that the OWWTF be allowed to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards. Under the proposed rule entitled ''Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution'' (Pretreatment Streamlining Proposal), which was published on July 22, 1999 (64 FR 39564), POTWs would be allowed to establish alternative mass limits if an Industrial User has installed Best Available Technology Economically Achievable (BAT), or equivalent to BAT treatment, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use.

While all of the conditions for receiving mass limits laid out in EPA's Streamlining Proposal are not being required for this site-specific rule (see discussion regarding Today's Proposal in Equivalent Mass Limits for Concentration Limits section of III.A, below), EPA is interested in determining whether providing mass limits prior to full adoption of water conservation practices will encourage more widespread adoption of such practices. To ensure the continued appropriateness of the specific mass limits, sponsor industries who are Participating Industrial Users would also be required to notify the City in the event production rates are expected to vary by more than 20 percent from a baseline production rate determined by Owatonna when it establishes a Participating Industrial User's initial mass limits. The Participating Industrial Users would commit to continued operation of at least the same level of treatment as at the outset of the project. Upon notification of a revised production rate, the City would reassess the appropriateness of the mass limit. Sponsor Elf Atochem discharges 16,900 gallons per day to the BPWWTF and commits in the draft FPA to a reduction goal of 10% of this amount. Because Elf Atochem is currently required to comply with mass-based limits, no change to its limits are required to facilitate water conservation measures.

EPA is today proposing a site-specific alternative procedure for publishing Significant Noncompliance for Participating Industrial Users. SNC is defined in 40 CFR 403.8(f)(2)(vii) as including violations by an Industrial User which meet one or more of eight specific criteria. Currently, POTWs are required to publish in the largest daily newspaper in the municipality in which the POTW is located a list of Industrial Users who have been in SNC at any time during the previous twelve months. The SNC publication requirement serves at least two important functions: (1) A deterrent effect on industrial users to avoid noncompliance generally, and SNC specifically; and (2) notice to the public of Significant Noncompliance. One result of this approach is that if the POTW publishes the notice for a particular SNC violation after the end of the twelve month period, the publication may not occur close in time to the violation, resulting in a delay between the violation and the notice to the public.

The intent of the proposed alternative procedure is to require website notice of all SNC violations, and reserve

additional newspaper publication for cases where this format is needed for its potentially greater effect. The Sponsors also intended to promote prompt and appropriate assistance for identifying and correcting violations through a unique community-based approach. Pursuant to the Steele County FPA, an Owatonna Peer Review Committee would be established. This Committee would consist of at least two Owatonna Sponsors not connected to the noncompliance event being reviewed and any stakeholders that wish to participate. The Peer Review Committee would investigate all instances of noncompliance by an Owatonna sponsor who is a Participating Industrial User and provide recommendations and assistance to expedite a return to compliance. The Peer Review Committee would make recommendations to the City regarding whether or not publication in a newspaper should occur, in addition to the website publication described below.

All recommendations by the Peer Review Committee would be non-binding on the City, and the City would continue to implement its State-approved Enforcement Response Plan. Under the Steele County FPA, the Sponsors would take steps to conduct public outreach on the information available regarding Significant and other noncompliance by the Sponsors, including a description of the Peer Review Committee and its functions, a Committee contact person and telephone number, and notice of Peer Review Committee meetings. Such outreach would include, but not be limited to, periodic (at least annual) mailings to the identified Steele County XL community stakeholders, and notice in the public library.

Any violation which is not corrected within thirty (30) calendar days or which results in pass through or interference would continue to be published in a newspaper as currently required in Part 403. All SNC violations, whether published in a newspaper or not, would be published as soon as is practicable on the MPCA web site. The website would contain an explanation of how SNC is determined. A contact name and phone number for information regarding all other violations would also be listed on the MPCA website.

2. What Are the Environmental Benefits of the Project?

This XLC project is expected to achieve superior environmental performance beyond that which is achieved under the current CWA regulatory system by encouraging the sponsors to work together in a coordinated manner to efficiently reduce their discharges to the OWWTF. As has been described, the Owatonna sponsors who are Participating Industrial Users have committed to 20% discharge reduction goals for nickel, chromium, copper, and zinc. Although not receiving regulatory flexibility under today's proposal, Elf Atochem has committed to analogous discharge reduction goals for BOD, TSS, and TKN to the BPWWTF. The Participating Industrial Users have additionally committed to a goal of at least a 10% reduction in water usage.

Besides the direct environmental benefits of these reductions, the sponsors have agreed to conduct an Environmental Management System (EMS) assessment within eighteen months of the effective date of the project. In the first year of the project, the Sponsors commit to arrange and participate in training for the development of the EMS. The Sponsors will utilize the information from the EMS assessment to reach the discharge reduction goals as well as to examine their facilities for other possible environmental improvements. The sponsors have agreed to report to the EPA and the MPCA the results of the assessment, and the suggestions which have been adopted by each facility. Additionally, the City has identified storm water infiltration into the collection system during wet weather events as a major problem. The Owatonna sponsors have agreed to work with the City to help alleviate this problem through the development of educational materials which will be distributed to sponsor employees as well as to the community at large. The Owatonna Sponsors have also committed in the draft FPA to develop a plan to minimize storm water infiltration into the sewer system at each participating facility.

One unique aspect of this pilot project is the desire of the sponsor facilities to work together to reach common goals. It is hoped that this cooperation will go beyond the specific goals of this project and result in presently unforseen environmental benefits.

3. What Are the Economic Benefits and Paperwork Reduction Deriving From the Project?

This XLC Project will encourage the sponsors to reduce water consumption at their facilities. This may result in reduced water costs for the facilities, without diminishing the level of environmental protection. Assuming the sponsors discharge lower levels of pollutants to the OWWTF and the BPWWTF, these POTWs may benefit from lower treatment costs. To the extent monitoring and reporting frequencies are reduced under this project, reduced expenditures may result. The EMS assessments may identify further environmental and economic benefits.

4. Stakeholder Involvement

Stakeholder involvement and participation is vital to the success of the Steele County XLC project. The participants have worked through a Community Advisory Committee, established by the Steele County Project Sponsors, to ensure that the general public has had an opportunity to be involved throughout the development of this project. The participants will continue to work to foster full and open communication between the general public and the project sponsors.

In addition, the Peer Review Committee will continue to provide opportunities for input from the community on important compliance issues. For example, if a sponsor is in noncompliance, the Peer Review Committee would provide input to bring the sponsor back into compliance. Sponsors would continue outreach work with all stakeholders using the strategies and tactics contained in their Proposed Stakeholder Involvement Plan (June 1999). MPCA, the Steele County Sponsors, Owatonna, Blooming Prairie, and EPA have been involved in the development of this project, and support it. From the beginning of the Steele County XLC process, there has been a high priority on providing opportunity for diverse stakeholder input and review. Public meetings were held in the City of Owatonna on June 9, September 23, and October 7, 1999.

5. What Is the Project Duration and Completion Date?

As with all XL projects testing alternative environmental protection strategies, the term of the Steele County Community XL project is one of limited duration. The duration of the regulatory relief provided by this rule is anticipated to be five (5) years from [PUBLICATION DATE OF FINAL RULE] or until [DATE FIVE YEARS FROM THE PUBLICATION DATE OF FINAL RULE.] However, the project may be terminated or suspended at any time for failure to comply with any of the requirements of the rule. If the parties renew the Steele County Community XL Final Project Agreement beyond its initial five year period, then it may be necessary to extend this site-

specific rule for an additional period of time.

6. How Will EPA Ensure That Only Appropriate Sponsors Continue To Receive Flexibility Under This Proposal?

If EPA determines that it is appropriate to terminate one or more Sponsors, who are Participating Industrial Users, participation in this Project so that they will no longer be eligible to receive the regulatory flexibility provided in today's proposed rule, EPA will coordinate with the POTW and State to make the necessary changes to the Participating Industrial User's permit. EPA retains its enforcement authority under the CWA to enforce Pretreatment Standards whether or not the POTW or State make such changes to the Participating Industrial User's permit.

7. How May the Project Be Terminated?

When the State modifies Owatonna's NPDES permit to incorporate the flexibility in today's rule, it will include a reopener provision enabling the State to eliminate this flexibility. This reopener provision would be utilized if the Project is terminated. In the event of early project termination, EPA will eliminate the provisions of proposed section 403.19 in advance of its [DATE FIVE YEARS FROM PUBLICATION DATE OF FINAL RULE] expiration date.

III. Rule Description

A. Clean Water Act Requirements, Pretreatment Streamlining Proposal and Summary of Regulatory Requirements for the Steele County XL Project

Equivalent Mass Limits for Concentration Limits (40 CFR 403.19(b))

1. *Existing Requirements* (40 CFR 403.6(c)). National categorical Pretreatment Standards establish limits on pollutants discharged to POTWs by facilities in specific industrial categories. The standards establish pollutant limitations in different ways for different categories. EPA has established categorical Pretreatment Standards that are: (1) Concentration-based standards that are implemented directly as concentration limits; (2) mass limits based on production rates; (3) both concentration-based and production-based limits; and (4) mass limits based on a concentration standard multiplied by a facility's process wastewater flow. The current regulations do not allow a mass limit to substitute for a concentration limit when the applicable standard is expressed in terms of concentration.

While 40 CFR 403.6(d) allows the Control Authority to develop equivalent mass limits for concentration-based standards in order to prevent dilution, the equivalent limit applies in addition to the concentration limit. Today's rule would allow a Participating Industrial User who qualifies for flexibility under the rule to demonstrate compliance with the categorical Pretreatment Standard by demonstrating compliance with an equivalent mass-based limit alone.

2. *The Pretreatment Streamlining Proposal.* In its proposed rule entitled Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution (64 FR 39564, July 22, 1999) (Pretreatment Streamlining Proposal), EPA proposed to allow Control Authorities to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards in cases where an industrial user has installed model treatment technology or a treatment technology that yields optimum removal efficiencies, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use. The Agency, however, solicited comments on whether mass limits would be appropriate in other situations. EPA proposed that 40 CFR 403.6(c) be revised to clarify that equivalent mass limits may be authorized by the Control Authority in lieu of promulgated concentration-based limits for industrial users. The Control Authority would be required to document how the mass limits were derived and make this information publicly available.

The July 22, 1999, proposed rule also specifically referenced the Steele County XL Community Project and indicated that, if this project was ready to proceed before EPA finalized the complete Pretreatment Streamlining proposal, EPA may promulgate, based on that proposal and comments received, a separate site-specific rule to allow the industries involved in the Steele County XLC project to use, at the discretion of the Control Authority, the change proposed for 40 CFR 403.6(c).

3. *Today's Proposal.* To facilitate water use reduction by industries involved in the Steele County XLC Project, EPA is proposing to allow the City of Owatonna, which is the Control Authority for the Owatonna sponsor industries, the Participating Industrial Users, to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards. Mass limits would be established by multiplying the five year, long term average process flows of the sponsors (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical standards. In general, flows used to establish mass-based limits must be appropriate in relation to current production or known future production, and will be determined based on consultation between the industry and the City of Owatonna. EPA's Guidance Manual for the Use of Production-Based Standards and the Combined Wastestream Formula (September 1985) provides additional guidance on establishing appropriate long-term average flows. In return for this flexibility, the sponsor industries, the Participating Industrial Users, are committing as a group to reduce water usage by 10 percent over the initial five year project period. In this site-specific rule EPA is not conditioning the availability of mass-based limits on the use of water conservation methods and technologies as it would in the Pretreatment Streamlining Rule. EPA is interested in determining whether providing mass limits prior to full adoption of water conservation practices will encourage more widespread adoption of such practices pursuant to the commitment described above.

In addition, this rule would not require that Participating Industrial Users utilize model treatment technologies that serve as the basis for the applicable Pretreatment Standards. Instead, EPA is interested in determining whether or not it would be sufficient to prevent facilities from complying with the applicable Standards, in the event of production decreases, by requiring that the facility maintain at least the same level of treatment as at the time an equivalent mass limit is established. To ensure the continued appropriateness of the specific mass limits, the Participating Industrial Users would also be required to notify the City in the event production rates are expected to vary by more than 20 percent from the previous year's average. Upon notification, the City will reassess the appropriateness of the mass limit.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise IU permits issued to Participating Industrial Users to enable it to establish alternative mass limits. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes proposed today.

Sampling for Pollutants Not Present (40 CFR 403.19(c))

1. *Existing Requirements* (40 CFR 403.12(e), 403.8(f)(2)(v)). Currently, 40 CFR 403.12(e)(1) requires industrial users subject to categorical Pretreatment Standards to submit reports to the Control Authority at least twice a year, indicating the nature and concentration of all pollutants in their effluent that are limited by the standards. 40 CFR 403.8(f)(2)(v) requires Control Authorities to sample these industrial users at least annually. Sampling is currently required for all pollutants limited by a categorical Pretreatment Standard even if certain pollutants regulated by the standard are not reasonably expected to be present.

2. *The Pretreatment Streamlining Proposal.* The July 22, 1999 Pretreatment Streamlining proposal would authorize a Control Authority to allow an industrial user subject to categorical Pretreatment Standards to not sample for a pollutant if the pollutant is not expected to be present in its wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. The Agency also proposed a reduced sampling requirement for the Control Authority, to once per permit term, once it had determined that a pollutant was not expected to be present.

The Pretreatment Streamlining proposal would require the Control Authority's decision to waive sampling to be based upon both sampling and other technical data, such as the raw materials, industrial processes, and potential by-products. EPA did not propose that a specific amount of sampling data be required but solicited comment on that issue.

3. *Today's Proposal.* For purposes of this project, and as specified in Attachment C of the FPA, the City would be authorized to allow a sponsor Participating Industrial User subject to categorical standards to reduce the required sampling to less than twice per year, or to not sample for a pollutant, if it is not expected to be present in its wastestream at levels greater than background levels in its water supply, with no increase in the pollutant due to the regulated process. For such pollutants, the POTW would only be required to conduct sampling and analysis once during the term of the Participating Industrial User's permit. The Participating Industrial User would still be subject to the categorical standards for pollutants determined not to be present, and would be in violation of the limit and would need to resume the required sampling if existing sampling indicates the user has violated the limit.

Consistent with the Streamlining Proposal, for purposes of this project, determinations by the City of Owatonna to either waive or reduce Participating Industrial User sampling to less than twice per year would be based on both sampling and other technical data, such as raw material usage, industrial processes, and potential by-products. Existing data on pollutant concentrations of the local public water supply will be used to characterize background concentrations; where a Participating Industrial User uses an alternative water supply, representative influent sampling would need to be provided. At least three years of Participating Industrial User effluent data would then be compared to the background data in making the determination that a given pollutant is not expected to be present. In addition, the city would need to make its determination based on its knowledge of the raw materials used and the facility's processes and potential by-products, but would not consider capability and efficiency of the user's pretreatment system. Where it believes it is necessary to make a determination, the City may require a Participating Industrial User to provide representative data on its untreated effluent.

Once the POTW determines that one or more pollutants are not expected to be present at a Participating Industrial User, it may modify the Participating Industrial User's permit to reduce or eliminate the monitoring requirements for the pollutant(s). The IU permit would also require the Participating Industrial User to submit, as part of its regular semi-annual monitoring reports, certification that there has been no increase in the pollutant in its wastewater due to its activities. The POTW would sample the Participating Industrial User for all pollutants in the applicable categorical standard at least once during the term of the Participating Industrial User's permit.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise Participating Industrial User permits issued to Sponsor facilities to enable it to eliminate monitoring for pollutants not present. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes proposed today.

Monitoring Frequency Reductions (40 CFR 403.19(e))

1. *Existing Requirements* (40 CFR 403.12(e)). As discussed above, 40 CFR 403.12(e)(1) currently requires industrial users subject to categorical Pretreatment Standards to submit reports to the Control Authority twice a year, or more frequently if required by the Pretreatment Standard or the Control Authority, indicating the nature and concentration of all pollutants in their effluent that are limited by the standards. The City of Owatonna generally requires its significant IUs to monitor and report on a quarterly basis.

2. *Today's Proposal.* Upon initiation of this project, the City would evaluate the recent performance of sponsor Participating Industrial Users, and could reduce monitoring requirements to twice per year for facilities with satisfactory compliance records. After the first metal reduction goal of 20% is met, the City would be authorized, at its discretion, to reduce the self-monitoring frequency of Participating Industrial Users for any regulated pollutant to once per year. EPA believes that this mechanism will provide an incentive for Participating Industrial Users to reduce their contribution of the specified metals. In exercising this discretion, the OWWTF would be required to consider the Participating Industrial User's previous three years of compliance data, and would not reduce monitoring for pollutants where there is a reasonable potential of violating Pretreatment Standards.

If one or more of the Industrial Users in the City of Owatonna, (Crown Cork and Seal Company, Inc.; Cybex International Inc.; Gandy Company, Inc.; Josten's Inc.—Southtown Facility; Mustang Manufacturing Company; SPx Corporation, Power Team Division; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company), does not become a Participating Industrial User, the loading values specified in today's proposed rule would be adjusted in the final rule based on a 20 percent reduction from the baseline loadings from the final group of Owatonna Participating Industrial Users.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise Participating Industrial User permits issued to Sponsor facilities to reduce monitoring frequencies for regulated pollutants. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes proposed today.

Significant Noncompliance Criteria (40 CFR 403.19(f))

1. *Existing Requirements* (40 CFR 403.8(f)(2)(vii)). ''Significant Noncompliance'' (SNC) is defined in 40 CFR 403.8(f)(2)(vii) to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of discharge limits (where 66 percent of all measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter); (2) technical review criteria (TRC) violations (where 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report Noncompliance; and (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local Pretreatment Program.

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of this modification was to provide some certainty and consistency among POTWs for publishing their lists of industrial users in Noncompliance. Under this provision, POTWs are required to annually publish a list of industrial users in SNC at any time during the previous twelve months. The POTW must publish this list in the largest daily newspaper published in the municipality in which the POTW is located. Independent of this publication requirement, POTWs are required to develop and implement Enforcement Response Plans, which describe the range of enforcement responses they will use in addressing various types of IU Noncompliance. Where an IU is identified as being in SNC, EPA guidance recommends that the POTW respond with some type of formal enforcement action such as an enforceable order (''Guidance For Developing Control Authority Enforcement Response Plans,'' EPA 832–B–89–102, September 1989).

2. *The Streamlining Proposal.* EPA did not propose to amend the entire provision on SNC, or even seek comment on all of it. Instead, the Agency proposed limited changes and sought comment on a number of options for a few specific provisions. With respect to publication, the primary purposes of which are to notify the public of violations and provide a disincentive for violating, EPA proposed to amend 40 CFR 403.8(f)(2)(vii) to allow publication of the SNC list in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice. EPA also proposed to amend the SNC criteria so that they must only be applied to significant industrial users, and to address more than just daily maximum and monthly average limits. The Agency also sought comments on whether to revise the Technical Review Criteria, whether to revise the SNC criteria for late reports, and whether to codify the rolling quarters approach to determining SNC or adopt some other approach.

3. *Today's Proposal.* Under today's proposed site-specific rule, the City would have the discretion to not publish certain instances of SNC by sponsor Participating Industrial Users in a newspaper. EPA believes that this change would provide faster public notice of SNC and would reserve additional newspaper publication of SNC for cases where this format is needed for its potentially greater effect. The City would continue to be required to provide newspaper publication of any violation which is not corrected within thirty (30) calendar days, or which results in pass through or interference. All SNC violations, whether published in a newspaper or not would be published as soon as is practicable, on the MPCA web site. The web site would contain an explanation of how SNC is determined, as well as a contact name and phone number for information regarding all other violations. The Owatonna Peer Review Committee system contemplated in the Steele County FPA will not be specified expressly in the rule, but rather is a voluntary agreement on the part of the Sponsors.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes proposed today.

IV. Additional Information

A. How Does This Rule Comply With Executive Order 12866?

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 Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order and because this proposed rule affects only nine specific private sector facilities and a single Publically-Owned Treatment Works (POTW), it is not a rule of general applicability or a ''significant regulatory action'' and therefore not subject to OMB review and Executive Order 12866. Further today's proposed rule does not affect the POTW or the facilities unless they choose on a voluntary basis to participate in the XL project. Finally, OMB has agreed that review of site specific rules under Project XL is not necessary.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, for today's action, EPA has chosen a shorter comment period of 21 days. Today's proposed rule affects a total of nine Industrial Users and one publically-owned wastewater treatment facility. These entities were involved in the development of the draft Final Project Agreement which was made available for public comment on December 29,

1999 (64 FR 73047). Additional stakeholder involvement activities have been described in the Stakeholder Involvement discussion of this preamble. In conclusion, considering the very limited, site-specific scope of today's rulemaking and the considerable public involvement in the development of the draft FPA, the EPA considers 21 days to be sufficient in providing a meaningful public comment period for today's action.

B. Is a Regulatory Flexibility Analysis Required?

Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.*

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. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Administrator certifies that this proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, EPA has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (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.

Today's proposed rule amends EPA's General Pretreatment Regulations to modify on a site-specific basis the requirements for POTW pretreatment programs. The rule authorizes the Owatonna, Minnesota Waste Water Treatment Facility, in its discretion, to reduce the required frequency of monitoring for its industrial users. Only one POTW is subject to this rule and grant of the relief authorized by the rule would reduce costs to the Owatonna Wastewater Treatment Facility's industrial users, including any industrial user that is a small business. Under these circumstances, EPA has concluded that the rule will not have a significant economic impact on a substantial number of small entities.

C. Is an Information Collection Request Required for This Rule Under the Paperwork Reduction Act?

This action applies to nine companies and a single POTW and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no Information Collection Request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?

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

As noted above, this proposed rule is limited to the OWWTF and certain sponsoring industries. This proposed rule would create no federal mandate because EPA is imposing no new enforceable duties. EPA has also determined that this proposed 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 one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this proposed rule, EPA worked closely with MPCA and the OWWTF and received meaningful and timely input in the development of this proposed rule.

E. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks 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.

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 Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. The proposed rule does not impose any new or amended standards for discharged wastewater resulting from treatment by a POTW. With respect to the effects on children, the collection, treatment and disposal of wastewater occurs in a restricted system (e.g., buried sewer lines and fenced

wastewater treatment plants) that children are unlikely to come in contact with on a routine basis. The proposed rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the proposed regulatory changes would not disproportionately affect children. The proposed rulemaking is thus in compliance with the intent and requirements of the Executive Order.

F. How Does This Rule Comply With Executive Order 13132 on 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.''

Under Section 6 of 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 proposed regulation. 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 proposed regulation.

This proposed 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. The requirements outlined in today's proposed rule will not take effect unless Minnesota chooses to adopt equivalent requirements through revisions to Owatonna's NPDES permit and Owatonna chooses to take the steps to implement the proposed rule and make revisions to any local law and industrial user permits. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with State and local officials in developing this rule.

G. How Does This Rule Comply with Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?

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 Office of Management and Budget, 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 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 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. There are no communities of Indian tribal governments located in the vicinity of Steele County. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Does This Rule Comply With National Technology Transfer and Advancement Act of 1995 ''NTTAA'')?

Section 12(d) of 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 standards. This proposed rulemaking sets equivalent means of expressing the same technical standards, and of determining compliance with those standards. It also uses voluntary goals to achieve pollutant reductions beyond those required by the technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 403

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 3, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority citation for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 403.19 is added to read as follows:

§ 403.19 Provisions of specific applicability to the Owatonna Waste Water Treatment Facility.

(a) For the purposes of this section, the term ''Participating Industrial Users'' includes the following Industrial Users in the City of Owatonna, Minnesota: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Gandy Company, Inc.; Josten's Inc.—Southtown Facility; Mustang Manufacturing Company; SPx Corporation, Power Team Division; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company.

(b) For a Participating Industrial User discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota, when a categorical Pretreatment Standard is expressed in terms of pollutant concentration the City of Owatonna may convert the limit to a mass limit by multiplying the five-year, long-term average process flows of the Participating Industrial User (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical standard. Participating Industrial Users must notify the City in the event production rates are expected to vary by

more than 20 percent from a baseline production rate determined by Owatonna when it establishes a Participating Industrial User's initial mass limit. To remain eligible to receive equivalent mass limits the Participating Industrial User must maintain at least the same level of treatment as at the time the equivalent mass limit is established. Upon notification of a revised production rate from a Participating Industrial User, the City will reassess the appropriateness of the mass limit. Owatonna shall reestablish the concentration-based limit if a Participating Industrial User does not maintain at least the same level of treatment as when the equivalent mass limit was established.

(c) If a categorical Participating Industrial User of the Owatonna Waste Water Treatment Facility has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that pollutants regulated through categorical Pretreatment Standards, other than 40 CFR part 414, are not expected to be present in quantities greater than the background influent concentration to the industrial process, the City of Owatonna may reduce the sampling frequency specified in § 403.8(f)(2)(v) to once during the term of the categorical Participating Industrial User's permit.

(d) If a Participating Industrial User is discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota and is subject to a categorical Pretreatment Standard other than one codified at 40 CFR part 414, the City of Owatonna may authorize the Participating Industrial User to forego sampling of a pollutant if the Participating Industrial User has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that the pollutant is not expected to be present in quantities greater than the background influent concentration to the industrial process, and the Participating Industrial User certifies on each report, with the following statement, that there has been no increase in the pollutant in its wastestream due to activities of the Participating Industrial User. The following statement is to be included as a comment to the periodic reports required by § 403.12(e):

> Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR ____, I certify that, to the best of my knowledge and belief, the raw materials, industrial processes, and potential by-products have not contributed this pollutant to the wastewaters since filing of the last periodic report under 40 CFR 403.12(e).

(e) If the average daily loading from the Participating Industrial Users to the Owatonna Waste Water Treatment Facility is equal to or less than .69 pounds per day of chromium, .28 pounds per day of copper, 1.18 pounds per day of nickel, and 1.11 pounds per day of zinc, Owatonna may authorize a categorical Participating Industrial User to satisfy the reporting requirements of § 403.12(e) with an annual report provided on a date specified by Owatonna, provided that the Participating Industrial User has no reasonable potential to violate a Pretreatment Standard for any pollutant for which reduced monitoring is being allowed, and has not been in Significant Noncompliance within the previous three years.

(f) The Owatonna Waste Water Treatment Facility in Owatonna, Minnesota shall post public notice of all Significant Noncompliance subject to the publication requirement in § 403.8(f)(2)(vii) at the Minnesota Pollution Control Agency website for a period of one year, as soon as practicable upon identifying the violations. In addition, the Owatonna Waste Water Treatment Facility shall post an explanation of how Significant Noncompliance is determined, and a contact name and phone number for information regarding other, non-Significant Noncompliance violations. If a violation is not corrected within thirty (30) calendar days or results in pass through or interference at the Owatonna Waste Water Treatment Facility, publication must also be made in the format specified in § 403.8(f)(2)(vii).

(g) The provisions of this section shall expire on [DATE FIVE YEARS FROM PUBLICATION DATE OF FINAL RULE].

[FR Doc. 00–11433 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 65, No. 89
Monday, May 8, 2000

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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board) established under the Employment Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 2000. This notice describes the Advisory Committee and invites applications from those interested in service on it.

1. General

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries and the American Society of Pension Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

2. Programs

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations which will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views on examination content are understood.

3. Function

The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommended.)

4. Membership

The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examination extant in the community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations which will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for Advisory Committee travels meals and lodging expenses incurred in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director C:AP:DOP, 1111 Constitution Avenue, NW, Washington, DC 20224.

Any questions may be directed to the Joint Board's Executive Director at 202–694–1891.

The deadline for accepting applications is September 5, 2000.

Dated: May 1, 2000.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 00–11470 Filed 5–5–00; 8:45 am]

BILLING CODE 4830–01–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Director of Practice on June 26 and 27, 2000.

DATES: Monday, June 26, 2000, from 9 AM to 5 PM, and Tuesday, June 27, 2000, from 8:30 AM to 5 PM.

ADDRESSES: The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, Franklin Court Building, 1099 14th Street, NW, Washington, DC on Monday, June 26, 2000, from 9 AM to 5 PM, and Tuesday, June 27, 2000, from 8:30 AM to 5 PM.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2000 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2000 pension actuarial examination and the May 2001 basic actuarial examinations will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 2000 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 PM on June 26 and will continue for as long as necessary to complete the discussion, but not beyond 3 PM. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than June 19, 2000, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director C:AP:DOP, 1111 Constitution Avenue, NW, Washington, DC 20224.

Dated: May 1, 2000.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 00–11471 Filed 5–5–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–00–302]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension to a currently approved information collection for Regulations Governing Inspection, Certification and Standards For Fresh Fruits, Vegetables, and Other Products.

DATES: Comments on this notice must be received on or before July 7, 2000, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Donald T. Paradis, Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2049-South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: 202–720–2482, FAX: 202–720–0393.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Inspection, Certification and Standards For Fresh Fruits, Vegetables, and Other Products—7 CFR part 51.

OMB Number: 0581–0125.

Expiration Date of Approval: November 30, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The Fresh Products Branch provides a nationwide inspection and grading service for fresh fruits, vegetables, and other products to shippers, importers, processors, sellers, buyers and other financially interested parties on a ''user-fee'' basis. The use of this service is voluntary and is made available only upon request or when specified by some special program or contract. Information is needed to carry out the inspection and grading services. Such information includes: the name and location of the person or company requesting the inspection, the type and location of the product to be inspected, the type of inspection being requested and any information that will identify the product.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0302205 hours per response.

Respondents: Shippers, importers, processors, sellers, buyers and others with a financial interest in lots of fresh fruits, vegetables and other products.

Estimated Number of Respondents: 51,800.

Estimated Number of Responses per Respondent: 4.09857.

Estimated Total Annual Burden on Respondents: $218,144 (6,416 total burden hours × $34.00 per hour).

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Donald T. Paradis, Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2049-South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Fax: 202–720–0393. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 1, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–11417 Filed 5–5–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Program Identification Card Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. This notice announces the intent of the Food and Nutrition Service (FNS) to continue requiring State agencies to issue a Food Stamp Program (FSP) identification (ID) card to each certified household in the Food Stamp Program.

DATES: Written comments must be submitted on or before July 7, 2000, to be assured consideration.

ADDRESSES: Send comments to Barbara Hallman, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Daniel Wilusz, (703) 305–2391.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Identification Card Requirements.

OMB Number: 0584–0124.

Form Number: None.

Expiration Date: October 31, 2000.

Type of Request: Extension of a currently approved collection with a reduction in burden hours.

Abstract: FSP ID cards are used during recertification and for the issuance of benefits. Specifically, the ID cards will be used by:

- Issuance agents to identify households for monthly issuance;
- Retailers to identify household when benefits are used; and
- Households to provide as proof of eligibility and when being issued monthly allotments.

The issuance of FSP ID cards by State agencies is authorized by section 7 of the Food Stamp Act of 1977 (the Act) (7 U.S.C. 2016). Section 11 of the Act (7 U.S.C. 2020) further specifies that these are to be photographic (photo) ID cards in both large project areas and in those areas identified by the Department as needing photo ID cards to reduce the number of unauthorized issuances.

FSP regulations at 7 CFR 274. 10(a) require that State agencies issue a FSP ID card to each household certified to participate in the FSP. The household must present its ID card as proof of eligibility to receive and use benefits. In addition, 7 CFR 274.10(b) requires State agencies to issue photo ID cards in project areas or portions thereof with more than 100,000 participants, and in smaller areas that have been identified by the Department's Inspector General as needing photo IDs to decrease the number of unauthorized issuances. Project areas where all issuance of benefits are through either direct mail or an electronic benefit transfer system (EBT) are exempt from the photo ID requirement.

FSP regulations require that the photo ID card be a controlled document with a serial number protected by lamination. The fact that it is a controlled document with a serial number ensures integrity in the issuance of new cards. Because the issuance agent is required by 7 CFR 274.10(c)(2)(i) to annotate this serial number on the authorization or issuance document, the State agency can identify the household that received a particular issuance during the reconciliation process. In addition, the photograph is required because it clearly identifies the bearer of the card to the issuance agent or retailer. Lastly, the lamination of the photo ID makes it more difficult to forge or alter the card. The Department believes that all of these features are essential to ensure the integrity of the FSP ID process and the FSP in general.

Estimated Burden

We are reducing the estimated burden from 61,480 hours to 20,629 hours to reflect declining FSP participation as well as the growing number of States currently using EBT to issue benefits. Total issuance has decreased over 19 percent from fiscal year 1997 to fiscal year 1999. As a result, fewer ID cards (both regular and photo) need to be issued. In addition, the growth of EBT also lowers the burden by reducing the number of photo ID cards. Photo ID cards are not required in an EBT environment since there are no coupons for households to pick up from issuance agents. EBT has increased from 15 percent of total issuance in fiscal year 1996 to about 71 percent of total issuance in January 2000.

Affected Public: State and local government, and food stamp households.

Estimated Number of Respondents: 338,535.

Number of Responses per Respondent: 12.

Total Number of Annual Responses: 4,062,420.

Estimated Time per Response: 0.005 hours.

Estimated Total Annual Burden: 20,629 hours.

Dated: April 28, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–11416 Filed 5–5–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–016N]

Notice of Public Meeting: Revised Action Plan for the Control of *Listeria monocytogenes* for the Prevention of the Foodborne Illness Listeriosis

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) will hold a public meeting to discuss and receive public comment regarding *Listeria monocytogenes (Lm).* The purpose of the meeting is to discuss the initiatives the Agency took after its February 1999

public meeting on *Lm* and the Agency's future plans to further protect the public from foodborne illnesses associated with *Lm.* The Agency also invites data and public comment on *Lm.*

DATE: The meeting will be held May 15, 2000, from 9 a.m. to 5 p.m. Written comments must be received by June 7, 2000.

ADDRESSES: The meeting will be held at the Holiday Inn—Washington, DC on the Hill, 415 New Jersey Avenue, NW., Washington, DC 20001, telephone number is 202–638–1616.

To register for the meeting and to schedule a presentation, contact Mary Harris, FSIS, by telephone (202) 501–7136 or FAX (202) 501–7642. If a sign language interpreter or other special accommodation is necessary, contact Ms. Harris at the above number.

Submit one original and two copies of written comments to: FSIS Docket Clerk, Docket #00–016N, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judith Riggins, Associate Deputy Administrator, Office of Policy, Program Development and Evaluation, by telephone (202) 720–2709 or Fax (202) 720–2025.

SUPPLEMENTARY INFORMATION: *Listeria monocytogenes (Lm)* is found in soil and water and can contaminate a variety of raw foods, such as uncooked meats and vegetables, as well as foods that become contaminated after processing, such as soft cheeses, and cold cuts. Consumption of food contaminated with *Lm* can cause listeriosis, an uncommon but potentially fatal disease, that can lead to serious and sometimes fatal infections in pregnant women, newborns, the elderly, and persons with weakened immune systems, such as those with a chronic disease, an HIV infection, or who are undergoing chemotherapy treatment.

FSIS considers *Lm* to be an adulterant in ready-to-eat (RTE) meat and poultry products. FSIS has established and enforces a zero tolerance (no detectable level permitted) for this pathogen in RTE products. Since 1989, FSIS has conducted a monitoring program within plants to test for *Lm* in certain ready-to-eat (RTE) products such as hot dogs and luncheon meats. FSIS analyzes approximately 3,500 samples for *Lm* each year. The following product categories are included in the monitoring program: (1) Beef jerkey, (2) roast beef, cooked beef, and cooked corned beef, (3) sliced ham and luncheon meat, (4) small-diameter sausage, (5) large-diameter sausage, (6) cooked, uncured poultry, (7) salads and spreads, and (8) dry and semi-dry fermented sausage.

Out of 3,547 samples of RTE meat and poultry products analyzed in calendar year 1998 through the monitoring program, 90 samples, or approximately 2.5 percent, tested positive for *Lm.* FSIS sampling of just hot dogs from 1993 to 1996 showed that approximately 4.4 percent of the samples were positive for *Lm.* FSIS' monitoring program, implemented before pathogen reduction and HACCP implementation, was intended to encourage industry process control and validation. However, this program was not statistically designed and thus information obtained from it cannot be used to make determinations about *Listeria* contamination on a nationwide basis.

To gather information on *Lm* and listeriosis associated with RTE meat and poultry products, FSIS held a public meeting on February 10, 1999 (64 FR 5629). The Agency held this meeting in response to a large outbreak of listeriosis that occurred in late 1998/early 1999 that was attributed to bacteria in a RTE meat or poultry product and several recalls of *Lm* adulterated meat and poultry products. At this meeting, experts from FSIS, Centers for Disease Control (CDC), and the Food and Drug Administration (FDA), as well as industry groups and consumer groups shared foodborne illness and product contamination statistics on *Lm,* as well as information about on-going research projects and future research needs for *Lm,* testing programs for *Lm,* and educational efforts about *Lm.* At the meeting, FSIS also discussed its zero tolerance policy regarding *Lm* in RTE meat and poultry products.

In May of 1999, FSIS Administrator Tom Billy announced an action plan comprised of a number of initiatives that FSIS was undertaking to reduce the risk of foodborne illness attributed to *Lm.* The action plan for the control of *Lm* was based on the information obtained at the February 1999 public meeting as well as other information obtained by FSIS. The initiatives set forth in the action plan included near-term and long-term activities that involved all programs of the Agency, as well as interagency activities. Some of these activities included issuing a **Federal Register** notice (64 FR 28351) advising manufacturers of RTE meat and poultry products of the need to reassess their HACCP plans to ensure that the plans were adequately addressing *Lm,* developing consumer education material targeted to reach individuals at an increased risk for developing listeriosis, developing guidance material for the regulated industry on practices that have been used successfully by meat and poultry establishments to prevent the occurrence of *Lm* in RTE products, conducting a study on the post production growth of *Lm,* and working with FDA to conduct a risk assessment for *Lm.*

FSIS has now revised its action plan for the control of *Lm* based on its analysis of the comments and data received in response to the February 1999 public meeting, recommendations of the National Advisory Committee on Meat and Poultry Inspection and the National Advisory Committee on Microbiological Criteria for Foods, a petition received in January 2000 from the Center for Science in the Public Interest (CSPI), and the work of an interdisciplinary Agency working group.

To update the public on the initiatives undertaken and to provide the public with FSIS' revised action plan for the control of Lm, FSIS will hold a public meeting on May 15, 2000. FSIS requests additional data on Lm and public comment on the revised action plan. Some of the topics to be discussed at the May 15 meeting are:

- The public health impact of foodborne Lm contamination;
- The results of FSIS's review of what establishments did in response to its May 1999 **Federal Register** notice on reassessment of HACCP plans to ensure that they adequately address *Lm*;
- The revised instructions to be issued to field employees regarding the testing and sampling of RTE products;
- The petition received by FSIS from CSPI, (copies are available in the FSIS Docket Clerk's office, See **ADDRESSES**);
- Consumer education about *Lm*; and
- Research on *Lm.*

The agenda for the public meeting will be available on the FSIS homepage, www.usda.fsis.gov and at the meeting.

Representatives from government, industry groups, consumer groups, and academia will lead the discussions. There will be time at the end of the meeting for general public comment. However, attendees must sign-up in advance to speak during the public comment session. The sign-up sheet will be at the meeting. Time allotted for comment will be approximately 5 minutes for each participant, but will depend on the number of people participating.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: May 3, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–11419 Filed 5–5–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the White Mountain National Forest; Carroll, Coos, and Grafton Counties, New Hampshire and Oxford County, Maine

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of public comment period on notice of intent for fourteen days.

SUMMARY: The Forest Service published a White Mountain National Forest Land and Resource Management Plan in the **Federal Register** on March 9, 2000 (Vol. 65, No. 47, FR 12505, Mar. 9, 2000). The Forest Service is extending the public comment period on that notice of Intent. A 14 day extension of the public comment period was given in response to comments from the public requesting additional time to fully analyze the issues and prepare comprehensive comments. The fourteen (14) day extensions starts immediately after the initial public comment period that ends May 9, 2000. The fourteen (14) day extension of the public comment period starts May 10, 2000 and ends May 23, 2000.

Additional information on the Notice of Intent can be found in the notice published in the **Federal Register** referenced above.

DATES: Comments on the Notice of Intent should be received in writing by May 23, 2000.

ADDRESSES: Send written comments to: Forest Planning, White Mountain National Forest, 719 N. Main St., Laconia, NH 03246. Or direct electronic mail to: mwoodbury@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Bryan Armel, Forest Planner, at (603) 528–8788. TDD (603) 528–8722. E-mail address: barmel@fs.fed.us.

SUPPLEMENTARY INFORMATION: The responsible official is Robert T. Jacobs, Regional Forester, Eastern Region, 210 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Dated: May 2, 2000.

Donna L. Hepp,

Forest Supervisor, White Mountain National Forest.

[FR Doc. 00–11381 Filed 5–5–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Housing Demonstration Program

AGENCY: Rural Housing Service, United States Department of Agriculture (USDA).

ACTION: Notice of Funding for the Rural Housing Demonstration Program.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing funds for Fiscal Year (FY) 2000 for the Rural Housing Demonstration Program. For FY 2000, RHS has set aside $3 million for the Innovative Demonstration Initiatives and is soliciting proposals for a Housing Demonstration program under section 506(b) of title V of the Housing Act of 1949. Under section 506(b), RHS may provide loans for innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase the availability of affordable Rural Housing (RH) for low-income families through innovative designs and systems.

EFFECTIVE DATE: May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Ave. SW, Washington, DC 20250–0783, Telephone (202) 720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient income to qualify for loans to obtain adequate housing. Section 506(b) of title V of the Housing Act of 1949, authorizes a housing demonstration program that could result in housing that these families can afford. The Congress of the United States made two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversely affected, and (2) that the aggregate expenditures for the demonstration may not exceed $10 million in any Fiscal Year.

Rural Development State Directors are authorized in FY 2000 to accept proposed demonstration concept proposals from nonprofit and for profit organizations.

The objective of the demonstration programs is to test new approaches to offering housing under the statutory authority granted to the Secretary of Agriculture. Rural Development will be required to review each application for completeness and accuracy; however, some demonstration programs may or may not be consistent with some of the provisions of our 7 CFR part 3550-Direct Single Family Housing Loans and Grants regulation. Under section 506(b) of the Housing Act of 1949, the Agency may provide loans for innovative housing design units, and systems which do not meet existing published standards, rules, regulations, or policies.

An application will be considered on a first come, first served basis based on the date a completed application is submitted. An application is considered complete only if the ''Application for Approval of Housing Innovation'' is complete in content, contains information related to the evaluation criteria and all applicable additional information required by this form has been provided. All application packages must be in accordance with the technical management requirements and address the evaluation criteria in the Proposal Content and Evaluation Criteria. The application, Proposal Content and Evaluation Criteria, and further information may be obtained from the Rural Development State Office in your area. (See the State Office

address list at the end of this notice or access the website at http://www.rurdev.usda.gov/recd map.html. Organizations that submit incomplete applications will be sent a letter within 15 working days after submission of the incomplete package, advising of additional information needed in the proposal for continued processing.

The following evaluation factors will not be weighted and are non-competitive. RHS, in its analysis of the proposals received, will give primary consideration to those proposals which demonstrate the greatest potential for carrying out the objectives of this demonstration effort in accordance with the following criteria:

A. Housing Unit Concept

1. A proposal must be well beyond the ''idea'' state. Sufficient testing must have been completed to demonstrate its feasibility. The proposal must be judged ready for full scale field testing in a rural setting.
2. Ability of the housing unit to provide for the protection of life, property, and for the safety and welfare of the consumer, general public and occupants through the design, construction, quality of materials, use, and maintenance of the housing unit.
3. Flexibility of the housing units in relation to varying types of housing and varying site considerations.
4. Flexibility of the housing unit concept, insofar as it provides the ability to adjust or modify unit size and arrangements, either during design or after construction.
5. Efficiency in the use of materials and labor, with respect to cost in place, the conservation of materials, and the effective use of labor skills. Potential for Self-Help Technical Assistance Grant applications.
6. Selection of materials for durability and ease of maintenance.
7. Concepts for the effective use of land and development.

B. Organization Capabilities

1. The experience and ''know-how'' of the proposed organization or individual to implement construction of the housing unit concept in relation to the requirements of RHS's housing programs.
2. The management structure and organization of the proposer.
3. The quality and diversity of management and professional talent proposed as ''key individuals.''
4. The management plan of how this effort will be conducted.

C. Cost and Price Analysis

1. The level of costs which are proposed, as they may compare with other proposals and be considered realistic for the efforts planned. Also, the quantity and level of detail in the information supplied.
2. Projected cost of ''housing in place,'' with particular reference to housing for very low and low-income families.

An acceptable proposal will be sent by the State Director to the National Office for concurrence by the RHS Administrator before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant in writing, giving specific reasons why the proposal was not selected. The funds for the RH Demonstration program are section 502 single family housing funds and are available to housing applicants who wish to purchase an approved demonstration dwelling. Funds cannot be reserved or guaranteed under the demonstration housing concept. There is no guarantee that a market exists for demonstration dwellings, and this does not ensure that an eligible loan applicant will be available for such a section 502 RH dwelling. If there is no available RHS eligible loan applicant, the RH demonstration program applicant will have to advance funds to complete the construction of the demonstration housing, with the risk that there may be no RHS applicant from which the builder will recover his or her development and construction costs.

This program or activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons contained in 7 CFR part 3015, subpart V and RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' this program or activity is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

All interested parties must make a written request for a proposal package. The request must be made to the State Director in the State in which the proposal will be submitted; RHS will not be liable for any expenses incurred by respondents in the development and submission of applications.

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under Control Number 0575–0114.

Date: April 28, 2000.

David J. Villano,

Acting Administrator, Rural Housing Service.

The following is an address list of Rural Development State Offices across the nation:

Alabama

Sterling Centre, 4121 Carmichael Road, Suite 601, Montgomery, AL 36106–3683, (334) 279–3400

Alaska

Suite 201, 800 W. Evergreen, Palmer, AK 99645–6539, (907) 745–2176

Arizona

Phoenix Corporate Center, 3003 N. Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700

Arkansas

Room 3416, 700 W. Capitol, Little Rock, AR 72201–3225, (501) 301–3200

California

Agency 4169, 430 G Street, Davis, CA 95616–4169, (530) 792–5800

Colorado

Room E100, 655 Parfet Street, Lakewood, CO 80215, (303) 236–2801

Delaware and Maryland

PO Box 400, 4607 S. DuPont Highway, Camden, DE 19934–9998, (302) 697–4300

Florida and Virgin Islands

PO Box 147010, 4440 NW 25th Place, Gainesville, FL 32614–7010, (352) 338–3400

Georgia

Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA, 30601–2768, (706) 546–2162

Hawaii

Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–3000

Idaho

Suite A1, 9173 W. Barnes Drive, Boise, ID 83709, (208) 378–5600

Illinois

Illini Plaza, Suite 103, 1817 S. Neil Street, Champaign, IL 61820, (217) 398–5235, (217) 398–5412 for automated answer

Indiana

5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100

Iowa

873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663

Kansas

PO Box 4653, 1200 SW Executive Drive, Topeka, KS 66604, (785) 271–2700

Kentucky

Suite 200, 771 Corporate Drive, Lexington, KY 40503, (606) 224–7300

Louisiana

3727 Government Street, Alexandria, LA 71302, (318) 473–7920

Maine

PO Box 405, 444 Stillwater Avenue, Suite 2, Bangor, ME 04402–0405, (207) 990–9106

Massachusetts, Connecticut, and Rhode Island

451 West Street, Amherst, MA 01002, (413) 253–4300

Michigan

Suite 200, 3001 Coolidge Road, East Lansing, MI 48823, (517) 324–5100

Minnesota

410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800

Mississippi

Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 956–4316

Missouri

Parkade Center, Suite 235, 601 Business Loop 70 West, Columbia, MO 65203, (573) 876–0976

Montana

Unit 1, Suite B, 900 Technology Boulevard, Bozeman, MT 59715, (406) 585–2580

Nebraska

Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551

Nevada

1390 S. Curry Street, Carson City, NV 89703–9910, (775) 887–1222

New Jersey

Tarnsfield Plaza, Suite 22, 790 Woodlane Road, Mt. Holly, NJ 08060, (609) 265–3600

New Mexico

Room 255, 6200 Jefferson Street, NE Albuquerque, NM 87109, (505) 761–4950

New York

The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400

North Carolina

Suite 260, 4405 Bland Road, Raleigh, NC 27609, (919) 873–2000

North Dakota

Federal Building, Room 208, 220 East Rooser, PO Box 1737, Bismarck, ND 58502–1737, (701) 250–4781

Ohio

Federal Building, Room 507, 200 N. High Street, Columbus, OH 43215–2477, (614) 255–2400

Oklahoma

Suite 108, 100 USDA, Stillwater, OK 74074–2654, (405) 742–1000

Oregon

Suite 1410, 101 SW Main, Portland, OR 97204–3222, (503) 414–3300

Pennsylvania

Suite 330, One Credit Union Place, Harrisburg, PA 17110–2996, (717) 237–2299

Puerto Rico

PO Box 366106, San Juan, PR 00936–6101, (787) 766–5095

South Carolina

Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163

South Dakota

Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57360, (605) 352–1100

Tennessee

Suite 300, 3322 W. End Avenue, Nashville, TN 37203–1084, (615) 783–1300

Texas

Federal Building, Suite 102, 101 S. Main, Temple, TX 76501, (254) 742–9700

Utah

Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147, (801) 524–4320

Vermont and New Hampshire

City Center, 3rd Floor 89 Main Street, Montpelier, VT 05602, (802) 828–6000

Virginia

Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229 (804) 287–1550

Washington

Suite B, 1835 Black Lake Blvd., SW, Olympia, WA 98512–5715, (360) 704–7740

West Virginia

Federal Building, Room 320, 75 High Street, Morgantown, WV 26505–7500, (304) 291–4791

Wisconsin

4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600

Wyoming

Federal Building, Room 1005, 100 East B, PO Box 820, Casper, WY 82602, (307) 261–6300

[FR Doc. 00–11373 Filed 5–5–00; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–801]

Electrolytic Manganese Dioxide From Greece: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: Based on a request by a Greek producer, Tosoh Hellas A.I.C., the Department of Commerce is conducting an administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece.

We have preliminarily determined that sales by Tosoh Hellas A.I.C. have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to liquidate without regard to antidumping duties all entries of EMD from Tosoh Hellas A.I.C. during the period of review.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

Background

On April 17, 1989, the Department published in the **Federal Register** (54 FR 15243) the antidumping duty order on electrolytic manganese dioxide (EMD) from Greece. Tosoh Hellas A.I.C. (Tosoh) requested a review on April 29, 1999. In response to this request, the Department published a notice of initiation of administrative review on May 20, 1999, in accordance with 19 CFR 351.213(b) (64 FR 28973). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of EMD from Greece. EMD is

manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip, or plate, and two grades, alkaline and zinc-chloride. EMD in all three forms and both grades is included in the scope of the order. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

Period of Review

The period of review (POR) is April 1, 1998, through March 31, 1999.

Product Comparability and Home Market Viability

In a July 20, 1999, submission, and in several subsequent submissions from Kerr-McGee Chemical LLC and Chemetals Inc. (collectively ''the petitioners''), the petitioners allege three points concerning the selection of comparable merchandise: (1) The zinc-chloride-grade EMD sold in the home market is not a foreign like product that can be compared to the alkaline-grade EMD sold to the United States under the definition set forth in section 771(16)(B) of the Act; (2) the current review presents an unusual situation in which the home market sales of EMD, though accounting for more than five percent of sales to the United States, should not be considered a viable comparison market; and (3) a particular market situation exists which warrants rejection of home market sales for comparison purposes.

We have preliminarily determined the following: (1) The subject merchandise sold in Greece is a foreign like product as defined under section 771(16)(B) of the Act; (2) the home market is viable within the meaning of section 773(a)(1)(C)(ii) of the Act; and (3) a particular market situation does not exist within the meaning of section 773(a)(1)(C)(iii) of the Act.

With respect to the first point, we examined whether the EMD grade sold in the home market met the standards of section 771(16)(B) of the Act. Specifically, pursuant to section 771(16)(B) of the Act, we evaluated the following criteria: (1) Whether the foreign like product was produced in the same country and by the same person as the subject merchandise; (2) whether the merchandise in question is like in component material or materials and in the purposes for which used; and (3) whether the two grades (*i.e.,* zinc-chloride and alkaline) of EMD are approximately equal in commercial value.

Based on the information provided on the record we found that the merchandise in question is produced in the same country and by the same person as the subject merchandise. In addition, we found that both the U.S.—and home market—sold grades of EMD are produced using the same component materials and both grades are used as cathode material in the production of dry-cell batteries.

With regard to the commercial-value criterion, we found that the products satisfy our twenty-percent difference-in-merchandise test which we generally apply to evaluate the commercial-value criterion of the statute. *See Import Administrative Policy Bulletin 92.2 ''Difference in Merchandise, 20 percent rule''* (July 29, 1992); *Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duties Administrative Review,* 61 FR 51263, 51265 (October 1, 1996); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 63860, 63874 (November 17, 1998). In addition, information the respondent submitted on March 13, 2000, shows that the two products have less than a two-percent difference in price when sold to a particular third-country market, the respondent's only market in which both zinc-chloride-grade and alkaline-grade EMD are sold. This less than two-percent difference in price, when considered in conjunction with a difference-in-merchandise adjustment of less than 20 percent, provides an indication that the grades are approximately equal in commercial value. Therefore, we preliminarily determine that the two products are ''approximately equal in commercial value'' as set forth in section 771(16)(B)(iii) of the Act.

Based on the reasons stated above, we determined that zinc-chloride-grade EMD is a foreign like product as defined under section 771(16)(B) of the Act. For a detailed explanation of our analysis, see the Decision Memorandum from Office Director to Deputy Assistant Secretary dated May 1, 2000 (''Decision Memo'').

With respect to the petitioners' second point, we analyzed whether the current review presents an unusual situation in which home market sales of EMD constituting more than five percent of sales to the United States should not be considered viable. Based on our interpretation of the statute, we have preliminarily found that in this case there is no unusual situation which makes our application of our normal statutory five-percent viability test inappropriate. Therefore, since the aggregate quantity of the respondent's home market sales is more than five-percent of the aggregate quantity of the respondent's U.S. sales, we find that it is viable in accordance with our statute and regulations. For a detailed explanation of our analysis, see the Decision Memo.

Finally, with respect to the petitioners' final point, that a particular market situation exists, the petitioners assert in their July 20, 1999, submission, that there are a number of elements which do not permit a proper price-to-price comparison in this review period. According to the petitioners, these elements are as follows: (1) The component materials used in the home market product are unlike the component materials in the U.S. product; (2) the two types of EMD differ substantially in the purposes for which they are used; (3) the two types of EMD differ substantially in commercial value; and (4) Tosoh's home market sales are incidental or insignificant to Tosoh. The petitioners argue that all of these factors create a particular market situation that prevents the Department from making an appropriate price-to-price comparison.

The Act states that there may be ''particular market situations'' in a foreign market that do not permit a proper comparison with EP or CEP sales. Although the Act does not identify these ''particular market situations,'' several are identified in the Statement of Administrative Action (SAA), H. Doc.103–316, vol. 1, 103d Cong., 2d sess., 822 (1994). These include: (1) Where a single sale in a foreign market constitutes five percent of sales to the United States; (2) where there are such extensive government controls over pricing in a foreign market that prices in that market cannot be considered competitively set; and (3) where there are differing patterns of demand in the United States and a foreign market. Finally, 19 CFR 351.404(c)(2) permits the Department to decline to calculate normal value on the basis of prices in a viable home market if parties establish to the Department's satisfaction that certain situations in the viable market would not permit a proper comparison of like product prices in that market with EP or CEP sales. See SAA at 822.

We have found no evidence of a particular market situation, within the meaning of section 773(a)(1)(C)(iii) of the Act, which would prevent a proper price comparison and which warrants a departure from the normal five-percent viability test. For example, there is no evidence to suggest that a single sale in the home market constitutes five percent of sales to the United States, that there are extensive government controls over pricing in the Greek home market, or that there are differing patterns of demand for EMD in the United States and in the home market. For a detailed explanation of our analysis, see our Decision Memo.

Because the criteria on which the petitioners rely in their particular market-situation argument reflect the definition of a foreign like product in sections 771(16)(B) (ii) and (iii) of the Act, we examined whether the SAA mentions any of the criteria as determinants of a particular market situation. Based on our analysis of the SAA, we found that the SAA does not mention any of the criteria on which the petitioners rely in their particular-market-situation argument as a measure for finding that a particular market situation exists. For a detailed explanation of our analysis, see the Decision Memo.

Constructed Export Price

For the price to the United States, we used constructed export price (CEP) as defined in section 772(b) of the Act. We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA (at 823–824), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including direct selling expenses and indirect selling expenses.

With respect to CEP profit, section 772(d)(3) of the Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling and further-manufacturing activities in the United States. Section 772(f) of the Act provides the rule for determining the amount of CEP profit to deduct from the CEP starting price. In this review, since we do not have any cost information to calculate CEP profit, we determined that the best available sources of profit information are the 1998 financial statements which the respondent and its U.S. affiliate submitted in response to section A of our questionnaire. See Analysis Memorandum dated April 28, 2000 (''Analysis Memo'').

Finally, in accordance with section 772(d)(1)(B) of the Act, we adjusted CEP to reflect a rebate which Tosoh is contractually obligated to make to its customer based on the relationship of its price, after all previously described adjustments, and normal value. For further details see Analysis Memo.

Normal Value

In calculating normal value, as we stated above, we determined that the quantity of foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1) of the Act because the quantity of sales in the home market was greater than five percent of the sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the price at which the foreign like product was sold for consumption in the exporting country. See Analysis Memo.

We calculated monthly, weighted-average normal values. Because identical merchandise was not sold during the relevant contemporaneous period, we compared U.S. sales to sales of the most similar foreign like product in accordance with section 771(16)(B) of the Act.

Home market prices were based on packed, free-on-truck prices to the unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing in accordance with section 773(a)(6)(A) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, and for differences in circumstances of sale (COS) in accordance with section 773 (a)(6)(C)(iii) of the Act and 19 CFR 351.410. With respect to our comparisons to CEP, we made COS adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments for home-market indirect selling expenses to offset U.S. indirect selling expenses.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales in accordance with section 773(a)(1)(B) of the Act. The normal value level of trade is that of the starting-price sales in the home market. See 19 CFR 351.412(c)(iii).

To determine whether home market sales were at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Tosoh reported that there was only one channel of distribution in the home market, and we conclude that there is only one level of trade. Because all of Tosoh's U.S. sales were CEP sales, we identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act, pursuant to 19 CFR 351.412(c)(ii). Based on our analysis, we considered CEP sales to constitute a single level of trade. Based on the record, we found that there were significant differences between the selling activities associated with the home market level of trade and those associated with the CEP level of trade. Therefore, we determined that CEP sales were at a different level of trade from the home market sales. Consequently, we could not match U.S. sales to sales at the same level of trade in the home market. Moreover, data necessary to determine a level-of-trade adjustment was not available. Therefore, because home market sales were made at a more advanced stage of distribution than that of the CEP level, we made a CEP-offset adjustment when comparing CEP and home market sales in accordance with section 773(a)(7)(B) of the Act. For a more detailed description of our analysis, see the Level-of-Trade section of our Analysis Memo.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin of 0.00 for Tosoh for the period April 1, 1998, through March 31, 1999.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 40 days after the date of publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice.

Parties who submit arguments are requested to submit with the arguments: (1) A table of contents, (2) a statement of the issue, (3) a list of authorities used, and (4) an executive summary of issues. Executive summaries should be limited to five pages total, including footnotes.

Hearing requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Department of Commerce building.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results of this administrative review, if there is no change from our preliminary results, we will instruct the Customs Service to liquidate all appropriate entries without regard to antidumping duties.

On April 20, 2000, the International Trade Commission (ITC) determined that revoking the existing antidumping duty orders on electrolytic manganese dioxide from Greece and Japan would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Therefore, because the order will be revoked as a result of the ITC's determination with an effective date of January 1, 2000, no deposit requirements will be effective for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 1, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–11461 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–806]

Electrolytic Manganese Dioxide From Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: Based on a request by a Japanese producer, Tosoh Corporation, the Department of Commerce is conducting an administrative review of the antidumping duty order on electrolytic manganese dioxide from Japan.

We have preliminarily determined that sales by Tosoh Corporation have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct Customs to liquidate without regard to antidumping duties all entries of EMD from Tosoh Corporation during the period of review.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Tabash or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–5047 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

Background

On April 17, 1989, the Department published in the **Federal Register** (54 FR 15243) the antidumping duty order on electrolytic manganese dioxide (EMD) from Japan. On June 30, 1999, the Department published a notice of initiation of administrative review in accordance with 19 CFR 351.213(b). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are sales of EMD from Japan. EMD is manganese dioxide (MnO2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc-chloride. EMD in all three forms and both grades is included in the scope of the order. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule (HTSUS) of the United States. The HTSUS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

Period of Review

The period of review (POR) is April 1, 1998, through March 31, 1999.

Product Comparisons

Two product-comparison issues arose prior to the completion of these preliminary results. First, the sub-types of alkaline-grade EMD Tosoh sold in the home market and a sub-type of alkaline-grade EMD Tosoh sold to the United States varied by physical characteristics such as moisture, mesh, and particle size.

Tosoh provided in its questionnaire response a product-matching table identifying the various sub-types of alkaline-grade EMD it sold in the home market and to the United States. In its July 21, 1999, submission, the respondent stated that the sub-type of alkaline-grade EMD it sold to the United States was not sold in the home market during the POR and that the Department should match the sub-type sold in the United States to the closest sub-type of alkaline-grade EMD sold in the home market. Kerr-McGee Chemical LLC and Chemetals Inc. (collectively ''the petitioners'') responded that the Department should disregard the respondent's proposed product-matching criteria and base normal value of EMD exported to the United States on all sales of alkaline-grade EMD in the home market because, they argue, it is the Department's practice to base model-matching schemes only on

physical differences that are shown to be ''commercially meaningful.''

In the original less-than-fair-value (LTFV) investigation and previous administrative reviews of this order, we grouped EMD into the following three categories for purposes of model-matching: (1) Alkaline-grade EMD in powdered form, (2) zinc-chloride-grade EMD in powdered form, and (3) EMD in chip or plate form. *See* Appendix V in the Department's questionnaire dated June 7, 1999, for a complete description of the product. Our decision to do this was based on our analysis of comments that we received from all interested parties at the beginning of this proceeding. The respondent has provided no information regarding the commercial significance of the different sub-types. We are not convinced by the respondent's assertion that a more refined product-matching methodology is appropriate because the record indicates that any differences in either price or cost attributable to physical differences among the sub-types of alkaline grade EMD are small. Therefore, for these preliminary results, we have continued to match EMD based on the criteria outlined in the LTFV investigation.

Second, in an August 27, 1999, and in subsequent submissions, the petitioners allege that the respondent should have reported and accounted for home-market sales during the POR of EMD containing both gamma crystalline structure and other crystalline structure. The petitioners state that the Department's regulations for reporting the subject merchandise do not make any distinction between the gamma crystalline and other gamma crystalline structure EMD. The respondent argues that the product covered by this administrative review is EMD with a gamma crystalline structure, and that there is no basis to require Tosoh to provide information relating to other crystalline structure manganese dioxide which, according to Tosoh, is non-subject merchandise.

Section 771(16) of the Act directs the Department to compare U.S. sales to sales in the home market of identical merchandise prior to making comparisons to non-identical merchandise sold in the home market. As discussed above, under the definition of comparable merchandise which has been in place since the beginning of this proceeding, we consider all alkaline-grade EMD to be identical for product-comparison purposes. Since we were able to compare U.S. sales to sales of identical merchandise in the home market, we have not required Tosoh to report its home-market sales of non-identical EMD.

Affiliated Party

On August 27, 1999, the petitioners alleged that Tosoh and the Japanese trading company that Tosoh used to make sales of EMD to the United States may be affiliated because the two companies own two other companies jointly. (The identity of the Japanese trading company and the two joint ventures is business proprietary information and can not be disclosed in this public notice.) One of these joint ventures is a producer of EMD in another country. On September 9, 1999, and in subsequent submissions, Tosoh stated that it does not consider itself to be affiliated with the trading company in question, and it reported its sale to the trading company as the U.S. transaction. Tosoh argues that the trading company is not legally or operationally able to exercise any control or direction over Tosoh, and the fact that the trading company and Tosoh participate in the ownership of two other companies is irrelevant to this review. Tosoh also argues, citing 19 CFR 351.102(b), that its mere participation in a joint venture does not support a finding of affiliation absent a showing pursuant to the Department's regulations that ''the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.'' Furthermore, Tosoh asserts that affiliation between joint-venture partners can not be found under section 771(33)(F) of the Act unless there is sufficient evidence of ''control'' over decisions concerning the production, pricing, or cost of the subject merchandise. Tosoh cites *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea,* 63 FR 13170, 13185 (March 18, 1998), where the Department found that two joint-venture partners were not affiliated under section 771(33)(F) of the Act because of the absence of evidence of control.

On November 29, 1999, after reviewing the information Tosoh presented in response to our original and supplemental questionnaires, we requested that Tosoh report the ''downstream'' sale information between the trading company's U.S. affiliate and its unaffiliated U.S. customer. *See* November 29, 1999, memorandum from Richard Rimlinger to Laurie Parkhill. (All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Department of Commerce building.)

Pursuant to section 771(33)(F) of the Act, affiliation exists where there are ''(t)wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person.'' However, we recognize the regulatory guidance indicating that a control relationship will not establish affiliation unless the relationship ''has *the potential* to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product,'' 19 CFR 351.102(b) (emphasis added). Regarding Tosoh's control of one of the joint ventures, we are persuaded that potential control exists due to the fact that this joint venture manufactures EMD for sale in a variety of markets, including the United States. Thus, Tosoh is in a position that requires it to coordinate production and sales activities for its EMD production facilities. With respect to the trading company's control of the same joint venture, the record indicates that its wholly owned U.S. subsidiary negotiates the prices and terms of the U.S. sales for both Tosoh and the third-country joint venture. Because the subsidiary negotiates the prices and terms of the sales for both Tosoh and the joint venture, we find that the trading company, through its U.S. subsidiary, is able or at least has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise. Accordingly, we have preliminarily determined that Tosoh and the trading company commonly control the joint venture within the meaning of section 771(33)(F) of the Act and the Department's regulations. *See* Affiliation Memorandum from Laurie Parkhill to Richard W. Moreland, dated May 1, 2000. Accordingly, we conclude that Tosoh and the trading company are affiliated and that the appropriate sale for use in our analysis is the sale by the U.S. affiliate of the Japanese trading company to the unaffiliated U.S. customer. That sale is a constructed export price (CEP) transaction because it was made in the United States.

Constructed Export Price

In calculating the price to the United States, we used CEP as defined in section 772(b) of the Act. We calculated CEP based on the delivered price to an unaffiliated purchaser in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Statement of Administrative Action (SAA), H. Doc. 103–316, vol. 1, 822–824 (1994), we calculated the CEP by deducting selling

expenses associated with economic activities occurring in the United States, including direct selling expenses and indirect selling expenses incurred in the United States.

With respect to CEP profit, section 772(d)(3) of the Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling and further-manufacturing activities in the United States. Section 772(f) of the Act provides the rule for determining the amount of CEP profit to deduct from the CEP starting price. Pursuant to subsection 772(f)(2)(C), we determined that the best available sources of profit information are the 1998 financial statements which the respondent and the Japanese trading company's U.S. affiliate submitted in their responses to our questionnaires. *See* Electrolytic Manganese Dioxide from Japan—Tosoh Corporation, Analysis Memo dated April 28, 2000. We made adjustments, where appropriate, for domestic inland freight, warehousing expenses, international freight, and brokerage and handling in accordance with section 772(c)(2)(A) of the Act. In accordance with 19 CFR 351.401(i), we used the invoice date as the date of sale for the U.S. market. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

Finally, in accordance with section 772(d)(1)(B) of the Act, we made an additional adjustment to CEP. Because of the business-proprietary nature of the adjustment, please see our Analysis Memo.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating normal value, we compare the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. Because the aggregate volume of home-market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating normal value. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the price at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade. We matched CEP to normal value at the same level of trade in the home market and made no level-of-trade adjustment (see discussion below).

We compared CEP to the monthly weighted-average price of sales of the identical foreign like product. We based normal value on delivered prices to unaffiliated purchasers in the home market. We made adjustments to home-market price for inland freight, warehousing expenses, discounts, and rebates. Home-market prices were based on packed, delivered prices to the unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. With respect to our comparisons to CEP, we made COS adjustments by deducting home-market direct selling expenses from normal value.

Level of Trade

To the extent practicable, we determine normal value for sales at the same level of trade as that in the United States in accordance with section 773(a)(1)(B) of the Act. The normal value level of trade is that of the starting-price sales in the home market. *See* 19 CFR 351.412(c)(iii).

To determine whether home-market sales were at a different level of trade than that in the United States, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Tosoh reported two channels of distribution in the home market. We examined the differences in selling functions Tosoh reported in its responses to our requests for information. We found that the selling activities associated with sales to trading companies/distributors did not differ from activities associated with sales to end-users in terms of various selling activities. For example, there were no differences between the two channels in terms of strategic planning/marketing, production planning/order evaluation, technical service, and freight/delivery to customer. Based on these sales activities and our overall analysis, we found that the two home-market channels constitute one level of trade.

Because Tosoh made CEP sales in the United States, we identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act and pursuant to 19 CFR 351.412(c)(ii). Based on our analysis, we considered CEP to constitute a single level of trade.

As a result of our examination of the record, we found that the respondent did not provide us with sufficient information to determine whether there were significant differences or similarities between the selling activities associated with the home-market level of trade and those associated with the CEP level of trade. Moreover, the respondent indicated in its July 21, 1999, and December 17, 1999, submissions that it was not requesting a level-of-trade adjustment. Therefore, we have determined that the U.S. sale was made at the same level of trade as the home-market level of trade and, therefore, no level-of-trade adjustment was necessary.

Preliminary Results of Review

As a result of our review, we preliminarily determine a weighted-average dumping margin of 0.00 percent for the period April 1, 1998, through March 31, 1999, for Tosoh.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 40 days after the date of publication of this notice, or the first workday thereafter. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice.

Parties who submit arguments are requested to submit with the arguments (1) a table of contents, (2) a statement of the issue, (3) a list of authorities used, and (4) an executive summary of issues. Executive summaries should be limited to five pages total, including footnotes.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results of this administrative review, if there is no change from our preliminary results, we will instruct the Customs Service to

liquidate all appropriate entries without regard to antidumping duties.

On April 20, 2000, the International Trade Commission (ITC) determined that revoking the existing antidumping duty orders on EMD from Greece and Japan would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Therefore, because the order will be revoked as a result of the ITC's determination with an effective date of January 1, 2000, no deposit requirements will be effective for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 1, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–11462 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews in Accordance With Court Decision

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review in accordance with Court Decision.

SUMMARY: On February 8, 2000, the Court of International Trade (CIT) affirmed the remand determination of the Department of Commerce (the Department) arising from the administrative reviews of the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). *See Fujian Machinery & Equipment Import & Export Corp., et. al* v. *United States,* CIT , Slip Op. 00–14, (February 8, 2000). No party appealed this decision. As there is now a final and conclusive court decision in this segment, we are amending the final results of reviews in this matter and will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

EFFECTIVE DATE: May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–5255 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1991, the Department issued antidumping duty orders on HFHTs from the PRC. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China,* 56 FR 6622 (February 19, 1991) (*Antidumping Duty Orders*). On April 4, 1996, the Department published its final results of the third administrative review of HFHTs for two PRC exporters, Fujian Machinery and Equipment Import and Export Corporation (FMEC) and Shandong Machinery Import and Export Corporation (SMC). *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Administrative Review,* 61 FR 15028 (April 4, 1996). On May 14, 1996, the Department published its amended final results of the third administrative review of HFHTs. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Amendment of Final Results of Antidumping Duty Administrative Review, 61 FR 24285 (May 14, 1996).

On September 7, 1999, the Department filed with the CIT a consent motion for voluntary remand so that the Department may exclude statistics used as surrogate values that were found to be aberrational by the Department in the Final Results of Redetermination Pursuant to Court Remand relating to the second administrative review. The CIT granted the motion and remanded to the Department on September 15, 1999.

On November 15, 1999, the Department filed its final results pursuant to remand. *See Final Results of Redetermination Pursuant to Court Remand, Fujian Machinery and Equipment Import & Export Corp., et. al* v. *United States* (November 15, 1999). On February 8, 2000, the CIT upheld the Department's redetermination on remand. *Fujian Machinery & Equipment Import & Export Corp., Shandong Machinery Import & Export Corp., et al.* v. *United States,* CIT , Slip. Op 00–14 (February 8, 2000). Neither party appealed the CIT's decision.

There is now a final and conclusive court decision in this action; therefore, we are amending our final results of review for the period February 1, 1993 through January 31, 1994. We recalculated margins on each product category for FMEC and SMC. The revised weighted average margins are as follows:

Manufacturer/Exporter	Margin (percent)
Fujian Machinery & Equipment Import & Export Corp.:	
Axes/Adzes	5.68
Bars/Wedges	16.14
Hammers/Sledges	8.90
Shandong Machinery Import & Export Corp.:	
Bars/Wedges	29.84
Hammers/Sledges	10.02
Picks/Mattocks	52.60

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all entries of subject merchandise from FMEC and SMC in accordance with these amended final results. For assessment purposes, we have calculated importer-specific duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the period of review (POR) to the total quantity of sales examined during the POR. The Department will issue appraisement instructions directly to Customs. The above rates will not affect FMEC or SMC's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed review.

This notice is published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: April 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–11463 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews in Accordance With Court Decision

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review in accordance with court decision.

SUMMARY: On February 8, 2000, the Court of International Trade (CIT) affirmed the remand determination of the Department of Commerce (the Department) arising from the administrative reviews of the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). *See Fujian Machinery & Equipment Import & Export Corp., et. al.* v. *United States,* CIT , Slip Op. 00–15 (February 8, 2000). No party appealed this decision. As there is now a final and conclusive court decision in this segment, we are amending the final results of reviews in this matter and will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

EFFECTIVE DATE: May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–5255 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1991, the Department issued antidumping duty orders on HFHTs from the PRC. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China,* 56 FR 6622 (February 19, 1991) *Antidumping Duty Orders).* On October 1, 1996, the Department published its final results of the fourth administrative review of HFHTs for two PRC exporters, Fujian Machinery and Equipment Import and Export Corporation (FMEC) and Shandong Machinery Import and Export Corporation (SMC). *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results of Antidumping Administrative Review,* 61 FR 51269 (October 1, 1996). On May 5, 1997, the Department published its amended final results of the fourth administrative review of HFHTs. *See Heavy Forged Hand Tools from the People's Republic of China; Amendment of Final Result of Antidumping Administrative Review,* 62 FR 24416 (May 5, 1997).

On September 7, 1999, the Department filed with the CIT a consent motion for voluntary remand so that the Department may exclude statistics used as surrogate values that were found to be aberrational by the Department in the Final Results of Redetermination Pursuant to Court Remand relating to the second administrative review. The CIT granted the motion and remanded to the Department on September 15, 1999.

On November 15, 1999, the Department filed its final results pursuant to remand. *See Final Results of Redetermination Pursuant to Court Remand, Fujian Machinery and Equipment Import & Export Corp., et. al.* v. *United States* (November 15, 1999). On February 8, 2000, the CIT upheld the Department's redetermination on remand. *Fujian Machinery & Equipment Import & Export Corp., Shandong Machinery Import & Export Corp., et al.* v. *United States,* CIT , Slip. Op 00–15 (February 8, 2000). Neither party appealed the CIT's decision.

There is now a final court decision in this action; therefore, we are amending our final results of review for the period February 1, 1994 through January 31, 1995. We recalculated margins on each product category for FMEC and SMC. The revised weighted average margins are as follows:

Manufacturer/Exporter	Margin (percent)
Fujian Machinery & Equipment Import & Export Corp.:	
Axes/Adzes	1.84
Bars/Wedges	1.05
Hammers/Sledges	1.23
Picks/Mattocks	65.11
Shandong Machinery Import & Export Corp.:	
Bars/Wedges	25.93
Hammers/Sledges	4.77
Picks/Mattocks	52.82

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all entries subject merchandise from FMEC and SMC in accordance with these amended final results. For assessment purposes, we have calculated exporter-specific duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the period of review (POR) to the total quantity of sales examined during the POR. We calculated exporter-specific assessment rates because there was no information on the record which indicated importers of record. The Department will issue appraisement instructions directly to Customs. The above rates will not affect FMEC or SMC's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed review.

This notice is published in accordance with section 751(a)(1)) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 351.221.

Dated: April 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–11464 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film From Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from two respondents and two U.S. producers, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers three manufacturers/exporters of the subject merchandise to the United States and

the period June 1, 1998 through May 31, 1999.

We preliminarily determine that there is a dumping margin for SKC Limited (SKC), and no margin for H.S. Industries (HSI) and Hyosung Corporation (Hyosung) during the period June 1, 1998 through May 31, 1999.

If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the United States Price (USP) and normal value (NV).

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues and (2) a brief summary of the arguments (no longer than five pages, including footnotes).

EFFECTIVE DATE: May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Enforcement Group III , Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475 and (202) 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on PET film from the Republic of Korea on June 5, 1991 (56 FR 25660). On June 16, 1999, two domestic producers, E.I. DuPont Nemours & Co., Inc. and Mitsubishi Polyester Film L.L.C. requested reviews of HSI, Hyosung, and SKC for the period June 1, 1998 through May 31, 1999. On June 28, and June 30, 1999, SKC and HSI, respectively, requested administrative reviews of their sales for the same time period. We published a notice of initiation of the review on July 29, 1999 (64 FR 41075).

On February 9, 2000, the Department published a notice extending the time limits for publication of its preliminary results by 62 days (65 FR 6360).

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage. The review covers the period June 1, 1998 through May 31, 1999. The Department is conducting this review in accordance with section 751 of the Act, as amended.

Fair Value Comparisons

To determine whether sales of PET film in the United States were made at less than fair value, we compared USP to the NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

United States Price (USP)

In calculating USP, the Department treated respondent's sales as export price (EP) sales, as defined in section 772(a) of the Act, when the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation, and use of the constructed export price (CEP) methodology was not otherwise indicated. The Department treated SKC's sales as CEP sales, as defined in section 772(b) of the Act, when the merchandise was sold to unaffiliated U.S. purchasers after importation.

CEP was based on the delivered or c.i.f. U.S. port, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, bank charges, U.S. duties, and discounts, in accordance with section 772(c) of the Act. We made additions to EP for duty drawback pursuant to section 772(c)(1)(B) of the Act.

CEP was based on the delivered, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, and U.S. duties, in accordance with section 772(c) of the Act. Pursuant to section 772(c)(1)(B) of the Act, we made an addition to CEP for duty drawback. We also made an addition to CEP for interest revenue. In accordance with section 772(d)(1) of the Act, we made deductions for selling expenses associated with economic activities in the United States, including warranties, credit expenses, bank charges, and indirect selling expenses.

With respect to subject merchandise to which value was added in the United States by SKC prior to sale to unaffiliated customers, we deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Act.

Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit to arrive at the CEP.

Normal Value

In order to determine whether there were sufficient sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, for each respondent we compared the volume of HM sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Each respondent's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on the price at which the foreign like product was sold for consumption in the home market in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade.

Because the Department had disregarded SKC's sales of the foreign like product in the June 1996–May 1997 administrative review because they failed the cost test (*see* Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (1996–1997 Administrative Review), 63 FR 37334, 37335 (July 10, 1998) in accordance with section 773(b)(2)(A)(ii) of the Act, the Department had reasonable grounds to believe or suspect that SKC made sales below cost of production (COP) during this POR. Accordingly, we initiated a sales-below-cost of production investigation for SKC in accordance with section 773(b) of the

Act. (The June 1996–May 1997 administrative review was the most recently completed review at the time that we issued our antidumping questionnaire.)

We performed a model-specific COP test in which we examined whether each HM sale was priced below the merchandise's COP. We calculated the COP of the merchandise using SKC's cost of materials and fabrication for the foreign like product, plus amounts for home market general and administrative (G&A) expenses and packing costs, in accordance with section 773(b)(3) of the Act. We allocated yield losses equally between A-grade and B-grade film because these grades have identical production costs. This is consistent with the methodology employed in past reviews of this case. (*See e.g.,* 1996–1997 Administrative Review, 37335).

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of SKC's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of SKC's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made: (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.,* the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Act.

In determining NV, we considered comparison market sales of identical or similar merchandise, or constructed value (CV).

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of SKC's cost of materials, fabrication, G&A expenses, and profit. We allocated yield losses equally between A-grade and B-grade film. In accordance with section 773(e)(2)(A) of the Act, we based G&A expenses and profit on the amounts incurred and realized by SKC in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing expenses.

In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV for credit expenses. When NV was based upon home market sales, we made an adjustment for inland freight. For SKC's local export sales, we also made an addition to home market price for duty drawback. For comparisons to EP, we made an addition to NV for U.S.credit expenses, and bank charges as circumstance-of-sale adjustments pursuant to section 773(a)(6)(C) of the Act.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See, e.g.,* Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we asked each respondent to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. SKC identified two channels of distribution in the home market: (1) wholesalers/distributors and (2) end-users. HSI also identified two channels of distribution: sales to end-users and sales to distributors. Hyosung identified one channel of distribution in the home market: sales to end-users. For both channels SKC and HSI perform similar selling functions such as order processing, market research and after-sales warranty services. Because channels of distribution do not qualify *per se* as separate LOTs, when the selling functions performed for each customer class are sufficiently similar, as in the instant review, we determined that there exists one LOT for SKC's and HSI's home market sales.

For the U.S. market SKC reported two LOTs: (1) EP sales made directly to its U.S. customers, and (2) CEP sales made through SKC America, Inc., SKC's wholly-owned U.S. subsidiary. HSI and Hyosung identified one LOT: EP sales made directly to U.S. customers. The Department examined the selling functions performed by SKC for both EP and CEP sales. These selling functions included customer sales contacts (*i.e.,* visiting current or potential customers, receiving orders, promotion of new products, collection of unpaid invoices), technical services, inventory maintenance, and/or business system development. We found that SKC provided a greater degree of these services on EP sales than it did on CEP sales, and that the selling functions were sufficiently different to warrant two separate LOTs in the United States.

When we compared EP sales to home market sales, we determined that for each respondent both sales were made at the same LOT. For both EP and home market transactions, each respondent sold directly to the customer and provided similar levels of customer sales contacts, technical services, inventory maintenance and business system development. Therefore, no LOT adjustment was warranted.

For CEP sales, SKC performed fewer customer sales contacts, technical services, inventory maintenance, and computer legal, audit and business system development. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market

sales involved a more advanced stage of distribution than CEP sales.

Because we compared these CEP sales to HM sales at a different LOT, we examined whether a LOT adjustment may be appropriate. In this case SKC sold at one LOT in the home market; therefore, there is no demonstrated pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine pricing patterns of SKC's sales of other similar products, and there is no other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment but the LOT in Korea for SKC is at a more advanced stage than the LOT of its CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by SKC. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period June 1, 1998 through May 31, 1999:

Company	Margin (percent)
HSI	0
Hyosung	0
SKC	1.35

We will disclose calculations performed in connection with these preliminary results of review within 5 days of the day of publication of this notice. Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–009 of the main Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b), we have calculated an importer/customer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the entered value of those same sales. This Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the ''all others'' rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 1, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–11460 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan; Preliminary Results and Partial Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by various interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on static random access memory semiconductors from Taiwan. This review covers the U.S. sales and/or entries of three manufacturers/exporters. In addition, we are rescinding this review with respect to two companies. The period of review is October 1, 1997, through March 31, 1999, for two of these companies and October 1, 1998, through March 31, 1999, for the remaining company.

We have preliminarily determined that sales have been made below the normal value by each of the companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington,

DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On April 15, 1999, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on static random access memory semiconductors (SRAMs) from Taiwan (64 FR 18600).

In accordance with 19 CFR 351.213(b)(2), in April 1999, the following five producers/exporters of SRAMs requested an administrative review of the antidumping duty order on SRAMs from Taiwan: Alliance Semiconductor (Alliance), Galvantech, Inc. (Galvantech), G-Link Technology Inc. (G-Link), GSI Technology, Inc. (GSI Technology), and Winbond Electronics Corporation (Winbond). In addition, one company which purchased, exported, and re-imported subject merchandise, White Electronic Designs (White Electronics), also requested an administrative review with respect to merchandise produced by G-Link. Because we determined that the merchandise subject to the antidumping duty order was the merchandise originally imported by G-Link (rather than re-imported by White Electronics), we did not initiate an administrative review for G-Link based on White Electronics' request. In addition, based on the facts associated with White Electronics' purchase, exportation, and re-importation, we determined that, upon re-importation, the merchandise at issue is not subject to cash deposits of antidumping duties. For further discussion of our treatment of re-imported merchandise, see the memorandum entitled ''Antidumping Duty Administrative Review on Static Random Access Memory Semiconductors (SRAMs) from Taiwan—Request by Electronic Designs, Inc. (EDI) for Clarification on Whether EDI is Liable for Antidumping Duties on the Second Importation of Certain SRAMs'' from the Team to Louis Apple, Director, Office 5, Office of AD/CVD Enforcement, dated June 21, 1999.

On May 19, 1999, the Department issued questionnaires to Alliance, Galvantech, G-Link, GSI Technology, and Winbond. The Department initiated an administrative review for each of these companies on May 20, 1999 (64 FR 28973 (May 28, 1999)).

In June and July 1999, respectively, Alliance and Galvantech withdrew their requests for an administrative review. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

Also in July 1999, we received a response to sections A through D of the questionnaire (*i.e.*, the sections relating to general information, foreign market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively) from Winbond.

In August 1999, we received a response to sections A through C of the questionnaire from G-Link. On August 27, 1999, the petitioner alleged that G-Link was selling at prices below the COP in its home market. Based on an analysis of this allegation, the Department initiated an investigation to determine whether G-Link made home market sales during the period of review (POR) at prices below the COP within the meaning of section 773(b) of the Act. Consequently, we issued section D of the questionnaire to G-Link.

In October 1999, we received a response to sections A through D of the questionnaire from GSI Technology. In November 1999, the petitioner alleged that GSI Technology was selling at prices below the COP in its third-country market. Based on an analysis of this allegation, we initiated an investigation to determine whether GSI Technology made foreign market sales during the POR at prices below the COP within the meaning of section 773(b) of the Act. Because GSI Technology submitted a response to section D of the questionnaire in October, it was not necessary to request additional information from GSI Technology.

In November 1999, we received a Section D questionnaire response from G-Link. Also in November and December 1999, we issued supplemental questionnaires to each of the respondents. We received responses to these questionnaires in December 1999, January 2000, and February 2000.

In February, March, and April 2000, the Department conducted verification of the data submitted by the respondents, in accordance with section 782(i) of the Act and 19 CFR 351.307(b)(1)(iv).

Scope of the Review

The products covered by this review are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope. The scope of this review includes modules containing SRAMs. Such modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The scope of this review does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). The SRAMs within the scope of this review are currently classifiable under subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, 8542.13.8005, and 8542.14.8004 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Review

The POR is October 1, 1997, through March 31, 1999, for G-Link and Winbond. Because GSI Technology was a respondent in the 1997–1998 new shipper review on SRAMs, the POR for our administrative review of its U.S. sales is October 1, 1998, through March 31, 1999.

Partial Rescission of Review

As noted above, in June and July 1999 respectively, Alliance and Galvantech withdrew their requests for administrative review. No other interested party requested a review of sales of merchandise produced or exported by either Alliance or Galvantech during the POR. Therefore, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding our review with respect to Alliance and Galvantech.

Normal Value Comparisons

To determine whether sales of SRAMs from Taiwan to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for G-Link, GSI

Technology, and Winbond as specified in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the foreign market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade. Where there were no sales of identical merchandise in the foreign market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade or CV, as appropriate.

Regarding G-Link and GSI Technology, we were unable to make product comparisons for certain models because these respondents failed to report cost information for these models, including both difference-in-merchandise and CV data. Consequently, for purposes of the preliminary results, we based the margin for the sales of these products on facts available pursuant to section 776(a)(2)(B) of the Act. As facts available, we used the highest non-aberrant margin calculated for any U.S. transaction for each respondent, in accordance with our practice. *See, e.g., Static Random Access Memory Semiconductors From Taiwan; Notice of Final Results of Antidumping Duty New Shipper Review,* 65 FR 12214 (Mar. 8, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8912 (Feb. 23, 1998) (*SRAMs Final Determination*); and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Germany,* 64 FR 30710, 30732 (June 8, 1999). In selecting a facts-available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory proposes of the adverse facts-available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of the respondent's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected the highest margin on an individual sale which fell within the mainstream of G-Link's and GSI Technology's transactions (*i.e.*, transactions that reflect sales of products that are representative of the broader range of models used to determine NV).

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For CEP, the U.S. level of trade is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (Nov. 19, 1997).

Both GSI Technology and Winbond claimed that they made foreign market sales at two levels of trade (*i.e.*, to original equipment manufacturers (OEMs) and distributors). G-Link claimed that it made home market sales at three levels of trade (*i.e.,* to OEMs, distributors, and trading companies). We examined the selling activities at each reported marketing stage for each respondent and found that there was no substantive difference in the selling functions performed at any of these stages. Consequently, we determine that only one level of trade exists with respect to sales made by these companies to all foreign market customers.

In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for foreign market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States, pursuant to section 772(d) of the Act. We found that G-Link performed essentially the same selling functions in its sales offices in Taiwan for home market and U.S. sales. Therefore, G-Link's home market sales were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exits between markets, we have not granted a CEP offset to G-Link. For a detailed explanation of this analysis, see the memorandum entitled ''Preliminary Results of Antidumping Duty Administrative Review on Static Random Access Memory Semiconductors from Taiwan,'' dated May 1, 2000 (the ''concurrence memorandum'').

In contrast, we found that GSI Technology and Winbond performed most of the selling functions and services related to U.S. sales at their sales offices in the United States. These selling functions are associated with those expenses which we deduct from the CEP starting price, as specified in section 772(d) of the Act. In addition, we found that GSI Technology generally performed the same selling functions for sales to its third-country customers at its office in the United States, while Winbond performed these functions for its home market sales in Taiwan. Therefore, we find that GSI Technology's and Winbond's sales in the foreign market were at a more advanced stage of marketing and distribution (*i.e.*, more remote from the factory) than the constructed U.S. level of trade. However, because GSI Technology and Winbond sell at only one level of trade in the foreign market, the difference in the levels of trade cannot be quantified. Because the difference in the levels of trade cannot be quantified, but the foreign market is at a more advanced level of trade, we have granted a CEP offset to GSI Technology and Winbond. For further discussion, see the concurrence memorandum referenced above.

Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP methodology because all sales took place after importation into the United States. We revised the reported data based on our findings at verification.

A. G-Link

We calculated CEP based on the starting price to the first unaffiliated

purchaser in the United States. Where appropriate, we made deductions for foreign inland freight, foreign warehousing, foreign brokerage and handling expenses, international freight, marine insurance, U.S. warehousing, U.S. freight expenses (offset by freight revenue), U.S. merchandise processing fees, and U.S. brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by G-Link and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. GSI Technology

We based CEP on the starting price to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts. We also made deductions for foreign inland freight, foreign warehousing, international freight, marine insurance, U.S. merchandise processing fees, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for credit expenses, commissions, and indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by GSI Technology on its sales of the subject merchandise in the United States and the foreign like product in the third country and the profit associated with those sales.

C. Winbond

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Taiwan. Where appropriate, we made deductions for foreign inland freight, foreign warehousing, foreign brokerage and handling expenses, foreign inland insurance, international freight, marine insurance, U.S. merchandise processing fees, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses, repacking expenses, and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Winbond and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there is a sufficient volume of sales in the foreign market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that G-Link and Winbond had viable home markets during the POR, while GSI Technology did not. Consequently, we based NV on home market sales for G-Link and Winbond and on sales to Japan (*i.e.*, the largest third-country market) for GSI Technology.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Winbond had made home market sales at prices below their COPs in this review because in the less-than-fair-value (LTFV) investigation, the Department disregarded below-cost sales that Winbond made in the home market. *See SRAMs Final Determination,* 63 FR 8909, 8913 (Feb. 23, 1998). As a result, the Department initiated an investigation to determine whether Winbond made home market sales during the POR at prices below their COPs.

In addition, in August and November 1999, respectively, the petitioner alleged that G-Link and GSI Technology were selling at prices below the COP in their foreign markets. Based on information submitted by the petitioner, the Department found reasonable grounds to believe or suspect that G-Link and GSI Technology made sales in the foreign markets at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated investigations to determine whether these respondents made foreign market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act. For further discussion, see the decision memoranda on this topic, dated August 27, 1999, for G-Link and December 6, 1999, for GSI Technology.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product in each quarter of the POR, plus amounts for SG&A and financing costs, in accordance with section 773(b)(3) of the Act.

We compared the weighted-average quarterly COP figures to home market or third country prices of the foreign like product, as appropriate, less any applicable movement charges and discounts, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below their respective COPs. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts, rebates, and packing expenses.

In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.''

Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) and (C) of the Act. To determine whether prices provided for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit cost of production at the time of the sale were also below the

weighted-average per-unit cost of production for the POR, in accordance with section 773(b)(2)(D). If they were, we disregarded the below-cost sales in determining NV.

We found that, for certain models of SRAMs, more than 20 percent of each respondent's foreign market sales within an extended period of time were at prices below the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of SRAMs for which there were no comparable foreign market sales in the ordinary course of trade, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, financing expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A, financing expenses, and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

We revised the sales data for each of the respondents, as well as the cost data provided by GSI Technology, based on our findings at verification. Because verification of the cost data submitted by G-Link and Winbond was conducted in April 2000, we were unable to incorporate our verification findings with respect to this data in the calculations performed for purposes of these preliminary results. We will, however, consider any verification findings for purposes of the final results. Company-specific calculations are discussed below.

A. G-Link

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight, foreign warehousing, and foreign inland insurance, where appropriate, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses.

Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by home market indirect selling expenses, up to the amount of the U.S. commission.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where NV was based on CV, we deducted from CV the weighted-average foreign market direct selling expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8). Where applicable, we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses, up to the amount of the U.S. commission.

B. GSI Technology

Where NV was based on third-country sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for discounts. We also made deductions, where appropriate, for foreign inland freight, foreign warehousing, international freight, marine insurance, U.S. merchandise processing fees, U.S. inland freight to the warehouse, and U.S. warehousing expenses, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for third-country credit expenses and commissions.

We deducted third-country indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by any third-country indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where NV was based on CV, we deducted from CV the weighted-average foreign market direct selling expenses and commissions, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8). In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment, calculated as noted above. Where applicable, we offset any commission paid on a U.S. sale by reducing the NV by any third-country selling expenses remaining after the deduction of the CEP offset, up to the amount of the U.S. commission.

Winbond

In its questionnaire response, Winbond stated that it made all sales in the home market to unaffiliated parties. However, one of Winbond's customers was classified as an affiliate for purposes of the company's audited financial statements, based on the fact that the President of Winbond was a managing director of the customer in question. Consequently, we have treated this customer as an affiliated party, as defined by section 771(33)(F) of the Act, for purposes of the preliminary results.

We tested the affiliated-party sales in question to ensure that they were made at ''arm's-length'' prices, in accordance with our practice. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (Appendix II) (July 9, 1993).) To conduct this test, we compared the prices of sales to affiliated and unaffiliated customers net of all movement charges, discounts, rebates, direct selling expenses, and packing costs, where appropriate. Based on the results of that test, we disregarded sales by Winbond to its affiliated party because they were not made at ''arm's-length'' prices, in accordance with 19 CFR 351.403(c).

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses, trade development fees, and commissions.

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by any home market selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with

section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where NV was based on CV, we deducted from CV the weighted-average foreign market direct selling expenses and commissions, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8). In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment, calculated as explained above. Where applicable, we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period October 1, 1997, through March 31, 1999 (for G-Link and Winbond) and the period October 1, 1998, through March 31, 1999 (for GSI Technology):

Manufacturer/exporter	Percent margin
G-Link Technology	21.74
GSI Technology, Inc.	33.85
Winbond Electronics Corp.	0.60

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days of the publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of each importer's sales during the POR. These rates will be assessed uniformly on all entries of particular importers made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of SRAMs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for G-Link, GSI Technology, and Winbond will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 41.75 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(i)(1) and 777(i)(1) of the Act.

Dated: May 1, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–11465 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–807]

Stainless Steel Wire Rod From Spain: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Howard Smith at (202) 482–5193 or Timothy Finn at (202) 482–0065, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. However, if it is not practicable to complete the preliminary results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days.

Background

On November 4, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on stainless steel wire rod from Spain, covering the period March 5, 1998 through August 31, 1999 (64 FR 60161). The preliminary

results are currently due no later than June 1, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. *See* Decision Memorandum from Tom Futtner to Holly A. Kuga, dated April 28, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore the Department is extending the time limit for completion of the preliminary results until no later than September 29, 2000. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 28, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 00–11459 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Vermont Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 99–031. Applicant: University of Vermont, Burlington, VT 05405. Instrument: HVS Video Tracking System, Pool and Platform, Model 2020. Manufacturer: HVS Image Ltd., United Kingdom. Date of Denial Without Prejudice to Resubmission: February 14, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–11466 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Delaware; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 00–008. Applicant: University of Delaware, Newark, DE 19716. Instrument: Electron Microscope, Model JEM-2010F. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 65 FR 21397, April 21, 2000. Order Date: November 1, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–11467 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 00–011. Applicant: University of Michigan, 930 N. University Avenue, Ann Arbor, MI 48109–1055. Instrument: Electron Beam Evaporator, Model EGN4. Manufacturer: Oxford Applied Research, United Kingdom. Intended Use: The instrument is intended to be used for studies of how various materials interact with thin metal films. Application accepted by Commissioner of Customs: April 21, 2000.

Docket Number: 00–013. Applicant: Allegheny-Singer Research Institute, 320 East North Avenue, Pittsburgh, PA 15212–4772. Instrument: Robot and Microplate Manipulator, Model Q-Bot. Manufacturer: Genetix Limited, United Kingdom. Intended Use: The instrument is intended to be used to prepare addressable libraries of DNA clones (both genomic and cDNA) for comparative gene expression studies (the basis of the science of functional genomics) to understand the differences between normal physiologic processes. The instrument will also be used for educational objectives through teaching trainees in the most current means to comparatively evaluate differences in gene expression. Application accepted by Commissioner of Customs: April 21, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–11468 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Ohio Coastal

Zone Management Program and the North Carolina National Estuarine Research Reserve (NERR).

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923.

The NERR evaluation will be conducted pursuant to section 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires a continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document or the Reserve's final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Ohio Coastal Zone Management Program evaluation site visit will be from June 26–30, 2000. The public meeting will be held on Wednesday, June 28, 2000, at 7:30 P.M., in the Visitor's Center at the Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, Huron, Ohio.

The North Carolina National Estuarine Research site visit will be from May 22–26, 2000. Public meetings will be held on Tuesday, May 23, 2000, at 7:00 P.M., in the Currituck County Satellite Office, Corolla, North Carolina; Wednesday, May 24, 2000, at 7:00 P.M., in the Marine Laboratory Auditorium, Duke University, Beaufort, North Carolina; and Thursday, May 25, 2000, at 7:00 P.M., at the Bryan Auditorium in Morton Hall, University of North Carolina at Wilmington, Wilmington, North Carolina.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3155, Extension 114.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: May 2, 2000.

John Oliver,

Chief Financial Officer, Chief Administrative Officer, National Ocean Service.

[FR Doc. 00–11346 Filed 5–05–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041900C]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that letters of authorization (LOAs) to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on February 4, 2000, to Taylor Energy Company of New Orleans, LA, and to Unocal Corporation of Lafayette, LA, on February 13, 2000, to Chevron U.S.A. of New Orleans, LA, on March 6, 2000 to Energy Resource Technology, Inc, on March 22, 2000, to Torch Operating Company, on April 21, 2000 to PennzEnergy, Newfield Exploration Company, and The Houston Exploration Company, all from Houston, TX, and to CNG Producing Company from New Orleans, Louisiana.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000. However, because these regulations will expire on November 13, 2000, that is the expiration date for all LOAs issued under these regulations.

Dated: May 2, 2000.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–11448 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041400A]

Taking and Importing of Marine Mammals

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

ACTION: Notice of affirmative finding; removal of embargo.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, issued an affirmative finding for the Government of Mexico under the Marine Mammal Protection Act (MMPA) on April 12, 2000. This affirmative finding allows importation into the United States of yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) after March 3, 1999, by Mexican-flag purse seine vessels or vessels operating under Mexican jurisdiction greater than 400 short tons (362.8 mt) carrying capacity. The affirmative finding was based on documentary evidence submitted by the Government of Mexico and obtained from the Inter-American Tropical Tuna Commission (IATTC). This finding remains in effect through March 31, 2001.

DATES: Effective April 12, 2000, through March 31, 2001.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802–4213; Phone 562–980–4000; Fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 et seq, as amended by the International Dolphin Conservation Program Act (IDCPA) (P. L. 105–42), allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the eastern tropical Pacific Ocean (ETP) under certain conditions. If requested by the harvesting nation, the Assistant Administrator for Fisheries, NOAA, will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, by the International Dolphin Conservation Program (IDCP), the IATTC, or the Department of State. A finding will remain valid for 1 year (April 1 through March 31) or for such other period as the Assistant Administrator for Fisheries may determine. The harvesting nation must submit an application directly to the Assistant Administrator for Fisheries for the first affirmative finding. Every 5 years, the government of the harvesting nation, must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator for Fisheries. The Assistant Administrator may require the submission of additional supporting documentation or verification of statements made in connection with requests to allow importations. An affirmative finding applies to tuna and tuna products that were harvested in the ETP by purse seine vessels of the nation, and applies to any tuna harvested in the ETP purse seine fishery after March 3, 1999, the effective date of the IDCPA.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the IDCP. To issue an annual affirmative finding, NMFS must receive the following information:

1. A statement requesting an affirmative finding;
2. Evidence of membership in the IATTC;
3. Evidence that a nation is meeting its obligations to the IATTC, including financial obligations;
4. Evidence that a nation is complying with the IDCP. For example, national laws and regulations implementing the Agreement on the IDCP and information that the nation is enforcing those laws and regulations;
5. Evidence of a tuna tracking and verification program comparable to the U.S. tracking and verification regulations at 50 CFR 216.94;
6. Evidence that the national fleet dolphin mortality limits (DMLs) were not exceeded in the previous calendar;
7. Evidence that the national fleet per-stock per-year mortality limits, if they are allocated to countries, were not exceeded in the previous calendar year;
8. Authorization for the IATTC to release to the Assistant Administrator for Fisheries complete, accurate, and timely information necessary to verify and inspect Tuna Tracking Forms; and
9. Authorization for the IATTC to release to the Assistant Administrator for Fisheries information whether a nation is meeting its obligations of membership to the IATTC and whether a nation is meeting its obligations under the IDCP, including managing (not exceeding) its national fleet DMLs or its national fleet per-stock per-year mortality limits. A nation may opt to provide this information directly to NMFS on an annual basis or to authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator for Fisheries determines that the requirements of 50 CFR 216.24(f)(9) are no longer being met or that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP. Every 5 years, the government of the harvesting nation, must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator for Fisheries.

The Assistant Administrator for Fisheries reviewed the application and documentary evidence submitted by the Government of Mexico and determined that the requirements under the MMPA to receive an affirmative finding have been met for the purposes of issuing an affirmative finding for the period April 1—March 31, 2001. On April 12, 2000, after consultation with the Department of State, NMFS issued an affirmative finding that removed the embargo and allows yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Mexican-flag purse seine vessels or vessels under Mexican jurisdiction greater than 400 short tons (362.8 metric tons) carrying capacity after March 3, 1999, to be imported into the United States. In subsequent years 2001 through 2004, the Assistant Administrator will determine on an annual basis whether the Government of Mexico is meeting the requirements under section 101 (a)(2)(B) and (C) of the MMPA. NMFS will use documentary evidence provided by the IATTC and the Department of State or by the harvesting nation on an annual basis to determine whether the finding should be renewed. If necessary, documentary evidence may also be requested from the Government of Mexico to determine whether the affirmative finding criteria are being met. A new application is due by the Government of Mexico if the affirmative finding lapses or is revoked. If the affirmative finding for the Government of Mexico is renewed after NMFS's annual review in the years 2001 to 2004, the Government of Mexico must submit a new application in early 2005 for an affirmative finding to be effective for the period April 1, 2005, through March 31, 2006, and subsequent years.

Dated: April 19, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–11446 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050100A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee and Advisory Panel, Habitat Committee and Advisory Panel, Enforcement Committee, and Gear Conflict Committee and Advisory Panel in May and June, 2000 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held between Wednesday, May 24, 2000 and Friday, June 2, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Peabody and Mansfield, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, May 24, 2000, at 9:30 a.m. and Thursday, May 25, 2000, at 8:30 a.m.—Scallop Committee and Scallop Advisory Panel Joint Meeting

Location: Kings Grant Inn, Trask Road, Route 128, Exit 21N, Danvers, MA 01923; telephone: (978) 774–6800; fax: (978) 774–6502.

The committee and advisors will review and finalize the draft management alternatives for Amendment 10 to the fishery management plan. Part of the meeting on May 24, 2000 will be a joint meeting with the Habitat Committee and its advisors.

Amendment 10 considers new area rotation systems to improve scallop yield, changes to the framework adjustment process and timing, modifications to the crew size limit, and possible trawl gear modifications to improve size selection. The purpose of this meeting will be to evaluate draft Amendment 10 alternatives, identify potential impacts, and recommend modifications to these conceptual alternatives so that the potential impacts are taken into account.

The committee will recommend these draft alternatives to the Council at its June 14–15, 2000 meeting for inclusion and analysis in the Draft Supplemental Environmental Impact Statement.

Wednesday, May 24, 2000, at 9:30 a.m.—Habitat Committee and Habitat Advisory Panel Joint Meeting

Location: Kings Grant Inn, Trask Road, Route 128, Exit 21N, Danvers, MA 01923; telephone: (978) 774–6800; fax: (978) 774–6502.

The committee and advisors will discuss and develop recommendations for Amendment 10 to the Sea Scallop Fishery Management Plan. The purpose of this joint meeting will be to evaluate draft Amendment 10 alternatives, identify potential impacts, and recommend modifications to these conceptual alternatives so that the potential impacts are taken into account. This meeting is being held jointly with the Scallop Oversight Committee meeting announced above.

Thursday, June 1, 2000, at 9:30 a.m.—Joint Scallop Oversight Committee and Enforcement Committee Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

The committee will discuss and develop recommendations for Amendment 10 to the Sea Scallop Fishery Management Plan. The purpose of this joint meeting will be to evaluate draft Amendment 10 alternatives, identify potential impacts, and recommend modifications to these conceptual alternatives so that the potential impacts are taken into account. Also, the committee will evaluate enforcement of general category permit gear restrictions and will hear a presentation by the NMFS Office of Law Enforcement on enforcement of day-at-sea and closed area regulations through the Vessel Monitoring System.

Friday, June 2, 2000, at 9:30 a.m.—Joint Scallop Oversight Committee and Gear Conflict Committee Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

The committee will discuss and develop recommendations for Amendment 10 to the Sea Scallop Fishery Management Plan. The purpose of this joint meeting will be to evaluate draft Amendment 10 alternatives, identify potential impacts, and recommend modifications to these conceptual alternatives so that the potential impacts are taken into account.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject for formal action during these meetings. 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.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 2, 2000.

Richard W. Surdi,

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

[FR Doc. 00–11447 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Reutilization and Marketing Service Customer Comment Card; OMB Number 0704–0394.

Type of Request: Extension.

Number of Respondents: 800.

Responses Per Respondent: 1.

Annual Responses: 800.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 200.

Needs and Uses: The information collection requirement is necessary to obtain customer rating and comments on the service of a Defense Reutilization and Marketing store. Respondents are customers who obtain or visit a store to obtain surplus or excess property. The customer comment card is a means for customers to rate and comment on aspects of the store's appearance, as an agent for service improvement, and for determining whether there is a systemic problem.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local, or Tribal Governments.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 2, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–11392 Filed 5–5–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Request for Approval for Qualification Training and Approval of Contractor Flight Crewmember, DD Forms 2627 and 2628; OMB Number 0704–0347.

Type of Request: Reinstatement.

Number of Respondents: 42.

Responses Per Respondent: 1.9.

Annual Responses: 81.

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 7.

Needs and Uses: The requirement to have government approval of contract flight crewmembers is in Defense Logistics Agency Manual (DLAM) 8210.1, Contractor's Ground and Flight Operations, Vol I, Chapter 6. The contractor provides a personal history and requests the government approve training in a particular type government aircraft (DD Form 2627). The contractor certifies the crewmember has passed a flight evaluation and, with the DD form 2628, requests approval of the personnel to operate and fly government aircraft. Without the approvals, the contractor cannot use their personal as requested.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 2, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–11393 Filed 5–5–00; 8:45 am]

BILLING CODE 5001–10–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Armed Forces Participation in Public Events; DD Forms 2535 and 2536; OMB Number 0704–0290.

Type of Request: Extension.

Number of Respondents: 43,000.

Responses Per Respondent: 1.

Annual Responses: 43,000.

Average Burden Per Response: 8 minutes (average).

Annual Burden Hours: 5,547.

Needs and Uses: The information collection requirement is necessary to evaluate the eligibility of events to receive Armed Forces community relations support and to determine whether requested military assets are available. Respondents are individuals or representatives of Federal and non-Federal government agencies, community groups, non-profit organizations, and civil organizations requesting Armed Forces support for patriotic events conducted in the civilian domain. DD Forms 2535 and 2536 record the type of military support requested, event data, and sponsoring organization information. The completed forms provide the Armed Forces the minimum information necessary to determine whether an event is eligible for military participation and whether the desired support is permissible and/or available. If the forms are not provided, the review process is greatly increased because the Armed Forces must make additional written and telephonic inquiries with the event sponsor. In addition, use of the forms reduces the event sponsor's preparation time because the forms provide a detailed outline of information required, eliminate the need for a detailed letter, and contain concise information necessary for determining appropriateness of military support. Use of the forms is essential to reduce preparation and processing time, increase productivity, and maximize responsiveness to the public.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 3, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–11394 Filed 5–5–00; 8:45 am]

BILLING CODE 5001–10–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 Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: 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 May 4, 2000. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 7, 2000.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

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 Group, 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: May 2, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Alternative Financing Program and the Alternative Financing Technical Assistance Program.

Abstract: The purpose of this program is to increase the availability of and expand opportunities for the purchase of assistive technology by creating State loan programs and to establish one grantee to give technical assistance to the States.

Additional Information: This program is a high priority initiative and a key part of the Administration's overall strategy to increase access to Assistive Technology services and devices for individuals with disabilities.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 1,680.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at (202) 708–6287 or via her internet 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. 00–11382 Filed 5–5–00; 8:4 5am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed funding priority for fiscal years 2000–2001 for one Disability and Rehabilitation Research Project (DRRP).

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes to establish a priority for one DRRP under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 2000–2001. The Assistant Secretary takes this action to focus research attention on an area of national need. We intend the priority to improve rehabilitation services and outcomes for individuals with disabilities. This notice contains a proposed priority under the Disability and Rehabilitation Research Projects and Centers Program for a DRRP on information technology technical assistance and training.

DATES: Comments must be received on or before June 7, 2000.

ADDRESSES: All comments concerning this proposed priority should be addressed to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3418, Switzer Building, Washington, DC 20202–2645. Comments may also be sent through the Internet: donna nangle@ed.gov.

You must include the term ''Disability and Rehabilitation Research Projects and Centers'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: donna nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audio tape, or computer diskette) on request to

the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3424, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

This proposed priority supports the National Education Goal that calls for every American to possess the skills necessary to compete in a global economy.

The authority for the Assistant Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762 and 764). Regulations governing this program are found in 34 CFR Part 350.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which the Assistant Secretary chooses to use one or more proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational.

Disability and Rehabilitation Research Projects

Authority for DRRPs is contained in section 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Proposed Priority

Under an 34 CFR 75.105(c)(3) the Assistant Secretary proposes to give an absolute preference to applications that meet the following priority. The Assistant Secretary proposes to fund under this competition only an application that meets this absolute priority.

Proposed Priority: Information Technology Technical Assistance and Training Center

Background

The emerging digital economy is fundamentally altering the way Americans work. The advent of powerful computers, high speed modems, sophisticated telecommunications networks, fiber optics, broadband network capacity, intranets, the Internet, the World Wide Web (WWW), and satellites has enabled computer and information experts to build a global information network that is unparalleled. These technologies, and how we use them, are undergoing rapid changes that result in a new wave of information flow that touches all facets of society, including education, employment and daily living. In this period of rapid technical, economic, and social change, access to electronic and information technologies is essential for everyone. Unfortunately, while the availability of information technology holds tremendous promise to level the playing field, the proliferation of electronic and information technologies does not guarantee accessibility and usability for individuals with disabilities.

The electronic and information technology industry has been growing at more than double the rate of the overall economy—a trend that is likely to continue (The Emerging Digital Economy II, a report by the U.S. Department of Commerce, June, 1999). Because of the increase in availability of the Internet, 20 million salaried workers telecommuted from their homes last year. That number is expected to reach 130 million by 2003 (InfoTech Trends, Fourth Quarter, 1998). Electronic mail, once considered an elite mode of communication for university-based researchers and scientists, is now routinely used by workers to instantly exchange visual and audible information in readable and reusable formats (*e.g.,* computer files, charts, figures, tables, images, databases, and software packages) using one of the estimated 14,000 Internet service providers worldwide (InfoTech Trends, Second Quarter, 1999).

In today's market, electronic and information technology product cycles are measured in months, not years. The same can be said for product lifetimes. This rapid proliferation of technologies has emphasized the need for universal design—a process whereby environments and products are designed with built-in flexibility so they are usable by as many people as possible, regardless of age and ability, at no additional cost to the user. Given the rapid evolution of each generation, new products often do not include universal design features, thus increasing the need for the expensive process of retrofitting.

Unfortunately, there is a shortage of individuals knowledgeable about the principles of universal design and the benefits of incorporating universal design features into electronic and information technologies. There is also a shortage of individuals trained to educate consumers, customer service professionals, technical writers, web developers, marketers, and other information technology related professionals about accessible and usable electronic and information technologies.

Congress has passed landmark legislation that increased access to electronic and information technology in a range of areas. These laws, and their provisions, include the Hearing Aid Compatibility Act of 1988, the Television Decoder Circuitry Act of 1990, the Americans with Disabilities Act (ADA) of 1990, the

Telecommunications Act of 1996, the Assistive Technology Act (AT Act) of 1998, and the Workforce Investment Act of 1998, which includes sections 504 and 508 of the Rehabilitation Act of 1973, as amended.

Section 255 of the Telecommunications Act of 1996 requires telecommunications service providers and equipment manufacturers to make their services and equipment accessible by persons with the full range of disabilities, if readily achievable. If a manufacturer or service provider claims this is not readily achievable, the manufacturer or service provider must still ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access. On July 19, 1999, the Federal Communications Commission (FCC) adopted rules and guidelines to implement section 255 of the Telecommunications Act.

Section 508 of the Rehabilitation Act of 1973, as amended, requires access to the Federal government's electronic and information technology. Section 508 applies to all federal departments and agencies when they develop, procure, maintain or use electronic and information technology. Federal departments and agencies must ensure equal access to, and use of, electronic and information technology for Federal employees with disabilities and members of the public seeking information or services from their agency comparable to those who do not have disabilities, unless such a requirement would cause an undue burden. The Access Board published a notice of proposed rulemaking in the **Federal Register** (65 FR 17345) on section 508 standards on March 31, 2000 and will publish final standards after analysis of comments received. Federal agencies will be responsible for complaints related to the procurement of accessible electronic and information technologies as of August 7, 2000. The Assistive Technology Act, 29 USC 3001, also requires that States receiving assistance, including subrecipients, under the State Grants program comply with the requirements of section 508, including the standards developed by the Access Board.

The regulations and standards for section 255 of the Telecommunications Act and section 508 of the Rehabilitation Act will have a profound impact on dozens of stakeholders, including, but not limited to, information technology manufacturers, product designers and engineers, technical writers, marketers, distributors, purchasers of information technologies, web developers and others. Currently there is a dearth of information and technical assistance available for stakeholders and other constituencies on how to comply with these regulations and standards. There is also a limited supply of skilled professionals capable of providing training and support on how to implement the requisite guidelines and standards for electronic and information technology.

A number of Federal agencies are collaborating to promote awareness about accessible electronic and information technologies, the benefits of incorporating universal design into these products, and the need for expanding capacity for training and technical assistance in this field. NIDRR, the General Services Administration, the Federal Communications Commission, and the Access Board are jointly supporting a multifaceted initiative that includes a demonstration center, multiple web pages, and technical assistance and training efforts, in partnership with industrial consortia and professional and trade associations. This priority relates to the need for expanding capacity for technical assistance and training for a broad array of constituents.

Priority: Information Technology Technical Assistance and Training Center

The Assistant Secretary proposes to establish an Information Technology Technical Assistance and Training Center to promote the wide spread use of accessible and usable electronic and information technology and to promote the benefits of universal design. In carrying out these purposes, the Information Technology Technical Assistance and Training Center must:

1. Design and implement a needs assessment that will determine the technical assistance and training needs relative to: a) implementing the final standards under section 508 of the Rehabilitation Act; b) the guidelines for section 255 of the Telecommunications Act; and c) promoting the principles of universal design. The needs assessment should target audiences including, but not limited to, State procurement officers, product designers and engineers, marketers, technical writers, web developers, consumer and disability-related organizations, service providers, human resource professionals, and relevant industrial consortia and professional and trade associations;

2. Based upon the findings of the needs assessment, develop, implement and evaluate relevant training materials and instructional modules that meet the requirements of section 255 of the Telecommunications Act and section 508 of the Rehabilitation Act, and address the principles of universal design;

3. Develop and disseminate training materials and instructional modules to States receiving AT Act funds on implementing the requirements of section 508 and its standards;

4. Provide information, training and technical assistance about section 255 of the Telecommunications Act, section 508 of the Rehabilitation Act, and the principles of universal design to appropriate constituencies, including the information technology and telecommunications industry, relevant industrial consortia, professional and trade associations, and States receiving AT Act funds;

5. Collaborate with the General Services Administration, the Federal Communications Commission, and the Access Board by contributing information and materials for the Government wide web site on Section 508;

6. Design and implement, in collaboration with the Federal Communications Commission, the Access Board, the Rehabilitation Engineering Research Center on Telecommunications Access and the telecommunications industry, a web site that contains information and instructional materials, including those developed under Activity 2, that can be used by telecommunications designers of equipment and services to develop and fabricate solutions that are in accordance with the guidelines for section 255 of the Telecommunications Act; and

7. Identify, implement, and disseminate strategies, in collaboration with industrial consortia and professional and trade associations, that will expand training capacity of the field and increase the knowledge base about accessible and usable electronic and information technology.

In addition to the activities proposed by the applicant to carry out these purposes, the Information Technology Technical Assistance and Training Center must:

- Collaborate with industry, industrial consortia, professional and trade associations, and States receiving AT Act funds on all relevant activities;

Coordinate on activities of mutual interest with NIDRR-funded projects including the Rehabilitation Engineering Research Centers on

Information Technology Access and Telecommunications Access and the Disability and Business Technical Assistance Centers; and

• Collaborate with relevant Federal agencies responsible for the administration of public laws that address access to and usability of electronic and information technology for individuals with disabilities including, but not limited to, the General Services Administration, the Access Board, the Federal Communications Commission, the Rehabilitation Services Administration, and other relevant Federal agencies identified by NIDRR.

Proposed Additional Selection Criterion

The Assistant Secretary will use the selection criteria in 34 CFR 350.54 to evaluate applications under this program. The maximum score for all the criteria is 100 points; however, the Assistant Secretary also proposes to use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points:

Within this absolute priority, we will give the following competitive preference to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of those strategies, we will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Applicable Program Regulations: 34 CFR Parts 350 and 353.

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Program Authority: 29 U.S.C. 761a(g) and 762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects)

Dated: May 3, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–11529 Filed 5–5–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on November 16, 1998, an arbitration panel rendered a decision in the matter of *Alabama Department of Rehabilitation Services* v. *U.S. Department of Defense, Department of the Air Force (Docket No. R–S/97–4).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(b) upon receipt of a complaint filed by petitioner, the Alabama Department of Rehabilitation Services.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged violation by the U.S. Department of Defense, Department of the Air Force (Air Force), of the priority provisions of the Act by the exclusion of the proposal submitted by the Alabama Department of Rehabilitation Services, the State licensing agency (SLA), from the competitive range for a full food service contract at Maxwell Air Force Base, Gunter Annex, Alabama. A summary of the facts is as follows: On July 2, 1996, the Air Force issued a request for proposal (RFP) for full food service at Maxwell Air Force Base, Gunter Annex, Alabama. The SLA responded to the RFP as the State licensing agency authorized to administer the Act in Alabama. In the SLA's proposal, a blind person was designated as the State's licensee, and Food Service, Inc. was identified as a subcontractor to the SLA.

The RFP specified that the technical criteria of management, production, quality control and safety would be used to evaluate the proposal. Following the technical evaluation of the proposal by the Air Force, the SLA was informed that its proposal was determined to be unacceptable under the management criteria. In excluding the SLA, the Air Force determined that the SLA's proposal had three primary deficiencies: (1) It failed to provide evidence of the

contractor's full understanding of the requirement for maintaining the SIMS computer system for the food service operation, in particular with regard to the contractor's role in providing contractor personnel identifications and passwords. (2) The proposed SIMS Administrator did not have the level of experience required by the solicitation. (3) The alternate SIMS Administrators did not have the experience required by the solicitation.

In October 1996, the Air Force issued four clarification/deficiency letters to the SLA requesting that the SLA respond to its concerns. In a letter dated November 20, 1996, the Air Force advised the SLA of its exclusion from the competitive range of the RFP. The letter referred to the three previously stated reasons as the basis for the Air Force's decision.

The SLA received the November 20th letter from the Air Force on November 22 and on November 27 filed a protest against the Air Force with the U.S. General Accounting Office (GAO). The SLA then learned that the Air Force had awarded a contract to a private concessionaire on November 22, 1996. On November 29, the SLA filed a supplemental protest with GAO alleging that the Air Force had violated the Federal Acquisition Regulation, which requires contracting officers to notify in writing an unsuccessful offeror at the earliest practicable time that its proposal is no longer in the competitive range.

On December 2, 1996, the Air Force filed a request for summary dismissal of the SLA's protest with GAO. On December 12, the SLA received notification that its protest had been dismissed. The SLA filed a request for arbitration with the Secretary of Education concerning this dispute. A Federal arbitration hearing on this matter was held on June 16, 1998.

Arbitration Panel Decision

The central issues before the arbitration panel were: (1) Did the Air Force reasonably and properly evaluate the proposal submitted by the SLA? (2) Did the Air Force comply with the legal requirements to conduct meaningful discussions with the SLA pursuant to the Act and implementing regulations? (3) Did the Air Force comply with the legal requirement to treat all offerors equally?

The majority of the panel ruled that the record demonstrated that the Air Force technical evaluation team evaluated the SLA's proposal reasonably and in accordance with the terms of the solicitation. The solicitation required that the proposed SIMS Administrator have 3 years experience performing complete system back-ups including daily back-ups, as well as 3 years experience in trouble-shooting the system. The offeror was required to provide resumes and other evidence that substantiated that its proposed SIMS Administrator satisfied this requirement. The record reflects that the SLA failed to do so.

The panel further found that, in order to show that it was improperly excluded from the competitive range, the burden of proof was on the SLA to show that the determinations concerning the unacceptability of its proposal were unreasonable. The majority of the panel concluded that the evidence failed to meet this burden. Further, the record showed that the Air Force evaluators reasonably reached each determination concerning the technical unacceptability of the SLA's proposal and the Air Force Contracting Officer reasonably excluded the SLA's proposal from the final competitive range. Accordingly, the panel found that the Air Force's evaluation of the SLA's proposal and decision to eliminate the SLA from the competitive range were reasonable, rational, proper, and in accordance with the requirements of the solicitation.

Concerning the second issue, regarding the alleged failure of the Air Force to conduct meaningful discussions with the SLA, the majority of the panel stated that, when conducting meaningful discussions, an agency merely must direct or lead offerors into areas of their proposals needing amplification. An agency is not obligated to give offerors all-encompassing negotiations, nor is the agency required to rewrite an offeror's proposal. The panel found that, in this procurement, the Air Force on several occasions informed the SLA representatives of the Air Force's concerns with regard to the SLA's SIMS experience and its role in maintaining the system.

Regarding the third issue, concerning the alleged failure of the Air Force to treat all offerors fairly, the majority of the panel found that the record fully supported the reasonableness of the Air Force's evaluation of the SLA's proposal. The panel further ruled that there was no evidence of unequal or unfair treatment. After fully considering the record, the majority of the panel ruled that the Air Force acted reasonably, properly, and in accordance with the solicitation in evaluating and excluding the proposal submitted by the SLA. Therefore, the complaint was denied.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U. S. Department of Education.

Dated: May 1, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–11345 Filed 5–5–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–221–002]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 27, 2000, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, Substitute Second Revised Sheet No. 14 with an effective date of April 1, 2000.

CNG states that the purpose of the filing is to comply with the Commission's April 18, 2000 letter order in this proceeding correcting the classification of Line H–156 to transmission as required by the Commission's order issued in Docket No. CP97–549–000.

CNG states that copies of this letter of transmittal and enclosures are being served upon parties listed on the official service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11359 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER000–1770–000]

Conectiv Energy Supply, Inc.; Notice of Issuance of Order

May 2, 2000.

On March 1, 2000, Conectiv, on behalf of its affiliates, Conectiv Delmarva Generation, LLC (CDG) and Conective Atlantic Generation, LLC (CAG) filed under section 205 of the Federal Power Act proposed market-based rates tariffs. In its filing, Conectiv also requested certain waivers and authorizations for CDG and CAG. In particular, Conectiv requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CDG and CAG. On April 25, 2000, the Commission issued an Order Accepting For Filing Proposed Service Agreements And Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's April 25, 2000 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CDG or CAG should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, CDG and CAG are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CDG and CAG compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CDG's and CAG's issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 25, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Borgers,

Secretary.

[FR Doc. 00–11351 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–28–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 28, 2000, Great Lake Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2000:

Fifth Revised Sheet No. 3
Fourth Revised Sheet No. 3A Fourth Revised Sheet No. 3B Fourth Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to 154.106(c) of the Commission's regulations. The revisions to the maps reflect the addition of the China meter station to Great Lakes' system, horsepower changes for two compressor stations, and other minor corrections.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11353 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–78–000]

Merchant Energy Group of the Americas, Inc.; Notice of Filing

May 2, 2000.

Take notice that on April 27, 2000, Merchant Energy Group of the Americas, Inc., Gener S.A., and TransAlta USA Inc. (Applicants) tendered for filing Exhibit H, the Stock Purchase Agreement (SPA), to accompany the joint application under Section 203 of the Federal Power Act filed by the Applicants on April 13, 2000. Pursuant to 18 CFR 388.112, Applicants request confidential treatment of the SPA.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 15, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11366 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–218–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

May 2, 2000.

Take notice that on April 27, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective April 16, 2000.

Natural states that these tariff sheets were filed in compliance with the Commission's ''Order Accepting and Suspending Tariff Sheets Subject to Refund and Other Conditions'' issued April 12, 2000 in Docket No. RP00–218–000 related to Natural's implementation of new Rate Schedule IBS (interruptible imbalance management service).

Natural states that copies of the filing have been mailed to its customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP00–218.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11358 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–256–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 28, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourteenth Revised Sheet No. 22, to be effective June 1, 2000.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions (GT&C) of its Tariff as the fourteenth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Commission promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines.

Natural requested waivers of Section 21 of the GT&C of its Tariff and the Commission's Regulations to the extent necessary to permit Fourteenth Revised Sheet No. 22 to become effective June 1, 2000.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11361 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–257–000]

Ozark Gas Transmission, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 28, 2000, Ozark Gas Transmission, L.L.C. (OGT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 1, 2000:

First Revised Sheet No. 13
First Revised Sheet No. 17
First Revised Sheet No. 46
First Revised Sheet No. 47
First Revised Sheet No. 80

OGT states that the proposed rate changes would increase OGT's revenues from jurisdictional transportation services by approximately $6.4 million, based on the twelve-month period ended December 31, 1999, as adjusted, compared with the underlying rates approved in the Commission's 1998 certificate order which approved the combination of two pipeline systems into what is now the OGT system. Ozark Gas Transmission Sys., et al., 84 FERC ¶ 61,002, reh'g granted in part, 85 FERC ¶ 61,329 (1998).

OGT states that the adjustments in rates are attributable to: (a) a change in the required rate of return and related taxes; (b) a reduction in the depreciation rate to be applied to transmission plant; (c) changes in operation and maintenance expenses and the inclusion of income taxes not reflected in the currently effective rates; (d) revised system rate design quantities; and (e) a reduction in the percentage governing fuel retention to reflect decreased fuel requirements.

OGT further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11362 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–59–001]

Petal Gas Storage, L.L.C.; Notice of Site Visit

May 2, 2000.

On May 11, 2000, the Office of Energy Projects staff will be conducting a precertificate inspection of the facilities proposed by Petal Gas Storage, L.L.C. (Petal) in the above-referenced docket. The inspection will begin at Petal's existing plant site near Hattiesburg, in Forrest County, Mississippi, at approximately 1:00 p.m., and proceed to examine the proposed new compressor station and pipeline route on the ground via automobile.

All parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 00–11349 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–255–000]

Petal Gas Storage, L.L.C.; Notice of Request for Waiver

May 2, 2000.

Take notice that on April 27, 2000, Petal Gas Storage, L.L.C. (Petal), tendered for filing a Request for Waiver of the Internet/interactive web site requirements of the Commission's Order No. 587–I.

Petal states that it is a small company with only two active customers and relatively low volumes. Petal further states that it maintains an electronic bulletin board (EBB) for informational postings and that none of its customers have requested an interactive web site. Petal furthers states that it will agree to implement an interactive web site if its customers request it or its business changes significantly in the future.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 9, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11360 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–108–000]

Questar Pipeline Company; Notice of Postponement of Technical Conference

May 2, 2000.

Take notice that the technical conference scheduled for Wednesday, May 3, 2000, in the above-referenced proceeding has been rescheduled at the request of the parties.

The conference will be rescheduled for Thursday, May 18, 2000, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–11357 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–1717–000, ER00–1742–000, ER00–1746–000, ER00–1792–000, ER00–1779–000, ER00–1804–000, ER00–1805–000, ER00–1803–000, ER00–1814–000, ER00–1844–000, ER00–1851–000, ER00–1858–000, ER00–1858–001 (Not consolidated)]

Reliant Energy Shelby County, LP, et al.; Notice of Issuance of Order

May 2, 2000.

Reliant Energy Shelby County, LP, Madison Windpower, LLC, DTE Georgetown, LLC, Liberty Generating Company, LLC, Union Power Partners, L.P., Panda Leesburg Power Partners, L.P., Panda Midway Power Partners, South Eastern Generating Corporation, Avista Turbine Power, Inc., Lamar Power Partners, LP, Pleasant Hill Marketing, LLC, and New Hampshire Electric Cooperative, Inc., (collectively, ''the Applicants'') filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On April 25, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's April 25, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants

have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 25, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us/* online/rims.htm (call 202–208–2222 for asssitance).

David P. Boergers,

Secretary.

[FR Doc. 00–11350 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES00–26–000]

Smarr EMC; Notice of Filing

May 2, 2000.

Take notice that on April 27, 2000, Smarr EMC (Smarr) submitted an application seeking authorization under Section 204 of the Federal Power Act. Smarr seeks authorization to borrow up to $195 million under a loan agreement, or replacements therefor or renewals thereof, with the National Rural Utilities Cooperative Finance Corporation (CFC) over a two-year period.

Smarr also requests a waiver of the Commission's competitive bidding and negotiated placement requirements in 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 22, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11348 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–26–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 21, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of April 1, 2000.

Transco states that the purpose of the filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of Section 19 of the General Terms and Conditions of Transco's Third Revised Volume No. 1. Transco states that the tariff sheets have been revised to include changes as a result of the termination of the Rate Schedule FT service agreement with Prior Energy Corporation and the associated open season. Transco states that also included in the filing are tariff sheets which update the Index of Daily Facility Group and Delivery Point Entitlements and Related Maps.

Transco states that copies of the filing are being mailed to each of its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11352 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–258–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 28, 2000, Trunkline LNG Company (TLNG) tendered for filing the following revised tariff sheet as part of its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 2000:

Fourth Revised Sheet No. 1

TLNG states that the purpose of this filing, made in accordance with the provisions of Section 154.602 of the Commission's Regulations, is to cancel TLNG's FERC Gas Tariff, Original Volume No. 1 in its entirety. The last effective rate schedule, Rate Schedule PLNG–2, was abandoned and canceled effective April 1, 1999 by the Commission's Order Approving Abandonment issued July 9, 1999 in Docket No. CP99–525–000 and the Commission's Order Accepting Tariff Sheets and Refund Plan issued March 15, 2000 in Docket No. RP92–122–008 (lead docket Trunkline Gas Company Docket No. RP87–15–036). All of the rate schedules in TLNG's Original Volume No. 1 have been canceled and no customers are affected by this filing. Therefore, TLNG proposes to cancel its Original Volume No. 1 in its entirety. TLNG will continue to offer open access service under its FERC Gas Tariff, Original Volume No. 1–A.

TLNG states that copies of this filing are being served on applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11363 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–259–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 28, 2000, Trunkline LNG Company (TLNG) tendered for filing the following revised tariff sheets for inclusion in its FERC Gas Tariff, Original Volume No. 1–A, to be effective June 1, 2000:

Second Revised Sheet No. 21
Second Revised Sheet No. 25
First Revised Sheet No. 65
First Revised Sheet No. 66
First Revised Sheet No. 114
Fourth Revised Sheet No. 115

TLNG states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to remove references to TLNG's Rate Schedule PLNG–2 which was abandoned and canceled effective April 1, 1999 by the Commission's Order Approving Abandonment issued July 9, 1999 in Docket No. CP99–525–000 and the Commission's Order Accepting Tariff Sheets and Refund Plan issued March 15, 2000 in Docket No. RP92–122–008 (Lead Docket No. RP87–15–036).

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11364 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–27–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 28, 2000, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the following revised tariff sheet to be effective June 1, 2000.

First Revised Sheet No. 4

TLNG states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the system map to shoe the interconnect with Trunkline Gas Company and to delete other images of facilities owned by Trunkline Gas Company.

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11389 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–29–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

May 2, 2000.

Take notice that on April 28, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 28, 2000:

Seventh Revised Sheet No. 5
Fifth Revised Sheet No. 6A
Fifth Revised Sheet No. 8
Sixth Revised Sheet No. 9

Williston Basin states that the revised tariff sheets are being filed simply to update its System Maps with the most recent information available.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11354 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2517–008, et al.]

XENERGY,Inc., et al.; Electric Rate and Corporate Regulation Filings

May 2, 2000.

Take notice that the following filings have been made with the Commission:

1. XENERGY, Inc.

[Docket No. ER97–2517–008]

Take notice that on April 26, 2000, XENERGY, Inc. (XENERGY), tendered for filing an amendment to its March 3, 2000 notice of status change in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). This amendment involves XENERGY's code of conduct to incorporate CMP as an affiliate.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. NYSEG Solutions, Inc.

[Docket No. ER99–220–006]

Take notice that on April 26, 2000, NYSEG Solutions, Inc., tendered for filing an amendment to its March 3, 2000 notice of status change in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). This amendment involves NYSEG Solutions, Inc.'s code of conduct to incorporate CMP as an affiliate.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. New York State Electric & Gas Corporation

[Docket No. ER99–221–003]

Take notice that on April 26, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing an amendment to its March 3, 2000 notice of status change in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). This amendment involves NYSEG's code of conduct to incorporate CMP as an affiliate.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Mid-Continent Area Power Pool

[Docket No. ER99–2649–002]

Take notice that on April 26, 2000, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, tendered for filing amendments to MAPP's Line Loading Relief procedure incorporating the North American Electric Reliability Council's transmission loading relief procedures for initial curtailments of non-firm transmission service.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Energy East South Glens Falls LLC

[Docket No. ER00–262–002]

Take notice that on April 26, 2000, Energy East South Glens Falls LLC (South Glens Falls), tendered for filing an amendment to its March 3, 2000 notice of status change in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). This amendment involves South Glens Falls' code of conduct to incorporate CMP as an affiliate.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Energy Corporation Operating Companies

[Docket No. ER00–1319–001]

Take notice that on April 26, 2000, Wisconsin Energy Corporation Operating Companies tendered for filing its compliance filing in accordance with the Commission's March 28, 2000 order in this proceeding, Wisconsin Energy Corporation Operating Companies, 90 FERC ¶ 61,298 (2000).

Copies of the filing have been served on all transmission service customers, the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. San Joaquin Cogen Limited

[Docket No. ER00–1517–001]

Take notice that on April 26, 2000, San Joaquin Cogen Limited (San Joaquin), tendered for filing revisions to its market based rate tariff in compliance with the March 29, 2000 Order issued in this proceeding.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Central Power and Light Company

[Docket No. ER00–2296–000]

Take notice that on April 25, 2000, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies) tendered for filing an Interconnection Agreement between CPL and Gregory Power Partners, L.P. (GPP) and a service agreement under which GPP will take ancillary services pursuant to Parts I and IV of the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies request that the Interconnection Agreement and the service agreement be accepted to become effective as of April 26, 2000. Accordingly, the CSW Operating Companies request waiver of the Commission's notice requirements.

CPL states that a copy of the filing was served on GPP and the Public Utility Commission of Texas.

Comment date: May 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER00–2297–000]

Take notice that on April 26, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing changes to Market Rules 1, 4 and 5 and requested expedited consideration of these changes.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company

[Docket No. ER00–2298–000]

Take notice that on April 26, 2000, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Conectiv Energy Supply, Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission

and the South Carolina Public Service Commission.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Consumers Energy Company

[Docket No. ER00–2299–000]

Take notice that on April 26, 2000, Consumers Energy Company (CECo), tendered for filing a Wholesale Market Based Rate Tariff and a pro forma Service Agreement.

CECo seeks an effective date of June 1, 2000 for all of the tariff sheets submitted with this filing.

CECo states that its Wholesale Market Based Rate Tariff, and pro forma Service Agreement, are being filed in order to implement a pro forma tariff prepared by a group of representatives from various segments of the electric industry and to facilitate a standardized master power purchase and sale agreement.

CECo states that it does not propose to eliminate either its currently effective market-based Power Sales Tariff accepted for filing effective October 28, 1998 in Docket No. ER98–4421–000, nor its cost-based power sales tariff accepted for filing effective January 1, 1997 in Docket No. ER97–696–000.

Copies of this filing have been sent to the Michigan Public Service Commission.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Wayne-White Counties Electric Cooperative

[Docket No. ER00–2300–000]

Take notice that on April 26, 2000, Wayne-White Counties Electric Cooperative (WWCEC), tendered for filing an executed umbrella service agreement under which WWCEC will make market-based power sales under its Market-Based Rate tariff, Rate Schedule FERC No. 1, to Illinois Power.

WWCEC requests an effective date of April 1, 2000, for the umbrella service agreement.

WWCEC states that a copy of the filing has been served on Illinois Power.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Public Service Company

[Docket No. ER00–2301–000]

Take notice that on April 26, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with South Plains Electric Cooperative, Inc., (South Plains). This umbrella service agreement provides for Southwestern's sale and South Plain's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Public Service Company

[Docket No. ER00–2302–000]

Take notice that on April 26, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with West Texas Municipal Power Agency (WTMPA). This umbrella service agreement provides for Southwestern's sale and WTMPA's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Central Illinois Light Company

[Docket No. ER00–2303–000]

Take notice that on April 26, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, Statoil Energy Services, Inc.

CILCO requested an effective date of April 17, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Light Company

[Docket No. ER00–2304–000]

Take notice that on April 26, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, Statoil Energy Services, Inc.

CILCO requested an effective date of April 17, 2000.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Tampa Electric Company

[Docket No. ER00–2305–000]

Take notice that on April 26, 2000, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Seminole Electric Cooperative, Inc. (Seminole) under Tampa Electric's market-based sales tariff. Tampa Electric proposes that the service agreement be made effective on May 15, 2000.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. It's Electric & Gas, L.L.C.

[Docket No. ER00–2306–000]

Take notice that on April 26, 2000, It's Electric & Gas, L.L.C. (It's Electric), petitioned the Commission for acceptance of It's Electric's FERC Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and waiver of certain Commission regulations.

It's Electric intends to engage in wholesale electric power and energy purchases and sales as a marketer or broker. It's Electric is not in the business of generating or transmitting electric power. It's Electric is a wholly-owned subsidiary of Strine Enterprises.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of New Mexico

[Docket No. ER00–2307–000]

Take notice that on April 26, 2000, Public Service Company of New Mexico (PNM), tendered for filing a unilaterally executed service agreement, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff, with the City of Banning (dated April 5, 2000). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to the City of Banning and to the New Mexico Public Regulation Commission.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER00–2308–000]

Take notice that on April 26, 2000, Entergy Services, Inc. (Entergy

Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing the Power Coordination and Interchange Agreement (Coordination Agreement) between Entergy Arkansas, Inc., and City Water and Light Plant of the City of Jonesboro, Arkansas.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Energy Supply Company, L.L.C.; The Potomac Edison Company; West Penn Power Company

[Docket No. ER00–2309–000]

Take notice that on April 26, 2000 Allegheny Energy Supply Company, L.L.C. (AE Supply), The Potomac Edison Company (''Potomac''), and West Penn Power Company (West Penn) (together, Potomac and West Penn are referred to as Allegheny Power), tendered for filing their ''First Amended Purchase and Sale Agreement for Ancillary Services between Allegheny Power and Allegheny Energy Supply Company, L.L.C.'' The amendment adds Potomac to the Agreement and establishes a default price cap for affiliated energy imbalance sales all as more fully explained in the Application.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Metropolitan Edison Company

[Docket No. ER00–2310–000]

Take notice that on April 26, 2000, Metropolitan Edison Company (doing business as GPU Energy), tendered for filing a letter amendment to the Generation Facility Transmission Interconnection Agreement between GPU Energy and AES Ironwood, L.L.C.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. PJM Interconnection, L.L.C.

[Docket No. ER00–2311–000]

Take notice that on April 26, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing 7 executed service agreements for network integration transmission service and for point-to-point transmission service under the PJM Open Access Transmission Tariff. These agreements are with Conectiv Energy Supply, Inc., NUI Energy Brokers, Inc. and Southern Company Retail Energy Marketing, L.P.

Copies of this filing were served upon the parties to the service agreements and the state commissions within the PJM control area.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Electric Power Company

[Docket No. ER00–2312–000]

Take notice that on April 26, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a revision to its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2). The revision to Service Schedule A, B and C clarifies that the cost of Wisconsin Electric's retail interruptible service options to be recovered in the definition of Out of Pocket costs.

Wisconsin Electric respectfully requests an effective date May 1, 2000. Wisconsin Electric requests waiver of the Commission's advance notice requirements.

Copies of the filing have been served on all current customers under the Coordination Sales Tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. NRG Energy Center Paxton, Inc.

[Docket No. ER00–2313–000]

Take notice that on April 26, 2000, NRG Energy Center Paxton, Inc. (Seller), a corporation organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Seller's proposed FERC Electric Tariff (Market-Based Rate Tariff); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is an indirect wholly-owned subsidiary of NRG Energy, Inc.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. NRG Power Marketing, Inc.

[Docket No. ER00–2314–000]

Take notice that on April 26, 2000, NRG Power Marketing, Inc., tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that NRG Power Marketing, Inc., had completed all the steps for pool membership. NRG Power Marketing, Inc., requests that the Commission amend the WSPP Agreement to include it as a member.

NRG Power Marketing, Inc., requests an effective date of April 25, 2000 for the proposed amendment. Accordingly, NRG Power Marketing, Inc., requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Duquesne Light Company; Orion Power MidWest, L.P.

[Docket No. ER00–2315–000]

Take notice that on April 26, 2000, Duquesne Light Company and Orion Power MidWest, L.P., tendered for filing under Section 205 of the Federal Power Act a reactive supply and voltage control service agreement. The agreement is a result of the purchase of Duquesne's generation facilities by Orion Power MidWest, previously approved by the Commission, and Orion Power MidWest's resulting ownership of baseload generating units within Duquesne's control area.

A copy of the filing was served upon the Pennsylvania Public Utility Commission.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Entergy Services, Inc.

[Docket Nos. ER99–3084–003; ER99–3093–003; ER99–3133–003; ER99–3175–003; ER99–3176–003; ER99–3188–003; ER99–3252–003; ER99–3315–003; ER99–3960–002]

Take notice that on April 26, 2000, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a compliance filing in accordance with the Commission's March 17 order in Entergy Services, Inc., 90 FERC ¶ 61,272 (2000), directing that Entergy submit a compliance refund report.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–11347 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission Soliciting Additional Study Requests and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

May 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2312–014.

c. *Date Filed:* March 31, 2000.

d. *Applicant:* PP&L Great Works, L.L.C.

e. *Name of Project:* Great Works Hydro Project.

f. *Location:* On the Penobscot River in Penobscot County, near Old Town, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert Burke, Esq., Vice President, Chief Council and Secretary, PP&L Great Works, L.L.C., 11350 Random Hills Road, Suite 400, Fairfax, VA 22030, (703) 293–2600.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Comment Date:* 60 days from the filing date of license application.

All documents (original and eight copies) should be filed with: David P. Boegers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. *Description of Project:* The existing Great Works Project consists of: (1) The Great Works Dam; (2) a 160-acre reservoir; (3) a 182-foot-long non-overflow structure; (4) an uncontrolled 850-foot-long concrete and timber crib spillway; (5) a 230-foot-long Denil fishway at the powerhouse; (6) a 216-foot-long powerhouse integral with the dam housing 11 generating units for a total installed capacity of 7,655-kW; (7) a 250-foot-long Denil fishway at the spillway; and (8) appurtenant facilities. Penobscot Hydro estimates that the total average annual generation would be 23, 640 MWh. The applicant is not proposing any changes to its powerhouse, generating units and equipment. Modifications are proposed to both upstream fish passage facilities and the downstream bypass, and the project dam.

l. With this notice, we are initiating consultation with the *Maine State Historic Preservation Officer (SHPO),* as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date of this application and serve a copy of the request on the applicant.

n. Procedural schedule and final amendments: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing

Notice of NEPA Scoping (unless scoping has already occurred)

Notice of application is ready for environmental analysis

Final amendments to the application must be filed with the Commission*

Notice of the availability of the draft NEPA document

Notice of the availability of the final NEPA document

Order issuing the Commission's decision on the application

David P. Boergers,

Secretary.

[FR Doc. 00–11355 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

* Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Transfer License and Soliciting Comments, Motions To Intervene, and Protests

May 2, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Approval to Transfer License.

b. *Project No.:* 7352–024.

c. *Date Filed:* April 14, 2000.

d. *Applicants:* Kings Falls Power Corporation and Tug Hill Energy, Inc.

e. *Name of Project:* Kings Falls Hydroelectric Project.

f. *Location:* On the Deep River, in Lewis County, New York near the towns of Copenhagen and West Carthage. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Kings Falls, (a) F. Michael Tucker, Kings Falls Corporation c/o Mercer Companies, Inc., 3 E-Comm2, Albany, New York 12207, (518) 434–1311 (b) William J. Madden, Jr., John A. Whittaker IV, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502, (202) 371–5700, Tug Hill, (a) John J. Furman, President, Tug Hill Energy, Inc., 200 High Street, Suite 3B, Windsor, Connecticut, 06095–1100, (860) 688–2977, (b) Addison F. Vars III, Mentor, Rudin & Trivelpiece, P.C., 120 Washington Street, Suite 500, Watertown, New York 13601–3300, (315) 786–7950.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: *lynn.miles@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* May 31, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (7352–024) on any comments or motions filed.

k. *Description of Request:* Kings Fall Power Corporation (transferor) and Tug Hill Energy, Inc. (transferee) jointly request to close all underlying transactions regarding the Kings Falls Hydroelectric Project. Both applicants further state that due to the financial commitments relating to the sale of the project they both desire to have the Commission to issue an Order

Approving Transfer of License no later than June 30, 2000.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http: www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriation actions to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–11356 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to Surrender Exemption

May 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Conduit Exemption.

b. *Project No.:* P–6274–005.

c. *Date Filed:* March 22, 2000.

d. *Applicant:* Herbert H. Beckwith.

e. *Name of Project:* Paradise Irrigation District, Projects C and D.

f. *Location:* The project is located on an unnamed tributary to Concaw Reservoir in Butte County, California (Paradise Irrigation District).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Herbert H. Beckwith, 1428 S. Marengo Ave., Alhambra, CA 91803–3001.

i. *FERC Contact:* James Martin at *james.martin@ferc.fed.us,* or telephone (202) 208–1046.

j. *Deadline for filing comments, motions, or protests:* June 26, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–6274–005) on any comments or motions filed.

k. *Description of Project:* Herbert H. Beckwith requests to surrender the exemption for his Paradise Irrigation District, Projects C and D. Project C has two generating units with a combined rating of 45 kW. Project D has two generating units with a combined rating of 60 kW.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by the agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of any agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–11365 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6602–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Mobile Air Conditioner Retrofitting Program

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:

Title: Mobile Air Conditioner Retrofitting Program, OMB Control Number 2060–0350, expiration date 5/31/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 7, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://ww.epa.gov/icr* and refer to EPA ICR No. 1774.02. For Technical questions about the ICR contact Anhar Karimjee at (202) 564–2683.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Activities Associated with EPA's Mobile Air Conditioner Retrofitting Program, OMB Control Number 2060–0350, EPA ICR Number 1774.02, expiration date 5/31/00. This is a request for extension of a currently approved collection.

Abstract: EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. The purpose of this Information Collection Request (ICR) is to estimate the burden associated with the 40 Code of Federal Regulations part 82 requirement that service technicians label mobile air conditioners with information about new refrigerants when they retrofit a system. These labels acknowledge that the retrofitting has been completed, and that the mobile air conditioner cannot accept chloroflourocarbon (CFC) refrigerant. In addition, the labels provide essential information to technicians about the specific refrigerant used in the air conditioning system. This information assists the technician in avoiding service practices that might result in cross-contamination and system failure. Responses to the collection of information are mandatory (section 612 of the Clean Air Act and 40 Code of Federal Regulations part 82).

An agency may not conduct or sponsor, and a person is not required to respond to, collection of information unless it displays a currently valid OMB control number. The OMB control numbers of EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/10/99; No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 minutes per response. Burden means that 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: Service technicians at new and used car dealers, gas service stations, top and body repair shops, general automotive repair shops, automotive repair shops not elsewhere classified, including air conditioning and radiator specialty shops.

Estimated Number of Respondents; 140,000.

Frequency of Response: Once per retrofitted car.

Estimated Total Annual Hour Burden: 416,667 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $500,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1774.02 and OMB Control No. 2060–0350 in any correspondence.

Ms. Sancy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Divison (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–11431 Field 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6601–8]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of Two New Reference Methods for $PM_{2.5}$ and Four New Equivalent Methods for O_3, SO_2, NO_2, and Pb

AGENCY: Environmental Protection Agency.

ACTION: Notice of designation.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, two new reference methods for measuring concentrations of $PM_{2.5}$ and four new equivalent methods for measuring concentrations of O_3, SO_2, NO_2, and Pb (respectively) in ambient air.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, NC 27711. Phone: (919) 541–2622, email: mcelroy.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the National Ambient Air Quality Standards. EPA hereby announces the designation of two new reference methods for measuring

concentrations of $PM_{2.5}$ in ambient air and four new equivalent methods for measuring O_3, SO_2, NO_2, and Pb (respectively) in ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference methods for $PM_{2.5}$ are manual monitoring methods based on particular, commercially available $PM_{2.5}$ samplers. The newly designated methods are identified as follows:

RFPS–0400–135, ''URG–MASS100 Single PM 2.5 FRM Sampler,'' operated with software (firmware) version 4B or 5.0.1, configured for ''Single 2.5'' operation, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, and in accordance with the URG–MASS100 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR part 50, Appendix L.

RFPS–0400–136, ''URG–MASS300 Sequential PM 2.5 FRM Sampler,'' operated with software (firmware) version 4B or 5.0.1, configured for ''Multi 2.5'' operation, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, and in accordance with the URG–MASS300 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR part 50, Appendix L.

The application for reference method determinations for these methods was received by EPA on July 27, 1998, and a notice of the receipt of the application was published in the **Federal Register** on October 29, 1998. The methods are available commercially from the applicant, URG Corporation, 116 S. Merritt Mill Road, Chapel Hill, NC 27516.

The new equivalent methods for O_3, SO_2, and NO_2 are automated methods (analyzers) that utilize a measurement principle based on differential optical absorption spectroscopy (DOAS) and measure pollutant concentrations directly in the atmosphere over a long, open path up to 500 meters in length, using a particular commercially available monitoring system. These newly designated methods are identified as follows:

EQOA–0400–137, Environnement S.A. Model SANOA Multigas Longpath Air Quality Monitoring System, consisting of a receiver, one or more projectors, interface unit, a user-provided control unit computer running the SANOA VisionAIR software, and associated incidental equipment; configured for measuring O_3, with the temperature control and internal calibration cell options installed, operated with a measurement range of 0 to 0.5 ppm, over an installed monitoring path length of between 27 and 500 meters, within an ambient air temperature range of −30 to +45°C, with a measurement (integrating) time of 180 seconds, and with or without external temperature and barometric pressure sensors or any of the following options: external (meteo) input connection, series 1M bus connection, OGR type projector, analog outputs. A high-concentration ozone generator, part # 80–231–03, or the SONIMIX 7121B calibration system is recommended for calibration or accuracy auditing.

EQSA–0400–138, Environnement S.A. Model SANOA Multigas Longpath Air Quality Monitoring System, consisting of a receiver, one or more projectors, interface unit, a user-provided control unit computer running the SANOA VisionAIR software, and associated incidental equipment; configured for measuring SO_2, with the temperature control and internal calibration cell options installed, operated with a measurement range of 0 to 0.5 ppm, over an installed monitoring path length of between 27 and 500 meters, within an ambient air temperature range of −30 to +45°C, with a measurement (integrating) time of 180 seconds, and with or without external temperature and barometric pressure sensors or any of the following options: external (meteo) input connection, series 1M bus connection, OGR type projector, analog outputs.

EQNA–0400–139, Environnement S.A. Model SANOA Multigas Longpath Air Quality Monitoring System, consisting of a receiver, one or more projectors, interface unit, a user-provided control unit computer running the SANOA VisionAIR software, and associated incidental equipment; configured for measuring NO_2, with the temperature control and internal calibration cell options installed, operated with a measurement range of 0 to 0.5 ppm, over an installed monitoring path length of between 27 and 500 meters, within an ambient air temperature range of −30 to +45°C, with a measurement (integrating) time of 180 seconds, and with or without external temperature and barometric pressure sensors or any of the following options: external (meteo) input connection, series 1M bus connection, OGR type projector, analog outputs.

Applications for equivalent method determinations for these methods were received by EPA on February 17, 1999, June 28, 1999, and July 23, 1999, respectively. A notice of the receipt of these applications was published in the **Federal Register** on October 12, 1999. The methods are available commercially from the applicant, Environnement S.A., 111 Boulevard Robespierre, 78304 Poissy, France.

The new equivalent method for lead (Pb) is a manual method that uses the sampling procedure specified in the Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air (40 CFR part 50, Appendix G), with an alternative analytical procedure. The method is identified as follows:

EQL–0400–140, ''Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Plasma—Atomic Emission Spectrometry (TNRCC).''

The application for an equivalent method determination for this method was submitted by the Texas Natural Resource Conservation Commission Laboratory, 5144 E. Sam Houston Parkway N., Houston, TX 77030 and was received by the EPA on March 1, 2000.

Test samplers, test analyzers, or the analytical procedure representative of each of these methods have been tested by the respective applicants in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the respective applicants, EPA has determined, in accordance with part 53, that each of these methods should be designated as a reference or equivalent method, as appropriate. The information submitted by the applicants will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As designated reference and equivalent methods, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, each method must be used in strict accordance with the operation or instruction manual associated with the method, any specifications and limitations (*e.g.*, sample period, flow rate, or path length) specified in the applicable method designation description (see identifications of the methods above), and the specifications and requirements set forth in Appendixes G, or L to 40 CFR part 50, as applicable. Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Guidance Document 2.12'' and the ''Quality Assurance Handbook, Volume II'' (both available at www.epa.gov/ttn/amtic). Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such

methods by users are specified under section 2.8 of Appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable perfor-mance specifications given in parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR part 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-certified facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these new reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of any of these methods should be directed to the appropriate applicant.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 00–11430 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6602–4]

Adequacy Status of the Submitted Revised Carbon Monoxide Attainment Demonstration for the New Jersey Portion of the New York-Northern New Jersey-Long Island Moderate Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that the motor vehicle emissions budget for carbon monoxide in the submitted revised attainment demonstration for the New Jersey portion of the New York-Northern New Jersey-Long Island nonattainment area is adequate for transportation conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the New Jersey portion of the New York-Northern New Jersey-Long Island nonattainment area must use the motor vehicle emission budget from this submitted revised carbon monoxide attainment demonstration for future conformity determinations.

DATES: This finding is effective May 23, 2000.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns, Mobile Source Team, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th Floor, New York New York 10007–1866, (212) 637–3895, cairns.matthew@epa.gov.

The finding and the response to comments will be available at EPA's conformity website: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

SUPPLEMENTARY INFORMATION:

Background

Today's document is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New Jersey Department of Environmental Protection on April 6, 2000, stating that the motor vehicle emissions budget for carbon monoxide in the submitted revised attainment demonstration (dated December 10, 1999) for the New Jersey portion of the New York-Northern New Jersey-Long Island nonattainment area is adequate for transportation conformity purposes. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures

for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described out process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671 q.

Dated: April 6, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–11432 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6602–6]

Office of Research and Development Board of Scientific Counselors Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's Board of Scientific Counselors (BOSC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. section 9(c). The purpose of the BOSC is to provide advice and recommendations to the Assistant Administrator for the Office of Research and Development (ORD) on issues associated with ORD's research program. It is determined that the BOSC is in the public interest in connection with the performance of duties imposed on the Agency by law. Inquiries may be directed to Shirley Hamilton, Designated Federal Officer, U.S. EPA, Office of Research and Development (mail code 8701–R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Dated: May 3, 2000.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 00–11434 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6600–7]

Notice of Sixth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement meeting.

SUMMARY: This notice announces the Sixth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. The purpose of this Task Force consisting of Federal, State, and Tribal members, is to lead efforts to coordinate and support nutrient management and hypoxia-related activities in the Mississippi River and Gulf of Mexico watersheds. The major matter to be discussed at the meeting is what should be included in a draft Action Plan which will be available for public comment. This plan of action is required by section 604(b) of the Harmful Algal Blooms and Hypoxia Research Control Act (Public Law 105–383—Coast Guard Authorization Act of 1998). The public will be afforded an opportunity to provide input to the Task Force during open discussion periods. The room accommodates approximately 125 people. Those who plan to make a statement are asked to indicate their intention to Dr. Belefski (Contact Information below).

DATES: The meeting will be held at 1 p.m.–5 p.m., June 15, 2000, and 8 a.m.—12 p.m., June 16, 2000.

ADDRESSES: The meeting will be held at the St. Louis Marriott Pavilion Downtown Hotel, One Broadway, St. Louis, MO; (314) 421–1776 or 1(800) 228–9290.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), Mail Code 4503F, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, telephone (202)-260–7061; Internet: belefski.mary@epa.gov. For additional information on hotel accommodations contact Marquietta Davis, Tetra Tech, Inc., 10306 Eaton Place, Suite 340, Fairfax, Virginia 22030, telephone: (703) 385–6000; Internet:davisma@tetratech-ffx.com.

Dated: May 2, 2000.

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 00–11429 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6600–6]

Project XL Proposed Final Project Agreement: Georgia-Pacific Corporation Big Island, Virginia XL Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is requesting comments on a proposed Project XL Final Project Agreement (FPA) for the Georgia-Pacific Corporation Big Island, Virginia XL Project (hereafter ''Georgia-Pacific''). The FPA is a voluntary agreement developed collaboratively by Georgia-Pacific, the Virginia Department of Environmental Quality (VADEQ), the USDA Forest Service (FS) and the EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing fifty XL projects undertaken in full partnership with the states.

Georgia-Pacific Corporation owns and operates a non-sulfur, non-bleaching, semi-chemical pulp and paper mill in Big Island, Virginia (Mill). The Mill produces corrugated medium and liner board (the inside and outside components of cardboard) from hardwood pulp and secondary recycled fiber. The Mill is subject to the Pulp and Paper Mill Cluster Rule (a hazardous air pollution standard promulgated under the federal Clean Air Act (CAA)), which is based on installation of Maximum Achievable Control Technology (MACT) on regulated emission sources. A second MACT standard applicable to pulp and paper mills (MACT II), was proposed on April 15, 1998 to specifically address emissions from combustion sources associated with the recovery of pulping chemicals. At the Mill pulping liquor is added to hardwood chips, and the mixture is passed through digesters to produce the pulp. Currently the Mill

takes the spent pulping or black liquor, reduces it through evaporation, and flame combusts the resultant concentrated liquor in two ''smelters,'' also called ''recovery furnaces.'' The smelters recover the sodium carbonate in a molten smelt that is then dissolved in water to produce new pulping liquor.

Due to the age and physical condition of the existing smelters at the Mill, to comply with MACT II Georgia-Pacific would have to substantially upgrade or rebuild these units and add additional emission control devices. Alternatively, they would need to replace the smelters with a new recovery boiler that uses conventional technology. Georgia-Pacific has investigated, and proposes to install, a third alternative for recovering pulping chemicals at its facility, using an innovative black liquor gasification system. Under this alternative, the concentrated black liquor would be pyrolyzed (thermal conversion of organic compounds) to liberate a combustible gas (primarily hydrogen), which in turn would be burned as an energy source to drive the pyrolysis and to produce steam to be used elsewhere in the Big Island facility. Sodium carbonate pellets would be recovered during this process for reuse in fresh pulping liquor.

Georgia-Pacific's proposed installation of a black liquor gasification system would be the first commercial application of this innovative gasification technology in the United States. Deployment of the proposed gasification technology promises reduced consumption of fossil fuel, increased efficiency in energy conversion and chemical recovery, elimination of the smelt-water explosion hazard (inherent to the operation of conventional recovery boilers), reduced maintenance costs, and significantly lower environmental emissions of criteria pollutants (particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds precursors to ozone), carbon monoxide), hazardous air pollutants, and greenhouse gases. If Georgia-Pacific experiences no problems or delays in construction and testing of the gasification technology, Georgia-Pacific expects that its gasifier could be operational in time to meet the MACT II standards when they become effective. However, Georgia-Pacific is pursuing an XL Project for its Mill for the following reasons:

(1) to be able to operate the existing smelters past the otherwise applicable MACT II compliance date, if necessary, while the gasification system is brought on line and during a limited trial of the gasification system using black liquor from Kraft pulp mills;

(2) to assure that if the gasification system fails, Georgia-Pacific would be allowed to operate its existing smelters, as necessary, past the otherwise applicable MACT II compliance date while it constructs a conventional recovery boiler; and

(3) to allow the steam generated by the new process to be utilized elsewhere at the Mill.

This project does not include modifications to production areas of the Mill. This project is not intended to increase pulp or paper production. The new gasification system will be similar in capacity to the existing smelters. Due to the extensive nature of the stateholder process conducted by Georgia-Pacific on this project, the comment period will be 14 days.

DATES: The period for submission of comments ends on May 22, 2000.

ADDRESSEES: All comments on the proposed Final Project Agreement should be sent to: Steven Donohue, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, or David Beck, Mail Drop 10 EPA Research Triangle Park, NC 27711. Comments may also be faxed to Mr. Donohue at (215) 814–2783 or to Mr. Beck at (919) 541–2464. Comments may also be received via electronic mail sent to: donohue.steve@epa.gov or beck.david@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the proposed Final Project Agreement or a Fact Sheet, contact: Steven Donohue, EPA Region III 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, or David Beck, Mail Drop 10 EPA Research Triangle Park, NC 27711. The FPA and related documents are also available via the Internet at the following location: *http://www.epa.gov/ProjectXL.* In addition, public files on the project, including the FPA, are located in the Big Island Public Library, 1111 Schooldays Road, Big Island, VA 24526 (804) 299–5604 and in the Amherst County Public Library, P.O. Box 370, Amherst, Virginia 24521 (804) 946–9388. Questions to EPA regarding the documents can be directed to Steven Donohue at (215) 814–3215 or David Beck at (919) 541–5421. To be included on the Georgia-Pacific Project XL mailing list for information about future public meetings, XL progress reports and other mailings from Georgia-Pacific on the XL project, contact Pat Moore, Georgia-Pacific Corporation, P.O. Box 40 Highway 501 North, Big Island, Virginia 24526 (804) 299–5911 ext. 286. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Policy, Economics and Innovation, United States Environmental Protection Agency, 401 M Street, SW Room M3802 (Mail Code 1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at http://www.epa.gov/ProjectXL.

Dated: May 2, 2000.

Elizabeth A. Shaw,

Deputy Associate Administrator for Reinvention Programs.

[FR Doc. 00–11428 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6586–7]

Water Pollution Control; Program Modification Application by Wisconsin to Administer the Sludge Management (Biosolids) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application and public comment period.

SUMMARY: Pursuant to 40 CFR 123.62 and 40 CFR part 501, the State of Wisconsin has submitted to EPA an application to modify the existing Wisconsin Pollutant Discharge Elimination System (WPDES) program to include administration and enforcement of the sludge management (biosolids) program where it has jurisdiction. Specifically, the State is seeking approval of a sludge management program which addresses the land application of sludge, surface disposal of sludge, and the landfilling of sludge. Wisconsin is not seeking approval for the incineration of sludge or the land application of septage. The state's sludge management program will not extend to ''Indian Country'' as defined in 18 U.S.C. 1151, and will not include lands within the exterior boundaries of Indian reservations within or abutting the State of Wisconsin, as they are not seeking approval for these areas at this time. According to the state's proposal, this program would be administered by the Wisconsin Department of Natural Resources (WDNR).

The application from Wisconsin is complete and is available for inspection and copying. Public comments are requested and encouraged.

DATES: Public comments are to be received or postmarked on or before June 22, 2000.

ADDRESSES: Send written comments to: Rebecca Harvey, Chief, NPDES Support and Technical Assistance Branch (WN–16J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

You may inspect, and copy at a minimal charge, the documents relevant to Wisconsin's submittal at the following addresses from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, at the: WDNR, Bureau of Watershed Management, 101 South Webster Street, Madison, Wisconsin 53707, contact: Greg Kester, (608) 267–7611; WDNR-Southeast Region, 2300 North Martin Luther King Jr. Dr., P.O. Box 12436, Milwaukee, WI 53212, contact: Jim Fratrick, (414) 263–8632; WDNR-Northeast Region, 1125 North Military, P.O. Box 10448, Green Bay, WI 54307, contact: Jeff Haack, (920) 492–5811; WDNR-Northern Region-Park Falls, 875 South 4th Ave., P.O. Box 220, Park Falls, WI 54552, contact: Jim Hansen, (715) 762–4684 ext. 120; WDNR-South Central Region, 3911 Fish Hatchery Rd., Fitchburg, WI 53711, contact: Roy Lembcke, (608) 275–3283; WDNR-West Central Region, 1300 W. Clairemont St., P.O. Box 4001,Eau Claire, WI 54702–4001, contact: Paul LaLiberte, (715) 839–3724; and at the EPA Regional Office in Chicago at the address appearing earlier in this notice, contact: David Soong, (312) 886–0136. Copies of the complete submittal can be obtained at a cost of 10 cents per page (roughly $280.00 for the complete submittal) from WDNR. Requests for copies should be addressed to Greg Kester, Wisconsin Department of Natural Resources at the address provided above or at telephone number (608) 267–7611.

FOR FURTHER INFORMATION CONTACT: David Soong, NPDES Support and Technical Assistance Branch, (WN–16J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, phone number: (312) 886–0136.

SUPPLEMENTARY INFORMATION:

Throughout this document ''we'', ''us'', or ''our'' means EPA.

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I. Introduction

Wisconsin has regulated sewage sludge quality and beneficial reuse under state authority since 1977. Section 405 of the Clean Water Act (CWA or Act), 33 U.S.C. 1345, created the federal sludge management program, allowing EPA to issue permits for the disposal of sewage sludge under conditions required by the CWA. Section 405(c) of the CWA provides that a state may submit an application to EPA for administering its own program for issuing sewage sludge permits within its jurisdiction. EPA is required to approve each such submitted state program unless EPA determines that the program does not meet the requirements of Sections 304(i) and/or 402(b) of the CWA or the EPA regulations implementing those sections. To obtain such approval, the state must show, among other things, that it has authority to issue permits which comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit. The requirements for state sludge management program approval are listed in 40 CFR part 501.

II. What Was Submitted in Wisconsin's Application for Sludge Management Program Approval?

Wisconsin's application for sludge management program approval contains a letter from the Secretary of WDNR requesting program approval, an Attorney General's Statement, copies of pertinent state statutes and regulations, amendments to the WPDES Program Description, and proposed amendments to the WDNR/EPA Memorandum of Agreement (MOA) to be executed by the Regional Administrator, Region 5, EPA, and the Secretary, Wisconsin Department of Natural Resources.

The Secretary's letter of May 26, 1998, requested that EPA approve the state's sludge management program as a modification to their WPDES program. On March 8, 1999, the Secretary limited the state's request to all sludge activities within the State except for those activities occurring within Indian Country.

The Attorney General's Statement includes citations to specific statutes, administrative regulations, and judicial decisions which demonstrate adequate authority to carry out the state's sludge management program. State statutes and regulations cited in the Attorney General's Statement are also included in the application.

The amendments to the WPDES Program Description include a description of the scope and organizational structure of the sludge management program, including a description of the general duties and the total number of state staff carrying out the program, a description of applicable state procedures, including permitting procedures, and administrative and judicial review procedures, and a description of the state's compliance tracking and enforcement program. It also includes an inventory of the facilities that are subject to regulations promulgated pursuant to 40 CFR part 503 and subject to the state's sludge management program.

The proposed amendments to the WDNR/EPA MOA include provisions for permit administration, enforcement and compliance monitoring, and annual reporting. The MOA has been signed by the Secretary of WDNR and will become effective upon the signature of the Regional Administrator of EPA, Region 5. The MOA does not limit the authority of EPA to take actions pursuant to its powers under the CWA, nor does it limit EPA's oversight responsibilities with respect to sludge management program administration.

III. Are There Variations Between Wisconsin's Sludge Management Program Regulations and the Federal Sludge Regulations, 40 CFR Part 503?

Following is a brief summary of and rationale for the main points of variance between Wisconsin's sludge management program and the 40 CFR part 503 sludge rules.

1. Wisconsin restricts application of sludge on agricultural land when it is frozen or snow covered. 40 CFR part 503 restricts sludge application on frozen or snow covered ground if there is a likelihood of sludge entering any waters or wetlands. Wisconsin believes that the

likelihood of runoff exists on most sites in Wisconsin which are frozen or snow covered. Therefore, winter land application is restricted pursuant to Wisconsin regulations.

2. Wisconsin regulations require that sludge must be land applied at the agronomic rate for the crop grown taking all sources of nitrogen into account. This is required to preclude over application of nitrogen which could result in groundwater contamination through the leaching of nitrates. 40 CFR part 503 requires application at the agronomic rate but is silent about how to take other nitrogen sources into account. Wisconsin requires disclosure at the time of soil sampling of the anticipated rate and type of manure application, percent of legume forage left standing, and projected options of crops to be grown.

3. Wisconsin regulations establish more stringent site restrictions regarding the land application of sludge than federal requirements. Wisconsin regulations address additional environmental and public concerns such as setback distances from residences, public and private wells, property lines, waterways of various kinds, rural schools, and rural health care facilities. Separation distances to bedrock and groundwater, allowable slopes and soil permeability are also addressed.

4. Wisconsin regulates radium-226 in communities which have elevated concentrations of radium-226 in their water supply system, while 40 CFR part 503 does not specifically regulate radium-226. Wisconsin's concern with the land application of sludge with radium-226 is twofold. First, Wisconsin is concerned that the decay of radium-226 to radon gas could pose a problem if construction were to occur in the future on a site which had an unacceptably high soil concentration. Second, Wisconsin is concerned that radium may leach to groundwater if the soil concentration of radium-226 is elevated.

5. Sludge management plans, which are required by Wisconsin regulations, are intended to allow facilities some flexibility in how they comply with the administrative rules. WDNR encourages innovative alternate beneficial uses of sludge such as mine reclamation, silviculture, and other projects which are shown to be environmentally sound. Sludge management plans provide the forum for such proposals to be presented. 40 CFR part 503 does not specifically require the use of sludge management plans.

6. State regulations prohibit ''Surface Disposal'' as a sludge management option, even though 40 CFR part 503 allows surface disposal. The State believes that surface disposal is not an environmentally acceptable alternative because it may threaten groundwater quality and contradicts the beneficial reuse policy WDNR promotes.

7. Bulk exceptional quality sludge is exempt from most of the management requirements of Wisconsin's regulations. However, application on frozen or snow covered ground is restricted and the storage requirement, which is not federally required, applies to this material.

IV. Can the Public Comment on Wisconsin's Program Submittal?

It is requested and encouraged that the public comment on the state's sludge management program submittal. Copies of all submitted statements and documents will become a part of the record submitted to EPA. All comments or objections presented in writing and postmarked within 45 days of this notice to EPA, Region 5, will be considered by EPA before it takes final action on Wisconsin's request for program modification approval. Written comments should be submitted to Rebecca Harvey at the address given above.

The public is also encouraged to bring the foregoing to the attention of anyone interested in this matter.

V. Is a Public Hearing Scheduled?

At the time of this notice, a decision has not been made as to whether a public hearing will be held on Wisconsin's request for program modification. During the comment period, any interested person may request a public hearing by filing a written request which must state the issues to be raised to EPA, Region 5. The last day for filing a request for a public hearing is 45 days from the date of this notice and should be submitted to Rebecca Harvey at the above address. In appropriate cases, including those where there is significant public interest, EPA may hold a public hearing. Public notice of such a hearing will occur in the **Federal Register** and in enough of the largest newspapers in Wisconsin to provide statewide coverage and will be mailed to interested persons at least 30 days prior to the hearing.

VI. Has a Decision Been Made Regarding Wisconsin's Program?

The only decision that has been made is that Wisconsin has submitted a complete application. EPA sent a letter to the Secretary of the WDNR on March 14, 2000, stating that the state's application to modify the WPDES program to include a state sludge management program was complete. EPA has 90 days from the date of that letter to approve or disapprove Wisconsin's Sludge management program. The decision will be based on the requirements of Sections 405, 402 and 304(i) of the CWA and EPA regulations promulgated thereunder. If the Wisconsin program modifications are approved, EPA will notify the State of the approval. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of NPDES sludge management permits in Wisconsin (except, as discussed below, for those in ''Indian Country''). The state's program will operate in lieu of the EPA-administered program where the State has authority. However, EPA will retain the right, among other things, to object to WPDES permits proposed to be issued by Wisconsin and to take enforcement actions for violations, as allowed under the CWA. If EPA disapproves Wisconsin's sludge management program, EPA will notify the State of the reasons for disapproval and of any revisions or modifications to the state program that are necessary to obtain approval.

VII. If EPA Approves the Wisconsin's WPDES Program Modification, What Is the Effect of That Decision?

If the Wisconsin program modification is approved, as of the date of program approval, there will be virtually no change in the program since Wisconsin has been regulating sludge management under state authority through its WPDES program. EPA will suspend issuance of NPDES sludge management permits in Wisconsin (except, as discussed below, for those in ''Indian Country''). The state's program will operate in lieu of the EPA-administered program where the State has authority. Wisconsin will issue and administer permits for all the provisions for which it is authorized. After approval, EPA will transfer any pending sludge permit applications, completed permits, or pertinent file information to Wisconsin upon request. However, EPA will retain the right, among other things, to object to WPDES permits proposed to be issued by Wisconsin and to take enforcement actions for violations, as allowed under the CWA.

Approval will not impose additional requirements on the regulated community because the regulations by which Wisconsin will be implementing the sludge management program are already effective and will not be changed by EPA's approval.

VIII. Would EPA's Approval Affect Indian Country (18 U.S.C. 1151) in Wisconsin?

Wisconsin is not authorized to carry out its WPDES program in Indian Country, as defined in 18 U.S.C. 1151. This includes:

1. Lands within the exterior boundaries of the following Indian Reservations within or abutting the State of Wisconsin:
   a. Bad River Indian Reservation.
   b. Forest County Indian Reservation.
   c. Ho-Chunk Nation Indian Reservation.
   d. Lac Courte Oreilles Indian Reservation.
   e. Lac Du Flambeau Indian Reservation.
   f. Menominee Indian Reservation.
   g. Oneida Indian Reservation.
   h. Red Cliff Indian Reservation.
   i. Sokaogon (Mole Lake) Indian Reservation.
   j. St. Croix Indian Reservation.
   k. Stockbridge-Munsee Indian Reservation.
2. Any land held in trust by the U.S. for any Indian tribe, and
3. Any other land, whether on or off a reservation that qualifies as Indian Country.

Therefore, if EPA approves the state's sludge management program, it will have no effect in Indian Country where EPA will continue to implement and administer the NPDES program.

In excluding Indian Country from the approval, we would not be making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. The state's application does not include a request for approval within Indian Country at this time. Should the State of Wisconsin choose to seek program approval within Indian Country, it may do so without prejudice.

IX. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from the requirements of Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045: Children's Health Protection

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.

If EPA approves the program modification, the action would not be subject to Executive Order 13045 because it does not involve decisions based on environmental health or safety risks.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, 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 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 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.''

If EPA approves the program modification, the action would not be subject to Executive Order 13084 because it would not significantly or uniquely affect the communities of Indian tribal governments. Wisconsin is not authorized to implement the NPDES program in Indian Country. Therefore, the action would have no effect on Indian Country within the State.

D. 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 various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose 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 proposed regulation. 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 proposed regulation.

If EPA approves the program modification, it will not have federalism implications. It will not have a substantial direct effect on states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule only effects one State. The approval would simply modify Wisconsin's existing program that they have voluntarily chosen to operate. Further, as a result of the approval, provisions of Wisconsin's sludge management program would apply in lieu of the equivalent federal program provisions implemented by EPA under CWA. Affected parties will be subject only to those authorized state program provisions, as opposed to being subject to both federal and state regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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

include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

If EPA approves the program modifications, the action will not have a significant impact on a substantial number of small entities because it does not impose any new requirements on small entities because small entities that generate or prepare sewage sludge for land application, landfilling, or surface disposal are already subject to the regulatory requirements under state and federal laws. With approval of the program modification, the state's program would apply in lieu of the equivalent federal program. Therefore, because the approval will not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this notice does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action provides notice of availability of the state's submittal and requests comments on the state's desire to modify its WPDES program to include a state sludge management program. If EPA approves the program modification, the state's program would apply in lieu of the equivalent federal program, therefore, imposing no new requirements under state or local law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not involve technical standards.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* federal agencies must consider the paperwork burden imposed by any informational request contained in a proposed rule or a final rule. Today's action will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Parts 123 and 501

Environmental protection, Administrative practice and procedures, Indian lands, Intergovernmental relations, Waste treatment and disposal, Water pollution control.

Authority for parts 123 and 501: Clean Water Act 33, U.S.C. 1251 *et seq.*

Dated: April 14, 2000.

Elissa Speizman,

Acting, Regional Administrator, Region 5.

[FR Doc. 00–11280 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Designation of Forty (40) Counties as Part of the High Intensity Drug Trafficking Area

AGENCY: Office of National Drug Control Policy, Executive Office of the President.

ACTION: Notice.

SUMMARY: This notice lists forty (40) counties as additions to various High Intensity Drug Trafficking Area (HIDTA) programs. These new counties are: Mohave in the Arizona HIDTA; the Colorado counties of Boulder, Larimer, Weld, Pueblo, Grand, Routt and Moffatt, the Utah county of Davis and the Wyoming counties of Campbell and Unita in the Rocky Mountain HIDTA; the Iowa counties of Appanoose, Black, Hawk, and Marshall, the Kansas counties of Barton, Finney, Franklin, Miami, Sedgewick and Shawnee, the Missouri counties of Benton, Buchanan, Greene, Jasper, Marion, Platte and Texas, the Nebraska counties of Dodge, Gage, Jefferson, Madison and Platte as well as the South Dakota counties of Beadle, Brookings and Brown in the Midwest HIDTA; the Texas counties of Smith in the North Texas HIDTA and the Texas counties of Hardin, Jefferson, Liberty and Orange in the Houston HIDTA. HIDTAs are domestic regions identified as having the most critical drug trafficking problems that adversely affect the United States. These new counties are designated in an effort to promote more effective coordination of drug control efforts. This action will support local, state and federal law enforcement officers in assessing regional drug threats, designing strategies to combat the threats, developing initiatives to implement the strategies, and evaluating the effectiveness of their coordinated efforts.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding this notice should be directed to Mr. Kurt Schmid, National HIDTA Director, Office of National Drug Control Policy (ONDCP), Executive Office of the President, Washington, DC 20503; 202–395–6692.

SUPPLEMENTARY INFORMATION: In 1990, the Director of ONDCP designated the first five HIDTAs. These original HIDTAs, areas through which most illegal drugs enter the United States, are the Southwest Border, Houston, Los Angeles, New York/New Jersey, and South Florida. In 1994, the Director designated the Washington/Baltimore HIDTA to address the extensive drug distribution networks serving hardcore drug users and the Puerto Rico/U.S. Virgin Islands HIDTA based upon the significant amount of drugs entering the United States through this region. In 1995, HIDTAs were designated in Atlanta, Chicago, and Philadelphia/Camden to target drug abuse and drug trafficking in those areas. In 1997, the Gulf Coast HIDTA (includes parts of Alabama, Louisiana, and Mississippi), the Lake County HIDTA, the Midwest HIDTA (includes parts of Iowa, Kansas, Missouri, Nebraska, and South Dakota, with the focus on methamphetamine), the Northwest HIDTA (includes seven counties of Washington State), the Rocky Mountain HIDTA (includes parts of Colorado, Utah, and Wyoming), and the San Francisco HIDTA were designated. In 1998, new HIDTAs were designated in Appalachia (includes parts of Kentucky, Tennessee, and West Virginia), Central Florida, Milwaukee, North Texas, and Southeast Michigan.

In 1999, new HIDTAs were designated in Central Valley California, Hawaii, New England, Ohio and Oregon.

The HIDTA Program supports over 462 collocated joint task forces in twenty-seven regions of the country, including the entire Southwest Border. The HIDTA Program strengthens local, state, and federal drug trafficking and money laundering task forces, bolsters drug enforcement information networks and, improves integration of law enforcement, drug treatment, and drug abuse prevention programs, where appropriate.

Signed at Washington, DC, this 13th day of April, 2000.

Barry R. McCaffrey,

Director.

[FR Doc. 00–11412 Filed 5–5–00; 8:45 am]

BILLING CODE 3180–02–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan African Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan African Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Sahara Africa.

Time and Place: Thursday, May 25, 2000, at 9 a.m. to 1 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

Agenda: This meeting will include a discussion on telecommunications and technology in Sub-Saharan Africa.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 19, 2000, Teri Stumpf, Room 1203, Vermont Avenue, NW Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3502.

John M. Niehuss,

General Counsel.

[FR Doc. 00–11414 Filed 5–5–00; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–967]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the eighth meeting of the Public Safety National Coordination Committee.

DATES: June 2, 2000 at 11:30 p.m.–4 p.m.

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

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the eighth meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: June 2, 2000.

Meeting Time: General Membership Meeting—11:30 p.m.–4 p.m.

Address: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room, Washington, DC 20554.

The NCC Subcommittees will meet from 8:30 a.m. to 11:30 p.m., continuing their meetings from the previous day. The NCC General Membership Meeting will commence at 11:30 p.m. and continue until 4:00 p.m. The lunch break will be announced during the meeting. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Remarks of Ari Fitzgerald, Legal Advisor to FCC Chairman William Kennard.
3. Remarks of Charles L. Jackson, Ph.D., Communications Consultant.
4. Administrative Matters.
5. Report from the Interoperability Subcommittee.
6. Report from the Technology Subcommittee.
7. Report from the Implementation Subcommittee.
8. Public Discussion.
9. Other Business.
10. Upcoming Meeting Dates and Locations.
11. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the eighth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC

by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this eighth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at jalford@fcc.gov. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

Ramona E. Melson,

Deputy Division Chief for Legal, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 00–11386 Filed 5–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 8:00 a.m. on Wednesday, May 10, 2000, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final amendments to Part 361—Minority and Women Outreach Program—Contracting.

DISCUSSION AGENDA: Memorandum re: BIF Assessment Rates for the Second Semiannual Assessment Period of 2000.

Memorandum re: SAIF Assessment Rates for the Second Semiannual Assessment Period of 2000.

Memorandum and resolution re: Final Rule—Part 332—Privacy of Consumer Financial information.

Memorandum and resolution re: Proposed Rule—Part 346—Disclosure and Reporting of CRA Related Agreements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements. Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 3, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–11509 Filed 5–3–00; 5:04 pm]

BILLING CODE 6714–01–M

FEDERAL TRADE COMMISSION.

[File No. 0023113]

Michael G. Chrisman, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 30, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Gurwitz or Michael Ostheimer, FTC/H–238, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, (202) 326–3272 or 326–2699.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 1, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Michael G. Chrisman and Michelle R. Chrisman, individually and doing business as DayTrading International (''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents sell and distribute recommendations for trading stock. Their trading products or services include the ''Live Interactive Trading Room,'' the ''Daily Picks Newsletter,'' and the ''Hot Small Caps Newsletter.'' The ''Live Interactive Trading Room'' is

an Internet chat room where respondents provide ''live'' day trading advice during the day on when to buy and sell stocks. The ''Daily Picks Newsletter,'' and the ''Hot Small Caps Newsletter'' are in the form of e-mails delivered once per day which contain advice for stock trading. Respondents advertise on their Internet Web site, www.daytradingintl.com. This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondents' stock trading program.

The Commission's proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' ''Live Interactive Trading Room'' program can reasonably expect to achieve profits on their trades more than 85 percent of the time and achieve substantial profits on a consistent basis (e.g., $500 per trade, two or three times each day); and that users of respondents' ''Daily Picks Newsletter'' program can reasonably expect to make short term trades, held one to five days, that achieve a rate of return of between two percent and ten percent per trade.

In addition, the complaint alleges that respondents misrepresented that users of their trading programs can reasonably expect to trade stocks profitably with little or no risk. The complaint also alleges that respondents misrepresented that since January 1996, their ''Daily Picks Newsletter'' program has returned an average of 167 percent annually and that during 1996 and 1997, their ''Hot Small Caps Newsletter'' program returned an average annual return of 214 percent. The complaint explains that respondents did not begin to offer the ''Daily Picks Newsletter'' or ''Hot Small Caps Newsletter'' until 1998.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation about the percentage, ratio, or number of trades that a user of any trading program could reasonably expect to be profitable; the amount of earnings, income, or profit that a user of any trading program could reasonably expect to attain; the rate of return that a user of any trading program could reasonably expect to attain or the length of time over which such a rate of return could reasonably be expected; or the past performance of a trading program. Part I also requires respondents to possess a reasonable basis substantiating claims about any financial benefit or other benefit from any trading program.

Part II of the proposed order prohibits respondents from misrepresenting that since January 1996, respondents' ''Daily Picks Newsletter'' program has returned an average of 167 percent annually or that during 1996 and 1997, respondents' ''Hot Small Caps Newsletter'' program returned an average annual return of 214 percent. It also prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, ''DAY TRADING involves high risks and YOU can LOSE a lot of money,'' in close proximity to any representation they make about the financial benefits of any day trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Parts IV–VII of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain personnel; to notify the Commission of changes in their employment status and any changes in the name of their business for a period of ten years; and to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–11458 Filed 5–5–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 002–3053]

Ellery Coleman; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 30, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Gurwitz or Michael Ostheimer, FTC/H–238, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–3272 or 326–2699.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 1, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania, Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Ellery Coleman, individually and

doing business as Granite Investments (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent sells and distributes various computer software programs and training for buying and selling S&P futures contracts on a daily basis. Respondent advertises on his Internet Web site, *www.choicedaytrades.com.* This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondent's trading methods.

The Commission's proposed complaint alleges that respondent made unsubstantiated claims that users of his S&P futures trading programs can reasonably expect to achieve substantial profits on a consistent basis (*e.g.,* $25,000 per futures contract); that specific trades or investments enumerated in respondent's advertisements were actually made and resulted in the substantial profits stated in the advertisements; and that testimonials appearing in the advertisements for respondent's S&P futures trading programs reflect the typical or ordinary experience of members of the public who use the programs.

In addition, the complaint alleges that respondent misrepresented that users of his S&P futures trading programs can reasonably expect to trade profitably with little financial risk; that testimonials appearing in the advertisements for his S&P futures trading programs reflect the actual experiences of consumers who have used the programs; that he personally uses his S&P futures trading programs to trade profitably on his own behalf; and that the trades recommended by his S&P futures trading programs, as enumerated in the advertisements, were actually made in many cases.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent to have a reasonable basis substantiating any representation that users of his S&P futures trading programs can reasonably expect to achieve substantial profits on a consistent basis; that specific trades or investments were actually made and resulted in substantial profits; about the amount of earnings, income, profit or the rate of return that a prospective user of any trading program could reasonably expect to attain; about the percentage, ratio, or number of trades that a prospective user of respondent's S&P futures trading programs could reasonably expect to be profitable; or about any financial benefit or other benefit from any trading programs offered by respondent.

Part II of the proposed order prohibits respondent from misrepresenting that users of any trading program can reasonably expect to trade profitably with little or no financial risk; that respondent personally uses his trading programs to trade on his own behalf; whether trades recommended by respondent's trading programs were actually made or were hypothetical; that any testimonial or endorsement of respondent's trading programs or training reflects the testimonialist's or endorser's actual experience and current opinions, findings, beliefs, or experiences; or from misrepresenting the extent of risk to which users of any trading program are exposed.

Part III of the proposed order requires respondent to disclose, clearly and conspicuously, ''FUTURES TRADING [or STOCK, CURRENCY, OPTIONS, ETC., as applicable] TRADING involves high risks and YOU can LOSE a lot of money,'' in close proximity to any representation he makes about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondent may be required to make.

Part IV of the proposed order prohibits respondent from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondent must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V–XI of the proposed order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain personnel; to notify the Commission of changes in Granite Investments that may affect the order; to notify the Commission of changes in respondent's employment status for a period of ten years; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–11457 Filed 5–5–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 002 3085]

CompuTrade LLC, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 30, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Gurwitz or Michael Ostheimer, FTC/H–238, 600 Pennsylvania Ave., NW, Washington, D.C. (202) 326–3272 or 326–2699.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the

full text of the consent agreement package can be obtained from the FTC Home Page (for May 1, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from CompuTrade LLC, a corporation, and Bernard Lewis, individually and as an officer of the corporation (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents sell and distribute computer software and training for buying and selling foreign currencies on a daily basis. They advertise on their Internet Web sites, *www.computrades.com* and *www.computrader.net.* This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondent's trading methods.

The Commission's proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' currency trading program could reasonably expect to earn large profits of $500 to $750 or more per day, and as much as six or seven figures annually (*i.e.*, more than $1,000,000); that users could reasonably expect to earn huge profits even if they had no previous experience in currency trading; and that testimonials appearing in the advertisements for respondents' currency trading program reflected the typical or ordinary experience of members of the public who use the program. In addition, the complaint alleges that respondents misrepresented that users of their currency trading program could reasonably expect to trade with little financial risk.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation that users of respondents' currency trading program can reasonably expect to earn large profits: (1) of $500 to $750 or more per day; (2) of as much as six or even seven figures annually (*i.e.*, more than $1,000,000); or (3) even if they have no previous experience in currency trading. Part I also requires respondents to possess a reasonable basis substantiating claims about the amount of earnings, income, or profit that a prospective user of any trading program could reasonably expect to attain, or about any financial benefit or other benefit from any trading program offered by respondents.

Part II of the proposed order prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, ''CURRENCY [or STOCK, COMMODITY FUTURES, OPTIONS, ETC., as applicable] TRADING involves high risks and YOU can LOSE a lot of money,'' in close proximity to any representation they make about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Part IV of the proposed order prohibits respondents from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondents must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V and VI of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part VII requires CompuTrade to notify the Commission of any changes in the corporate structure that might affect compliance with the order. Part VIII requires that the individual respondent notify the Commission of changes in his employment status for a period of ten years. Part IX requires CompuTrade to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–11456 Filed 5–5–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., June 7, 2000 and 8:30 a.m.–12 p.m., June 8, 2000.

Place: Marriott Atlanta Century Center, 2000 Century Boulevard NE, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and

reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Agenda items include issues pertaining to the epidemiology and control of Tuberculosis in low incidences counties and TB research priorities.

CONTACT PERSON FOR MORE INFORMATION: Paulette Ford, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 1, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–11383 Filed 5–5–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–2:15 p.m., May 22, 2000; 8:30 a.m.–12:45 p.m., May 23, 2000.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8:00 a.m. and 8:30 a.m. or 12:30 p.m. and 1:00 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be Discussed: Agenda items will include: an update on the National Vaccine Program Office (NVPO) activities; an update on Unmet Needs Funding; Influenza Vaccine—New Technologies; Pandemic Planning and Adult Immunization; Bioterrorism—Advisory Committee on Immunization Practices (ACIP)/NVAC Activities; Large Population Immunization; Immunization Registries Funding Issues; Vaccine Safety and Communication Subcommittee Report; update from the Office of the Assistant Secretary for Health and Surgeon General; Immunization Coverage Subcommittee Report; Future Vaccines Subcommittee Report; ACIP Annual Report; a report on NVAC Poliovirus Containment Workgroup; Together for Tots/Preventive Services Collaborative.

Name: Subcommittee on Future Vaccines.

Time and Date: 2:15 p.m.–5 p.m., May 22, 2000.

Place: Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: Agenda items will include discussions on the Institute of Medicine Report ''Vaccines for the 21st Century'' Cytomegalovirus (CMV) Workshop planned meeting; Vaccines for Chronic diseases meeting.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2:15 p.m.–5 p.m., May 22, 2000.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters to be Discussed: Agenda items will include adolescent immunization coverage rates; review of the Adult Immunization Standards' document; immunization requirements for school entry and philosophical exemptions; update on unmet needs; the roll-out process for the ''Strategies to Sustain Success'' and the Adult Immunization Action Plan.

Name: Subcommittee on Vaccine Safety and Communication.

Time and Date: 2:15 p.m.–5 p.m., May 22, 2000.

Place: Hubert H. Humphrey Building, Room 325A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: Communication Workshop; Vaccine Safety Surveillance; and Standards for Pediatric Immunization Practices.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S D–66, Atlanta, Georgia 30333, telephone 404/687–6672.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 3, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–11516 Filed 5–5–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY: President's Committee on Mental Retardation, HHS.

ACTION: Notice of meeting.

DATES: Friday, June 2, 2000 from 9 to 1.

Place: Hotel Washington, 515 15th Street, NW, Washington, DC. 20004–1099.

Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

Agenda: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

SUPPLEMENTARY INFORMATION: The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics related to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for

persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

FOR FURTHER INFORMATION CONTACT: Jane L. Browning, Room 701 Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447, (202) 619–0634.

Dated: May 1, 2000.

Jane Browning,

Executive Director, President's Committee on Mental Retardation.

[FR Doc. 00–11256 Filed 5–5–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10000]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This is necessary to ensure compliance with the Balance Budget Act of 1997. We cannot reasonably comply with the normal clearance procedures because to do so would result in public harm. Public harm would result because there would be a delay in being able to furnish materials to Medicare beneficiaries that would assist them in making informed health care choices concerning fee-for-services benefits and managed care benefits. We need to have the results of a survey ready to be included in the Medicare and You Handbook by October 1, 2000 and therefore must be able to begin the survey in July.

HCFA is requesting OMB review and approval of this collection by June 30, 2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by June 23, 2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection; *Title of Information Collection:* Medicare Consumer Assessment Survey of Health Plan Survey (CAHPS)—Fee for Service; *HCFA Form Number:* HCFA–10000 (OMB approval #: 0938–NEW); *Use:* Under the Balanced Budget Act of 1997, HCFA is required to provide general and plan comparative information to beneficiaries that will help them make more informed health plan choices. A CAHPS fee for service survey is needed to provide information comparable to those data collected from the CAHPS managed care survey; *Frequency:* Annually; *Affected Public:* Individuals or households; *Number of Respondents:* 168,000; *Total Annual Responses:* 134,400; *Total Annual Burden Hours:* 44,800.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by June 23, 2000:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262 Attn: Julie Brown HCFA–10000 and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: April 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–11367 Filed 5–5–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison

Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on October 1, 1999, through December 22, 1999.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (*Petitioner's Name* v. *Secretary of Health and Human Services*) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Timothy P. Shelenberger, New Wilmington, Pennsylvania, Court of Federal Claims Number 99–0853V.
2. Andrea and Brian Franklin on behalf of Scott P. Franklin, Maitland, Florida, Court of Federal Claims Number 99–0855V.
3. Jennifer and Gene Young on behalf of Miranda Young, Deceased, McCook, Nebraska, Court of Federal Claims Number 99–0856V.
4. Melody Miller, Fort Myers, Florida, Court of Federal Claims Number 99–0859V.
5. Alisha and Tom L. Conrad on behalf of James-Kylie N. Conrad, Washington, Iowa, Court of Federal Claims Number 99–0861V.
6. Richard Gilbert and Doris McClinton on behalf of Jamal Gilbert, Alexandria, Louisiana, Court of Federal Claims Number 99–0866V.
7. Jimena Alvarado on behalf of Maria J. Alvarado, Belleville, New Jersey, Court of Federal Claims Number 99–0871V.
8. Mary Ann and Douglas Besser on behalf of Nicholas Besser, Madison, Wisconsin, Court of Federal Claims Number 99–0872V.
9. Vanessa Rowley, Sandy, Utah, Court of Federal Claims Number 99–0880V.
10. Cynthia and William Nyberg on behalf of Erik Anders Nyberg, Seattle, Washington, Court of Federal Claims Number 99–0887V.
11. Angela Vasquez on behalf of Stephanie Vasquez, Deceased, Burley, Idaho, Court of Federal Claims Number 99–0888V.
12. Melrose Heltsley, Elkton, Kentucky, Court of Federal Claims Number 99–0892V.
13. Marla and David Lefeve on behalf of Steven James Lefeve, Baton Rouge, Louisiana, Court of Federal Claims Number 99–0896V.
14. Lyne and Nelson Adams on behalf Thomas Adams, McHenry, Illinois, Court of Federal Claims Number 99–0901V.
15. Luther B. Yount, Jr., Charleston, Indiana, Court of Federal Claims Number 99–0906V.
16. Harris Sandler, Boca Raton, Florida, Court of Federal Claims Number 99–0907V.
17. David Jenkins, San Diego, California, Court of Federal Claims Number 99–0911V.
18. Regina Touchstone on behalf of Ashley Deaver, Fort Myers, Florida, Court of Federal Claims Number 99–0912V.
19. Josie V. Rivera, Sarasota, Florida, Court of Federal Claims Number 99–0939V.
20. Shon and Jonathan Burch on behalf of Sabian E. Burch, Vienna, Virginia, Court of Federal Claims Number 99–0946V.
21. Ann and Scott Raper on behalf of Rian Raper, Deceased, Fort Hood, Texas, Court of Federal Claims Number 99–0947V.
22. Maria Perez on behalf of Dimitri Flores, Bronx, New York, Court of Federal Claims Number 99–0949V.
23. Kelli Logan on behalf of Logan Doughty, Oklahoma City, Oklahoma, Court of Federal Claims Number 99–0959V.
24. Su (John) F. Goh on behalf of Chelsea Goh, Kansas City, Missouri, Court of Federal Claims Number 99–0962V.
25. Riley Beth Elton-Gatherum, Kearneysville, West Virginia, Court of Federal Claims Number 99–0963V.
26. Karen B. Locklear on behalf of Katlyn Lathan, Southern Pines, North Carolina, Court of Federal Claims Number 99–0966V.

27. Helen Johnson, Bossier Parish, Louisiana, Court of Federal Claims Number 99–0978.

28. Kristen and Patrick Strain on behalf of Zachary P. Strain, Vienna, Virginia, Court of Federal Claims Number 99–0985V.

29. Kim Schirmer-Guzman and Adolfo Guzman on behalf of Brianna Guzman, Old Bridge, New Jersey, Court of Federal Claims Number 99–0998V.

30. Janet Boeger on behalf of Preston Lucido-Boeger, Antioch, California, Court of Federal Claims Number 99–01008V.

31. Yulanda Hargrove Turner, Round Rock, Texas, Court of Federal Claims Number 99–01009V.

Dated: May 2, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–11390 Filed 5–5–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; 2000 California Health Interview Survey Cancer Control Topical Module (CHIS CCTM)

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 4, 1999, pages 60215–6 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: 2000 California Health Interview Survey Cancer Control Topical Module (CHIS CCTM). *Type of Information Request:* New. *Need and Use of Information Collection:* The CHIS CCTM will assist NCI in the measurement of the burden of cancer in the population of the United States. Due to the rich diversity of California's population, NCI will be able to obtain information on racial/ethnic populations that are insufficiently represented in current national surveys. In addition, CHIS CCTM will use small area data for tracking emerging trends in cancer prevention and control at a geographic level that will impact future national trends. They survey will provide county-specific estimates for small racial/ethnic groups concentrated there. Data will be collected from July–December 2000, from approximately 55,000 respondents. *Frequency of Response:* One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Persons 18 yrs of age or older. The annual reporting burden is as follows: *Estimated Number of Respondents:* 55,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* .2171; and *Estimated Total Annual Burden Hours Requested:* 11,962. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nancy Breen, National Cancer Institute, Executive Plaza North, Room 4005, Bethesda, Maryland 20892–7344, or call non-toll free number (301) 496–4675, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to nb19k@nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before June 7, 2000.

Dated: April 18, 2000.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 00–11439 Filed 5–5–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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/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 Dental and Craniofacial Research Special Emphasis Panel 00–40, Review of R03s & F32.

Date: May 1, 2000.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PhD. Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–66, Review of R01.

Date: May 19–June 19, 2000.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center

Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Instiute of Dental and Craniofacial Research Special Emphasis Panel 00–65, Review of R01.

Date: June 12, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm 4AN44F, Bethesda, MD 20892.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–55, Review of R01.

Date: June 13, 2000.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–55, Review of R01.

Date: June 13, 2000.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–52, Applicant Interview, P01.

Date: June 18–19, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–47, Applicant Interview, U01s.

Date: July 26–27, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 1, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–11435 Filed 5–5–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Environmental Health Sciences Council, May 15, 2000, 8:30 AM to May 16, 2000, 2:00 PM, Building 31C, Conference Room 6, National Institutes of Health, 3100 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on April 13, 2000, 65 FR 19916.

The NAEHSC meeting will be held for one day on May 15, 2000. The Open and Closed Sessions will be as follows: Open 8:30 a.m. to 1:15 p.m. and Closed 1:30 p.m. to 4:30 p.m. The meeting is partially Closed to the public.

Dated: May 1, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–11436 Filed 5–5–00; 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 Clinical Trials Network.

Date: May 18–19, 2000.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P Street, NW, Washington, DC 20037.

Contact Person: Susan L. Coyle, PhD, Chief, Clinical, Epidemiological and Applied Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

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. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 1, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–11437 Filed 5–5–00; 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 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Screening Compounds for Utility as Cocaine Pharmacotherapies Using the Rat Self-Administration Test''.

Date: May 17, 2000.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

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 on Drug Abuse Special Emphasis Panel ''Policy Training Support''.

Date: June 1, 2000.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Cardiovascular and Safety Evaluations of Potential Medications to Reduce Drug Use''.

Date: June 6, 2000.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Bridging the Disconnect''.

Date: June 14, 2000.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 1, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–11438 Filed 5–5–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Privacy Act of 1974: New System of Records

AGENCY: Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Notification of a new system of records subject to the Privacy Act of 1974.

SUMMARY: In accordance with the requirements of the Privacy Act, the Substance Abuse and Mental Health Services (SAMHSA) is publishing a notice of the establishment of a new system of records, Child Care Subsidy Program. The new system will collect family income data from SAMHSA employees for the purpose of determining their eligibility for child care subsidies, and the amounts of the subsidies. It also will collect information from the employees' child care provider(s) for verification purposes, e.g., that the provider is licensed. Collection of data will be by subsidy application forms submitted by employees.

DATES: SAMHSA invites interested persons to submit comments on the proposed new system on or before June 7, 2000.

SAMHSA will adopt this new system without further notice on June 7, 2000 unless comments are received which would result in a contrary determination.

ADDRESSES: Please address comments to the SAMHSA Privacy Act Officer, Office of Program Services, Room 13C–20, Parklawn Building, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857. We will make comments available for public inspection at the above address during normal business hours, 8:30 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Director, Division of Human Resources Management, OPS/SAMHSA, Room 14C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–3408.

Dated: May 2, 2000.

Richard Kopanda,

Director, Office of Program Services, Substance Abuse and Mental Health Services Administration.

09–30–0050

SYSTEM NAME:

Child Care Subsidy Program Records (HHS/SAMHSA/OPS).

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is maintained by the Office of Program Services, 5600 Fishers Lane, Rockville, Maryland 20857. The system of records will also be maintained at various contractor sites. A current list of contractor sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals in the system are employees of the Substance Abuse and Mental Health Services Administration who voluntarily apply for child care subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms for a child care subsidy contain personal information, including employee's (parent) name, Social Security Number, grade, home phone number, home address, total income, number of dependent children, and number of children on whose behalf the parent is applying for a subsidy, information on any tuition assistance received from State/County/local child care subsidy, and information on child care providers used, including their name, address, provider license number, and State where license issued, tuition cost, provider tax identification number, and copies of Internal Revenue Form 1040 for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 106–58 and Executive Order 9397.

PURPOSE(S):

To establish and verify SAMHSA employees' eligibility for child care subsidies in order for SAMHSA to provide monetary assistance for its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a Member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. SAMHSA intends to disclose information from this system to an expert, consultant, or contractor (including employees of the contractor) of SAMHSA if necessary to further the implementation and operation of this program.

4. Disclosure may be made to a Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Substance Abuse and Mental Health Services Administration is made aware of a violation or potential violation of civil or criminal law or regulation.

5. Disclosure may be made to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of the subsidy program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

The records are retrieved by name and may also be cross-referenced to Social Security Number.

SAFEGUARDS:

—Authorized Users: Only SAMHSA personnel working on this project and personnel employed by SAMHSA contractors to work on this project are authorized users as designated by the system manager.

—Physical Safeguards: Records are stored in lockable metal file cabinets or security rooms.

—Procedural Safeguards: Contractors who maintain records in this system are instructed to make no further disclosure of the records, except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts.

—Technical Safeguards: Electronic records are protected by use of passwords.

—Implementation Guidelines: HHS Chapter 45–13 of the General Administration Manual, ''Safeguard Records Contained in Systems of Records and the HHS Automated Information Systems Security Program Handbook, Information Resources Management Manual.''

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the SAMHSA Records Control Schedule, Appendix B–311 (NCI–90–76–5) Item 45.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director, Division of Human Resources Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Individuals may submit a request with a notarized signature on whether the system contains records about them to the above system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is provided by SAMHSA employees who apply for child care subsidies. Furnishing of the information is voluntary.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–11391 Filed 5–5–00; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–12]

Notice of Proposal Information Collection: Comment Request; Housing Owners Certification and Application for Housing Assistance Payments, Schedule of Tenant Assistant Payments Due, Special Claims, Unpaid Rent/Damages, Vacancies

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC. 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Multifamily Housing, Office of Business Products, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone number (202) 708–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate

whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Owners Certification and Application for Housing Assistance Payments, Schedule of Tenant Assistant Payments Due, Special Claims, Unpaid Rent/Damages, Vacancies.

OMB Control Number, if applicable: 2502–0182.

Description of the need for the information and proposed use: The forms must be completed so HUD can pay owners the difference between the gross rent and the total tenant payment (housing assistance payments) according to regulation.

Agency form numbers, if applicable: HUD–52670, HUD–52670–A Part 1 and HUD–52670–A Part 2, 52671A–D.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 38,252, frequency of responses is 40, the average time to complete form 52670A (Part 1) is 30 minutes, form 52670A (Part 2) is 20 minutes, and 52671A–D is 20 minutes, and annual burden hours requested are 158,792.

Status of the proposed information collection: Reinstatement without change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 30, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–11337 Filed 5–05–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–02]

Notice of Proposed Information Collection: Brief Survey of HUD Lead Hazard Control Grantees

AGENCY: Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the Notice of Funding Availability (NOFA) for Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2000.

ADDRESSES: Integrated persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gail Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Peter J. Ashley, (202) 755–1785 ext. 115 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title of Proposal: Brief Survey of HUD Lead Hazard Control Grantees

OMB Control Number: Not applicable.

Need For the Information and Proposed Use: This information collection is required to assist in the design of a study to evaluate the effectiveness of lead hazard control interventions performed on private housing by a sample of the recipients of HUD lead hazard control grants (grant recipients include state or local governments). A similar study has been completed for a sample of 12 recipients of LHC grants from Rounds 1 and 2 of the grant program (awards made in 1992 and 1993). A new evaluation study is needed to assess the effectiveness of LHC interventions performed by a sample of LHC grants from Rounds 3 through 7 of the program. The new evaluation is needed to asses factors or conditions that could not be assessed in the completed study (*e.g.,* novel intervention protocols, communities in different geographic areas).

A brief survey will be conducted of potential study participants to provide information to be used in selecting a sample of final study participants. This research should contribute to an eventual reduction in the national prevalence of childhood lead poisoning.

Agency Form Numbers: None.

Members of Affected Public: State or local government recipients of HUD lead hazard control grants during Rounds 3–7 of the grant program (1994–2000).

Total Burden Estimate (first year):

Total Estimated Hours: 375.

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Respond in writing to survey questions	125	1	3	375

Number of copies to be submitted to the Office of Lead Hazard control for evaluation: One copy.

Status of the Proposed Information Collection: New request.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 1, 2000.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 00–11454 Filed 5–5–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4410–FA–13]

Announcement of Funding Awards; Community Development Technical Assistance Programs; Fiscal Year 1999

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal Year 1999 competition for Community Development Technical Assistance Programs. The notice contains the names of award winners and the amounts of the awards. Winners for Housing Opportunities for Persons with AIDS (HOPWA) technical assistance were announced on February 28, 2000 (65 FR 10531).

FOR FURTHER INFORMATION CONTACT: Penny McCormack, Department of Housing and Urban Development, Room 7216, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–3176, extension 4391. The TTY number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION. The purpose of the Community Development Technical Assistance competition is to select providers who can provide assistance in four Community Planning and Development programs. The purposes of technical assistance under these four programs are as follows: Community Development Block Grant (CDBG) Technical Assistance—to increase the effectiveness with which States and units of general local government plan, develop and administer their CDBG plans, including assistance to aid non-profits and other recipients of CDBG Funds; Community Housing Development Organizations (CHDOs) Technical Assistance—to promote the ability of CHDOs to maintain, rehabilitate and construct housing for low-income and moderate-income families; to facilitate the education of low-income homeowners and tenants; and to help women who reside in low- and moderate-income neighborhoods to rehabilitate and construct housing in the neighborhoods; HOME Technical Assistance—to help HOME participating jurisdictions design and implement HOME programs including, improving their ability to design and implement housing strategies and incorporate energy efficiency into affordable housing, facilitating the establishment and efficient operation of employer-assisted housing programs and land bank programs, and encouraging private lenders and for-profit developers of low-income housing to participate in public-private partnerships; Supportive Housing Program (SHP) Technical Assistance—to provide HUD-funded Supportive Housing program projects with technical assistance to promote the development of supportive housing and supportive services as part of a Continuum of Care approach, including innovative approaches to assist homeless persons in the transition from homelessness, and promoting the provision of supportive housing to homeless persons to enable them to live as independently as possible.

The assistance made available in this announcement is authorized by the following: CDBG Technical Assistance—Title I of the Housing and Community Development Act of 1974 (42 U.S. C. 5301–5320), 24 CFR 570.402; CHDO Technical Assistance—HOME Investment Partnerships Act (42 U.S.C. 12773), 24 CFR part 92; HOME Technical Assistance—HOME Investment Partnerships Act (42 U.S.C. 12781–12783), 24 CFR part 92; SHP Technical Assistance—42 U.S.C. 11381 *et seq.*, 24 CFR 583.140. The competition was announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on February 26, 1999 (FR 14410–N–01). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

A total of $21,681,998 was awarded to 80 providers nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the awardees and amounts of the awards in Appendix A to this document.

Dated: May 1, 2000.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

Appendix A.—FY 1999 Funding Awards for the Community Development Technical Assistance Programs

Technical assistance awardee	CDBG TA	CHDO TA	HOME TA	SHP TA	Total
Asian Americans for Equality 111 Division Street, New York, NY 10002	$121,720	$344,003	$221,568	.....	$687,291
Association of Community Living Agencies in Mental Health, 315A Washington Avenue Albany, NY 12206	20,000	.....	60,000	60,020	140,020
Center for Community Change 1000 Wisconsin Avenue, NW, Washington, DC 20007	.....	167,320	.....	.....	167,320
Center for Poverty Solutions 2521 N. Charles St., Baltimore, MD 21218	.....	.....	.....	26,000	26,000
Center for Technical Assistance and Training (CTAT), 7500 Germantown Avenue, Suite 100, Philadelphia, PA 19119	.....	71,526	51,800	.....	123,326
Chicago Rehabilitation Network, 53 W. Jackson, Suite 742, Chicago, IL 60604	.....	168,202	.....	.....	168,202
Coalition for Low Income Community Development (CLICD), 1118 Light Street, Suite B, Baltimore, MD 21229	43,750	.....	.....	.....	43,750
Coalition on Homelessness and Housing in Ohio, 85 East Gay Street, Suite 603, Columbus, OH 43215	.....	.....	125,000	78,000	203,000
Coastal Enterprises, Inc., 36 Water St. P.O. Box 268, Wiscasset, ME 04578	.....	88,344	.....	.....	88,344
Colorado Coalition for the Homeless, 2100 Broadway, Denver, CO 80205	.....	90,200	.....	.....	90,200

Technical assistance awardee	CDBG TA	CHDO TA	HOME TA	SHP TA	Total
Common Ground 110 Prefontaine Place South, Suite 504, Seattle, WA 98104	28,470	.....	68,375	30,030	126,875
Community Development Training Institute, 50 Washington Square, Newport, RI 02840	30,000	.....	.....	.....	30,000
Community Research and Development, 1300 Baxter St., Suite 269, Charlotte, NC 28204	.....	76,260	.....	.....	76,260
Congress of National Black Churches, Inc., 1225 Eye Street, N.W., Suite 750, Washington, DC 20005	131,820	362,610	.....	.....	494,430
Connecticut Housing Coalition, 30 Jordan Lane, Wethersfield, CT 06109	40,000	.....	102,900	.....	142,900
Corporation for Supportive Housing, 50 Broadway, 17th Floor, New York, NY 10004	.....	.....	99,400	263,570	362,970
Creative Housing Solutions, Inc., P.O. Box 1022, Selah, WA 98942	18,980	.....	15,570	.....	34,550
Dennison Associates, Inc., 910 17th St. NW, Suite 404, Washington, DC 20006	36,700	.....	.....	.....	36,700
Development Training Institute, Inc., 2510 St. Paul Street, Baltimore, MD 21218	106,588	2,183,486	1,091,570	.....	3,381,644
Douglass-Cherokee Economic Authority, Inc., 534 E. First North Street, P.O. Box 1218, Morristown, TN 37814	40,000	112,590	57,800	55,000	265,390
Education Development Center, Inc., 55 Chapel Street, Newton, MA 02458	.....	.....	.....	60,339	60,339
Enterprise Foundation, 10227 Wincopin Circle, Suite 500, Columbia, MD 21044	10,000	18,258	.....	.....	28,258
Florida Counties Foundation, 100 South Monroe Street, Tallahassee, FL 32301	17,500	.....	.....	.....	17,500
Florida Housing Coalition, Inc., 1367 East Lafayette St. Suite C, Tallahassee, FL 32301	16,000	59,040	54,802	21,120	150,962
Florida Planning Group, Inc., 9471 Baymeadow Road, Suite 401, Jacksonville, FL 32256	26,250	.....	54,880	40,000	121,130
Fomento Inc., dba Mendez England & Associates, 5550 Friendship Blvd., Suite 230, Chevy Chase, MD 20815	40,000	.....	.....	.....	40,000
Grassroots Leadership Development Program, Inc., 1875 North Ridge Rd., East Suite A, Lorain, OH 44055	35,000	73,098	.....	.....	108,098
HomeBase/The Center for Common Concerns, Inc., 870 Market Street, Suite 1228, San Francisco, CA 94102	.....	.....	.....	181,600	181,600
ICF Incorporated, 9300 Lee Highway, Fairfax, VA 22031	299,901	.....	1,065,317	.....	1,365,218
Illinois Community Action Association, 101 North 16th Street, Springfield, IL 62703	.....	.....	.....	109,300	109,300
Indiana Association for Community Economic Development, 17 West Market Street, Suite 865, Indianapolis, IN 46204	26,250	.....	.....	19,000	45,250
Iowa Housing Corporation, 100 Court Avenue, Suite 209, Des Moines, IA 50309	.....	28,275	54,940	.....	83,215
Johnson, Bassin & Shaw, Inc., 8630 Fenton Street, Suite 1200, Silver Spring, MD 20910	112,040	.....	233,780	156,220	502,040
Lawton Community Development Corp., 6 SW D Avenue, Suite B, Lawton, OK 73501	16,000	.....	.....	.....	16,000
Local Initiatives Support Corporation, 733 Third Avenue, 8th Floor, New York, NY 10017	.....	321,235	.....	.....	321,235
Low Income Housing Development Corporation, d/b/a The Affordable Housing Group, 1300 Baxter St., Suite 269, Charlotte, NC 28204	.....	42,336	.....	.....	42,336
Maine State Housing Authority, 353 Water St., Augusta, ME 04330	17,800	.....	66,575	16,404	100,779
Maryland Center for Community Development, Inc., 1118 Light Street, Baltimore, MD 21230	16,000	45,280	17,480	.....	78,760
Massachusetts Housing & Shelter Alliance, Inc., 5 Park Street, Boston, MA 02018	.....	.....	.....	16,404	16,404
Massachusetts Nonprofit Housing Association, Inc., 18 Tremont Street, Suite 401, Boston, MA 02108	.....	.....	.....	43,709	43,709
McClure Group, 2960 Piney Wood Drive, East Point, GA 30344	43,750	70,560	137,200	.....	251,510
Metropolitan Boston Housing Partnership, 569 Columbus Ave., Boston, MA 02118	.....	58,896	.....	.....	58,896
Michigan Coalition Against Homeless, 1210 W. Saginaw, Lansing, MI 48915	.....	.....	.....	51,750	51,750
Michigan Housing Trust Fund, 5829 Executive Drive, Lansing, MI 48911	.....	123,840	.....	.....	123,840
Minnesota Housing Partnership, 122 W. Franklin Ave., Suite 230, Minneapolis, MN 55404	24,000	121,275	102,900	40,000	288,175
Mississippi Home Corporation, P.O. Box 23369, Jackson, MS 39225	.....	35,280	.....	.....	35,280
National Affordable Housing Training Institute, 1200 19th Street, NW, Suite 300, Washington, DC 20036	24,000	.....	894,176	.....	918,176
National Association for Equal Opportunity in Higher Education, 8701 Georgia Avenue, Suite 200, Silver Spring, MD 20910	.....	625,378	.....	.....	625,378
National Center for Appropriate Technology, 3040 Continental Dr., P.O. Box 3838, Butte, MT 59702	.....	.....	403,484	.....	403,484
National Congress for Community Economic Development, 1030 15th Street, NW, Suite 325, Washington, DC 20005	16,000	336,725	18,000	.....	370,725
National Puerto Rican Coalition, Inc., 1700 K Street, NW, Suite 500, Washington, DC 20006	84,778	206,548	461,658	174,934	927,918

Technical assistance awardee	CDBG TA	CHDO TA	HOME TA	SHP TA	Total
North Carolina Rural Economic Development Center, Inc., 4021 Carya Drive, Raleigh, NC 27610	17,500	28,224	.....	.....	45,724
Northern Ponca Housing Authority, 1405 Riverside Blvd., P.O. Box 2486, Norfolk, NE 68702	40,000	.....	.....	.....	40,000
Northwest Regional Facilitators, 525 E. Mission Avenue, Spokane, WA 99202	.....	135,567	90,155	50,648	276,370
NYS Rural Housing Coalition, Inc., 879 Madison Avenue 2nd Floor, Albany, NY 12208	70,182	108,036	53,702	12,930	244,850
Ohio Capital Corporation for Housing, 88 East Broad St., Suite 1800, Columbus, OH 43215	.....	141,480	150,000	.....	291,480
Ohio CDC Association, 85 East Gay Street, Suite 403, Columbus, OH 43215	52,650	.....	.....	.....	52,650
Pathways Community Network, Inc., 44 Broad Street, NW, Suite 702, Atlanta, GA 30303	.....	.....	.....	40,000	40,000
Rural Community Assistance Corporation, 3120 Freebroad Drive, Suite 201, West Sacramento, CA 95691	130,370	927,868	413,800	34,222	1,506,260
Smart, Inc., 833 Howard, 3rd Floor, New Orleans, LA 70113	.....	.....	35,000	20,000	55,000
Southeast Michigan Council of Governments, 660 Plaza Drive, Suite 1900, Detroit, MI 48226	40,000	.....	.....	.....	40,000
Southern California Association of Governments, 818 West Seventh Street, 12th Floor, Los Angeles, CA 90001	.....	.....	123,200	.....	123,200
Southern California Mutual Housing Association, 4229 South Central Avenue, Los Angeles, CA 90011	.....	112,639	.....	.....	112,639
State of Alaska, P.O. Box 101020, Anchorage, AK 99510	40,000	23,640	45,600	40,000	149,240
State of Michigan Department of Consumer & Industry Services, 401 S. Washington Square, P.O. Box 30044, Lansing, MI 48909	.....	.....	96,320	.....	96,320
State of North Dakota, 600 East Boulevard Avenue, 14th Floor—State Capitol, Bismarck, ND 58505	33,580	.....	.....	.....	33,580
State of Utah, 324 South State Street, Suite 500, Salt Lake City, UT 84111	.....	120,000	60,000	16,000	196,000
Statewide Housing Action Coalition, 202 South State Street, Suite 1414, Chicago, IL 60604	.....	55,112	.....	.....	55,112
Structured Employment Economic Development, Corporation (Seedco), 915 Broadway, Suite 1703, New York, NY 10010	99,642	748,559	.....	.....	848,201
Technical Assistance Collaborative, One Center Plaza, Suite 310, Boston, MA 02108	.....	.....	.....	16,404	16,404
Tonya, Inc., 1000 Vermont Avenue, NW Suite 500, Washington, DC 20005	368,779	.....	792,698	317,163	1,478,640
Training & Development Associates, Inc., 1680 South Main Street, Suite 201, Laurinburg, NC 28352	88,000	513,970	344,670	72,980	1,019,620
UNITY for the Homeless, 2475 Canal Street, Suite 300, New Orleans, LA 70119	.....	.....	.....	96,000	96,000
University of Southern MS, P.O. Box 5157, Hattiesburg, MS 39406	16,000	.....	27,480	.....	43,480
Upstate Homeless Coalition of South Carolina, 2 Bennett Street, 1st Floor, P.O. Box 17738, Greenville, SC 29606	.....	.....	.....	16,000	16,000
Virginia Poverty Law Center, 201 W. Broad St., Suite 302, Richmond, VA 23220	.....	52,920	.....	.....	52,920
Washington Community Development Loan Fund, 1305 Fourth Ave., Suite 906, Seattle, WA 98101	.....	75,000	25,000	.....	100,000
West Virginia Housing Development Fund, 841 Virginia Street, East, Charleston, WV 25301	.....	161,700	137,200	.....	298,900
Wisconsin Department of Administration, 101 E. Wilson St., 4th Floor P.O., Box 8944, Madison, WI 53708	.....	.....	126,000	.....	126,000
Woonsocket Neighborhood Development Corp., 141 Olo Street, Woonsocket, RI 02895	20,000	.....	20,000	10,971	50,971

[FR Doc. 00–11453 Filed 5–5–00; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1830–XQ]

Notice of Extension of Application Deadline

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of extension of membership application deadline.

SUMMARY: Pursuant to authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council is seeking nominations for membership on the advisory council. The original application deadline of April 20, 2000 has been extended to Friday, May 26, 2000.

SUPPLEMENTARY INFORMATION: There are five open seats on the Advisory Council. Three openings are in Category One, which includes holders of federal grazing permits or leases, representatives of the timber or mineral industries, representatives of commercial recreation or off-highway vehicle interests, and interests associated with transportation and rights of way. There is one open seat in Category Two, which includes representatives from national or regional environmental groups, interests associated with dispersed recreation activities, archaeological and historic interests, and national or regionally recognized wild horse and burro interest groups. There is one open seat in

Category Three, which includes persons who hold state, county or local elected office, employees of state agencies responsible for natural resources, teachers involved in the natural sciences, members of Native American tribes, and the public at large. Members are appointed by the Secretary of the Interior to serve three-year terms. The person selected must have knowledge or experience in the interest area specified, and must have knowledge of the geographic area under the council's purview (the northeast portion of California and the northwest portion of Nevada). Qualified applicants must have demonstrated a commitment to collaborate to solve a broad spectrum of natural resource issues.

Nomination forms are available by contacting BLM Public Affairs Officer Joseph J. Fontana, 2950 Riverside Drive, Susanville, CA 96130; by telephone (530) 257–5381; or email, jfontana@ca.blm.gov. Completed nomination forms, and letters of support, must be returned to: Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130, Attention Public Affairs Officer, no later than Friday, May 26, 2000.

FOR ADDITIONAL INFORMATION:

Contact BLM Alturas Field Manager Tim Burke, (530) 233–4666, or Public Affairs Officer Joseph J. Fontana at the above phone or email address.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–11452 Filed 5–5–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the California State Office, Bureau of Land Management, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the California State Office, Bureau of Land Management, Sacramento, CA which meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

The 90 cultural items consist of *olivella* shell beads and pottery sherds.

In 1989, these cultural items were removed from a cremation at site CA-IMP–6315, ancient Lake Cahuilla, western Imperial County, CA during legally authorized investigations conducted by the University of California, Riverside. The human remains interred with these cultural items were not collected.

The one cultural item is a projectile point.

In 1989, this cultural item was removed from a cremation at site CA-IMP–6315, ancient Lake Cahuilla, western Imperial County, CA during legally authorized investigations conducted by the University of California, Riverside. The human remains interred with these cultural items were not collected.

Based on the common occurrence of brown and buff ware pottery derived from the lower Colorado river area, small projectile points, and late period shell beads imported from the Southern California coastal area, all of these cultural items can be dated to the late precontact period in the Southern California, Colorado Desert sequence, c. 1500 A.D. to the 19th century. Based on archeological and material culture evidence, there is a clear continuum from the late period precontact archeological cultures to the native peoples present in the area at the time of European contact. Consultation evidence presented by the Kumeyaay Cultural Repatriation Committee (authorized representatives of the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California) also supports the recognition of this area of Imperial County as Kumeyaay ancestral homeland.

Based on the above mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Bureau of Land Management have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California.

This notice has been sent to officials of the Kumeyaay Cultural Repatriation Committee and the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California. Representatives of any other

Indian tribe that believes itself to be culturally affiliated with these objects should contact Russell Kaldenberg, Archeologist, Division of Natural Resources, California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825; telephone: (916) 978–4635 before June 7, 2000. Repatriation of these objects to the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California may begin after that date if no additional claimants come forward.

Dated: April 26, 2000.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 00–11379 Filed 5–5–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Dayton Museum of Natural History, Dayton, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Dayton Museum of Natural History (a division of the Dayton Society of Natural History), Dayton, OH.

A detailed assessment of the human remains was made by Dayton Museum of Natural History professional staff in consultation with representatives of the Tonto Apache Tribe of Arizona; the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

In 1943, human remains representing one individual were donated to the Dayton Museum of Natural History by Mrs. E.R. Skillman. No known individuals were identified. No associated funerary objects are present.

Based on the original accession form, these human remains have been determined to be Native American affiliated with the Apache. No other evidence exists to contradict this accession information. Based on dental wear, the professional staff of the Dayton Museum of Natural History are inclined to believe that this individual dates to the precontact period rather than the historic period.

Based on the above mentioned information, officials of the Dayton Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Dayton Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Tonto Apache Tribe of Arizona; the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

This notice has been sent to officials of the Tonto Apache Tribe of Arizona; the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Ms. Lynn Simonelli, Curator, Dayton Museum of Natural History, 2600 DeWeese Parkway, Dayton, OH 45414; telephone: (937) 275–7431, ext. 30 before June 7, 2000. Repatriation of the human remains to the Tonto Apache Tribe of Arizona; the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 26, 2000.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 00–11380 Filed 5–5–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from the Nevada Test Site, NV in the Possession of the Nevada Operations Office, U.S. Department of Energy, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items

from the Nevada Test Site, NV in the possession of the Nevada Operations Office, U.S. Department of Energy, Las Vegas, NV which meet the definition of ''sacred object'' and ''unassociated funerary object'' under Section 2 of the Act.

The 46 cultural items consist of ceramics, groundstones, bone and glass beads, stone pendants, projectile points, white chert, abrader, pestle, chipped stone, and a bowl.

These 46 cultural items were recovered in the same vicinities where Native American burials had previously been recovered. Consultation evidence presented by representatives of Western Shoshone and Paiute tribes indicates these cultural items are consistent with funerary objects typically included in Western Shoshone and Paiute burials.

The 274 cultural items consist of bone and glass beads, groundstone, projectile points and fragments, pieces of pottery, ceramics, obsidian bifaces, white chert, abraders, basketry, a bowl, a stone knife, a stone drill, crystals, pipe fragments, cores, and stone pendants/ornaments.

Consultation evidence presented by representatives of Western Shoshone and Paiute tribes indicates these 250 cultural items are specific ceremonial objects needed by Native American traditional religious leaders for the practice of Native American religion by present-day adherents.

Between 1965-1969, these cultural items were recovered from several sites within the Nevada Test site during non-legally permitted collections by Frederick Worman, and anthropologist and biologist with the Los Alamos National Laboratory and William McKinnis, an engineer with the Lawrence Livermore National Laboratory. These collections also include cultural items from within the Nevada Test site given to McKinnis by other unknown collectors. After 1969, these collections were curated at the University of Nevada-Las Vegas until 1983, when they were transferred to the Desert Research Institute (DRI), a federal curation facility, in Reno, NV. When the collections containing these cultural items were inventoried in 1996, if was found that there was not any systematic referencing system, making it difficult to assign materials to their original locations within the Nevada Test site.

Based on the above-mentioned information, officials of the U.S. Department of Energy have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 46 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the U.S. Department of Energy have determined that, pursuant to 43 CFR 10.2 (d)(3), these 274 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the U.S. Department of Energy have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Paiute Indian Tribe of Utah, the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the Colorado River Indian Tribes of the Colorado Indian Reservation, the Duckwater Shoshone Tribe of the Duckwater Reservation, the Ely Shoshone Tribe of Nevada, the Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, the Moapa Band of Paiute Indians of the Moapa River Indian Reservation, the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, and the Yomba Shoshone Tribe of the Yomba Reservation.

This notice has been sent to officials of the Paiute Indian Tribe of Utah, the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the Colorado River Indian Tribes of the Colorado Indian Reservation, the Duckwater Shoshone Tribe of the Duckwater Reservation, the Ely Shoshone Tribe of Nevada, the Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, the Moapa Band of Paiute Indians of the Moapa River Indian Reservation, the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, the Yomba Shoshone Tribe of the Yomba Reservation and the following non-Federally recognized Indian groups: the Timbisha Shoshone Tribe, the Pahrump Paiute Tribe, the Las Vegas Indian Center, the Southern Paiute Tribal Chairman's Associated, and the Owens Valley Board of Trustees. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Robert C. Furlow, NAGPRA Program Manager, DOE Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518; telephone: (762) 295–0845, fax: (762) 295–1455 before June 7, 2000. Repatriation of these objects to the Paiute Indian Tribe of Utah, the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the Colorado River Indian Tribes of the Colorado Indian Reservation, the Duckwater Shoshone Tribe of the Duckwater Reservation, the Ely Shoshone Tribe of Nevada, the Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, the Moapa Band of Paiute Indians of the Moapa River Indian Reservation, the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, and the Yomba Shoshone Tribe of the Yomba Reservation may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 26, 2000.

Veletta Canouts,

Acting Deparmental Consulting Archeologist, Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 00–11378 Filed 5–5–00; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

Notice of Commission Decision Not to Review an Initial Determination Amending the Complaint and Notice of Investigation

[Inv. No. 337–TA–428]

In the Matter of Certain Integrated Circuit Chipsets, Components Thereof and Products Containing Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting a motion to amend the complaint and notice of investigation to withdraw claims 1–11, 32–36, and 39–48 of U.S. Letters Patent 5,581,782 from the investigation and to amend the notice of investigation by adding to the caption and the text the phrase ''components thereof.''

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on February 4, 2000, based on a complaint filed by Intel Corp., of Santa Clara, California (''Intel''). 65 FR 7059 (2000). The complaint named five respondents: VIA Technologies, Inc., of Taipei, Taiwan; VIA Technologies, Inc., of Fremont, California (collectively, ''VIA''); First International Computer, Inc., of Taipei, Taiwan; First International Computer of America, Inc., of Fremont, California; and Everex Systems, Inc., of Fremont, California (collectively, ''FIC''). Id. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain integrated circuit chipsets and products containing same by reason of infringement of claims 1–3 and 15–16 of U.S. Letters Patent 5,333,276, claims 1–4, 10, 15, 22, 27–30, 36–37, 44–45, and 49 of U.S. Letters Patent 5,740,385, claims 1–12 and 28–48 of U.S. Letters Patent 5,581,782 (''the '782 patent''), and claims 1–31 of U.S. Letters Patent 5,548,733.

On March 29, 2000, complainant Intel filed a motion to amend the complaint and notice of investigation by deleting claims 1–11, 32–36, and 39–48 of the '782 patent and by adding the phrase ''components thereof'' to the text and caption of the notice of investigation. Respondents opposed the motion to the extent that it sought to add the phrase ''components thereof'' to the notice of investigation. The Commission investigative attorney supported the motion in its entirety.

On April 10, 2000, the presiding ALJ issued an ID (Order No. 6) granting Intel's motion, thereby amending the complaint to delete claims 1–11, 32–36, and 39–48 of the '782 patent, and amending the notice of investigation to delete claims 1–11, 32–36, and 39–48 of the '782 patent and add the phrase ''components thereof'' to the caption and the text. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR § 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

By order of the Commission.
Issued: May 1, 2000.

Donna R. Koehnke
Secretary

[FR Doc. 00–11339 Filed 5–5–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance; Agency Information Collection Activities: Common Request

ACTION: Notice of information collection under review; survey of best practices for hiring and retention of female and minority law enforcement officers.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 28, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until June 7, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Survey of Best Practices for Hiring and Retention of Female and Minority Law Enforcement Officers.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Bureau of Justice Assistance, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Local Law Enforcement Agencies. 42 USC 3760 [Sec.510.] Purposes (a)(4) providing financial assistance to public agencies and private nonprofit organizations for demonstration programs, which, in view of previous research or experience, are likely to be a success in more than one jurisdiction.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 800 respondents will complete a 35 minute nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 400 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy

Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: April 28, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–11342 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2000 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces a new grant program, COPS in Schools, designed to combat school violence by helping local law enforcement agencies hire additional community policing officers to work in schools. This program provides an incentive for law enforcement agencies to build working relationships with schools and to use community policing efforts to combat school violence. The COPS in Schools program will help reduce the local match requirement for local law enforcement agencies seeking to hire additional new officers to be used in or around schools.

DATES: The application deadline for CIS is June 16, 2000. Applications must be postmarked by this date to be considered for funding. Due to limited funding, applications that are not funded this Fiscal Year will be carried over for consideration in Fiscal year 2001 (subject the availability of Fiscal Year 2001 funding). If your agency already was awarded a FAST, AHEAD or UHP grant, you may request additional officers at any time. Note on your application if you are requesting officers that will be assigned to primary or secondary schools.

ADDRESSES: To obtain a copy of an application or for more information, please call the U.S. Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480, or visit the COPS web site at http://www.usdoj.gov/cops/.

Departments that have a pending application under the Universal Hiring Program that are interested in redirecting that request to the COPS in Schools initiative should contact their grant advisor at 1–800–421–6770.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770. The CIS application and information on the COPS Office are also available on the Internet via the COPS web site at: http://www.usdoj.gov/cops/.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770 or your grant advisor.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The COPS in Schools program is specifically designed to combat school violence.

Many communities are discovering that trained, sworn Law enforcement officers assigned to schools make a difference. The presence of these officers provides schools with on-site security and a direct link to local law enforcement agencies.

Community policing officers typically perform a variety of functions within the school including teaching crime prevention and substance-abuse classes, monitoring troubled students, and building respect for law enforcement among students. School Resource Officers combine the functions of law enforcement and education.

The COPS in Schools initiative provides an incentive for law enforcement agencies to build working relationships with schools to use community policing efforts to combat school violence.

The COPS in Schools initiative reduces the local match requirement for law enforcement agencies seeking to hire additional officers in and around schools.

Grants will be awarded to provide for a designated portion of the salary and benefits of each new officer over three years. The maximum grant amount is $125,000 per officer; any remainder is paid with state or local funds. To qualify for funding, officers must be hired on or after the grant award start date. Funding begins when new officers are hired or on the award date (whichever is later). Funds are distributed over the course of the grant.

COPS grants must not replace funds that eligible agencies otherwise would have devoted to hire officers in the absence of the COPS funding. In other words, any hiring under the COPS in Schools program must be in addition to, not in lieu of, officers that otherwise would have been hired or currently employed officers. Grant recipients must develop a written plan to retain their COPS-funded officer positions with State of local funding after Federal funding ends. This plan must be submitted with the application.

To be eligible to receive funding under this grant program, applicants must be eligible to receive funding under the current guidelines established for the Universal Hiring Program (UHP). UHP guidelines are available from the U.S. Department of Justice Response Center (1–800–421–6770). Applicants must also provide assurance that the officers employed under this program will be assigned to work in primary or secondary schools and must enter into a partnership agreement with either a specific school official or with an official with general educational oversight authority in that jurisdiction. All applicants must also submit a memorandum of understanding (MOU). The MOU, which must be signed by both the Law Enforcement Executive and the School Official with general educational oversight, is an agreement between the parties involved whose purpose is to define the roles and responsibilities of the individuals and partners involved.

In addition to these general program requirements, agencies seeking funding under this program will be asked to provide supporting documentation in the following areas: problem identification and justification, community policing strategies to be used by the officers, quality and level of commitment to the effort, and the link to community policing.

All COPS in Schools awards will contain an ''Additional Grant Condition'' that must be signed and returned to the COPS Office. This condition requires the funded officer(s) and a school administrator to attend a COPS in Schools Training. Costs for training, per diem, travel, and lodging for attendance of required participants will be reimbursed by the COPS Office up to a maximum of $1100.

An award under the COPS in Schools grant program will not affect the eligibility of an agency to receive awards under any other COPS program.

(The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.)

Dated: April 21, 2000.

Thomas Frazier,

Director.

[FR Doc. 00–11368 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2000 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policy Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of Universal Hiring Program (UHP) grants to pay up to 75 percent of the total salary and benefits for new officers over three years, and up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. To qualify for funding, officers must be hired on or after the grant award start date. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

DATES: Application deadline for UHP is May 31, 2000. Applications must be postmarked by the deadline date. Additional application deadline dates may be announced later and are subject to available funding. If additional funding is available, applications postmarked after the deadline date may be carried over to the next funding period. Unlike previous fiscal years, funding is limited under the Universal Hiring Program. Because funding is limited, we encourage you to apply early. If your agency previously was awarded funding under the Universal Hiring Program, you may request additional officers at any time.

ADDRESSES: To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at (202) 307–1480 or 1–800–421–6770.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770. The UHP application and information on the COPS Office are also available on the Internet via the COPS web site at: http://www.usdoj.gov/cops.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The Universal Hiring Program (UHP) enables interested agencies to supplement their current sworn forces, or interested jurisdictions to establish a new agency, through Federal grants for up to three years. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

Grants will be made for up to 75 percent of the total salary and benefits for each new officer over three years, and up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant. Officers must be hired after the grant award start date to qualify for grant funding.

Waivers of the non-Federal matching requirement may be requested under UHP, but will be granted only upon a showing of extraordinary fiscal hardship.

COPS grant funds must not be used to replace funds that eligible agencies otherwise would have devoted to officer hiring in the absence of the grant. In other words, any hiring under UHP must be in addition to, and not in lieu of, officers that otherwise would have been hired. All grant recipients must develop a written plan to retain their COPS-funded officer positions after Federal funding has ended. This plan must be submitted to the COPS Office with your application.

In hiring additional officers under the UHP, agencies may not reduce the scope of their customary screening and training procedures, and must include community policing principles in their training curricula.

An award under the COPS Universal Hiring Program will not affect the consideration of an agency's eligibility for a grant under other COPS programs.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 21, 2000.

Thomas Frazier,

Director.

[FR Doc. 00–11369 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services FY 2000 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Revised notice of availability: deadline extension.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the Visiting Fellowship Program (VFP) designed to support training, technical assistance, research, program development and policy analysis to contribute to address crime and related problems in communities across the country.

The VFP is intended to offer researchers, policing professionals, community leaders, and policy analysts an opportunity to undertake independent research, problem development activities, and policy analysis designed to advance community policing in a variety of ways.

Two types of fellowships are available: Community Policing Training and Technical Assistance Fellowships, and Program/Policy Support and Evaluation (PPSE) Fellowships.

Community Policing Training and Technical Assistance Fellowships will offer police practitioners and community leaders the opportunity to participate in a community policing training program that is national in scope. PPSE Fellowships will offer police practitioners, researchers, and policy analysts the opportunity to support innovative community policing programs, to engage in activities to assess the effectiveness of community policing approaches, and to apply policy analysis skills to support the advancement of community policing nationwide.

Visiting fellows will study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. Residency in Washington, DC, is not required, but visits to the COPS Office are encouraged.

DATES: The application deadline has been extended to May 15, 2000. Applications must be post marked by May 15, 2000 to be eligible for consideration.

ADDRESSES: To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at 1–800–421–6770. Application kits are also available on the COPS Office web site at http://www.usdoj.gov/cops.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center at 1–800–421–6770, or the COPS web site at: http://www.usdoj.gov/cops.

SUPPLEMENTARY INFORMATION:

Overview

The United States Department of Justice, Office of Community Oriented Policing Services (COPS) has been charged with the implementation of the Public Safety Partnerships and Community Policing Act of 1994 (42 U.S.C. 3976dd). Under this law, the COPS Office provides grants, cooperative agreements, and technical assistance to increase police presence, improve police and community partnerships designed to address crime and disorder, and enhance public safety. The VFP, which complements the COPS Office's efforts to add 100,000 officers to our nation's streets and support innovative community policing, is one of a wide variety of policing programs supported under this law.

The VFP is intended to offer researchers, policing professionals, community leaders, and policy analysts an opportunity to undertake independent research, problem development activities, and policy analysis designed to advance community policing in a variety of ways.

Two types of fellowships are available: Community Policing Training and Technical Assistance Fellowships and Program/Policy Support and Evaluation (PPSE) Fellowships.

Community Policing Training and Technical Assistance Fellowships will offer police practitioners and community leaders the opportunity to participate in a community policing training program that is national in scope. Fellows will work to broaden their knowledge of a training area that is directly related to community policing. The experience is intended to encourage the further development, enhancement, or renewed exploration of a particular training expertise that supports community policing. Fellows will deliver this expertise innovatively as well as provide technical assistance to others. Under Community Policing Training and Technical Assistance Fellowships, Fellows may pursue initiatives designed to: (1) Improve police-citizen cooperation and communication; (2) enhance police relationships within the criminal justice system, as well as at all levels of local governments; (3) increase police and citizens' ability to innovatively solve community problems; (4) facilitate the restructuring of agencies to allow the fullest use of departmental and community resources; (5) promote the effective flow and use of information both within and outside of an agency; and/or (6) improve law enforcement responsiveness to members of the community.

PPSE Fellowships will offer police practitioners, researchers, and policy analysts the opportunity to support innovative community policing programs, to engage in activities to assess the effectiveness of community policing approaches, and to apply policy analysis skills to support the advancement of community policing nationwide. The experience is intended to encourage the further development, enhancement, or renewed exploration of program, policy, and evaluation issues that support community policing. This work will be shared with policy makers and practitioners through a variety of forums. Under PPSE Fellowships, Fellows may pursue a wide variety of initiatives. Topic areas of particular interest to the PPSE Division include, but are not limited to, the following goals: (1) Improve the ability of policing agencies and community organizations to collect different types of information that will aid in collaborative problem solving efforts; (2) enhance current knowledge of how policing agencies evolve while implementing community policing; (3) enhance current knowledge about how various policing agencies utilize information technology to support crime reduction and community policing efforts; and/or (4) enhance current knowledge of or improve the ability of policing agencies to implement community policing and problem solving in other ways.

Visiting Fellows will study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. Residency in Washington, DC, is not required, but visits to the COPS Office are encouraged.

Grants or cooperative agreements under the VFP may support salary, fringe benefits, travel essential to the project, and miscellaneous supplies or equipment in support of the project. Reasonable costs for research assistants or support staff will also be considered. Reasonable relocation expenses and the cost of temporary housing also may be permitted in cases of relocation from a Fellow's permanent address.

Under the VFP, the COPS Office may award grants or enter into cooperative agreements with individuals, public agencies, colleges or universities, nonprofit organizations, and profit-making organizations willing to waive their fees.

Receiving a grant or cooperative agreement under the VFP will not affect the eligibility of an agency to receive awards under other COPS programs.

The selection process is expected to be highly competitive.

(The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.)

Dated: April 21, 2000.

Thomas Frazier,

Director.

[FR Doc. 00–11370 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 26, 2000, a proposed Consent Decree in *United States* v. *Harvey GRQ, Inc., et al.,* Civil Action No. 00 C 2505, was lodged with the United States District Court for the Northern District of Illinois.

The Consent Decree settles an action brought under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.,* (''CERCLA'') for the recovery of past costs incurred by the United States in responding to releases or threatened releases of hazardous substances at the Harvey GRQ Site, located in the Villages of Harvey and Dixmoor, Illinois. The proposed settlement set forth in the Consent Decree addresses the liability of four defendants in this action, each of which has been named as an owner and/or operator of the Site. Under the terms of the proposed decree, the settling defendants will pay the United States a total of $700,000 in settlement of the United States' past costs claims against them.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Harvey GRQ Inc., et al.,* D.J. Ref. 90–11–3–06600.

The Consent Decree may be examined at the office of the United States Attorney, Northern District of Illinois, 219 S. Dearborn St., 5th Floor, Chicago, Illinois 60604, and at United States Environment Protection Agency Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed consent decree may also be obtained by

mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC. 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–11372 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, the Resource Conservation and Recovery Act, the Clean Water Act, and the Safe Drinking Water Act

Under 28 CFR 50.7, notice is hereby given that on April 21, 2000, a proposed Consent Decree in *United States* v. *TPI Petroleum, Inc., Diamond Shamrock Refining Co., Diamond Shamrock Refining and Marketing Co., Sigmor Pipeline Co., and TPI Pipeline Corp.* Civil Action No. 00–CV–10151–BC (E.D. Mich.), was lodged with the United States District Court for the Eastern District of Michigan, Northern Division.

In this action, the United States sought injunctive relief and penalties against Defendant TPI Petroleum, Inc. (''TPI'') for claims arising in connection with TPI's refinery in Alma, Michigan, under the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.,;* the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.;* the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.;* and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.* The United States also sought injunctive relief and penalties from Diamond Shamrock Refining Co., Diamond Shamrock Refining and Marketing Co, Sigmor Pipeline Co., and TPI Pipeline Corp. (''Slotted Guidepole Defendants'') under the New Source Performance Standards of the Clean Air Act for Ka and Kb tanks, 40 CFR 60.112a(a)(1)–(2), and 60.112b(a)(1)–(2), and, with respect to the Corpus Christi product terminal owned by Sigmor Pipeline Co., the corollary requirements under the Texas State Implementation Plan, Tex. Admin, Code title 30 § 115.112.

Under the Consent Decree, TPI will submit quarterly reports regarding the status of its shutdown and decommissioning of the Alma Refinery. TPI will also close certain hazardous waste management units pursuant to the requirements of the Resource Conservation and Recovery Act, and will work with the U.S. Environmental Protection Agency and the Michigan Department of Environmental Quality to negotiate a corrective action consent order. TPI will perform a $9 million sediment remediation Supplemental Environmental Project (''SEP'') on the Horse Creek and Pine River in Gratiot County, Michigan, and a $900,000 Brownfield SEP in the downtown waterfront area of Alma, Michigan, TPI will pay a cash penalty of $4 million.

Under the Consent Decree, TPI and the Slotted Guidepole Defendants will install controls on tanks that are equipped with guidepoles that have slots in them.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *TPI Petroleum, Inc., et al.,* Civil Action No. 00–CV–10151–BC, D.J. No. 90–5–2–1–2199.

The Consent Decree may be examined at: (1) The Office of the United States Attorney, 101 First St., Suite 200, Bay City, Mich., 48706, (2) the Region 5 Office of the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590. A copy of the Consent Decree may be obtained by mail from the Department of Justice consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the above-referenced case and DOJ Reference Number 90–5–2–1–2199, and enclose a check in the amount of $39.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–11371 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 28, 2000, and published in the **Federal Register** on February 9, 2000, (65 FR 27), Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of dihydromorphine (9145), a basic class of controlled substance listed Schedule I.

Mallinckrodt, Inc. plans to isolate dihydromorphine as a step in a multistep synthesis of hydromorphone.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Mallinckrodt, Inc. to manufacture dihydromorphine is consistent with the public interest at this time. DEA has investigated Mallinckrodt, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: April 25, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–11411 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB Emergency Review; Comment Request

May 3, 2000.

The Department of Labor (DOL) has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. chapter 35). OMB approval has been requested by June 23, 2000. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Ira L. Mills on (202) 219–5095 x 129.

Comments and questions about the ICR listed below should be forwarded to

the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Departmental Management, U.S. Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

The Office of Management and Budget 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 clarify of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: Office of the Secretary, DOL.

Title: 2000 Family Medical Leave Act (FMLA) Employer and

Employee Surveys.

OMB Number: 1225–0 New.

Frequency: One time for both surveys.

Affected Public: Individuals or households; business or other for-profit.

Employee Survey

Sampled households	Total responses	Average time per response (minutes)	Estimated total burden (hours)
Screeners	10,000	5	833
Leave Takers	1,400	15	350
Leave Needer	206	7	24
Employed Respondent	800	5	67
Total	12,406	.....	1,274

Employee Survey:

Sampled establishments	Total responses	Average time per response (minutes)	Estimated total burden (hours)
Screeners	2,400	5	200
Data Gathering by Respondent	1,500	45	1,125
Extended Interview	1,500	20	500
Total	5,400	.....	1,825

Total Burden: 3,099 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: DOL will conduct two surveys as a follow-up to the 1995 surveys done by the Commission on Family and Medical Leave, a bipartisan body established by the Congress. Prior survey clearances were approved by OMB under 1225–0062 (survey of businesses) and 1225–0063 (survey of employees). The new surveys will determine the response by employees and employers to family and medical leave issues, in general, as well as to the Family and Medical Leave Act. The new surveys will be very similar to the previous surveys to permit an analysis of the changes (if any) since 1995. Comments submitted in response to this notice will become a matter of public record.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–11444 Filed 5–5–00; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Office of Policy and Research; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondents burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Policy and Research is soliciting comments concerning the proposed extension of the collection of the Occupational Code Request (OCR) information.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 7, 2000.

ADDRESS: Jim Woods, Office of Policy and Research, Employment and Training Administration, Room N–5637, 200 Constitution Avenue, NW., Washington, DC, 20210, (202) 219–7161 (This is not a toll free number), FAX (202) 219–9186; E-Mail; o*net@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The *Dictionary of Occupational Titles* (DOT) classifies nearly all jobs in the United States economy. However, new

jobs are constantly evolving, and old ones are eliminated as technology and other facts change. As the O*NET (Occupational Information Network) system, the automated replacement of the DOT, is preparing for the implementation phase, the need for Occupational Code Requests (OCRs) remains.

The ETA 741 Form, the Occupational Code Request (OCR), was developed by the Occupational Analysis (OA) program, as a public service to the users of the revised DOT in an effort to help them in obtaining occupational codes, titles and definitions for jobs that they were unable to locate in the DOT. In addition, data provided on the OCR may also be useful indicators of potential occupations that should be studied as part of the new O*NET on-line system.

Use of the OCR is voluntary and is provided only (1) as a uniform guideline to the public and private sectors to submit information, and (2) to assist O*NET in identifying potential changes in occupations or emerging occupations.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Office of Policy and Research, while preparing for the implementation phase of O*NET, seeks to provide both the public and private sectors with needed occupational codes that cannot be located in the DOT. Therefore, the need for continuing an existing collection of this information is requested.

Type of Review: Extension (without change).

Agency: Employment and Training Administration.

Title: Occupational Code Request.

OMB Number: 1205–0137.

Affected Public: Federal Government, State or Local Government; Individuals; and Business or other for-profit/Not-for-profit institutions.

Total Respondents: 95.

Frequency: On occasion.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 47 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $1119.10.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 2, 2000.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 00–11443 Filed 5–5–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–99]

Curtis-Straus LLC., Recognition as an NRTL

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Curtis-Straus LLC. for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on May 8, 2000, and will be valid until May 9, 2005, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of Curtis-Straus LLC. (CSL) as a Nationally Recognized Testing Laboratory (NRTL). This recognition covers testing and certification of the equipment or materials, and covers the site, listed below. The recognition also includes CSL's use of the supplemental programs described below.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products ''properly certified'' by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of its final decision on an application.

CSL applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required notice in the **Federal Register** (64 FR 69552, 12/13/99) to announce the application. The notice included a preliminary finding that CSL could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by February 11, 2000. OSHA received five comments in response to the notice, all of which expressed support for recognition of the applicant.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL–1–99, the permanent record of public information on the CSL recognition.

The address of the testing facility (site) that OSHA recognizes for CSL is: Curtis-Straus LLC., 527 Great Road, Littleton, Massachusetts 01460.

Background on the Applicant and the Application

According to the application, Curtis-Straus LLC. (CSL) is a limited liability company chartered in the Commonwealth of Massachusetts and was established in 1996. CSL states that it offers testing services in electrical safety and in a number of other areas. The applicant also states that its founders and managers have, in the aggregate, over thirty years of technical

experience in these areas. The application indicates that CSL is privately owned.

CSL submitted an application for recognition on February 9, 1998 (see Exhibit 2A). In response to requests from OSHA for clarification and additional information, CSL amended its application in submissions dated June 24, 1998, and August 9, 1999 (see Exhibits 2B and 2C). Some documents in these submissions, and part of the original application, have been withheld from disclosure under Exemption 4 of the Freedom of Information Act (FOIA). Staff of the NRTL Program performed an on-site assessment (review) of the Littleton, Massachusetts, facility on October 26–29, 1998. In the on-site review report (see Exhibit 3), the program staff recommended a ''positive finding.''

The applicant has presented documentation that describes how it will operate as an NRTL. However, it is an organization that, to date, has not operated a product certification program, and CSL only recently developed the documents for the certification phase of its planned NRTL operations. The CSL Standard Operating Procedures Manual (SOPM), which is one of the documents withheld from disclosure under FOIA, contain most of the detailed procedures the applicant plans to follow.

The four recognition requirements of 29 CFR 1910.7 are presented below, along with examples that illustrate how CSL has met or plans to meet each of these requirements. We also presented this information in the notice of preliminary finding.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review report indicates that CSL has adequate testing equipment and an adequate facility to perform the tests required under the test standards for which it is recognized. Security measures are in place to restrict or control access to their facility, and procedures exist on handling of test samples. The report also indicates that testing and processing procedures are in place, although some were in the process of review and updating, at the time of the on-site review. CSL only recently developed the testing procedures it will use for the test standards listed below.

The application indicates that CSL maintains records on testing equipment, which include information on repair, routine maintenance, and calibrations. It uses outside calibration sources and has developed procedures for internal calibrations of certain equipment. The application and on-site review report address personnel qualifications and training, and identify CSL staff involved with product testing, along with a summary of their education and experience. Also, the report indicates that CSL personnel have adequate technical knowledge for the work they perform. Moreover, the review report indicates that the Quality System Manual (QSM) and SOPM are the primary documents for the CSL quality assurance activities. The application contains the procedures CSL will utilize for conducting the internal audits of its operations.

The application indicates that CSL has not tested products to all requirements of a test standard and, as already mentioned, CSL has just developed many of the procedures it will utilize to do such testing. Therefore, OSHA has not yet evaluated the actual use of the testing and reporting procedures that CSL will utilize for purposes of certifying to a complete test standard, and OSHA needs to investigate this aspect of CSL's operations when these procedures are in use. Accordingly, OSHA includes a condition in this recognition notice to provide the Agency with the opportunity to make this evaluation.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The applicant has developed procedures and related documentation for initially qualifying a manufacturer under the CSL certification program and for performing the required follow-up inspections at a manufacturer's facility. CSL has stated in its SOPM that it will perform follow-up ''factory inspections at least four times per year.'' These inspections will be one part of the activities that the applicant will utilize in controlling its certification mark. In its application, CSL included evidence of its application for registration of its certification mark with the U.S. Trademark and Patent Office (USPTO). The USPTO has issued a notice of allowance for this mark.

According to the on-site review report, CSL has not had a product certification program prior to applying for recognition as an OSHA NRTL. Staff of the NRTL Program reviewed a number of documents during the on-site visit that described the approach CSL would take in operating its program. After the visit, CSL finalized more detailed procedures, previously mentioned, for qualification and follow-up inspection of the manufacturer. CSL also presented procedures to establish and modify a ''listing'' of products it has certified and to control its mark on these products. Since CSL has just developed its NRTL follow-up program, and has not listed or labeled any products under these procedures, OSHA has been unable to evaluate the actual use of CSL's product certification program. The condition, mentioned above, that OSHA includes below also will provide the Agency with the opportunity to make this evaluation. In addition, OSHA is concerned about the adequacy of CSL's proposed procedures to control its certification mark. As a result, OSHA imposes another condition to ensure that CSL will adequately control its mark.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

In its original application, CSL has stated that there is ''no ownership of Curtis-Straus by [organizations that are] manufacturers or suppliers of products or components to be tested or certified.'' The applicant also states that none of its owners ''works for, or has ownership of, or significant interest in'' any such organization. More recently, CSL provided a more comprehensive statement of its independence from ''suppliers'' (*i.e.,* a manufacturer or distributor) and ''major users'' (*i.e.,* employers that make major use) of any products that must be certified by an NRTL. The applicant also states that its ''conflict of interest policies are in place and * * * conflict of interest statements are signed by all personnel.''

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an NRTL must maintain effective

procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

As previously stated, CSL has only recently developed the procedures it will utilize in testing and certifying products. This includes the procedures for evaluating and reporting the findings for its initial or follow-up testing of products to ensure they conform to all requirements of a test standard. The applicant did include examples of the kind of reports it will generate. However, as with the testing procedures, the evaluation and reporting procedures are new to CSL, and OSHA needs to evaluate them when the applicant uses them for its NRTL operations. Regarding the handling of complaints and disputes, the applicant's SOPM contains the details on how it will handle a complaint it receives from its clients or from the public.

Programs and Procedures

OSHA is granting the request by CSL to use the two (2) supplemental programs, listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that CSL meets the criteria for use of the following supplemental programs:

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents. (Limitation—recognition covers equipment calibration and maintenance services only.)

CSL does not plan to use Program 9 for purposes of conducting its follow-up inspections, which is permitted under this program.

OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under the programs only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, OSHA does treat these programs as one of the three elements that defines an NRTL's scope of recognition.

Additional Conditions

As described above, OSHA has not had the opportunity to evaluate the actual testing, evaluation, and reporting procedures, and use of the follow-up program, since these have not yet been implemented. Many of these procedures and practices will be new to CSL. Unless CSL meets a condition imposed by OSHA, it could not be recognized as an NRTL under 29 CFR 1910.7. As a result, OSHA conditionally recognizes CSL subject to a later assessment of the detailed procedures and practices once they are in place.

This approach is consistent with OSHA's past recognition of other organizations as NRTLs which, like CSL, were mainly experienced in testing products to specific customer or partial test standard requirements. OSHA indicated in the **Federal Register** notice for those recognitions that the procedures to be used were new to the organization (for example, see 56 FR 28581, 6/21/91; and 58 FR 15511, 3/23/93). OSHA will require CSL to take steps to correct any deficiencies that OSHA may find during its initial follow-up review. If deficiencies are not corrected, then OSHA will commence its process to revoke the recognition of the NRTL.

In addition, CSL plans to monitor use of its mark during its follow-up inspections and plans to monitor media to check for misuse of its mark. However, its procedures on authorizing and issuing its labels appear to present the opportunity for a manufacturer to label, intentionally or not, products that are not covered under the listing agreement with CSL. Under its procedures, CSL gives a manufacturer general authorization to use the CSL mark or label on a product but does not appear to control the actual marking or labeling that the manufacturer would use on a lot or run of production, much less on a series of such runs of production.

CSL's authorization procedure and listing agreement contain provisions to prohibit a manufacturer's use of the mark on products that are not ''identical to the sample'' CSL has certified. However, such proscriptions do not ensure that CSL actually controls its mark on a given run of production. As mentioned, CSL does plan to perform after-the-fact monitoring of the manufacturer to check for misuse. Also, it will take appropriate action if it discovers misuse. However, its procedures may not initially prevent misuse of the mark, and its planned monitoring may not detect instances when misuse has occurred, especially considering that many thousands of products may be affected. Such misuse may have serious consequences for workers who use products that turn out to be unsafe, which CSL, although well intentioned in its procedures, did not effectively detect. As a result, OSHA has included a condition on CSL that it implement, as part of its system for authorization or issuance of the use of its mark on products, an effective method to ensure that only products that it has certified carry this mark. If CSL does not meet this condition, it would not meet the requirement in 29 CFR 1910.7(b)(3), under which an NRTL must maintain adequate control programs, and could not continue to be recognized as an NRTL.

Therefore, OSHA has included appropriate conditions below to address these matters. These conditions apply solely to the CSL operations as an NRTL and solely to those products that it certifies for purposes of enabling employers to meet OSHA product approval requirements. The conditions are in addition to the other conditions listed below, which OSHA normally imposes in its recognition of an organization as an NRTL. The NRTL Program staff includes these type of additional conditions on OSHA's informational web page for the NRTL. When the staff determine that a particular condition has been satisfied, not only for CSL but for any NRTL, they will remove the condition from the web page and notify the NRTL accordingly. OSHA has no requirement to publish a public notice to remove conditions it imposes as part of its NRTL recognition activities.

Final Decision and Order

The NRTL Program staff has examined the complete application, the amendments to the application, and other pertinent documents. Based upon this examination and the OSHA staff finding, including the on-site review report (see Exhibit 3), OSHA finds that Curtis-Straus LLC. has met the requirements of 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby recognizes Curtis-Straus LLC. as a Nationally

Recognized Testing Laboratory, subject to the limitations and conditions listed below.

Limitations

OSHA recognizes CSL for testing and certification of products to demonstrate conformance to the following five (5) test standards, one part of the NRTL's scope of recognition. OSHA's recognition also includes the site and the use of the two supplemental programs, listed above. The Agency's recognition of CSL, or any NRTL, is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, OSHA's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements. OSHA has determined that the standards listed below are appropriate, within the meaning of 29 CFR 1910.7(c).

ANSI/UL 1459 Telephone Equipment
ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General Requirements

The designations and titles of the above standards were current at the time of the preparation of the notice of the preliminary finding.

Conditions

Curtis-Straus LLC. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, CSL will notify the OSHA NRTL Program Director so that OSHA may review CSL's implementation of its procedures for testing and certification of products covered within the scope of the test standards listed above.

As part of its system for authorization or issuance of the use of its certification mark, CSL must establish, maintain, and utilize proper procedures that ensure its mark is applied only to the specific run(s) of production of the products that CSL has certified.

OSHA must be allowed access to CSL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CSL agrees that it will allow no representation of its recognition as a Nationally Recognized Testing Laboratory (NRTL) by OSHA without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain types of products;

CSL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, including details;

CSL will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

CSL will continue to meet the requirements for recognition in all areas where it has been recognized; and

CSL will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C. this 21st day of April, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–11442 Filed 5–5–00; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities, Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 714, from 9 a.m. to 5 p.m., on Tuesday, May 30, 2000.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 2000.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Laura S. Nelson, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 00–11441 Filed 5–5–00; 8:45 am]

BILLING CODE 703–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation et al.; Seabrook Station, Unit No. 1; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. NPF–86 for the Seabrook Station, Unit 1 (Seabrook Station), to the extent held by United Illuminating Company (UI). The indirect transfer would be to UIL Holdings Corporation (Holdings), incorporated in Connecticut. Currently, Holdings is a wholly owned subsidiary of UI.

According to a February 17, 2000, application, as supplemented on March 1, 2000, by UI for approval of certain indirect license transfers, on January 24, 2000, UI entered into an ''Agreement and Plan of Merger and Share Exchange'' (Plan of Exchange) with Holdings. Under the plan of exchange, UI will become a wholly owned subsidiary of Holdings, while the unregulated businesses of UI will be

transferred to Holdings as subsidiaries thereof. The establishment of a new parent for UI will effect an indirect transfer of the Seabrook Station license to the extent held by UI to Holdings. UI holds a 17.5-percent ownership interest in Seabrook Station; however, North Atlantic Energy Services Corporation (NAESCO) is exclusively authorized to operate the unit. NAESCO would remain as the managing agent for the 11 joint owners of the facility, including UI, and would continue to have exclusive responsibility for the management, operation, and maintenance of the Seabrook Station. The application does not propose a change in the rights, obligations, or interests of the other 10 joint owners of the Seabrook Station. In addition, no physical changes to the Seabrook Station facility or operational changes are being proposed in the application. No direct transfer of the license will result from the proposed corporate restructuring of UI.

The application also seeks approval of a proposed indirect license transfer in connection with UI's partial ownership of the Millstone Nuclear Power Station, Unit 3, which will be the subject of a separate notice.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding the license transfer application, are discussed below.

By May 29, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Barton Z. Cowan, Esq., Eckert Seamans Cherin & Mellott, LLC, 600 Grant Street, 44th floor, Pittsburgh, PA 15219 (telephone number 412–566–6000 and e-mail address bzc@escm.com,) attorney for United Illuminating Company; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by June 07, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of the **Federal Register** notice.

For further details with respect to this action, see the application dated February 17, 2000, and supplement dated March 1, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.NRC.gov).

Dated at Rockville, Maryland this 1st day of May 2000.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–11397 Filed 5–5–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station, Unit No. 3; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit No. 3 (Millstone, Unit 3), to the extent held by United Illuminating Company (UI). The indirect transfer would be to UIL Holdings Corporation (Holdings), incorporated in Connecticut. Currently, Holdings is a wholly owned subsidiary of UI.

According to a February 17, 2000, application, as supplemented on March 1, 2000, by UI, for approval of certain indirect license transfers, on January 24, 2000, UI entered into an ''Agreement and Plan of Merger and Share Exchange'' (Plan of Exchange) with Holdings. Under the Plan of Exchange, UI will become a wholly owned subsidiary of Holdings, while the unregulated businesses of UI will be transferred to Holdings as subsidiaries thereof. The establishment of a new parent for UI will effect an indirect transfer of the Millstone, Unit 3 license to the extent held by UI to Holdings. UI holds a 3.685-percent ownership interest in Millstone, Unit 3; however, Northeast Nuclear Energy Company (NNEC) is exclusively authorized to operate the unit. NNEC would remain as the managing agent for the 14 joint owners of the facility including UI and would continue to have exclusive responsibility for the management, operation, and maintenance of Millstone, Unit 3. The application does not propose a change in the rights, obligations, or interests of the other 13

joint owners of Millstone, Unit 3. In addition, no physical changes to the Millstone, Unit 3 facility or operational changes are being proposed in the application. No direct transfer of the license will result from the proposed corporate restructuring of UI.

The application also seeks approval of a proposed indirect license transfer in connection with UI's partial ownership of Seabrook Station, which will be the subject of a separate notice.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding the license transfer application, are discussed below.

By May 29, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Barton Z. Cowan, Esq., Eckert Seamans Cherin & Mellott, LLC, 600 Grant Street, 44th floor, Pittsburgh, PA 15219 (telephone number 412–566–6000 and e-mail address bzc@escm.com,) attorney for United Illuminating Company; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by June 7, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of the **Federal Register** notice.

For further details with respect to this action, see the application dated February 17, 2000, and supplement dated March 1, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.NRC.gov).

Dated at Rockville, Maryland this 3rd day of May 2000.

Victor Nerses,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–11396 Filed 5–5–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Amergen Energy Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62 issued to AmerGen Energy Company, LLC (the licensee) for operation of the Clinton Power Station (CPS) located in DeWitt County, Illinois.

The proposed amendment would allow a one-time extension of some CPS Technical Specification (TS) surveillance intervals related to logic system functional testing of the Primary Containment and Drywell Isolation Instrumentation, and the Suppression Pool Makeup System Instrumentation. The extension would be to November 30, 2000, which is the scheduled end date of the upcoming refueling outage. The extension is requested to support elimination of a planned mid-cycle outage. Previously, by license Amendment No. 125 dated March 17, 2000, the NRC staff approved surveillance interval extensions for various TS to support elimination of the mid-cycle outage.

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.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The proposed Technical Specification (TS) changes involve a one-time only change in

the surveillance test intervals of selected Surveillance Requirements (SRs). As such, the Operability requirements for systems, structures, and components required by the Technical Specifications remain unchanged. Further, the proposed TS changes do not impact the TS surveillance performance requirements themselves nor the way in which the surveillances are performed, since only the test intervals are affected for the identified SRs. The proposed TS changes do not physically involve any changes to the plant, nor do they impact any design or functional requirements of the associated systems. Thus, the proposed TS changes do not increase the challenges of any safety systems assumed to function in the accident analysis.

In addition, the proposed TS changes do not significantly affect the availability of equipment or systems required to mitigate the consequences of an accident because (1) extension of the test intervals to the extent requested is not expected to have a significant impact on availability (i.e., no extended test interval would exceed 30 months), and (2) other or more frequent testing performed for the affected systems or components, as well as for redundant systems or components, supports continued availability of the affected functions. The equipment subject to testing per the affected SRs is still required to be operable and capable of performing any accident mitigation functions assumed in the accident analysis. Furthermore, a historical review of surveillance test results identified no failures that would invalidate these conclusions.

Based on the above, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. *The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The proposed TS changes involve a one-time only change in the surveillance testing intervals of selected SRs. Such changes do not introduce any failure mechanisms of a different type than those previously evaluated since there are no physical changes being made to the facility. In addition, the surveillance test requirements themselves, and the way surveillance tests are performed, will remain unchanged. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. *The proposed changes do not involve a significant reduction in a margin of safety.*

The one-time extended surveillance frequencies do not result in a significant reduction in the margin of safety. Although the proposed TS changes will result in an increase in the interval between surveillance tests, the impact, if any, on system availability is small. This is because, as noted previously, extension of the test intervals to the limited extent proposed would not be expected to have a significant impact on availability. Other or more frequent testing performed for the affected systems or components, as well as the testing performed for redundant systems or components, supports continued availability of the affected functions.

In addition, the proposed changes do not involve any physical changes to the affected systems or components, nor do they involve any changes to setpoints, operating limits, or safety limits.

Based on the above, the assumptions in the licensing basis are not impacted, and the proposed TS changes do not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 7, 2000, 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 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner 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 factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention

must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of 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. Petitioner must provide 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 to relief. A petitioner who fails to file such a supplement which satisfies 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, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Kevin P. Gallen, Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 24, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 2nd day of May, 2000.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–11395 Filed 5–5–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on May 19, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, May 19, 2000—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the status of risk-informed revisions to 10 CFR Part 50 (Option 3), including proposed revision to 10 CFR 50.44 concerning combustible gas control systems and issues in the Nuclear Energy Institute letter dated January 19, 2000. The Subcommittee will also discuss the public comments related to the Option 2 Advance Notice of Public Rulemaking. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 5, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–11387 Filed 5–5–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Severe Accident Management; Notice of Meeting

The ACRS Subcommittee on Severe Accident Management will hold a meeting on May 18, 2000, in Room T–

2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Thursday, May 18, 2000—1 p.m. Until the Conclusion of Business

The Subcommittee will: (1) Review the proposed final Regulatory Guide and Standard Review Plan Section supporting the revised Source Term Rule, and (2) discuss the status of the NRC and NEI program to address issues associated with control room habitability. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 2, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–11388 Filed 5–5–00; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Notice of Receipt of and Availability for Public Comment on an Application for Wireless Telecommunications Facilities Site; The Presidio of San Francisco, California

AGENCY: The Presidio Trust.

ACTION: Public notice.

SUMMARY: This notice announces the Presidio Trust's receipt of and availability for public comment on an application from Bay Area Cellular Telephone Company, dba Cellular One, for a wireless telecommunications facilities site in The Presidio of San Francisco (the ''Project''). The proposed location of the Project is in the parking area located directly below the Doyle Drive overpass in the vicinity of the intersection of Halleck and Vallejo Streets, San Francisco, California (the ''Project Site'').

The Project involves (i) placing a single utility pole and a one-story equipment building at the Project Site (alternatively, the equipment may be housed in an existing building, obviating the need for an equipment building), and (ii) removing five existing utility poles and lines, burying the lines underground. The utility pole will be approximately 50 feet tall. The one-story equipment building will be 9 feet by 15 feet. Power for the Project will be provided through underground coaxial cables connected to existing power sources. Connection to telephone lines will be through existing telephone lines.

Comments: Comments on the proposed Project must be sent to Devon Danz, Presidio Trust, 34 Graham Street, PO Box 29052, San Francisco, CA 94129–0052, and be received by June 7, 2000. A copy of Cellular One's application is available upon request to the Presidio Trust.

FOR FURTHER INFORMATION CONTACT: Devon Danz, Presidio Trust, 34 Graham Street, PO Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: May 2, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–11384 Filed 5–5–00; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension: Rule 30b2–1, SEC File No. 270–213, OMB Control No. 3235–0218.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''Act'') [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 30b2–1 Under the Investment Company Act of 1940, Filing of Copies of Reports to Stockholders

Rule 30b2–1 under the Investment Company Act of 1940 [17 CFR 270.30b2–1] requires the filing of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its stockholders.[1] This requirement ensures that the Commission has information in its files to perform its regulatory functions and to apprise investors of the operational and financial condition of registered investment companies.[2]

It is estimated that approximately 3,490 registered management investment companies are required to send reports to stockholders at least twice annually. The annual burden of filing the reports is estimated to be negligible.

The burden estimate for Rule 30b2–1 is made solely for the purposes of the Act and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The collection of information under Rule 30b2–1 is mandatory. The information provided by Rule 30b2–1 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[1] Most filings are made via the Commission's electronic filing system; therefore, paper filings under Rule 30b2–1 occur only in exceptional circumstances. Electronic filing eliminates the need for multiple copies of filings.

[2] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and stockholders.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 1, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–11403 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Maxim Pharmaceuticals, Inc., Common Stock, $.001 Par Value, and Redeemable Common Stock Purchase Warrants Expiring July 10, 2001) File No. 1–14430

May 2, 2000.

Maxim Pharmaceuticals, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the securities described above (''Securities'') from listing and registration on the American Stock Exchange LLC (''Amex'') and under Section 12(b) of the Act.[3]

The Company, whose business is biotechnology, has undertaken to transfer trading in its Securities from the Amex to the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq''), which it considers to be the preeminent marketplace for the securities of biotechnology companies. The Company has registered its Securities pursuant to Section 12(g) of the Act[4] by filing a Registration Statement on Form 8–A with the Commission on April 26, 2000. The Securities subsequently became designated for quotation and began trading on the Nasdaq National Market, and were simultaneously suspended from trading on the Amex, on April 27, 2000. In making the determination to withdraw its Securities from listing and registration on the Amex in conjunction with the commencement of trading on the Nasdaq, the Company hopes to avoid both the costs of maintaining dual listings and potential fragmentation of the market for its Securities.

The Company has stated that it has complied with the Rules of the Amex governing the withdrawal of its Securities from listing and registration on the Exchange, and that the Amex in turn has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Securities from listing and registration on the Amex and shall have no effect upon the Securities' designation for quotation and trading on the Nasdaq National Market and registration under Section 12(g) of the Act.[5]

Any interested person may, on or before May 23, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–11401 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registrations; (Rogers Corporation, Capital Stock, $1 Par Value, and Rights to Purchase Capital Stock, $1 Par Value) File No. 1–04347

May 2, 2000.

Rogers Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2-2(d) thereunder, [2] to withdraw the securities to described above (''Securities'') from listing and registration on the American Stock Exchange LLC (''Amex'').

The Company is seeking to withdraw its Securities from listing and registration on the Amex in conjunction with the commencement of their trading on the New York Stock Exchange, Inc. (''NYSE''). The Company hopes that, with a NYSE listing, it will be able to realize a broader market base for its Securities than it has had through the Amex.

Subsequent to the filing of the Company's Registration Statements on Form 8–A with the Commission, which became effective on April 6, 2000, trading in the Securities commenced on the NYSE, and was simultaneously suspended on the Amex, at the opening if business on April 18, 2000. In making the determination to withdraw its Securities from listing and registration on the Amex in conjunction with the new listing and registration on the NYSE, the Company hopes to avoid both the costs associated with maintaining dual listings and potential fragmentation of the market for its Securities.

The Company has stated that it has complied with the rules of Amex governing the withdrawal of its Securities, and the Amex in turn has indicated that it will not opposed such withdrawal.

The Company's application relates solely to the withdrawal of the Securities from listing and registration on the Amex and shall have no effect no effect upon the Securities' continued listing and registration on the NYSE. By reason of Section 12(b) of the Act[3] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under Section 13 of the Act.[4]

Any interested person may, on or before May 23, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

[4] 15 U.S.C. 78m.

mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–11404 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–42733; File No. SR–CHX–00–10)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

April 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on April 10, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The 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 CHX proposes to amend its membership dues and fees schedule (''Schedule'') to impose a charge for the replacement of new identification badges used on the trading floor. The text of the proposed rule change is available upon request from the CHX and 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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 proposed rule change amends the Schedule to confirm that the Exchange will impose a $30 fee on members and Exchange employees for the replacement of photo identification badges that will soon be issued by the Exchange. These identification badges will be issued to each member, member firm employees, and other person who works on the trading floor.[3]

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[4] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(B)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.[7]

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed wit the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–10 and should be submitted by May 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–11399 Filed 5–5–00; 8:45am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] There will be no charge for the initial badge; only replacement badges will incur the $30 fee. Telephone conversation between Ellen J. Neely, Vice President and General Counsel, CHX, and Michael Gaw, Division of Market Regulation, Commission (April 26, 2000).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42749; File No. SR–NASD–00–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Market-Wide Trading Halts

May 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. On May 1, 2000, Nasdaq amended the filing.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal

Nasdaq's proposal is an interpretation to NASD Rule 4120 dealing with trading halts due to extraordinary market price movements, otherwise known as ''circuit breakers.'' The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

* * * * *

IM–4120–3. Market Closing Policy

Since 1988, the NASD has consistently asserted that circuit breakers should only be used in response to extraordinary price movement. The NASD's strong preference is that markets remain open wherever possible and, most importantly, remain open at the end of the day.

The NASD recognizes, however, the risks imposed on any single market that remains open while all other U.S. markets have halted trading in response to extraordinary price movements. Therefore, the NASD Board of Governors has determined to halt, upon SEC request, all domestic trading in both the securities listed on The Nasdaq Stock Market and all equity and equity-related securities trading in the over-the-counter market should other major securities markets initiate market-wide trading halts in response to extraordinary market conditions.

This determination reflects the NASD's long-time policy of cooperation with the Commission and other market participants on issues relating to trading halts and represents the Association's continued commitment to the establishment of circuit breaker standards that both keep markets open longer during periods of market stress and that are also more reflective of market activity as a whole.

Towards that end, the NASD believes that additional future changes to circuit breakers are warranted. In particular, the NASD is concerned that the Dow Jones Industrial Average, [which contains no Nasdaq stocks,] *despite recent improvements including the addition of a small number of Nasdaq stocks,* [is] *remains* an inappropriately narrow indicator of market price declines. *As an alternative, the NASD believes that the Commission should consider replacing the DJIA with the larger and more diverse Standard and Poor's 500 Index as the measure that best reflects overall market activity for circuit breaker purposes.* [Moreover, recent attempts to commercially leverage the DJIA may result in that average being less immediately available to the investing public during periods of market stress.] The NASD hopes to revisit [these] this issue[s] with the Commission in the future. [with a view towards the adoption of a more representative [, and more readily-available, market index for circuit breaker purposes.]

This Policy Statement on Market Closings shall remain in effect until April 30, [2000] *2002,* unless otherwise modified, or extended prior thereto, by the NASD Board of Governors.

* * * * *

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 its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to extend and modify, on a two-year pilot basis, NASD IM–4120–3, which expresses the Association's agreement to halt, upon SEC request, all domestic trading in both the securities listed on Nasdaq and all equity and equity-related securities trading in the over-the-counter market, should any of the other major United States securities markets initiate market-wide trading halts in response to extraordinary market conditions. As outlined in the Interpretive Material (''IM''), the NASD reiterates its commitment to halt trading on Nasdaq and the over-the-counter market when any other major securities market declares a market-wide trading halt in response to extraordinary market conditions. In addition, Nasdaq proposes to modify the current market closing policy statement to reflect the recent addition of two Nasdaq stocks to the Dow Jones Industrial Average (''DJIA''), while still expressing the Association's view that the DJIA is too small and narrow an index to serve as the circuit-breaker price-decline standard.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] in that the proposed IM is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. In addition, Nasdaq believes the IM removes impediments to, and perfects the mechanism of, a free and open market and a national market system as well as, in general, protecting investors.

B. Self-Regulatory Organization's Statement of 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,[7] and Rule 19b–4(f)(1)[8] thereunder, in that it constitutes

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* April 28, 2000 letter from Thomas P. Moran, Assistant General Counsel, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (''Amendment No. 1''). Amendment No. 1 changed the file number from SR–NASD–00–25 to SR–NASD–00–26, and changed Section III of Exhibit 1 to properly reflect that the proposal was filed pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(1).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–26 and should be submitted by May 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–11400 Filed 5–05–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–42740; File No. SR–CHX–00–11)

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

May 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on April 25, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has requested a six-month extension[3] of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules. The pilot currently is due to expire on May 1, 2000. The Exchange proposes that the pilot remain in effect on a pilot basis through November 1, 2000. The text of the proposed rule is available at 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 regarding the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[4] Among other things, these rules rendered the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the ''MAX'' system).[5]

On January 3, 1997, the Commission approved,[6] on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to Commission Rule 11Ac1–1 (the ''NBBO''). When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April 1997. Six months of trading data did not become available until November 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the original filing, the Exchange requested a one-year extension of the pilot program. In a telephone call on May 1, 2000, between Paul O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, and Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, the Exchange agreed to a six month extension for the pilot.

[4] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2); *see also*, Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1000).

[5] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX Rules, Art. XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, but MAX system handling rules remain applicable.

[6] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[7] The Exchange submitted the report to the Commission on January 30, 1998, Subsequently, the Exchange requested another three-month extension, in order to give the Commission adequate time ot approve the pilot program on a permanent basis.

On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.[8] On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.[9] On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June 30, 1999.[10] On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.[11] On January 31, 2000, the Commission approved the pilot for an additional three-month period, until May 1, 2000.[12] The Exchange now requests another extension of the current pilot program, through November 1, 2000. The Exchange also submitted to the Commission a report relating to executions in accordance with the pilot program, to enable the Commission to continue its review of the pilot program on April 27, 2000.[13]

Under the pilot program, specialists must continue to accept agency [14] market orders or marketable limit orders, but only for orders of 100 to 1,000 shares in Nasdaq/NM securities rather than the 2,099 share limit previously in place. Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists are required to automatically execute Nasdaq/NM orders only if they are quoting at the NBBO when the order was received.

The pilot program requires the specialists to set the MAX auto-execution threshold at 1,000 shares or greater for Nasdaq/NM securities. When a CHX specialists is quoting at the NBBO, orders for a number of shares less than or equal to the auto-execution threshold designated by the specialist are executed automatically (in an amount up to the size of the specialist's quote). Orders in securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at an increment away from the NBBO, as determined by the specialist from time to time, for either 100 or 1,000 shares, depending on the issue.[15]

When the specialist is not quoting a Nasdaq/NM security at the NBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialists does not elect manual execution, MAX market and marketable limit orders in the security that are of a size equal to or less than the auto-execution threshold is less than or equal to the NBBO. If the specialists elects manual execution, the specialist must either manually execute the order at the NBBO or a better or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold are not subject to these requirements, and may be canceled within one minute of being entered into MAX to designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[16] In particular, the proposed rule is consistent with Section 6(b)(5) [17] of the Act in that it designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Th CHX's proposal is intended to conform CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while recognizing that the CHX provides a separate, competitive market for Nasdaq/NM securities. The rules establish execution procedures and guarantees that attempt to provide executions reflective of the best quotes among OTC market makers and specialists in Nasdaq/NM securities without subjecting CHX specialists to execution guarantees that are substantially greater than those imposed on their competitors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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 proposal is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[7] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 62 FR 1517 (January 9, 1998).

[8] *See* Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[9] *See* Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

[10] *See* Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[11] *See* Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999).

[12] *See* Securities Exchange Act Release No. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000).

[13] *See* Letter to Katherine England, Assistant Director, Division, Commission, from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, dated April 27, 2000.

[14] The term ''agency order'' means an order for the account of a customer, but does not include professional orders, as defined in CHX Rule, Art. XXX, Rule 2, Interp. and Policy .04. The rule defines a ''professional order'' as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[15] Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) for issues that became subject to mandatory compliance with Commission Rule 11Ac1–4 on or prior to February 24, 1997 and 1000 shares for other issues.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–11 and should be submitted by May 30, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)[19] of the Act, which requires that an Exchange have rules 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 a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 11A(a)(1)(C)[20] and 11A(a)(1)(D)[21] of the Act. The proposal is consistent with Section 11A(a)(1)(C) in that it seeks to ensure economically efficient execution of securities transactions. Moreover, the proposal is consistent with Section 11A(a)(1)(D) in that it attempts to foster the linking of markets for qualified securities through communication and data processing facilities.

The Commission notes, however, that while the Exchange has been working toward establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.[22] In connection with this effort, the Commission has requested an update on the information provided in the December 21, 1999 and April 27, 2000 reports using the Exchange's surveillance system. The Commission requests that the Exchange supplement the available trading data so that it can consider issues concerning the pilot program, including the circumstances involving orders that are not automatically executed through MAX, whether orders are given the NBBO shown at the time the order is received or the NBBO posted at the time the order is executed, and what explanations are available for price disimprovment. The Commission's is extending the pilot program through November 1, 2000 so that the Exchange may compile this data for the Commission's review. The Commission requests that the Exchange provide a report addressing the above no later than August 15, 2000.

Upon approval of SR–CHX–99–27,[23] wherein the Exchange last sought an extension of this pilot, the Commission also requested that the Exchange rewrite Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules so these rules clearly explain the difference between how listed (or dually traded) securities and over-the-counter (or Nasdaq/NM) securities are routed and executed by the Exchange, and submit the new proposed language to the Commission for review and approval. Further, the Commission requested that the Exchange include in its rules an explanation of how the provisions of the Exchange's Best Rule interact with the Exchange's Rules governing automatic execution of orders. The Exchange has been working with Commission staff in an effort to revise these rules, and the Commission expects that these efforts will continue until the Exchange has sufficiently clarified these rules for their members and the public.

Thus, the Commission's approval of the pilot extension has several ramifications. Approval will: (1) Allow the Exchange to operate the BEST pilot without interruption; (2) provide a period for compilation of additional data; and (3) allow the Exchange additional time to revise the language of the existing rules for clarity and ease of understanding in the public interest and for protection of investors.

The Commission does not want to interrupt the current operations of the Exchange's pilot while the above-described issues are being addressed. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.**

It is therefore ordered, pursuant to Section 19(b)(2)[24] of the Act that the proposed rule change (SR–CHX–00–11), be, and hereby is, approved through November 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–11402 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–M

[18] In reviewing this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 USC 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C).

[21] 15 U.S.C. 78k–1(a)(1)(D).

[22] *See* January 1997 Order, *supra* note 7.

[23] *See* Securities Exchange Act Release No. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000).

[24] 15 U.S.C. 78sZ(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [65 FR 25410, May 1, 2000]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW, Washington, DC.

DATE PREVIOUSLY ANNOUNCED: April 28, 2000.

CHANGE IN THE MEETING: Cancellation of meeting.

The closed meeting scheduled for Wednesday, May 3, 2000, at 2 p.m. has been cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 3, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–11473 Filed 5–3–00; 4:10 pm]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect to List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of countries denying fair market opportunities for products and suppliers of the United States in airport construction procurements.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. 50104), the United States Trade Representative (''USTR'') has determined not to include

any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

DATES: Effective May 1, 2000.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC, 20508.

FOR FURTHER INFORMATION CONTACT: John Ellis, Director of Government Procurement Issues, (202) 395–3063; or Stephen Kho, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100–223 (codified at 49 U.S.C. 50104) (''the Act''), requires USTR to decide by May 1, 2000, whether any foreign countries have denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the governments of such countries. The list of such countries must be published in the **Federal Register**. For the purposes of the Act, USTR has decided not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–11340 Filed 5–5–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative (USTR) has submitted its annual report on the identification of those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign countries, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives, pursuant to section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242).

DATES: This report was submitted on April 28, 2000.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Deputy Assistant U.S. Trade Representative for Intellectual Property, (202) 395–6864, Donna DiPaolo, Director for Intellectual Property, (202) 395–6864, or Stephen Kho, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act requires USTR to identify within 30 days of the publication of the National Trade Estimates Report all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as ''priority foreign countries,'' unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate officials of the Federal Government and take into account information from other sources, such as information submitted by interested persons.

On April 28, 2000, USTR identified 59 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection. USTR identified Ukraine for potential Priority Foreign Country designation on August 1, 2000. USTR again designated Paraguay and China for ''Section 306 monitoring'' to ensure both countries comply with the commitments made to the United States under bilateral intellectual property agreements.

USTR announced placement of 16 trading partners on the ''Priority Watch List'': Argentina, the Dominican Republic, Egypt, the European Union, Greece, Guatemala, India, Israel, Italy, Korea, Malaysia, Peru, Poland, Russia, Turkey, and Ukraine. USTR placed 39 trading partners on the ''Watch List.'' Countries that were not mentioned in the report last year but are on the Watch List this year include: Armenia, Azerbaijan, Kazakhstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. In addition, out-of-cycle reviews will be conducted of Italy in September, and Korea and Macau in December 2000. While El Salvador and the West Bank and Gaza are not listed, USTR will also conduct out-of-cycle reviews of each in September and December 2000, respectively. Finally, the USTR announced the initiation of WTO dispute settlement cases against Argentina and Brazil, and that it will take the next step in our dispute with Denmark and request the establishment of a WTO panel unless imminent progress is made.

P. Claude Burcky,

Director of Intellectual Property.

[FR Doc. 00–11341 Filed 5–5–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Annual Report on Discrimination in Foreign Government Procurement Pursuant to Executive Order 13116 (''Title VII'')

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice if hereby given that the United States Trade Representative (''USTR'') has submitted the annual report on discrimination in foreign government procurement, published herein, to the Committees on Finance and on Governmental Affairs of the United States Senate and the Committees on Ways and Means and on Government Reform and Oversight of the United States House of Representatives, pursuant to the reinstituted procedures of Title VII of the Omnibus Trade and Competitiveness Act of 1988 (''Title

VII''), as amended, as set forth in Executive Order No. 13116 of March 31, 1999.

DATES: The report was submitted on May 1, 2000.

FOR FURTHER INFORMATION CONTACT: John Ellis, Office of the US Trade Representative, 600 17th Street, NW, Washington, DC 20508, 202–395–3063.

SUPPLEMENTARY INFORMATION: The text of the USTR report is as follows:

Office of the United States Trade Representative, Washington, DC, April 28, 2000

Annual Report on Discrimination in Foreign Government Procurement

I. Executive Summary

Executive Order 13116, which the President signed on March 31, 1999, re-institutes the provisions of Title VII of the Omnibus Trade and Competitiveness Act of 1988 (''Title VII''), as amended. Title VII establishes procedures for identifying foreign countries engaging in discriminatory government procurement practices. The Executive Order mandates that the United States Trade Representative (''USTR'') submit a report on the identified countries and practices to the Congressional committees of jurisdiction within 30 days of the submission of the National Trade Estimate Report (for the years 1999, 2000, and 2001), and publish these reports in the **Federal Register**. This is the second annual report required by the Executive Order.

In accordance with the provisions of the Executive Order and on the recommendation of the Trade Policy Staff Committee, USTR has decided to terminate the 1996 Title VII identification of Germany for discrimination in the heavy electrical sector. This decision is based on Germany's implementation of new legislation that appears to effectively address the concerns raised by the United States through the original Title VII identification.

USTR's 1992 identification of the European Union (''EU'') for discriminatory procurement practices of government-owned telecommunications entities in certain member states, as well as the resulting U.S. sanctions, remains outstanding. There are no other outstanding Title VII identifications. However, the Administration continues to work in a range of bilateral and multilateral fora to resolve U.S. concerns with procurement practices described in this and previous Title VII reports. Those concerns, discussed in detail below, relate to foreign procurement practices in the following areas:

- Japan: Public works
- Taiwan: Various aspects of the procurement regime
- Canada: Provincial price preferences
- Mexico: Implementation of new procurement laws and NAFTA tendering periods
- Korea: Airport construction
- Germany: Sect filters

In addition, this report describes the Administration's efforts to eliminate discriminatory foreign procurement practices by building and strengthening the international rule of law in a wide range of multilateral, regional and bilateral fora:

- The FTAA Business Facilitation initiative and Negotiating Group on Government Procurement
- The WTO Working Group on Transparency in Government Procurement
- The WTO Committee on Government Procurement
- The NAFTA Working Group on Government Procurement
- The OECD and OAS Conventions on Combating Bribery and Corruption
- Consultations on the Use of Offsets in Defense Trade

II. Provisions of the Executive Order

Pursuant to Executive Order 13116, USTR is required to submit to the Congress each year a report identifying foreign countries:

(1) That have failed to comply with their obligations under the WTO Agreement on Government Procurement (''GPA''), Chapter 10 of the North American Free Trade Agreement, or other agreements relating to government procurement to which that country and the United States are parties; or

(2) That maintain, in government procurement, a significant pattern or practice of discrimination against U.S. products or services which results in identifiable harm to U.S. businesses, when those countries' products or services are acquired in significant amounts by the U.S. Government.

Within 90 days of the submission of the report, USTR must initiate under section 301 of the Trade Act of 1974, as amended, an investigation with respect to any country identified in the report, unless USTR determines that a satisfactory resolution of the matter has been achieved. If the matter is not resolved during that period and USTR determines that the rights of the United States under an international procurement agreement are being violated, or that any discriminatory procurement practices exist, the Executive Order permits USTR, inter alia, to initiate formal dispute settlement proceedings under the international agreement in question or revoke any waivers for purchasing requirements granted to the discriminating foreign country.

Title VII has been a useful and effective tool in challenging foreign governments' procurement barriers. From 1991 to 1996, USTR conducted six annual reviews under Title VII. During that time, six identifications were formally made, while numerous potentially discriminatory government procurement practices were noted. USTR achieved satisfactory resolution with respect to eight discriminatory or potentially discriminatory practices. The re-institution of Title VII procedures through Executive Order 13116 sends a strong signal that the President is committed to protecting U.S. interests in international procurement markets.

III. Identification of Specific Discriminatory Foreign Procurement Practices

A. Practices Identified in Previous Reports

Germany—Power Generation: In 1996, USTR identified Germany for its failure to comply with market access procurement requirements in the heavy electrical equipment sector. The identification was based on irregularities in the procurement process for two separate steam turbine generator projects in Germany. In particular, the 1996 Title VII Report noted a ''pervasive institutional problem'' with respect to Germany's implementation of a remedies system for challenging procurement decisions. The imposition of trade sanctions, however, was delayed until September 30, 1996, because consultations with Germany suggested a resolution might be possible given additional time.

On October 1, 1996, USTR announced that the German Government had agreed to take steps to ensure open competition in the German heavy electrical equipment market, including reform of the government procurement remedies system as well as outreach, monitoring, and consultation measures. The United States did not, however, terminate the Title VII action at that time because legislation implementing reform of the procurement remedies system needed to be enacted.

In May 1998, the German parliament passed legislation requiring significant reforms in the German procurement system, including with respect to bid challenge procedures. This legislation entered into effect on January 1, 1999. Although the law is still relatively new and not fully tested, a precedent-setting decision in an August 1999 case demonstrated that losing bidders can now challenge procurement decisions in a court of law and anticipate a fair ruling. The United States has not received further complaints from U.S. suppliers.

Accordingly, USTR has decided, on the recommendation of the TPSC, to terminate the outstanding Title VII determination against Germany for discrimination in the heavy electrical sector. The Administration will continue to monitor the implementation of Germany's procurement reform legislation.

EU—Telecommunications: In 1992, USTR identified the European Union (EU) as engaging in discriminatory procurement via the practices of telecommunications entities with ''special and exclusive rights'' in certain member states. As a result of this identification, the United States imposed sanctions in 1993, which remain in place today. In 1999, the European Commission (EC) informed the Administration that telecommunications operators in most EU member states were exempted from the procurement requirements in the Utilities Directive. Consequently, the EC requested that the United States remove the sanctions imposed in 1993. The Administration has asked the EC for clarification of the amendments to its regulations and how those amendments apply to individual EU Member States. When that information is received, the Administration will review the issue, including the overall market access conditions in the EU telecommunications market.

B. Practices Identified in This Report

In developing this report, USTR has given careful consideration to a wide range of views and information, including the recommendations of other executive agencies and U.S. embassies and consulates overseas, private sector responses to USTR's request

for comments on this year's Title VII report (published in the **Federal Register** on February 1, 2000), and information on foreign government procurement practices reported in the 2000 National Trade Estimates Report.

On the basis of this information, and after consultation with the TPSC, USTR has determined that no practices meet the criteria for Title VII identification this year. As in previous years, however, there remain a number of foreign government procurement practices of concern which the Administration is pursuing in bilateral and multilateral fora, including WTO dispute settlement when appropriate, or that require continued monitoring and study.

Japan—Public Works

American companies are world-renowned for their expertise and competitiveness in design/consulting and construction projects. However, in 1999, American design and construction firms won only $50 million (.02 percent) in contracts in Japan's $250 billion public works market. This is the same level of participation as 1998, only half of the $100 million in Japanese public works contracts awarded to U.S. firms in 1997, and well below U.S. participation in this market in the late 1980's. Proportionally, Japanese firms do 12 times as much public construction business in the United States as American firms do in Japan.

These disappointing results have occurred despite commitments made by Japan in our two U.S.-Japan public works agreements. In particular, the 1994 U.S.-Japan Public Works Agreement aims at ''reforming bidding and contracting procedures for public works in Japan, to enhance transparency, objectivity and competition, as well as to strengthen the application of the principle of non-discrimination.'' In spite of this, Japan has engaged in a significant and persistent pattern of practices of discrimination that impedes American companies from participating in Japan's public works sector. These practices include rampant bid-rigging; unreasonable restrictions on the formation of joint ventures, including the three-company joint venture rule which limits to three the number of members in joint ventures for construction projects; the use of unreasonably vague and discriminatory qualification and evaluation criteria; and the structuring of procurements and calculation of procurement values so they fall below the agreements' thresholds.

The U.S. and Japanese Governments have met at least annually to discuss the U.S. Government's substantive concerns with these and other practices in this sector. These discussions have been helpful in making progress on some issues, but major impediments continue to deprive American firms from opportunities within Japan's vast public works sector. Although the 1994 Agreement has no expiration date, the consultation provision requiring annual meetings between the United States and Japan expired on March 31, 2000, and Japan rejected the U.S. Government's formal request to extend the consultation provision. The United States believes a continuation of the government-to-government discussions on the implementation of the 1994 Agreement is needed given the continuing problems in this sector.

The United States expects that Japan will take steps to resolve concerns regarding this persistent pattern of practices. If these concerns are not resolved in a timely manner, the U.S. Government will initiate the steps necessary to identify Japan under Title VII.

Taiwan—General Procurement Procedures: Taiwan, which is in the process of acceding to both the WTO and the GPA, recently enacted a law and promulgated regulations intended to bring its procurement practices into conformity with the requirements of the GPA. Although the new procurement law is an improvement over the former procurement regime, particularly in the area of transparency, it will not be fully applicable to foreign bidders until Taiwan's accession and does not cover the full range of procurement activities of interest to U.S. suppliers. Moreover, the new regulations do not appear to have effectively addressed problems that U.S. suppliers continue to experience in the Taiwan procurement market, particularly in the following areas:

- The lack of timely and effective arbitration procedures, which prevent satisfactory resolution of contract disputes;
- High bid bond requirements and unacceptably high potential contract liabilities;
- Frequent costly and unreasonable contract change orders;
- The use of tender specifications to exclude foreign bidders;
- Qualification requirements that require experience in similar projects in Taiwan, which do not take into account relevant experience in other markets;
- Qualification requirements that require foreign suppliers to establish local subsidiaries; and
- The use of offsets in certain key sectors.

The Administration continues to urge the Taiwan authorities to take concrete steps, in preparation for its WTO and GPA accession, to eliminate these and other procurement practices that appear inconsistent with WTO requirements or that constitute an unfair or unnecessary restriction on competition in Taiwan's government procurement market.

Canada—Provincial Price Preferences: Canada is the only Party to the GPA that has not assumed obligations to cover procurement by sub-central government entities. Some Canadian provinces maintain ''Buy Canada'' price preferences that favor Canadian suppliers over U.S. and other foreign competitors. The Administration is concerned that the application of those preferences may result in an imbalance of bilateral market access opportunities in government procurement, will continue to raise these concerns in bilateral discussions, with a view to bringing Canadian provincial governments and other government and government-owned entities within the scope of the GPA and NAFTA procurement rules.

Mexico—Implementation of New Procurement Laws and NAFTA Tendering Periods: On January 4, 2000, Mexico published new laws relating to the procurement of Public Works and Related Services. These laws require Mexican procurement agencies to implement a new system of ''Buy Mexico'' purchasing preferences. While the laws appear to include a general exception for treaty obligations, there remains a potential risk that Mexico could implement the laws in a way that would be inconsistent with Mexico's NAFTA commitments. The Administration is following the situation closely to ensure Mexico's conformity with its obligations under the NAFTA.

The United States also remains concerned about complaints that some Mexican agencies are not adhering to NAFTA requirements relating to the time periods to be provided for tendering. The United States has joined Canada is seeking clarification of this issue in the NAFTA Negotiating Group on Government Procurement (NGGP), and continues to urge Mexico to ensure that its procurement authorities comply with the relevant NAFTA commitments.

Korea—Airport Construction: Practices applied by Korea in procurements for construction of the new Inchon International Airport project favor Korean firms over foreign firms. These practices, such as the use of domestic partnering, short deadlines and certain licensing requirements, appear inconsistent with the GPA, and restrict the ability of U.S. and other foreign firms to participate meaningfully in bidding opportunities and to win contracts. U.S. officials raised these concerns with Korea repeatedly in the WTO Government Procurement Committee and in informal bilateral consultations.

Because Korea's GPA schedule does not explicitly list the names of the entities procuring for the Inchon International Airport project, the United States and Korea disagreed about whether such procurements were even covered by the Agreement. The United States maintained that these entities, which were specifically created for the purpose of procuring for this particular project, are covered because they are in fact subordinate to Korea's Ministry of Construction and Transportation, a ''central government'' entity explicitly listed in Korea's GPA schedule. Korea, on the other hand, denied coverage of these entities under its GPA obligations.

The two governments could not come to an agreement after two years of discussions. Therefore, the United States asked a WTO panel to examine this issue. Formal consultations between the governments were held on March 17, 1999, and meetings of the panel were held in October and November of last year. On April 7, 2000, the panel issued its final report to the two governments. In its report, the panel concluded that this particular airport construction project is not covered by the GPA. The panel made this determination based on its findings, *inter alia,* that the project is not explicitly written into Korea's GPA schedule and that the entities procuring for the project are not ''legally unified'' with Korea's listed entities.

Germany—''Sect Filters'': Policy guidance issued by the German Federal Government has raised concerns about a potential for discrimination against U.S. firms in procurement decisions by German entities. In September 1998, the Federal Economics Ministry issued procurement guidelines to be

put into effect by all Federal Government Ministries. These procurement guidelines warn that a firm should be deemed ''unreliable'' if it refuses to sign a so-called sect filter. The filter requires a firm's leadership to attest that Scientology principles will not be used or spread in fulfillment of any contract; that the leadership of a firm will not recommend or approve participation in courses or seminars relating to Scientology principles during the course of business; and that firms reject Scientology principles in conjunction with any subsidiary. Procurement entities are permitted to reject bids and immediately terminate contracts if a firm does not sign the sect filter.

Although issued at the Federal level and only for use on procurements related to consulting or training services, state-level entities and even private firms currently appear to be using sect filters beyond that narrow scope. While it still remains unclear how these measures will be implemented, at least one major U.S. supplier has had to undergo a qualification process that was significantly more extensive than that required by its competitors. Upon learning of the sect filter requirements, the Administration raised its concerns with the German Government and continues press the Germans to repeal this discriminatory policy.

IV. Expanding and Strengthening the International Rule of Law With Respect to Government Procurement

A. Free Trade Area of the Americas (''FTAA'')

In the March 1998 San José Declaration, the Trade Ministers of the 34 countries of the Western Hemisphere agreed that the specific objectives of the FTAA negotiations in the area of government procurement were to ensure: ''openness and transparency of government procurement processes''; ''non-discrimination * * * within a scope to be negotiated''; and ''impartial and fair review for the resolution of complaints and appeals by suppliers and the effective implementation of such resolutions.'' In the November 1999 Toronto Declaration, FTAA Ministers instructed their negotiators to submit draft negotiating texts for ministerial review by the end of 2000. The FTAA governments are committed to concluding the FTAA negotiations by 2005.

Currently, only 27 countries and territories are Parties to the WTO Government Procurement Agreement. The entry into force of the FTAA procurement chapter, therefore, is likely to more than double the number of countries that have agreed to open their government procurement markets and subject them to strong, binding, non-discriminatory international procurement rules. In order to achieve the Toronto mandate, the Administration has pressed for a focused and forward leaning work program in the Negotiating Group on Government Procurement (''NGGP''). During the first part of the year, the NGGP has agreed that delegations will submit drafting proposals on all the elements that have been identified for inclusion in the FTAA procurement chapter. The NGGP will consolidate those proposals and seek to narrow differences and, where possible, achieve consensus on specific provisions by the end of the year. The resulting negotiating text will provide the framework for subsequent negotiations on the coverage (*i.e.*, specific market access commitments) of the eventual procurement chapter.

B. WTO Working Group on Transparency in Government Procurement

Continued, active support for early conclusion of a WTO Agreement on Transparency in Government Procurement is a key element of the Administration's ongoing efforts to promote the rule of law in public sector economic management throughout the world. Conclusion of this Agreement will serve a wide range of important U.S. interests. It will help to establish a more stable and predictable business environment for U.S. exporters, even in markets where governments maintain ''buy national'' or other purchasing restrictions. It will also build on the ''good governance'' reforms that a growing number of countries have adopted in response to the international financial crisis and the deeper structural impediments to efficient long-term growth and development.

In 1999, the WTO Working Group on Transparency in Government Procurement moved forward rapidly with the development of concrete provisions for potential international commitments in this area. On this basis, WTO Members are in a good position to conclude a multilateral agreement on transparency in government procurement. This work provides a strong foundation for continuing to pursue U.S. procurement objectives in bilateral and regional negotiations, as well as in the WTO. The Administration will, in the context of WTO Members' decisions on the overall WTO agenda, continue to actively support the efforts to conclude a strong multilateral Agreement on Transparency in Government Procurement at the earliest date possible.

C. The WTO Agreement on Government Procurement (''GPA'')

The GPA, which entered into force on January 1, 1996, is a ''plurilateral'' agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking, and its membership is limited to the 27 WTO members that signed the Agreement in Marrakesh or that subsequently acceded to it. In its report to the 1996 Singapore Ministerial Conference, the Committee on Government Procurement, which monitors the GPA, stated its intention to undertake an ''early review'' of the GPA starting in 1997. The Administration considers the review of the Agreement to be an important opportunity to streamline the GPA and make it more understandable to current and potential new GPA Parties, their suppliers, and their procuring entities.

The United States and the other GPA Parties believe that the completion of this process will make the Agreement more accessible to a much broader range of WTO Members. Currently, five WTO Members are in the process of negotiating accession to the GPA, or preparing for those negotiations. A number of other countries, particularly eastern European countries seeking to accede to the European Union, have committed to pursue GPA accession in the future. In order to facilitate and expedite this process, the WTO Government Procurement Committee is developing standard accession procedures and time-tables. The Administration believes that the development of systematic accession procedures will complement the review process in making the GPA more accessible to a broad range of WTO Members and significantly expanding international participation in the open, rules-based international trading system for government procurement.

The GPA provides a consultative procedure to assist the Parties in monitoring and enforcing their procurement commitments under the Agreement. The United States has used this procedure to comment on questionable procurement practices, such as the application of the EU ''Utilities Directive,'' and to obtain detailed information relevant to potential dispute settlement cases.

D. Chapter 10 of the North American Free Trade Agreement (''NAFTA'')

In NAFTA Chapter 10, the NAFTA signatories agreed to open the majority of non-defense related federal procurement opportunities to competition from all North American suppliers. Because Mexico is not a member of the GPA, its participation in the NAFTA marked the first time that Mexico had committed to eliminate discriminatory government procurement practices. While differences exist between NAFTA Chapter 10 and the GPA (*e.g.*, with respect to thresholds and sub-federal coverage), the principles of non-discrimination, fair and open competition, and transparency are established with equal force in both agreements.

As with the WTO Government Procurement Committee, the NAFTA Working Group on Government Procurement provides a useful forum for the Administration in monitoring and enforcing the NAFTA Parties' procurement commitments.

E. Combating International Bribery and Corruption

Among the most consistent complaints the Administration receives from U.S. industry and labor representatives is that bribery and corruption can seriously compromise commercial opportunities in many overseas government procurement markets. This is particularly true for big ticket infrastructure projects for which preparation of a bid package alone can cost millions of dollars. U.S. exporters often report that they bid on projects with little or no certainty as to whether the offered technology and price are going to be the primary criteria in the award of contracts. In many cases, they may be doubly disadvantaged if their international competitors are not subject to legal disciplines similar to the U.S. Foreign Corrupt Practices Act. Despite these concerns, U.S. firms are frequently hesitant about coming forward publicly with cases in which they have seen bribery and corruption influence contract awards, because of fears that they may experience a commercial backlash with respect to future contracts.

These circumstances call for government-to-government initiatives to root out bribery and corruption in international procurement markets. The Administration is aggressively pursuing this objective in a wide range of international fora. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, for example, represents a major breakthrough in this area. The Convention obligates the parties to criminalize bribery of foreign public officials in the conduct of international business, which can include government procurement. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe. For this reason the Convention is often characterized as a ''supply side'' agreement, as it seeks to effect changes in the conduct of companies in exporting nations. The Convention entered into force in February 1999 for 12 of the 34 signatories. As of April 2000, 20 signatories, including the United States, had ratified it.

In March 1996, countries in the Western Hemisphere concluded negotiations on the Inter-American Convention Against Corruption. To date, 26 countries have signed it and 18 have ratified. This Convention, a direct result of the Summit of the Americas Plan of Action, requires that the signatories criminalize bribery, using language modeled in part on the U.S. Foreign Corrupt Practices Act, and adopt other various measures aimed at both national and international corruption. The Convention entered into force in March 1997 for those countries which have ratified it.

The Administration is pursuing a broad range of complementary initiatives in the WTO and other international and regional trade fora. For example, we continue to press WTO Members for early conclusion of a multilateral Agreement on Transparency in Government Procurement. We have also led initiatives to ensure full and timely implementation of the WTO Agreement on Customs Valuation and to strengthen the operation of the WTO Agreement on Pre-Shipment Inspection. As part of the Business Facilitation initiative for the Free Trade Agreement of the Americas, the Administration has already secured important commitments to ensure transparency and due process, particularly in relation to customs procedures, that will apply to all 34 countries of the Western Hemisphere. These initiatives strengthen the international rule of law and help to create a transparent, stable and predictable business environment that suppresses corrupt practices and allows U.S. firms and their workers to compete on a level playing field in overseas markets.

F. Offsets in Defense Trade

When purchasing defense systems from U.S. contractors, many foreign governments require compensation, in the form of offsets, as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services. Offsets include mandatory co-production, licensed production, subcontractor production, technology transfer, countertrade, and foreign investment. Offsets may be directly related to the weapon system being exported, or they may take the form of compensation unrelated to the exported item, such as foreign investment or countertrade.

Originally designed to enhance allied national security, some key U.S. trading partners now use offsets to pursue economic and commercial objectives. Department of Commerce data indicates that, while over 90 percent of recent offset agreements were associated with exports of U.S. aerospace weapons systems, almost half the resulting offset transactions were fulfilled with non-aerospace products. Such mandatory offset requirements may negatively affect U.S. firms and their workers by enhancing foreign suppliers' competitive capabilities or opportunities, reducing U.S. exports, and potentially limiting domestic job opportunities in these industries. They may also have a negative impact on the foreign buyer, since contract award decisions that are determined by the willingness or ability of a supplier to provide offsets may result in procurement that does not achieve the best possible value in terms of the price and quality of the equipment, installation, materials or services supplied.

An Interagency Offset Steering Committee, chaired by the Department of Defense and including representatives of the Departments of Commerce, State and Labor and the Office of the United States Trade Representative, was established in 1999. The Committee has been working to develop strategies that would reduce the adverse effects that defense related offsets may have on the industrial base and on U.S. trade interests. On this basis, the Committee has initiated bilateral discussions with U.S. allies in an effort to focus allied governments' attention on the adverse effects of offsets in defense trade and to explore ways for reducing or eliminating them.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 00–11415 Filed 5–5–00; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lehigh and Norththampton Counties, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lehigh and Northampton Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Operations Group Leader, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 536, Harrisburg, PA 17101–1720, Telephone: (717) 221–3411 OR Donald Lerch, Assistant District Engineer, Pennsylvania Department of Transportation, District 5–0, 1713 Lehigh Street, Allentown, Pennsylvania, 18103, Telephone (610) 798–4131.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), and the Lehigh Valley Planning Commission will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives for improvements to the U.S. Route 22 corridor in Lehigh and Northampton Counties, Pennsylvania. The proposed action would consist of improvements along U.S. Route 22 between its interchanges with Interstate 78 to the west and S.R. 248 to the east, a distance of approximately 31 km (19 miles). Included in the overall project will be the identification of a range of alternatives that meet the identified project needs, and supporting environmental documentation and analysis to recommend a selected alternative for implementation. A complete public involvement program is included as part of the project.

Documentation of the need for the project is being prepared. This process will identify the need for roadway improvements through the study area based on local and regional transportation demand, system linkage and continuity, geometric criteria, safety and local and regional planning.

Alternatives that will be considered may include, but will not be limited to: No Build; transportation systems management (TSM) upgrade existing facility, construction on new alignment, upgrade of existing road network, mass transit, traffic control measures, (TCM), and travel demand management (TDM). These alternatives will be the basis for recommendation of alternatives to be carried forward for detailed environmental and engineering studies in the EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations and citizens who express interest in this proposal. Public meetings will be held in the area throughout the study process. Public involvement and agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this

proposed action and the EIS should be directed to FHWA or PennDOT 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 program)

Issued on: April 25, 2000.

James A. Cheatham,

FHWA Division Administrator.

[FR Doc. 00–11413 Filed 5–5–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[RSPA–00–7283, Notice No. 00–4]

Safety Advisory Notice; Use of Non-Complying Portable Tanks for Transportation of Propane

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

ACTION: Safety advisory notice.

SUMMARY: This safety advisory notice is to make persons aware of safety concerns related to the intermodal transportation of propane in portable tanks and of the proper packaging requirements for such transportation. RSPA has become aware of several instances where propane was improperly transported in portable tanks. This suggests that some persons who offer or transport propane in portable tanks may not be fully aware of the applicable requirements of the Hazardous Materials Regulations. This notice alerts offerors and transporters to potential safety problems and summarizes the proper packaging requirements for offering or accepting propane in portable tanks for transportation.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Coast Guard has identified problems with certain portable tanks used to transport propane in and between the states of Washington and Alaska. It appears that many of the portable tanks in this service may not conform to the requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) and to requirements for approval and inspection of cargo containers (49 CFR parts 450–453). Some of the deficiencies identified may pose a significant safety threat.

On March 17, 2000, a SeaLand/CSX cargo vessel transporting over 6,000 gallons of propane in a portable tank encountered rough seas. The portable tank broke loose from its frame, damaging its external piping and releasing over 100 gallons of propane. Although the release of propane in this incident was relatively small, the potential for a catastrophic incident involving the bulk transportation of propane on board vessels should not be minimized. A significant release of propane, coupled with a fire or explosion, would place the crew and the vessel at serious risk.

Subsequent inquiries and investigations by RSPA's Offices of Hazardous Materials Enforcement and Hazardous Materials Technology, the Federal Motor Carrier Safety Administration, and the U.S. Coast Guard identified several potential problems with portable tanks used for the intermodal transportation of propane. These problems involve improper mounting of portable tanks to container frames, substandard welds where portable tanks are attached to container frames, overfilling, improperly modified cargo tanks, and invalid specification packaging markings. Preliminary indications are that such deficiencies may affect a significant number of portable tanks in intermodal propane service. An initial industry estimate is that perhaps 60 percent of 500 portable tanks involved in this transportation may not conform to HMR requirements. Because these tanks are used in intermodal service, the potential safety problems could affect highway and rail transportation, in addition to transportation by vessel.

II. Requirements for the Transportation of Propane in Portable Tanks

Section 173.315 of the HMR authorizes the transportation of propane in a number of bulk packagings, including DOT Specification 51 portable tanks. Specifications for the design and manufacture of DOT Specification 51 portable tanks are in Subpart H of Part 178 of the HMR.

Design and construction. Generally, DOT 51 portable tanks must be designed, constructed, certified, and stamped in accordance with the ASME Code in effect at the time the tank is constructed (see § 178.245–1). Welds used in tank construction, as well as welding procedures and weld performance tests, must conform to the ASME Code (see § 178.245–1(b)). The regulations also include specific requirements for tank openings and filling and discharge connections (see § 178.245–1(d)). Among other requirements, each filling and discharge connection below the normal liquid level of the tank must be equipped with an internal self-closing stop valve capable of closing within 30 seconds of actuation.

The regulations for DOT 51 portable tanks also include specific requirements applicable to materials of construction (§ 178.245–2), design pressure (§ 178.245–3), mountings (§ 178.245–4), and damage protection (§ 178.245–5).

A DOT 51 portable tank that meets the definition of a ''container'' in 49 CFR 450.3(a)(2) must also conform to the requirements of 49 CFR parts 450 through 453 for compliance with Annex II of the International Convention for Safe Containers, particularly with regard to attachment of the portable tank to its intermodal frame (see § 178.245–1(d)(4)(i) and 178.245–4(e)). Parts 450 through 453 establish requirements and procedures for safety approval and periodic examination of cargo containers. Portable tanks that meet the definition of ''container'' for purposes of Parts 450 through 453 must be inspected by an agency that has been approved by the US Coast Guard. As defined in 49 CFR 450.3(a)(2), a ''container'' is an article of transport equipment that: (1) Is suitable for repeated use; (2) is designed to facilitate the transport of goods by one or more modes of transport without intermediate reloading; (3) is designed to be secured and readily handled with corner fittings for these purposes; and (4) has an area enclosed by the bottom four corners that is at least 150 square feet or 75 square feet if it has top corner fittings.

Periodic inspections and tests. Portable tanks used for the transportation of hazardous materials must undergo periodic inspections and tests to assure the continued integrity of the tank and its appurtenances. The requirements for periodic inspection and testing of DOT 51 portable tanks are in § 173.32(e). Every five years, a DOT 51 portable tank must successfully pass a pressure test that conforms to the requirements in § 173.32(e)(2)(i) and a visual inspection that conforms to the requirements in § 173.32(e)(2)(ii). The date of the most recent periodic test and inspection must be marked on the tank on or near its certification plate. A portable tank for which the prescribed tests or inspections have become due may not be filled and offered for

inspection until the test or inspection has been successfully completed.

Cargo tank conversions. It is possible, though difficult, to modify a cargo tank, such as by using the tank from an MC 330 cargo tank motor vehicle, to meet the DOT 51 portable tank specification. The modification must be performed by an ASME Code facility. The manufacturer performing the modification must assure that the modified tank conforms to all the requirements of the DOT 51 specification in § 178.245 of the HMR. Such a tank no longer meets the cargo tank specification; thus, the manufacturer must remove or cover the cargo tank specification plate on the modified tank and affix a new certification plate in accordance with § 178.245–6. Other than through recertification as a portable tank, there is no provision for use of the tank from a cargo tank motor vehicle as a portable tank.

Filling densities. The HMR prescribe maximum permitted filling densities for portable tanks in propane service in § 173.315(b). Generally, maximum permitted filling densities depend on the specific gravity of the material to be transported, measured at 60°F, and the size of the tank. Propane in a portable tank may not exceed 60 percent of the water-weight capacity of the tank.

III. Safety Implications

The purpose of this safety advisory notice is to alert persons who offer or transport propane that transporting propane in portable tanks that do not conform to the HMR could have serious safety implications for persons who handle or transport such tanks and for the general public. When liquid propane is released into the atmosphere, it quickly vaporizes into the gaseous form that is its normal state at atmospheric pressure. Vaporization occurs very rapidly and, in the process, the propane combines readily with air to form fuel-air mixtures that are ignitable over a range of 2.2 to 9.5 percent by volume. If an ignition source is present in the vicinity of the highly flammable mixture, the vapor cloud ignites and burns explosively.

No person may offer for transportation or transport hazardous materials except in conformance with the HMR. Persons offering or transporting propane in portable tanks that do not conform to the HMR requirements may be subject to civil or criminal penalties.

Issued in Washington, DC, on May 2, 2000.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–11375 Filed 5–5–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33868]

OmniTRAX, Inc., Central Kansas Railway, L.L.C., and Kansas Southwestern Railway, L.L.C.—Corporate Family Transaction Exemption

OmniTRAX, Inc. (OmniTRAX),[1] Central Kansas Railway L.L.C. (CKR), and Kansas Southwestern Railway, L.L.C. (KSW), have jointly filed a verified notice of exemption. CKR operates over approximately 900 miles of rail line in the States of Kansas and Colorado. KSW operates over approximately 106 miles of rail line in the State of Kansas and connects at several locations with CKR. KSW will be merged into CKR, with CKR as the surviving corporation. After the transaction is consummated, OmniTRAX will control 9 Class III railroads in the United States.

The transaction was scheduled to be consummated on or shortly after April 26, 2000.

The purpose of the transaction is to simplify OmniTRAX's corporate structure and eliminate costs associated with separate accounting, tax, bookkeeping and reporting functions. The proposed transaction will also enhance the operating economies of, and improve service on, the surviving corporation.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33868, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, P.C., Ball Janik LLP, Suite 225, 1455 F Street, NW, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: April 28, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–11183 Filed 5–5–00; 8:45 am]

BILLING CODE 4915–00–P

[1] OmniTRAX is a noncarrier holding company, which at the time of filing, directly controlled 10 Class III railroads, including CKR and KSW, operating in 7 states. *See OmniTRAX, Inc.—Control Exemption—Northern Ohio & Western Railway, LLC,* STB Finance Docket No. 33598 (STB served June 5, 1998). OmniTRAX also states that it controls 3 rail carriers that operate in Canada.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Proposed Renewal of Information Collection; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC) and Office of Thrift Supervision (OTS), Treasury, and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: The OCC, OTS, and FDIC (collectively, the ''agencies''), as part of their continuing efforts to reduce paperwork and respondent burden, invite financial institutions, the general public, and other Federal agencies to comment on a continuing information

collection. This notice is issued in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the agencies are requesting comment on the extension, without change, of an information collection titled Interagency Guidance on Asset Securitization Activities.

DATES: Written comments should be received on or before July 7, 2000.

ADDRESSES: You are invited to submit a comment to any or all of the agencies. Please direct your comments as follows:

OCC: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Attention: 1557–0217, Washington, DC 20219. In addition, you may send a comment by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

OTS: Manager, Dissemination Branch, Information Management and Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0104. You may hand deliver your comments to the Guard's desk at 1700 G Street, NW.; or you may send comments by facsimile transmission to (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. If you comment by e-mail, you should include your name and telephone number. You should send any comments over 25 pages in length to FAX Number (202) 906–6956. You may inspect the comments at 1700 G Street, NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays. Comments are also available at OTS.treas.gov.

FDIC: Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. You may hand-deliver comments to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838: Internet address: comments@fdic.gov]. You may inspect and photocopy comments in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m., on business days.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection by contacting:

OCC: Jessie Dunaway or Camille Dixon, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington DC 20219, (202) 874–5090.

OTS: William Magrini, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5744.

FDIC: Steven F. Hanft, Office of the Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429, (202) 898–7453.

SUPPLEMENTARY INFORMATION:

Title: Interagency Guidance on Asset Securitization Activities.

OMB Numbers:
OCC: 1557–0217.
OTS: 1550–0104.
FDIC: 3064–0137.
Form Numbers:
None.

Abstract: On December 13, 1999, the agencies issued the Interagency Guidance on Asset Securitization Activities. The information collections contained in the Interagency Guidance were approved by OMB. The agencies are now in the process of requesting that OMB renew its approval of those information collections. The agencies are not proposing any change to the underlying information collections.

The Board of Governors of the Federal Reserve System has participated in the development and review of this information collection and will process its extension under its Paperwork Reduction Act delegated authority.

Type of Review: Renewal, without change, of a currently approved collection.

Affected Public: Business, for-profit institutions, and non-profit institutions.

Estimated Number of Respondents:
OCC: 50.
OTS: 30.
FDIC: 70.
Estimated Total Annual Responses:
OCC: 1 per year.
OTS: 1 per year.
FDIC: 1 per year.
Estimated Total Annual Burden:
OCC: 2,115 hours.
OTS: 1,269 hours.
FDIC: 2,070 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Request for Comments

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information shall have practical utility;

(b) The accuracy of the agencies' estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: May 2, 2000.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated: April 24, 2000.

John E. Werner,

Director, Information Management and Services, Office of Thrift Supervision.

Dated at Washington, DC, this 26th day of April, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–11376 Filed 5–5–00; 8:45 am]

BILLING CODE 4810–33–P; 6720–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–113–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, EE–113–82, Required Distributions From Qualified Plans and Individual Retirement Plans (§ 1.403(b)–2).

DATES: Written comments should be received on or before July 7, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Required Distributions from Qualified Plans and Individual Retirement Plans.

OMB Number: 1545–0996.

Notice Number: EE–113–82.

Abstract: This regulation provides rules regarding the minimum distribution requirements applicable to any annuity contract, custodial account, or retirement income account described in Internal Revenue Code section 403(b). The minimum distribution rules do not apply to benefits accrued before January 1, 1987.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local, or tribal governments.

Estimated Number of Respondents: 8,400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 8,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 26, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–11344 Filed 5–5–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4972

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4972, Tax on Lump-Sum Distributions (From Qualified Retirement Plans of Plan Participants Born Before 1936).

DATES: Written comments should be received on or before July 7, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax on Lump-Sum Distributions (From Qualified Retirement Plans of Plan Participants Born Before 1936).

OMB Number: 1545–0193.

Form Number: 4972.

Abstract: Internal Revenue Code section 402(e) and regulation section 1.402(e) allow recipients of lump-sum distributions from a qualified retirement plan to figure the tax separately on the distributions. The tax can be computed on the 10 year averaging method and/or by a special capital gain method. Form 4972 is used to compute the separate tax and to make a special 20 percent capital gain election on lump-sum distributions attributable to pre-1974 participation.

Current Actions: The Small Business Job Protection Act of 1996 repealed the 5-year averaging method for lump-sum distributions from qualified plans, effective for taxable years beginning after December 31, 1999. Thus, the Act repeals the separate tax paid on a lump-sum distribution and also repeals the deduction from gross income for taxpayers who elect to pay the separate tax on a lump-sum distribution. Therefore, lines 23–29 and line 37 in Part III of Form 4972 were deleted.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 35,000.

Estimated Time Per Respondent: 2 hours, 44 minutes.

Estimated Total Annual Burden Hours: 95,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 1, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–11472 Filed 5–5–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0025]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Information and Technology (IT), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed for an individual to provide a written consent to release his/her records or information to a third party.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 7, 2000.

ADDRESSES: Submit written comments on the collection of information to Barbara Epps (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0025'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Barbara Epps at (202) 273–8013 or FAX (202) 273–5981.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, IT invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of IT's functions, including whether the information will have practical utility; (2) the accuracy of IT's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for and Consent to Release of Information From Claimant's Records, VA Form 3288.

OMB Control Number: 2900–0025.

Type of Review: Extension of a previously approved collection.

Abstract: The form is completed by veterans or beneficiaries to provide VA with a written consent to release records or information to third parties such as insurance companies, physicians and other individuals. Use of the form ensures an individual gives an informed written consent for the release of records or information about himself/herself that is consistent with the statutory requirements of the Privacy Act of 1974 and VA's confidentiality statute.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,875 hours.

Estimated Average Burden Per Respondent: 7.5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 151,000.

Dated: April 13, 2000.

By Direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–11377 Filed 5–5–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 65, No. 89

Monday May 8, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

Correction

In notice document 00–10711 beginning on page 25495 in the issue of Tuesday, May 2, 2000, make the following corrections:

1. On page 25495, in the second column, under ''**DATE**'', ''July 3, 2000'' should read ''June 3, 2000''.

2. On page 25496, in the second column, five lines from the bottom, ''July 3, 2000'' should read ''June 3, 2000''.

[FR Doc. C0–10711 Filed 5–5–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–28]

Agency Information Collection Activities; Announcement on OMB Approval

Correction

In notice document 00–10380 appearing on page 24512 in the issue of Wednesday, April 26, 2000, make the following corrections:

1. On page 24512, in the second column, the document heading is corrected to read as set forth above.

2. On the same page, in the thrid column, in the first line, '' 20 CFR'' should read, ''29 CFR''.

[FR Doc. C0–10380 Filed 5–5–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
May 8, 2000

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 10, 13, 17, and 23

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Revision of Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13, 17, and 23

RIN 1018–AD87

Revision of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to revise the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a treaty that regulates international trade in certain protected species. CITES uses a system of international permits and certificates to help ensure that trade is legal and does not threaten the survival of wildlife or plant species in the wild. Since the existing regulations were finalized, the CITES Conference of the Parties (COP) has held nine meetings where resolutions have been adopted. We propose to incorporate certain applicable current resolutions into 50 CFR part 23. Revised regulations will help us more effectively promote species conservation, fulfill our responsibilities under the Treaty, and help those affected by CITES understand how to conduct international trade in CITES species.

DATES: In preparing the final decision on this proposed rule, we will consider all information and comments received by August 7, 2000.

ADDRESSES: Send comments to Ms. Teiko Saito, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. To the extent possible, reference the section of the proposed regulations on which you are commenting. You may also send comments via e-mail to: r9oma—cites@fws.gov. Please reference ''Part 23 Comments'' and include your name and return address in your e-mail message. Materials received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Teiko Saito, at the above address, telephone (703) 358–2093, fax (703) 358–2280.

SUPPLEMENTARY INFORMATION:

Acronyms Used in This Proposed Rule

APHIS U.S. Department of Agriculture, Animal and Plant Health Inspection Service
CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora, also referred to as the Convention or Treaty
CFR Code of Federal Regulations
COP CITES Conference of the Parties or meeting of the Conference of the Parties
DNA Deoxyribonucleic acid
ESA Endangered Species Act

Background

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it came into force on July 1, 1975, after the required 10 countries had ratified it. Section 8A of the Endangered Species Act (ESA), as amended in 1982, designates the Secretary of the Interior as the U.S. Management Authority and Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. The U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first COP was held. The COP meets every 2 to 3 years to vote on proposed resolutions that interpret and implement the text of the Treaty and on amendments to the listing of species in the CITES appendices. There are currently 151 Parties (countries that have ratified or acceded to CITES). As a Party to CITES, the United States is committed to fulfilling its obligations under the Treaty, including implementing species listings and appropriate resolutions of the COP.

Resolution consolidation. Between 1976 and 1994, at least 190 resolutions were adopted by the Parties. In 1994, the Parties began an effort to consolidate some of these resolutions. Some resolutions were no longer relevant, and others needed to be combined since there were several resolutions on the same or similar subjects adopted at different COP's. As a result of this process, there are currently 82 resolutions in effect. This proposed rule incorporates certain of these consolidated resolutions from COP 2 through COP 10, as appropriate and relevant to U.S. implementation of the Treaty.

Previous proposed rules. We published proposed rules on September 24, 1985 (50 FR 38683), to incorporate changes from COP 2 through COP 4, and on April 10, 1986 (51 FR 12350), to incorporate changes from COP 5. These proposed rules were never finalized, and we are withdrawing them here because of subsequent decisions of the COP.

Current proposed rule. We propose to replace the current regulations contained in 50 CFR part 23. In this proposed rule, we retained most of the general information from the current 50 CFR part 23, but we reorganized the sections, added provisions from certain resolutions, and revised text under the Government's plain language initiative to make the regulations clearer and easier to use.

Stricter national legislation. Article XIV of the Treaty explicitly recognizes the rights of Parties to adopt stricter national measures to restrict or prohibit trade, taking, possession, or transport of any wildlife or plant species. Resolution Conf. 2.6 (Rev.) recommends that Parties make use of stricter national measures if they have determined ''that an Appendix-II or -III species is being traded in a manner detrimental to the survival of that species'' or is being ''traded in contravention of the laws of any country involved in the transaction.'' Resolution Conf. 2.10 (Rev.) recommends that Parties experiencing significant problems in administering or enforcing CITES take stricter national measures to eliminate those problems. We have not incorporated elements of a number of resolutions into this proposal because our stricter national legislation, such as the ESA, the Marine Mammal Protection Act, and the Lacey Act, takes precedence.

Other resolutions. Some resolutions deal specifically with other countries and do not impact these regulations, such as Resolutions Conf. 6.5 (Rev.) and 8.2 (Rev.), which deal solely with the European Economic Community. A number of resolutions deal with general topics, including species conservation issues related to Houbara bustards, trade in sharks, and swiftlets. Although these are important resolutions, they are not regulatory in nature and, therefore, have not been addressed in this proposed rule.

Comments and Information Received

On August 5, 1997, the Fish and Wildlife Service published a notice of intent to propose rulemaking (62 FR 42093). The notice requested public input for the revision of these regulations. We received eight letters of comment: seven from organizations (Animal Welfare Institute, Busch Gardens Tampa, Defenders of Wildlife, Humane Society of the United States, Safari Club International, TRAFFIC USA, and Wildlife Management Institute) and one from an individual.

Suggested changes reflected diverse viewpoints that, at times, supported opposite courses of action or interpretation. The comments fit into the following general categories.

Product contents. Two commenters stated that language should be added to 50 CFR part 23 so that products listing CITES species as ingredients must meet all CITES requirements. We propose to define the term ''readily recognizable'' to include any specimen that has accompanying documents, packaging, marks, or a label that indicates it contains CITES species.

Definitions. Most of the commenters wanted terms in resolutions defined. These included primarily commercial purposes, accompanying personal baggage, hybrid, commercial, bred in captivity, and artificially propagated. We propose to expand the current definitions section (see proposed § 23.5) to include those definitions with unique meanings under CITES.

Non-detriment. One commenter suggested that we include criteria for making non-detriment findings in the regulations, and two felt that the public should have the opportunity to comment on non-detriment findings. One commenter wanted regulations to enable us to question scientific non-detriment findings made by other countries for Appendix-II shipments and reject shipments if we find that the finding was inadequate.

In making a non-detriment finding, we use the best information available. We consult with other Federal agencies, State agencies, and experts to ensure that the information we use is current. We agree that the factors considered when making non-detriment findings should be included in the regulations and propose to include a section outlining those factors. In addition, we encourage people with information on a species or trade to send it to us at any time. As recommended in Resolutions Conf. 2.6 (Rev.) and 10.3, we currently request information on scientific findings from another Party when it appears appropriate. We propose to include the recommendations of these resolutions in the proposed section that outlines when a CITES document is valid (see proposed § 23.23).

Personal effects exemption. We received several comments concerning the personal effects exemption. Several requested that live wildlife or plants be excluded from this exemption, and some requested that limits be put on the number of items that could be considered as personal effects. We propose to revise the requirements for this exemption to exclude any live specimen, to implement Resolution Conf. 10.6, to include conditions that qualify what we would consider personal effects, and to provide guidelines for quantities rather than provide specific numbers.

Quotas for Appendix-I species. One commenter suggested that we expand our use of quotas for Appendix-I species, and another that we abide by the ''plain'' language of the Treaty rather than the resolutions concerning Appendix-I hunting trophies. The second commenter considered trophy hunting a primarily commercial industry and argued that the import of Appendix-I hunting trophies should not be allowed. The revisions we are proposing follow the relevant resolutions as well as stricter measures under U.S. laws. In general, we do not consider the import of hunting trophies by the person who killed the wildlife to be primarily commercial, even though commercial activity occurs in the exporting country as part of the hunt.

Registered operations. Two commenters wanted us to provide an opportunity for the public to comment on proposed registrations of captive-breeding facilities. We propose to publish notices in the **Federal Register** and invite public comment when we receive requests that U.S. operations be registered.

Resolutions. Most of the commenters discussed the inclusion of resolutions into the regulations. We received a wide range of comments, including: (1) Resolutions are confusing and contradictory, and not all of them should be incorporated; (2) resolutions are recommendations and should not be put into regulations; (3) we should only adopt resolutions that the United States supported at the COP's; (4) we should explain which resolutions are being incorporated and why; and (5) we should give a history of any resolution incorporated, including who proposed it and whether or not the United States supported it. We also received a number of comments on specific resolutions that commenters felt should be incorporated into the regulations. We propose to incorporate the resolutions that are regulatory in nature and consistent with U.S. interpretation of its obligations under CITES and under U.S. law. It is the goal of the Parties to adopt resolutions by consensus. The United States works hard at COP's to ensure that it can support the text of any resolution that is adopted.

We have reviewed all of the comments and addressed them wherever appropriate. Since there were conflicting recommendations, not all comments were incorporated into this proposal. Some comments were not relevant to 50 CFR part 23, but belong in other regulations and will be considered when those regulations are revised.

Analysis of Proposed Changes to 50 CFR Parts 10, 13, and 17

Definitions in 50 CFR 10.12: We propose to revise two definitions in 50 CFR 10.12 because the definitions provided in 50 CFR part 10 apply to all regulations in subchapter B if not separately defined in a specific part. We propose to expand the term ''country of origin'' to apply to plants as well as wildlife and to update the definition of the ''United States'' to reflect changes in areas under U.S. jurisdiction.

General permit procedures in 50 CFR part 13: We propose to reorganize 50 CFR 13.1 and to revise it to reflect that, under very limited circumstances, permits for non-commercial CITES shipments may be issued after the activity has occurred (see proposed § 23.43 on retrospective documents).

We also propose to revise 50 CFR 13.12 to change the general information required on an application to include an address within the United States. There have been a number of situations where a business in a foreign country has requested a CITES document from us for a shipment it owned that is being shipped out of the United States. If we issue the CITES document showing the exporter's foreign address rather than a U.S. address, it appears that we issued a CITES document for goods that were never in this country. The document can be issued to the owner of the items, but it must include either a U.S. address or the name and address of a U.S. agent. For commercial activities, the name and address of the commercial entity's agent in the United States must be included.

We propose to revise 50 CFR 13.22 that allows continuation of permitted activity during permit renewal. This general provision in 50 CFR part 13 does not apply to CITES documents since they are not considered valid for use upon expiration.

Permittees are required to maintain records. However, our authority to inspect records is limited to areas within the United States. Therefore, to ensure that we are able to carry out our responsibility to inspect records when necessary, we propose to revise 50 CFR 13.46 to require foreign permittees conducting commercial activities within the United States to maintain records in this country.

Import exemption for threatened, Appendix-II wildlife (50 CFR 17.8): We propose to add this new section to 50 CFR part 17. Section 9(c)(2) of the ESA sets out an exemption to the import

prohibition for threatened, Appendix-II wildlife when the taking and export meets the provisions of CITES and the import is not made in the course of a commercial activity. The exemption includes sport-hunted trophies that were personally taken from the wild or on a ranch for personal use. We propose to define ''sport-hunted trophy'' the same as in proposed § 23.5. Handicraft items or items manufactured from the trophy for use as clothing, curios, ornamentation, jewelry, or other utilitarian items would not be allowed.

The purchase in foreign commerce of an item of an ESA species is prohibited under the ESA. Section 9(c)(2) only exempts import; it does not exempt foreign commerce. Thus, the exemption would not include trophy items or other items purchased in curio stores, even if the intended use was personal. It would not apply to species that have a special rule in 50 CFR part 17, such as the argali in 50 CFR 17.40(j). It also would not apply to Appendix-II specimens annotated for a specific use, such as export of hunting trophies for non-commercial purposes, where other specimens of that species are included in Appendix I. The annotation of African elephant populations in Zimbabwe, Namibia, and Botswana is an example of this type of annotation.

Analysis of Proposed Subpart A—Introduction

We propose to expand this subpart to give a clearer picture of our responsibilities under CITES. The following is a section-by-section description of proposed changes to the current regulations.

Parties: The existing regulations (§ 23.4) include a list of countries that are Parties. We propose to omit this list. CITES has grown to include 151 Party countries. To keep this list up to date, we would need to continually revise the list of Parties when more countries join and as contact information for Parties changes. The list of Parties (including addresses and phone/fax numbers) is available on our website, from our fax retrieval system, or by mail or e-mail (see proposed § 23.7). As changes occur, these sources can be more quickly and easily updated than issuing a revised rule.

Purposes (§ 23.1): This section provides background information on the Treaty and explains that CITES is implemented in the United States under the ESA. It outlines the aim of CITES as stated in the preamble to the Treaty. The Parties acknowledge that wildlife and plants have aesthetic, scientific, cultural, recreational, and other non-consumptive values as well as economic importance.

Scope (§ 23.2): We have used a table to help people determine if these regulations apply to their proposed activities. The first question to be answered is whether the specimen is regulated by CITES. The reader is referred to the CITES appendices for the list of species. The second and third questions list the few CITES exemptions and refer the reader to the specific sections in the regulations for these exemptions. The fourth question lists the types of international trade regulated by CITES. The fifth question raises the issue of specimens that were illegally acquired or traded in contravention of CITES. The possession and domestic trade of legal specimens is not regulated by CITES unless the specimens were in international trade under specific conditions of a CITES document that still apply. The possession and domestic or international trade of illegally imported specimens, however, is prohibited. Further, any offspring of illegal specimens are also considered illegal.

Other applicable regulations (§ 23.3): These regulations detail the requirements for CITES species. However, many CITES species are covered by one or more other laws that have regulations in other parts of subchapter B. This section tells you where to look for information on other requirements.

Appendices I, II, and III (§ 23.4): Species are listed at one of three levels of protection, which have different requirements for permits and certificates (CITES documents). This section briefly defines Appendices I, II, and III.

Definitions (§ 23.5): We have added a number of definitions that relate to these regulations. In some cases, we could not clearly define a term in one or two sentences. We have provided longer definitions where necessary and/or referenced a section that contains more detailed provisions. Whenever possible we have defined terms using the wording of the Treaty and the resolutions.

We use some basic terms throughout these regulations. We define ''import,'' ''export,'' ''re-export,'' ''international trade,'' and ''introduction from the sea'' to reflect the way they are used by the Parties. These definitions refer to international movement, whether the purpose is commercial or non-commercial. ''Import'' and ''export'' are further defined in 50 CFR part 14. We have also defined the term ''shipment'' to eliminate confusion.

The text of the Treaty uses the terms ''permits'' (for import and export) and ''certificates'' (for re-export, exemptions, certificates of origin, and introduction from the sea) in referring to documents issued by CITES Management Authorities (a governmental agency officially designated by a Party or non-Party to implement CITES). However, some Parties refer to all CITES documents as ''permits.'' For this reason, we have defined and use the term ''CITES documents'' to refer to all permits and certificates that are issued by a Management Authority. The definition of ''permit'' in this section is expanded from the definition in 50 CFR § 10.12 to include documents issued by any Management Authority, not just documents ''issued by the Service.''

The current regulations (§ 23.3) define the Management Authority in terms of Parties only and do not define Scientific Authority. We propose to define both and to include non-Parties in the definitions. If non-Parties wish to trade with Parties, they need to have entities officially designated as Management and Scientific Authorities to implement CITES and make the findings needed to grant CITES documents.

We used the definition of ''specimen'' given in the Treaty to clarify that, under this part, the term refers only to species listed under any of the CITES appendices.

Although the term ''readily recognizable'' is used in the Treaty (Article I), it is not specifically defined in the Treaty. However, Resolution Conf. 9.6 defines the term, and we have based our proposed definition on the text of the resolution.

Management and Scientific Authorities (§ 23.6): Under Article IX, each Party must designate a Management Authority and Scientific Authority. In the United States, these authorities have been delegated by the Secretary of the Interior and the Director of the Service to two different offices. We propose to add a section that summarizes the major roles of these authorities in the United States. The roles include a wide range of activities such as the issuance and denial of permits; scientific and management findings; monitoring of trade and trade impacts; communication with the Secretariat and other countries on scientific, administrative, and enforcement issues; and evaluation of species' status and trade. Another of our roles is to provide training and technical assistance to countries when possible (Resolution Conf. 3.4 on Technical Co-operation).

Contact information (§ 23.7): The table in this section outlines the type of information available from the Office of Management Authority, Office of

Scientific Authority, Office of Law Enforcement, APHIS, and the Secretariat and the different ways you can contact each office. In an effort to serve the public more efficiently, we have developed a website and a fax retrieval system that provide information, such as application forms for CITES documents, the names and addresses of Management and Scientific Authority offices in Party and non-Party countries, and the list of CITES species.

Information collection (§ 23.8): Each permit application form that we use must be reviewed and approved by the Office of Management and Budget for information collection under the Paperwork Reduction Act. These forms undergo review every 3 years. This process provides an opportunity for the public to provide input concerning the amount of time that it takes to complete the forms and prepare the information requested on the forms.

Analysis of Proposed Subpart B—Prohibitions, Exemptions, and Requirements

In this proposed subpart, we detail the activities that are prohibited, circumstances when exemptions may apply, and requirements for international movement of specimens. CITES uses a system of documents to ensure that trade in protected species is legal and does not threaten the survival of wildlife or plant species in the wild. The Treaty outlines standardized information that needs to be on these documents and, based on experience in inspecting shipments and enforcing CITES, the Parties have adopted a number of resolutions to refine the types of information that need to be on documents for Parties and non-Parties.

Prohibitions (§ 23.11): We propose minor changes to the prohibitions section in the current regulations. We listed ''introduction from the sea'' separately from ''import'' to clarify that CITES treats the activities differently. We added the phrase ''engage in international trade'' to the list of prohibitions to clarify that international trade in specimens in violation of these regulations by any person under U.S. jurisdiction is prohibited even if specimens are not actually imported into or exported from the United States.

Personal and household effects (§ 23.12): Article VII(3) provides for the import, export, or re-export of specimens that are personal or household effects without CITES documents under certain circumstances. We propose to clarify the current regulations (§ 23.13(d)) based on our experience in administering the Convention. Since many Parties do not recognize this exemption and require CITES documents for personal and household effects, we added new paragraphs explaining when CITES documents for personal and household effects may be required.

We also propose to exclude live wildlife and plants (including eggs and non-exempt seeds) and Appendix-I specimens from the exemption. The drafting history of CITES, as well as significant debate that occurred at COP 4 (the resulting resolution was consolidated into Resolution Conf. 10.6), clearly supports the view that this exemption applies only to nonliving items, such as clothing, jewelry, or household effects, that are being used by an individual for personal needs and are not for resale. In addition, few countries allow the import or export of Appendix-I specimens, including personal pets, without CITES documents, even for personal or household effects. In the United States, many Appendix-I species are listed under the ESA, which does not have an exemption for personal or household effects. Therefore, to assist in the enforcement of the Convention and to reduce the risk to Appendix-I species in the wild, we propose to be more restrictive and require CITES documents for all Appendix-I specimens, except for certain worked items made from African elephant ivory (see proposed § 23.12(g)).

The proposed rule clarifies that personal effects must be personally owned by the traveler for exclusively non-commercial purposes, be reasonably appropriate for the purpose of the trip or stay, and either be worn as clothing or accessories or part of accompanying personal baggage. We have encountered a number of instances, both in the United States as well as abroad, where individuals have had souvenirs or other items seized when these items were mailed or shipped to them. Although these could be considered items for personal use, the CITES exemption does not apply in these cases.

The proposal also clarifies that household effects must be personally owned items that are part of a non-commercial household move. We understand that sometimes it is not possible to ship household goods all at one time. Thus, we propose to allow a person to make as many shipments as needed to accomplish the move as long as they occur within 1 year of the person's change in residence. A shipment may contain only items acquired before the individual moves. It may not include items purchased, inherited, or otherwise acquired after the person has moved, even though the household goods have not yet been shipped.

At COP 10, the Parties recommended in Resolution Conf. 10.12 that the personal effects exemption for sturgeon caviar be limited to no more than 250 grams for each person. We propose to allow this exemption for caviar from species of Appendix-II sturgeon not listed under the ESA. The caviar must be strictly for personal use, and all other requirements of the personal effects exemption would apply. If a person is bringing in more than 250 grams of caviar, a CITES document is required that covers the entire amount, not just the amount over 250 grams. For example, if a person arrives in a country with 265 grams of sturgeon caviar without a CITES document for 265 grams, he or she will not be allowed to keep 250 grams as personal effects and simply surrender the excess amount. Since he or she did not have the required CITES document, the whole amount would be subject to seizure. All other parts and products of Appendix-II sturgeon species that are not listed under the ESA, such as a mounted fishing trophy, can be traded internationally as personal or household effects if they meet the conditions of the exemption.

The African Elephant Conservation Act is stricter U.S. legislation concerning the import or re-export of African elephant ivory. We propose to allow U.S. residents to travel out of and return to the United States with worked African elephant ivory as personal or household effects under certain conditions. Upon import, travelers would need to show records that they owned the ivory before leaving the United States. The exemption does not include items that are purchased while abroad or intended as gifts. We propose to adopt a definition of ''raw ivory'' similar to the one in the special rule concerning African elephants in 50 CFR 17.40(e) and Resolution Conf. 10.10. Individuals should contact the Management Authority in the country of their destination to find out about its requirements.

Urine, feces, and synthetically derived DNA (§ 23.13): We propose that the international trade of these types of specimens be exempt from CITES requirements. We consider samples of urine and feces to be wildlife by-products, rather than parts and products.

We differentiate between DNA extracted directly from blood or tissue samples and synthetically derived DNA. DNA extracted directly from blood and tissue samples must comply with all CITES permitting requirements. At COP

8, the Parties rejected Denmark's draft resolution to exempt blood and tissue samples to be used for DNA studies. The Parties agreed that such tissues should not be exempt from CITES controls. In 1994, we developed a policy that clarified that we consider synthetically derived DNA as exempt from CITES requirements since it contains no part of the original template. We believe that trade in synthetically derived DNA samples will not adversely affect the conservation of, or effective regulation of trade in, CITES species and their parts and derivatives. We are considering, however, whether we should expand this policy to exempt from CITES requirements DNA that has been extracted directly from tissue. We believe there is little commercial trade in this type of DNA and that exempting it from CITES requirements is of low conservation risk. We will be discussing this issue with other Parties and invite comment to assist us in making a final decision.

Since the Parties have not discussed whether urine, feces, or synthetically derived DNA are regulated by CITES, some countries may require CITES documents for these types of samples. If a country requires CITES documents, we will honor that country's interpretation and process an application.

Although we propose not to regulate these types of specimens under CITES, we believe it is important that researchers collect samples in a manner that does not harm the wildlife and that complies with the laws of the country where the collection occurs. Before collecting samples, researchers should contact the foreign Management Authority or other relevant wildlife or plant authorities to obtain information on collecting and export requirements.

Diplomats and other customs-exempt persons (§ 23.14): CITES Decision 10.34 urges the Parties to remind their diplomatic missions, their delegates on mission in foreign countries, and their troops serving under the flag of the United Nations that they are not exempt from the provisions of the Convention. We propose to add this provision to the regulations to better inform persons who receive duty-free and inspection waiver privileges under customs laws that CITES applies to their activities.

Required CITES documents (§ 23.15–23.17): Articles III, IV, and V lay out the types of documents that must accompany Appendix-I, -II, or -III specimens in international trade. Article VII recognizes some exemptions (such as pre-Convention, bred in captivity, and artificially propagated) that usually require specimens to be accompanied by CITES documents.

We propose to organize the information on what types of CITES documents are required (§ 23.12 and part of § 23.13 in the current regulations) into two decision trees and three tables.

Although the tables include Appendix-I specimens, we developed separate decision trees specifically to address the confusion expressed by the public on the export requirements for Appendix-I wildlife and plants. The decision trees and tables should make it easier for importers and exporters to understand what type of document is needed for a shipment. They refer the user to the section in these regulations that explains the application procedures, provisions, issuance criteria, and conditions. The foreign Management Authority should be contacted for information on how to meet its requirements.

Reservations (§ 23.18): Articles XV, XVI, and XXIII allow a Party to take a reservation on a species' listing. Generally, a reserving Party is treated as a non-Party with respect to trade in the reserved species. Some countries take a reservation because they choose not to recognize a listing and wish to continue trading in the species with other reserving Parties or non-Parties. To date, the United States has not taken a reservation. We believe that commercial trade in Appendix-I species by reserving Parties undermines the effectiveness of the Convention. A current list of species' reservations taken by Parties is available from us (see proposed § 23.7).

To clarify the requirements of the Treaty and to promote conservation, we propose to add this new section to emphasize what types of documents are required from Parties that have taken a reservation on a species. We are incorporating Resolution Conf. 4.25, which recommends that Parties who take a reservation when a species is transferred from Appendix II to Appendix I continue to treat the species as if listed in Appendix II, rather than not listed, when trading with other reserving Parties or non-Parties. This provision should promote the conservation of species listed in Appendix I and continue the reserving Party's obligations for the species.

In-transit (§ 23.19): Due to limited transportation routes and schedules, exporters and re-exporters may not always be able to ship specimens from one country directly to another without transhipping them through intermediary countries. Shipments of marine specimens harvested from international waters may need to move through waters under the jurisdiction of intermediary countries before reaching their port of introduction. Article VII(1) provides an exemption for specimens that are in-transit through a country while the specimens remain under customs control. We propose to define ''in-transit shipment'' as the immediate transhipment of a wildlife or plant through an intermediary country when the specimen remains under customs control.

In 1983, the COP recognized the potential for abuse of this provision, such as when importers claimed the exemption and delayed shipment of the transiting specimen in order to find a buyer in a foreign country. In 1989, the COP noted that if a valid CITES export document was required to accompany shipments through intermediary countries, Parties could discover illegal trade. The inspection of in-transit shipments was recommended in 1992. Resolution Conf. 9.7 consolidates the earlier resolutions concerning in-transit shipments (Resolutions Conf. 4.10, 7.4, and 8.8).

To prevent misuse of the in-transit exemption, we propose to revise § 23.13(b) to reflect the recommendations of the COP. In-transit shipments must be accompanied by a valid original CITES document issued by the Management Authority of the exporting or re-exporting country that designates the name of the importer in the country of final destination, a copy of a valid import permit for Appendix-I specimens where required, and transportation routing documents that show that the shipment has been consigned to the importer listed on the CITES documents. In-transit shipments must only stay in an intermediary country for the time necessary to transfer the specimens to the mode of transport used to continue to the final destination; must remain under customs control; and may not be sold, manipulated, or split. In addition to these requirements, shipments of specimens from non-Parties or reserving Parties must be accompanied by CITES documents.

We also propose to add language on CITES species protected under other U.S. regulations, such as migratory birds, bald and golden eagles, injurious wildlife, endangered or threatened species, or marine mammals. A shipment that contains specimens of species protected under these regulations that arrives in the United States before continuing on to another country is considered an import and must meet all import requirements.

In a separate **Federal Register** rulemaking proposal, we plan to

propose a revision of 50 CFR part 14 to clarify that shipments to duty-free shops, free ports, or similar zones, or shipments traveling under a customs carnet are considered imports and are not in-transit shipments.

Required information on CITES documents (§ 23.20): Article VI provides basic requirements for CITES documents for import, introduction from the sea, export, and re-export. At the first COP, the Parties recognized the importance of having standardized documents. They also recognized that the process of developing the standards would be a continuous one. Resolutions Conf. 2.5, 3.6, and 7.3 on permits and certificates were consolidated at COP 9 (Resolution Conf. 9.3) and reorganized at COP 10 into Resolution Conf. 10.2. This comprehensive resolution provides guidance on all aspects of CITES documents.

The use of standardized documents assists Parties in implementing CITES. Such standardization allows countries to verify that the specimen being shipped is the one listed on the document and helps identify false and invalid CITES documents. It facilitates the collection of information on the volume of trade in wildlife and plants, providing standard information for annual reports and allowing better monitoring of the levels of commercial trade on a species-specific basis. It also facilitates the clearance of shipments at ports of exit and entry by making all necessary information available to the inspector in a familiar format.

We propose this new section to provide detailed information on what all CITES documents must contain. It applies not only to documents issued by the United States, but also to ones issued by Parties and non-Parties. Most of the information is presented in a series of tables, organized alphabetically by key phrase, code, or type of document. This section should help those shipping and receiving specimens to understand what information is needed on CITES documents.

Most of the requirements are taken directly from Resolution Conf. 10.2 and need no further explanation. However, we discuss some here to clarify issues raised in the past.

Dates: We have had many questions about the ''valid until date.'' We propose to clarify that the validity of a document expires at midnight (local time at the place of presentation) on the date indicated on the document. All activities, including, but not limited to, transport and presentation for import must be completed before that time.

Description of the specimen: The use of standard descriptions for a specimen is needed to do accurate global trade analyses, particularly for purposes of evaluating the impact of trade on the conservation of the species in the wild. We propose to require that descriptions be in English, Spanish, or French (the three working languages of the Treaty) on documents from Parties to assist inspectors in determining if documents match the accompanying shipment. We have experienced difficulties in processing CITES documents written in languages other than English, Spanish, or French, and clearance of some shipments has been delayed. Limiting descriptions to the three languages of the Treaty should help prevent or reduce such delays, while assisting in enforcement efforts.

Purpose of transaction: Resolution Conf. 10.2 lists standard transaction codes to be used on documents. These are the same codes used by Parties in their CITES annual reports. Although in some cases more than one code may apply, Parties must assign one code that best describes the overall activity. For example, a specimen may be exported for breeding purposes, but the wildlife was sold and the ultimate use is commercial. In this case, the permit will be marked as ''T'' for commercial, rather than ''B'' for breeding in captivity. The Management Authority is responsible for reviewing all information provided in an application and then determining which category best describes the transaction or is most appropriate.

Quantity: Many shipments have been presented for clearance with quantities identified as ''one box'' or ''one case.'' These quantities give little clear information about how much wildlife or plants are actually in the shipment. A box may contain one wildlife or plant specimen, or it may contain hundreds. The unit of measurement should be appropriate for the type of specimen and agree with the preferred or alternative unit to be used in the CITES annual report, if possible. The unit should be in metric measurement. If weight is given, it is important to provide the weight of the specimen, not the packing material. Some items are more accurately reported by volume, such as timber, which should be shown as cubic meters. To effectively monitor trade, we need records on quantities that actually reflect the volume of that trade.

Scientific name: We propose that the scientific name of the species on the CITES document must include the subspecies when that information is needed to determine the level of protection of the specimen under CITES and/or the ESA. For example, under CITES, three subspecies of cougar (*Puma* (=*Felis*) *concolor coryi, P. c. costaricensis,* and *P. c. cougar*) are included in Appendix I, while all other subspecies are included in Appendix II. Under the ESA, the Louisiana black bear (*Ursus americanus luteolus*) is listed as a threatened species; while under CITES, the entire species is included in Appendix II with no subspecies included in Appendix I.

The document must contain the scientific name of the species that is of the standard nomenclature as it appears in the CITES appendices or in the references adopted by the COP. CITES has adopted nomenclature references for most, but not all, species. Resolution Conf. 10.22 provides a list of these references for mammals, birds, reptiles, amphibians, and plants. Taxonomy evolves, and different references may use different scientific names for the same organism. Having one standard that we can follow is important to ensure that documents are issued for the correct species. Any changes of adopted nomenclature references would be by a resolution of the COP. The most current list of references is available from us or the Secretariat's website.

Resolution Conf. 10.2 recommends three situations when a higher taxon name (such as genus or family) could be used on a CITES document. We propose to incorporate the recommendations of the resolution as adopted. We would accept a CITES document that uses a higher taxon name only when the COP has agreed to its use, the issuing Party can show it is well justified and has communicated it to the Secretariat, or when the item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species' level.

Signature: We propose to implement the CITES requirement that the signatures of individuals authorized to sign CITES documents for a Management Authority must be on file with the Secretariat. This proposed requirement should help us determine if a document is valid and avoid delays in the clearance of shipments.

The proposed table in paragraph (e) provides details on additional information that is required for specific types of documents, such as an annex or certificate of origin. Some documents require additional information because of the type of transaction, the specimen involved, or special provisions, such as quotas.

CITES allows phytosanitary certificates to be used in lieu of CITES certificates for Appendix-II and -III artificially propagated plants only and under specific circumstances. Proposed paragraph (f) lists information that is

required on these certificates. At this time, the United States does not use phytosanitary certificates in lieu of CITES certificates.

Source of the specimen (§ 23.21): The source of a specimen is needed by Management and Scientific Authorities to make the findings required to issue CITES documents and is an important component in analyzing data and monitoring trade. We are providing a list of standardized codes that Management Authorities use on documents. Each code is defined as to the source of the specimen under CITES. The Management Authority will determine the appropriate code based on information provided in an application.

We often receive questions about the difference between the source codes ''C'' and ''F.'' Wildlife bred in captivity can be given the source code ''C'' only if the specimen meets the requirements adopted by the COP as ''bred in captivity'' (see proposed § 23.53). If it is an Appendix-I specimen, it also must have been bred for non-commercial purposes (see proposed § 23.55) to qualify for an exemption certificate (see proposed § 23.33). If a captive-born specimen does not meet these criteria, it is assigned the source code ''F'' and requires CITES documents under Article III, IV, or V. For an Appendix-I specimen, both import and export permits are required, and the import may not be for primarily commercial purposes.

Additional information required on non-Party documents (§ 23.22): Article X provides that a Party may accept documentation from a non-Party if it is issued by a competent authority and substantially conforms with the requirements of CITES. Because the Parties were concerned that the trade of CITES specimens through non-Parties might jeopardize the effectiveness of the Convention, Resolution Conf. 9.5 was adopted. This resolution recommends that Parties accept documents from non-Parties only if they contain certain basic information, including certifications that they have made the findings required under Articles III, IV, and V.

Because of the need for standardized information concerning CITES species from all sources, to ensure that appropriate protection is given to CITES species, and to reduce the risk of detrimental or illegal trade from non-Parties, we propose to be stricter and incorporate the requirements of not only this resolution, but also Resolution Conf. 10.2 on permits and certificates. This proposed policy means that for us to consider a non-Party CITES document valid, it would essentially need to contain the same information as a Party document. This proposed section would replace § 23.14 in the current regulations.

Valid CITES documents (§ 23.23): Article VIII outlines measures that Parties should take to enforce the provisions of the Convention. Resolutions Conf. 2.6 (Rev.), 3.9 (Rev.), 6.4 (Rev.), 7.5, 9.8 (Rev.), 9.9, and 10.2 further detail these measures. For CITES to be effective, shipments must be accompanied by valid CITES documents issued by the appropriate authority and must meet all conditions of those documents. Each Party must have border controls for the inspection and validation of CITES documents. To ensure that specimens traded in violation of CITES are not re-entered into illegal trade, Parties are to consider seizure of specimens, rather than refusal of entry of the shipment. Parties are encouraged to cooperate with other Parties, the Secretariat, and international enforcement organizations to further effective enforcement of the Treaty and provide protection to CITES species.

We propose to include this new section in the regulations to clarify what requirements must be met before CITES documents are considered valid. We present this information in a table arranged alphabetically by key phrase to assist importers and exporters. Most of the requirements are self-explanatory; however, we feel it would be helpful to discuss specific ones.

Management Authority and Scientific Authority: We propose to incorporate the recommendation of Resolutions Conf. 3.9 (Rev.), 9.5, and 10.3 that documents should be accepted only from Parties and non-Parties that have designated a Management Authority and Scientific Authority and have provided that information to the Secretariat. If countries have not designated Management and Scientific Authorities, we cannot be sure that the required findings have been made. Without these findings, CITES documents are not valid.

Ranched: A number of species have been transferred from Appendix I to Appendix II based on ranching of the species. Resolution Conf. 10.18 recommends that Parties not allow trade in such species from a non-Party or a Party that has taken a reservation on the species. We propose to incorporate this recommendation. Trade in this type of specimen cannot be properly monitored when specimens are traded through non-Parties and Parties that hold reservations and do not require CITES documents.

Shipment contents: The proposed language reflects current practice. CITES documents must be obtained before the shipment occurs. Documents are specific to the specimens identified on the document, and the shipper may not substitute a new specimen to replace the one approved. The inspecting official may inspect the shipment and verify that the contents match the specimens described on the document. The official will validate or certify on the CITES document the actual quantities that are being shipped. The quantity may be less than the quantity shown on the document at the time it was issued, but cannot be more than that quantity.

Quotas: The COP approves export quotas for some species. For other species, countries determine their own export quotas. The Secretariat notifies the Parties of these quotas each year. We propose to require that the quantity exported may not exceed the quota.

We outline in paragraph (d) of this section the situations when we may request verification of documents from the Secretariat or the Management Authority of any country involved in the shipment. It includes instances when we have reasonable grounds to believe a document is not valid or authentic.

In paragraph (e), we propose to issue an information bulletin if we determine that a country is not effectively implementing CITES. The bulletin would indicate how we will handle shipments involving that country or a species from that country. We may issue such a bulletin if we receive reliable information from the COP, Standing Committee, Secretariat, or other credible source that there are reasonable grounds to believe that documents from a country are not valid. We will consider all available information, including whether the trade is detrimental to the species, the trade is in violation of any foreign law, or if the applicable findings are not being made when CITES documents are issued by a country. We will no longer publish separate notices of information in the **Federal Register**, but will use a number of more timely ways to provide this information to the public. These could include posting the bulletin on our website, mailing it to all import/export license holders and recipients of our CITES updates, and providing it to the media through press releases.

Presentation of CITES documents at the port (§ 23.24): Inspecting officials at the ports of exit and entry must verify that shipments are accompanied by valid CITES documents and take enforcement action when shipments do not comply with CITES. To help

importers and exporters, we propose this new section, which provides a table that outlines the type of U.S. and foreign documents that they must present for validation or certification or surrender when importing, introducing from the sea, exporting, or re-exporting CITES species. The general requirements for import and export are given in 50 CFR part 14 for wildlife and 7 CFR part 355 for plants.

Analysis of Proposed Subpart C—Application Procedures, Issuance Criteria, and Conditions

This proposed subpart expands the current § 23.15(c) through (f) to provide more detailed information on application procedures, decisions on applications, and records needed to apply for U.S. documents. The general requirements of this proposed subpart apply to both U.S. and foreign CITES documents.

Application procedures (§ 23.25): This proposed section gives a general overview of the application process for U.S. CITES documents. A number of CITES species are protected under other laws or treaties that we implement. If appropriate, we will accept one application if the applicant provides the information needed under all relevant regulations. Applicants should review the issuance criteria for all relevant regulations when preparing an application to ensure they understand the kinds of information we need. This review should help the applicant submit a more complete application and prevent delays in processing.

When we review an application, we decide whether the requirements of an exemption document under Article VII can be met or whether we need to process the application under the standard CITES requirements of Articles III, IV, or V. For example, a person may apply to export a specimen that was born in captivity. We will first look to see if the specimen meets the bred-in-captivity exemption. If the specimen does not meet the issuance criteria for this exemption, we will consider the application under the standard CITES requirements for an export permit.

Decisions on applications (§ 23.26): This new proposed section explains the procedures we follow in making a decision on an application. When an application is complete, we review the information under all applicable issuance criteria, including 50 CFR part 13, regulations under other wildlife and plant laws, and the CITES regulations. We may consult with outside experts, scientists, and staff within the Federal Government, State and tribal agencies, the Secretariat, or foreign Management or Scientific Authorities before we make our findings. The burden of proof in establishing that the issuance criteria are met lies with the applicant. We can issue a CITES document only if we are satisfied that all criteria specific to the proposed activity are met.

Records (§ 23.27): When applying for a U.S. CITES document, an applicant must provide documents on the origin of the specimens and/or parental or founder stock. This information must be sufficient for us to make the required findings for the type of document requested. This proposed section summarizes the types of general records that potential applicants should consider keeping for specimens that have been in or may enter international trade. Documents should be maintained as long as a specimen is owned by a potential applicant and should be transferred to any subsequent owner.

Requirements for standard CITES documents (§§ 23.28–23.31): The basic requirements for U.S. and foreign CITES documents are the same as in the current regulations (§ 23.15). We have designed U.S. application forms for specific activities and protection levels to make applications easier to complete and to clarify what information is needed. The information provided in paragraph (b) of each of these proposed sections is designed to help an applicant determine which application form to request. The forms can be obtained from our website and fax retrieval system or requested by phone or e-mail. We propose to omit the application information from the regulations since we have made application forms for specific activities available to the public.

The information in paragraph (c) or (d) of each of these proposed sections lists the issuance criteria for each type of document and references the appropriate section for factors we consider in making a decision on certain criteria. The issuance criteria are based on the provisions of the Convention (Articles III, IV, V, and XIV) and resolutions, including Resolution Conf. 10.2 on permits and certificates.

Under Article III, before a Management Authority can issue an export permit for an Appendix-I specimen, it must be satisfied that an import permit has been granted for the specimen. However, some countries have stricter national legislation that requires the export permit be issued before they can issue an import permit. Resolutions Conf. 10.14 and 10.15 recommend that this requirement may be satisfied when the Management Authority of the importing country has provided written assurance that an import permit will be granted. Thus, we propose in § 23.29(d)(1) that the issuance criteria can be met either by showing that the import permit has been granted or by providing confirmation from the Management Authority of the importing country that the import permit will be granted. We propose the same issuance criteria for the re-export of live specimens as required by Article III(4)(b). For re-export of dead specimens, the Management Authority does not need to see the import permit before issuing a re-export certificate, but the shipment still must be accompanied by an import permit.

As discussed earlier, to comply with Resolution Conf. 10.2, CITES documents must show the scientific name of the species using the standard nomenclature in the CITES appendices or the references adopted by the COP. Although current regulations (§ 23.15(c)(1)) require that applications include scientific names, they do not mandate use of the nomenclature in the CITES appendices and references. We propose to add this requirement as an issuance criterion to conform with Resolution Conf. 10.2, expedite review of permit applications, and ensure that documents are issued for the correct species.

Because Appendix-I wildlife and plants can be imported only when the intended use is not for primarily commercial purposes, we propose to condition all import permits that the specimen can be imported and subsequently used only for the permitted purpose. If the importer wants to transfer the specimen where it would be used for a different purpose, he or she would need to obtain permission from us. The importer would not be allowed to use or transfer the specimen for commercial purposes once in the United States.

To comply with the intent of Resolution Conf. 9.10 (Rev.), we propose to add an issuance criterion for re-export of confiscated Appendix-II specimens in § 23.29(d)(2). It would require us, before issuing a re-export certificate, to find that the proposed re-export of confiscated specimens would not be detrimental to the survival of the species. Regulations in 50 CFR 12.37 allow for the sale of confiscated Appendix-II and -III wildlife and plants. When specimens have been confiscated and subsequently sold or transferred, we consider them legally acquired. However, because the specimens were imported without the proper CITES documents, we need to make the biological finding (that normally would have been made prior to export) before issuing a re-export certificate.

Current regulations (§ 23.12(b)(2)) provide only general information about certificates of origin. We are proposing a new section (§ 23.30) to provide specific information on the application form and issuance criteria for certificates of origin. These documents allow the export of specimens of species listed in Appendix III when the specimens originate in a non-listing country.

Article XIV(4) and (5) provides a limited exemption for introduction from the sea of Appendix-II species when a country is a party to another treaty, convention, or international agreement that protects the listed marine species and was in force on July 1, 1975 (the entry into force of CITES). Based on this article, we propose in § 23.31(d) to apply this exemption only to specimens that were harvested by a ship registered in the country of introduction.

Certificates for artificially propagated plants (§ 23.32): The Parties recognize that a different approach for plants is sometimes necessary because of the unique aspects of plant biology and trade. This proposed section implements Article VII(5) and expands on the current regulations in § 23.15(d)(8). It allows us to issue a certificate for artificially propagated plants for specimens of Appendix-I species and hybrids of annotated Appendix-I species propagated for non-commercial purposes and for hybrids of unannotated Appendix-I species and specimens of Appendix-II or -III species or hybrids propagated for any purpose. It is important to note that there are no annotated Appendix-I plant species at this time, so all hybrids of Appendix-I species that qualify as artificially propagated are eligible for this exemption certificate. (See proposed § 23.39 to export Appendix-I plants propagated for commercial purposes under Article VII(4).) We propose to adopt the conditions of Resolution Conf. 9.18 (Rev.) to decide whether plants qualify as artificially propagated (see proposed § 23.54). This resolution means that not all ''cultivated'' (see proposed § 23.5) plants grown under controlled conditions qualify as artificially propagated, and the shipper may need a CITES export permit rather than a certificate for artificially propagated plants (see proposed § 23.29). An Appendix-I plant that qualifies for this exemption does not need a CITES import permit.

Bred-in-captivity certificates (§ 23.33): Bred-in-captivity wildlife is also covered under Article VII(4) and (5). In adopting Resolutions Conf. 8.15 and 10.16, the Parties recognized the need for a standard interpretation of these two paragraphs. The Parties have expressed concern that trade in specimens falsely declared as bred in captivity is contrary to the Convention and may be detrimental to the survival of wild populations. (See proposed § 23.38 concerning the registration of operations that breed Appendix-I wildlife for commercial purposes to meet the provisions of Article VII(4).) This proposed section implements Article VII(5) and expands the current regulations in § 23.15(d)(8). It allows us to issue a bred-in-captivity certificate for specimens of Appendix-I species bred for non-commercial purposes and specimens of Appendix-II or -III species bred for any purpose. We propose to adopt the conditions of Resolution Conf. 10.16 for bred in captivity (see proposed § 23.53). Wildlife that is born in captivity, but does not qualify under this criterion, can be shipped only with a CITES export permit (see proposed § 23.29). Appendix-I wildlife that qualifies for a bred-in-captivity certificate does not need a CITES import permit.

Hybrids. At COP 2, the Parties recognized that it is difficult to distinguish between purebred and hybrid specimens for trade identification purposes. If hybrids were not subject to CITES controls, persons wishing to avoid the controls of CITES could falsely claim that the specimens in question were hybrids. Resolution Conf. 2.13 recommended that hybrids, even though not specifically listed in any of the appendices, are subject to CITES if one or both parents are listed. The Parties agreed at COP 10 to treat plant hybrids differently from wildlife hybrids. Resolution Conf. 2.13 was repealed, and provisions for hybrids were placed in other resolutions.

Plant hybrids (§ 23.34): Resolution Conf. 9.18 (Rev.) on trade in plants was revised to add a section on trade in plant hybrids. We are proposing a new section in the regulations to implement this resolution. Trade in plant hybrids must meet the requirements of CITES unless the Parties agree to exempt an Appendix-II and -III hybrid by a specific annotation to the appendices. At COP 10 a number of artificially propagated hybrids of some ''supermarket'' cacti were granted this general exemption. Plant hybrids are subject to CITES controls if one or both parents are in the appendices. If the hybrid includes two CITES species in its lineage, it is listed in the more restrictive appendix of either parent, with Appendix I being the most restrictive. Most plant hybrids are the product of artificial propagation using well-established nursery stocks that have been artificially propagated for many years. Thus, the Parties agreed to treat artificially propagated hybrids of one or more unannotated Appendix-I species as if listed in Appendix II and allow them to be traded with a certificate for artificially propagated plants.

Wildlife hybrids (§ 23.35): In Resolution Conf. 10.17, the Parties agreed that wildlife hybrids with one or more specimens of Appendix-I or -II species in their recent lineage are controlled under CITES as if they were ''genetically pure'' specimens of the listed species. The term ''recent lineage'' was discussed during the drafting of this resolution, but a definition was not included in the final version. The term was again discussed at the 14th meeting of the Animals Committee in May 1998. Following the Animals Committee meeting, CITES Notification to the Parties No. 1998/28 advised the Parties that the Animals Committee had agreed that the term ''recent lineage'' would refer to the previous four generations of a species' ancestry. Because of listing in the CITES appendices of higher taxa, such as falcons or parrots, few commonly hybridized species of wildlife would qualify for this exemption. However, specimens of the domesticated bengal cat could qualify for this exemption, depending on when a wild leopard cat (*Prionailurus* (=*Felis*) *bengalensis*) was in a specimen's ancestry.

To confirm that a hybrid is exempt from CITES controls, we propose to require that the specimen be accompanied by a letter issued by the Management Authority of the country of export, or a CITES document if required by the exporting or re-exporting country. The letter would need to certify that the wildlife hybrid contains no CITES specimens in its recent lineage. Since not all countries will be aware of this U.S. requirement, a person who plans to import an exempt wildlife hybrid needs to contact the Management Authority of the exporting or re-exporting country to get the appropriate letter or CITES document before making a shipment. For export or re-export from the United States, once a person provides information to verify the hybrid's lineage and scientific name, we could issue a letter.

Personally owned live wildlife (§ 23.36): Article VII(3) provides that, in some circumstances, the provisions of Articles III, IV, and V do not apply to specimens that are personal or household effects. As discussed previously, Parties have generally excluded live wildlife from this exception. However, in Resolution Conf. 10.20, the Parties recommend that the

term ''personal and household effects'' include personally owned, live wildlife that is registered by the Management Authority in the country where the owner usually resides. To monitor frequent international movement and reduce administrative and technical problems, the Parties agreed to use a certificate of ownership under specific conditions. We propose to implement this resolution, which will simplify the procedure for people who frequently travel internationally with companion animals or wildlife used in non-commercial competitions, such as falconry. The certificate of ownership would act like a passport, but could be issued only after agreement between the Management Authorities of the Parties concerned. The owner must accompany the specimen when crossing international borders, and the wildlife cannot be sold or otherwise transferred when traveling abroad.

Pre-Convention specimen (§ 23.37): Under Article VII(2), a specimen acquired before the provisions of CITES applied to the species involved is exempt from Articles III, IV, and V when the Management Authority issues a pre-Convention certificate. Resolution Conf. 5.11 provides guidance on determining pre-Convention dates. This proposed section expands the current regulations in § 23.15(d)(8) and clarifies when a pre-Convention certificate may be issued.

The pre-Convention date for a specimen may vary depending on when a Party joined CITES or on a country's stricter national legislation. Although Parties may differ on the date they consider as pre-Convention for a species, a pre-Convention certificate is valid only if both importing and exporting countries consider the specimen to be pre-Convention. The Parties agreed to put the date the species was acquired on the face of the certificate so the importing country could confirm that the specimen qualifies as pre-Convention for them. Since the United States became a Party to CITES when it first came into force, the pre-Convention date for the United States is always the date a species was first listed in any of the appendices. Thus, we do not consider pre-Convention certificates issued for a specimen acquired after that date as valid for entry into the United States.

We propose that the applicant provide information that the wildlife or plant (including parts or products) was removed from the wild or held in captivity or a controlled environment before the first date that CITES applied to the specimen before we can issue a pre-Convention certificate. A certificate is also needed to export items that are antiques (over 100 years old).

We are also proposing a voluntary registration of any inventory or stockpile of live specimens or parts and products when species are initially listed on the CITES appendices. We would especially encourage businesses that have an inventory or stockpile in their possession to register it with us before the effective date of a listing. Our experience with certain listings, such as sturgeon and Brazilian rosewood, has shown that it becomes difficult to assess the pre-Convention status of stock over time. It would be advantageous to the exporter to register inventory, since registration would allow us to process applications for pre-Convention certificates faster. Commercial export or re-export of pre-Convention stock that had not been registered would require other convincing evidence that the specimens are pre-Convention.

Registration of Appendix-I commercial breeding operations (§ 23.38): Article VII(4) provides that specimens of Appendix-I species bred in captivity for commercial purposes will be regarded as species included in Appendix II. The Parties recognize the potential abuse inherent in this exemption since it is difficult for inspectors to distinguish between specimens bred in captivity and those removed from the wild. They also recognize that captive breeding for commercial and conservation purposes is increasing. The registration of operations that breed Appendix-I species for commercial purposes has been the subject of a series of resolutions (Conf. 4.15, 5.21, and 7.10), which were repealed with the adoption of Resolution Conf. 8.15.

We propose to implement this resolution, which provides guidelines in registering and monitoring these operations. We are proposing application procedures to allow an operation to register each Appendix-I species at the operation. The issuance criteria would include whether the species qualifies as bred in captivity (see proposed § 23.53, which is based on Resolution Conf. 10.16) and whether the founder stock has been legally acquired.

Instead of publishing a detailed notice in the **Federal Register** describing each application received, we propose to publish a notice of receipt that identifies the registration request and invites public comment. This action would allow for a more streamlined process and still give the public an opportunity to comment.

Wildlife from a registered breeding operation can be exported with an Appendix-II export permit under Article IV. Since no import permit is required, specimens can be used for primarily commercial purposes. To date, only one U.S. operation has chosen to complete the process of registering. We encourage breeders to register their operations if they plan to trade in Appendix-I specimens internationally. Currently most commercial breeders in the United States are applying for permits under Article III, rather than registering and taking advantage of this exemption. Article III, however, allows trade only when the import is not for primarily commercial purposes. The use of Article III is becoming more limited since an increasing number of Parties allow import of Appendix-I wildlife that was bred for commercial purposes only if the specimen originated in an operation registered with the Secretariat.

Debate continues on the best way to implement this exemption. Resolution Conf. 8.15 was discussed at COP 10, where it was referred to the Animals Committee to examine the effectiveness of and need for the existing registration system. This issue will also be discussed at COP 11, and any changes to the registration system that result from that discussion will be considered for incorporation into the regulations.

Exporting Appendix-I plants commercially (§ 23.39): The Parties recognize that the artificial propagation of plants is essentially different from captive breeding of wildlife and requires a different approach. Artificial propagation of native plants can provide an economic alternative to traditional agriculture in countries of origin. By making specimens readily available, artificial propagation may have a positive effect on the conservation of wild populations by reducing pressure from collection. Article VII(4) provides that specimens of Appendix-I plants artificially propagated for commercial purposes will be regarded as species included in Appendix II.

At COP 9, the Parties adopted Resolution Conf. 9.19, which recommends guidelines on the registration of nurseries that export artificially propagated Appendix-I plants. At the same time, the Parties recognized that nurseries that are not registered could still export artificially propagated Appendix-I plants using the standard procedures.

To date we have not registered any nurseries. We continue to implement this provision of the Convention by reviewing a nursery's facilities during the application process for CITES documents and issuing export permits. We recognize that there may be some advantages to developing a registration process. However, due to the

complexity of this issue, we propose to not incorporate Resolution Conf. 9.19 into the regulations, but to reserve § 23.39(e) for nursery registration. We anticipate seeking public comment on this issue in a separate **Federal Register** notice at a later date.

Registered scientific institutions (§ 23.40): Article VII(6) provides an exemption from strict CITES controls for preserved, dried, or embedded museum specimens, herbarium specimens, and live plant material that carry an approved label. The exemption covers the non-commercial loan, donation, or exchange of these items between scientists or scientific institutions registered by each country's Management Authority. Resolution Conf. 1.4 recommends that Parties encourage their natural history museums and herbaria to inventory their holdings of rare and endangered species. This recommendation was to allow researchers to efficiently borrow specimens for study and reduce any potential adverse impacts that museum needs for research specimens can have on small populations of rare wildlife and plants. In Resolution Conf. 2.14, the Parties recommended guidelines for implementing this exemption.

This proposed section would combine §§ 23.13(g), 23.15(d)(8)(iii), and 23.15(e)(3) in the current regulations and adopt the guidelines of the resolutions. A scientist who wishes to use this exemption must be affiliated with a registered scientific institution. We would broaden the exemption to include frozen museum specimens. Specimens could be used for scientific research, but not for decoration, trophies, or commercial purposes. We are clarifying that preserved, frozen, dried, or embedded biological samples, including blood and tissue samples, that would be partially destroyed during analysis are eligible for this exemption. A portion of each sample would need to be maintained at the museum for future scientific reference. Samples that would be completely destroyed during analysis would not be eligible for this exemption and would require the applicable CITES documents. Since not all countries recognize these types of samples as being eligible to be traded under this exemption, registered scientific institutions should check with the foreign CITES Management Authority before shipping such specimens under a scientific exchange certificate.

We also propose that all specimens for which the exemption is being claimed must have been legally acquired and under the control of a registered scientific institution. The specimens must have been permanently recorded by the sending registered institution before being shipped for exchange, donation, or loan for scientific research purposes. The Parties were concerned about possible abuse of the exemption by scientists who might collect specimens and directly export them without the permission of a registered institution in the exporting country. Thus, the registration criteria require the orderly handling and permanent recording of specimens, including the maintenance of permanent records for loans and transfers of specimens to other institutions. In addition, scientists may still need permits under other parts of this subchapter.

Traveling live-animal exhibitions (§ 23.41): Article VII(7) allows for the international movement of pre-Convention or bred-in-captivity specimens that are part of a traveling zoo, circus, menagerie, or other traveling animal exhibition without CITES certificates. The exhibition must register the wildlife with its Management Authority, and the wildlife must be transported and cared for humanely. Parties have agreed, however, to require exhibitions to be accompanied by CITES certificates to verify such registration. To address technical problems and to prevent potential fraud, the Parties adopted Resolution Conf. 8.16. We propose to incorporate the provisions of this resolution into these regulations. The term ''traveling live-animal exhibition'' is proposed in § 23.4 to include live wildlife used for display or entertainment where the exhibition is temporarily moving internationally. Typically, exhibitions are circuses and performing acts, but trainers that travel across borders with wildlife that perform in movies or television programs could also apply for this exemption. An exhibition certificate would be treated like a passport. The exhibitor would retain the original certificate, which must be validated at each border crossing.

Exhibitors would need to obtain a pre-Convention or bred-in-captivity certificate for each specimen. This exemption does not apply to specimens that do not qualify for one of these exemptions. Since exhibitors currently may have a number of specimens on one document, we propose phasing in this requirement and allowing existing documents to be used until they expire. At that time, the exhibitor would need to obtain a separate certificate for each specimen. This provision facilitates the identification of each specimen in the exhibition and validation of documents by border officials.

We are also proposing a number of conditions to ensure these certificates are used only for temporary cross-border movement by the exhibitor who owns the specimen. For example, a document may not be transferred to another exhibitor, and specimens cannot be sold or otherwise transferred when traveling abroad. Specimens could only be transported internationally for display or entertainment purposes, not for breeding or other purposes.

Many specimens covered by this exemption are Appendix-I specimens. We propose under the general conditions (see proposed § 23.45(a)(7)) to require that all live Appendix-I specimens be uniquely marked. To ensure that each specimen exported or imported is the specimen indicated on the certificate, we recommend that Appendix-II and -III specimens also be clearly identified and, if appropriate, uniquely marked. Tattoos, microchips, tags, or other marks may be used.

Replacement of documents (§ 23.42): Resolution Conf. 10.2 provides guidelines for replacing documents that are lost, damaged, stolen, or accidentally destroyed. In this section, we propose to incorporate the provisions of this resolution and clarify when replacement documents may be available and how to obtain one. One of the proposed issuance criteria requires a full and reasonable explanation of the circumstances surrounding the lost, damaged, stolen, or accidentally destroyed CITES document. We will also check to see if the exporter has requested a replacement document before and review the circumstances surrounding any previous request.

When a replacement document is requested after a commercial shipment has left the United States, we will consult with the Management Authority of the importing country. When we issue a replacement document for a shipment that has already left the country, we will not validate it because we cannot compare the actual shipment contents to the document. It is important that we issue replacement documents only when the circumstances warrant doing so and that issuance of such documents prevents the use of the original CITES document for a different shipment.

Retrospective documents (§ 23.43): A retrospective document authorizes an export or re-export after that activity has occurred, but before the shipment is cleared for import.

Resolution Conf. 10.2 recommends that a Party neither issue nor accept retrospective documents, but recognizes limited exceptions. We propose to amend 50 CFR 13.1 to add this new

section to allow for the issuance of retrospective permits for specimens based on this resolution. Retrospective documents would be issued only after both the exporting (or re-exporting) and importing countries have thoroughly investigated the situation and agreed to the issuance of the document. The investigation would need to reveal that the exporter, re-exporter, or importer is not responsible for any irregularities and that the shipment is otherwise in compliance with CITES and the national laws of the involved countries.

This proposed section details the situations when we would consider issuing a retrospective document and gives the issuance criteria. Based on the intent of the original resolution (Resolution Conf. 6.6, which is now part of Resolution Conf. 10.2), we propose to generally limit issuance of retrospective documents for non-commercial items. Eligible individuals would include travelers hand-carrying Appendix-II or -III items with them as personal effects or persons who can demonstrate that they were misinformed by an employee of the Service, APHIS (for plants), or a Management Authority of the foreign country that should have known the CITES requirements. We also are proposing to include live Appendix-II or -III wildlife and plants that are outside the proposed CITES personal effects exemption. Such shipments would need to be limited to no more than two specimens, be for personal use, and accompany the person as personal baggage. Retrospective documents would be allowed for Appendix-I wildlife and plants, including live specimens, parts, and products, only when they are personal pre-Convention specimens. We would issue a retrospective document only if the Management Authority of the importing country agrees to accept it.

Length of document validity (§ 23.44): Article VI(2) states that an export permit can be valid only for a period of 6 months from the date of issue. The Convention does not specify validity time frames for other documents. Resolution Conf. 10.2 specifies validity time frames for re-export certificates (6 months), import permits (12 months), and certificates of origin (12 months). We are also proposing that an introduction-from-the-sea certificate be valid for a maximum of 12 months since the activity is similar to import. Resolutions Conf. 8.16 and 10.20 recommend that certificates for traveling live-animal exhibitions and certificates of ownership be valid for no more than 3 years.

We propose to expand the current regulations (§ 23.15(f)) to incorporate the recommended validity times endorsed in the resolutions. All CITES documents would specify the length of validity. All import and introduction-from-the-sea activities must be completed by midnight (local time at the point of import) of the expiration date indicated on the document. The only situation where an extension of the validity date is authorized is for certain timber species under limited circumstances (see proposed § 23.64).

CITES document conditions (§ 23.45): Section 23.15(e) would be replaced by this proposed section, which addresses the topic of CITES document conditions. General conditions apply to all CITES documents, standard conditions apply to specific types of documents, and special conditions may be placed on a CITES document when the activity with a species warrants it. All CITES document conditions must be met for a shipment to be lawful.

Resolution Conf. 8.13 recommends that Parties, where possible and appropriate, adopt the use of microchip transponders for the secure identification of live Appendix-I wildlife. The Parties, however, have identified a number of technical issues that need to be addressed and have asked the Animals Committee to monitor this issue. The Animals Committee has drafted a resolution to be considered at COP 11. Thus, we are not proposing that all Appendix-I wildlife be marked with microchips. We propose that all live Appendix-I wildlife be securely marked or uniquely identified to ensure that the wildlife presented with a document is actually the specimen for which the document was issued.

Analysis of Proposed Subpart D—Factors We Consider in Making Certain Findings

Legal acquisition (§ 23.50): One of the issuance criteria in the current regulations at § 23.15(d)(2) is whether the wildlife or plant was acquired lawfully. Under Articles III, IV, and V, we must make a legal acquisition finding before granting export permits and re-export certificates for Appendix-I, -II, and -III wildlife and plants. The Parties have also agreed through a number of resolutions to make this finding before granting certain exemption documents under Article VII. These include Resolutions Conf. 2.14 (scientific exchange), Conf. 10.16 and 8.15 (bred-in-captivity wildlife), Conf. 9.18 (Rev.) and 9.19 (artificially propagated plants), and Conf. 10.20 (personally owned live wildlife).

The determination of legal acquisition includes an assessment of whether the specimen and its founder stock were traded internationally in accordance with CITES and whether they were acquired consistent with national laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws.

We make the legal acquisition finding on a case-by-case basis considering all available information. Since the applicant is responsible for providing sufficient information to show that the specimen was legally acquired, potential applicants need to keep good records (see proposed § 23.27). General statements that there is no available information or that there is no evidence that the specimen or its founder stock is illegal will not be sufficient for us to make the legal acquisition finding. In addition to the information provided by the applicant, we consider other relevant trade information, scientific literature, and advice of experts. We may consult with foreign Management Authorities, the CITES Secretariat, other U.S. governmental agencies, and non-governmental experts.

We propose to add this section to the regulations to clarify the factors we consider in making a legal acquisition finding. This section should help individuals provide complete information at the time they apply for a CITES document and better understand the kind of records they should be keeping.

Persons who conduct commercial activities involving protected wildlife and plants are held to a high standard in understanding and complying with the requirements of the laws that affect their activities. We expect these persons to provide clear records that each specimen was legally acquired, including a record of the history of ownership, copies of cleared CITES documents, and records of parental or founder stock for specimens bred or propagated in the United States. We apply a lower information requirement, in most instances, for persons who acquired a specimen in the United States and want to travel internationally with it for personal, non-commercial use. We believe this system is appropriate for the limited number of specimens that would be involved, for the low conservation risk posed, and because most specimens are purchased from retailers who, as businesses, are expected to be prepared to comply with the laws. We will, however, request additional information when non-commercial trade in a particular species raises greater conservation concern.

For the export of specimens that are bred or propagated in captivity in the

United States, we consider whether the parental or founder stock was legally acquired. Resolutions Conf. 9.18 (Rev.) and 10.16 require that a Management Authority find that the breeding or propagation stock was established in accordance with CITES and national laws. We propose to define founder stock to mean the original breeding or propagation stock that produced the subsequent generations of captive specimens. This stock includes specimens that are pre-Convention, were previously imported into the United States, or were removed from the wild if the species is native to the United States. Standardized records, such as the International Species Inventory System (ISIS), provide this kind of information. Founder stock may differ from the parental stock, which is the immediate parents of a specimen.

We propose that applicants provide information on parental stock for species of lower conservation risk and information on founder stock for species of higher risk. For some species, we will look at a number of factors to decide if we need founder stock information. These factors include whether the species is uncommon in captivity in the United States, the species has not been documented to breed or propagate readily in captivity, illegal trade in the species is significant, few specimens have been legally imported into the United States, and the range country does not allow commercial export of the species.

We also propose to allow the export or re-export of donated

CITES specimens of unknown origin by public institutions on a case-by-case basis under limited circumstances. In some instances, public institutions, primarily zoos, aquariums, and botanical gardens, receive unsolicited donations of wildlife and plants. These donations may be brought in by individuals or left anonymously on the doorstep and may include specimens found sick or injured by well-meaning citizens, pets or plants that are no longer wanted, or specimens that owners fear they may possess in violation of the law. When this occurs, the institution may not be able to obtain reliable information concerning the origin of the specimen. Justifying issuance of a permit under CITES is extremely difficult when there are no data on the origin of the specimen, especially when the donor remains anonymous. We do not wish to open a loophole for laundering specimens that were illegally obtained by the donor or by someone else in the chain of ownership. However, the underlying purpose of CITES is to protect, preserve, and benefit the listed species. We believe that the provisions proposed will assist in the suitable placement of specimens without leading to illegal or unjustified take of wildlife and plants from the wild.

Non-detriment findings (§ 23.51): Under Articles III and IV and Resolution Conf. 10.3, the Scientific Authority must find that a proposed export or introduction from the sea of Appendix-I or -II specimens is not detrimental to the survival of the species and that a proposed import of an Appendix-I species is not for purposes that would be detrimental to the survival of the species. Although many activities could be considered detrimental or potentially detrimental, we would consider the following, among other things, to be detrimental: non-sustainable use and proposed activities that would pose a net harm to the status of the species in the wild. For Appendix-I species, we would also consider, among other things, whether the proposed activity would stimulate further trade in the species. We are proposing to use the definition of ''sustainable use'' as provided in 50 CFR part 15 under the Wild Bird Conservation Act. The wording has been slightly edited to be consistent with language used in this part.

Since a permit grants permission to an institution or individual to engage in an otherwise prohibited activity, the applicant must provide sufficient information to satisfy us that the proposed activity is not detrimental to the species concerned. If we can make a finding of non-detriment, and if all other issuance criteria are met, we can issue the relevant CITES document. If, however, the requested activity does not meet the criteria, we will either make a finding of detriment or be unable to determine that the activity is non-detrimental. In either case, we will not issue a CITES document.

Although we are proposing no changes in this proposed rule in how we make a non-detriment finding, we are proposing to list the factors used to determine if the requested import or export of CITES specimens would be non-detrimental to the survival of the species. These factors would be used for all specimens in a single shipment or in multiple shipments if the anticipated international trade is over a given period. Approval on a shipment-by-shipment or multiple-shipment basis is at our discretion. We have the option under CITES to issue our required scientific findings on a shipment-by-shipment basis (a different finding for each individual shipment) or management or conservation program basis (one finding to cover all shipments from a particular program).

Some Appendix-II species in the United States are listed under Article II(2)(b) because they or their parts and products (such as furs) are similar in appearance to other Appendix-I or -II species. Examples of such species include the river otter (*Lontra canadensis*), bobcat (*Lynx rufus*), and white sturgeon (*Acipenser transmontanus*). These species are listed to ensure that trade in the species to which they are similar is brought under control. Our non-detriment finding for these species takes this issue into consideration. We are obligated, however, to ensure that a species does not decline to the point that it qualifies to be listed in Appendix II under Article II(2)(a). Many of these species are included in State or tribal programs that manage the species and control removal of specimens from the wild. We receive information from the States and Tribes every year that allows us to monitor exports and be assured that exports are not detrimental to the species.

The status of the species in the wild and the degree of risk to the species posed by the proposed activity determine the level of scrutiny we give an application in making a finding. We give greater scrutiny, require more detailed information, and make our decision in a more precautionary manner for proposed activities that pose a greater risk to a species in the wild. In addition, we consider whether a living specimen being imported or exported would have an adverse impact if it was intentionally or accidently released into the wild. With the adverse impacts that invasive species are having both in the United States and in other countries, it is important that activities conducted under CITES do not further complicate the situation. We consider the cumulative risk, recognizing each aspect of international trade has a continuum of risk associated with it. For example, the export of an Appendix-II, non-native specimen bred in captivity would be less of a conservation risk than the import of an Appendix-I, wild-caught specimen that is being heavily impacted by illegal trade. Likewise, the export of plants grown from exempt seed or flasked seedlings or tissue culture would present a lower conservation risk than plants grown from non-exempt seeds. In all cases, if the species is subject to pressure from high levels of commercial trade or subject to significant illegal trade, the degree of scrutiny increases.

The Parties have agreed that export quotas for the non-commercial use of Appendix-I species can be proposed by

a range country and agreed to by the COP. This situation often pertains to trophy hunting. When making a non-detriment finding for the import of a specimen of a species where a quota has been established, we consider the biological and management factors used as a basis of the export quota. If necessary, we will contact the Scientific and Management Authorities of the exporting country for additional information to complete our finding. We clarify in this proposed section that even when a quota has been established, we will review any application for the import of a specimen of that species and make the required non-detriment finding as required under Article III.

Primarily commercial purposes (§ 23.52): Under Article III, import permits or introduction-from-the-sea certificates for Appendix-I species can be issued only when a Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes. Resolution Conf. 5.10 provides details on the interpretation of ''primarily commercial purposes,'' including examples. We consider this resolution to be an accurate interpretation of the Treaty. The United States supports its provisions and has been using the principles and examples set out in the resolution in evaluating applications for import documents for Appendix-I species. We propose to incorporate the provisions of this resolution in these regulations.

For an import or introduction of an Appendix-I specimen to qualify, the non-commercial aspects of the import or introduction must clearly predominate. While the nature of the transaction between the owner and the proposed recipient may be commercial, it is the intended use of the specimen that must not be for primarily commercial purposes. When we determine whether or not an import or introduction is primarily commercial, we must take into consideration all factors involved. Each application is considered on a case-by-case basis. The applicant must provide sufficient information for us to make a finding.

We propose that all applicants provide basic information on intended use, planned public outreach that may increase revenues, planned disposition of offspring, and an assessment of the reasons the proposed activities are not primarily commercial. Under certain circumstances, the commercial nature of the organization or the public appeal of a species would make it more difficult for us to make this finding. Thus, we propose that for-profit applicants would need to provide more detailed information. We would also ask for more detailed information from any applicant when we find that the proposed activity is with a species that is uncommon in captivity in the United States, has high public appeal, or is capable of generating substantial revenues. The additional information would include a statement from a licensed, independent certified public accountant that the applicant's internal accounting system is sufficient to account for and track funds generated by the proposed activities. We are also proposing that all net profits generated in the United States must be used for the conservation of the Appendix-I species in a range country. It is possible that an import or introduction, although superficially commercial, may qualify based on the overwhelming conservation benefits that will be provided through assistance to range countries, research, or other considerations that result from the import or introduction.

Bred in captivity (§ 23.53): Article VII, paragraphs 4 and 5, provides exemptions for wildlife bred in captivity. To establish a standard interpretation of the term ''bred in captivity,'' the Parties adopted Resolution Conf. 2.12, which was revised at COP 10. After much discussion among the Parties, Resolution Conf. 2.12 (Rev.) was repealed and Resolution Conf. 10.16 adopted. We propose to incorporate this resolution into this new section.

In making this finding, we consider the conditions under which an individual specimen is bred and whether the breeding stock was established legally and in a non-detrimental manner and whether it is maintained with limited introduction of wild specimens. We also consider whether the breeding stock has consistently produced offspring of at least second generation (F2) or whether the U.S. captive population is managed in a way that shows it is capable of reliably producing F2 offspring. If a facility has sufficient breeding stock to meet all of the criteria, including consistently producing F2 offspring, then the wildlife at that facility can be considered bred in captivity. Few facilities, however, have sufficient stock to meet the criteria. Alternatively, if the majority of captive specimens of a species within the United States meets the criteria, then specimens bred by any U.S. facility that uses standard management procedures could meet the criteria for bred in captivity. Thus, we have determined that a number of species commonly held in the United States (such as lions, tigers, brown eared pheasants, and Burmese pythons) qualify as bred in captivity.

Artificially propagated (§ 23.54): Article VII, paragraphs 4 and 5, provides exemptions for artificially propagated plants. The Parties recognize the unique aspects of plant biology and trade. Modern developments in plant propagation, such as the use of flasked orchid seedlings, have allowed large quantities of artificially propagated plants to be produced. Resolution Conf. 9.18 (Rev.) addresses ways to reduce the paperwork involved to move plants internationally while maintaining protection of wild plants.

This proposed section expands the current § 23.15(d)(8) and incorporates from that resolution the criteria for artificially propagated. In making this finding, we consider the controlled conditions under which a plant is propagated. We also consider whether the cultivated parental stock was established legally and in a non-detrimental manner and whether it is managed in a way to ensure its long-term maintenance. For example, we would not consider plants grown from seeds, cuttings, or other propagules collected from wild plants and grown out under controlled conditions as artificially propagated. Hybrid plants must meet the same criteria. Grafted plants can also be considered artificially propagated if both the rootstock and the graft have been artificially propagated according to criteria in this section.

Some plant materials of CITES species are exempt from CITES requirements (*see* proposed § 23.88(c)). However, plants grown from exempt plant materials are regulated under CITES and are not automatically considered artificially propagated. Since these plant materials can be imported into the United States without any CITES documents, we propose to usually require less information on the origin of the exempt plant material than we would require on the origin of non-exempt plant material. Importers of exempt plant material should keep records that document who sold them the material. In general, we will consider plants grown from flasked seedlings or tissue culture as artificially propagated unless we have reasonable grounds to believe the plants were grown from wild propagules. However, it is more difficult to know if plants grown from exempt seeds meet the criteria for artificially propagated plants. If importers want to ensure plants they have grown from exempt seeds will qualify for a CITES certificate for artificially propagated plants, rather than an export permit, they may want to keep records that document the

cultivated origin of imported exempt seeds. We understand that limited information may be available on the origin of exempt seeds. Therefore, we would typically require less information when determining whether plants grown from exempt seed would be considered artificially propagated. We would consider whether the species is commonly artificially propagated and whether substantial numbers of seeds are collected from the wild.

Bred or propagated for commercial purposes (§ 23.55): The Treaty provides in VII(4) that specimens of Appendix–I species bred in captivity or artificially propagated for commercial purposes would be deemed to be in Appendix II. It also provides in VII(5) that specimens that are bred in captivity or artificially propagated may be granted an exemption document. To decide whether to process an application under Article VII(4) or Article VII(5), we must decide whether an Appendix-I specimen was bred or propagated for commercial purposes. We propose this new section to clarify what we consider in making this finding. We would use the definition of ''commercial'' (*see* proposed § 23.5) provided in Resolution Conf. 5.10. We would assess the purpose of the breeding and propagation activities, considering a variety of information, including the reproductive biology of the species and all aspects of the breeding or propagation program. Although generally we have found non-profit institutions are breeding specimens for non-commercial purposes, there have been instances when we have found they were breeding for commercial purposes. This issue of what is considered ''bred for commercial purposes'' has been discussed at some length within the Animals Committee and will be discussed at COP 11 in April of 2000.

Suitably equipped to house and care (§ 23.56): Under Article III(3)(b) and (5)(b), the Scientific Authority must determine that an individual or institution has facilities that are suitably equipped to house and care for an Appendix-I specimen being imported or introduced from the sea. These requirements are to ensure that rare specimens will have a reasonable chance for survival.

We propose this section to clarify the factors we consider in making this finding. All individuals or institutions that will be receiving specimens must be identified in an application, and their facilities approved by us, including individuals or institutions that are likely to receive specimens within 1 year of the specimen's arrival in the country. We will consider all possible uses that could be reasonably expected to occur and the housing and care requirements for those uses. For example, if the applicant is importing specimens for display and there was the possibility of offspring being produced, we would consider whether the applicant could provide adequate housing and care for the offspring.

We will base our finding on the best available information on the requirements of the species and information provided by the applicant. We will give closer scrutiny to applications for species with more demanding biological and husbandry or horticultural needs. For a captive-born, commonly held species, like a scarlet macaw, we would be less critical due to the ease with which such a species can be held in captivity and the availability of veterinary care and commercially prepared diets. For a species, such as the Chinese giant salamander, that is not commonly held in captivity and has very restrictive husbandry and housing requirements, we would require a greater level of detail regarding the facilities where the specimen would be held.

We have provided in this proposed section the general and specific factors that we consider in making this finding. We consider whether a facility supplies adequate space, appropriate living conditions, adequate veterinarian or horticultural care, sufficient security, and properly trained staff to care for the specimen. In addition, we consider if appropriate housing and care are available for any potential offspring.

An applicant may apply for a CITES document to import or introduce from the sea a specimen before the facility is completed or the staff to maintain the specimen has been identified or properly trained. In such a case, we can review the information, including construction plans or intended staffing, and make the finding based on that information. We would, however, condition the finding that the import could not occur until the facility has been completed or the staff hired and/or trained and approved by us.

Analysis of Proposed Subpart E—International Trade in Certain Specimens

This proposed subpart deals with situations that are either covered by specific resolutions or by procedures we have developed to deal with certain heavily traded native CITES species. We need information that allows us to make the required findings before we can issue CITES documents for export or re-export. Where this information is available from a State or tribal management program and is sufficient to allow us to make our required scientific and management findings, we have made export findings on a State or tribal basis. These findings certify that the programs contain the elements needed to allow us to make the findings required for export under CITES. For Tribes, we can make findings only for Tribes that have full wildlife management authority over the resource. In the past, we have published findings in the **Federal Register** for export of American ginseng, bobcat, river otter, Alaska lynx, Alaska gray wolf, Alaska brown bear, and American alligator. States and Tribes for which findings have been made are requested to submit an annual report to us containing certain information on the previous year's harvest. In some cases, such as for many furbearer species, our findings have been made on a multi-year basis. Annual reports from States allow us to remain assured that our original findings remain valid. In these sections, we are proposing to include the information we request from the States and Tribes on an annual basis. The non-detriment findings we make are based on § 23.51.

Initially, making findings on a State or tribal basis was a new way to address large-scale export of certain native species. If the legal acquisition and non-detriment findings were made on a permit-by-permit basis, it would present a tremendous workload for exporters as well as for our offices. It is standard practice for many Parties to issue findings on an annual basis for species with biologically based management programs. Although the State-and Tribe-based findings are not a rulemaking, we published them in the **Federal Register** as a convenient way of notifying the public. Since there are now more timely ways to provide this information to the public, we propose to discontinue publication of the findings in the **Federal Register.** A list of States and Tribes that have findings made on a State or tribal basis and copies of the findings would either be posted on our website or be available on request. Any requests to make findings for new States or Tribes will continue to be evaluated on a case-by-case basis.

American ginseng (§ 23.60): This proposed section is a revision of § 23.51. Most American ginseng is collected or grown for export and is exported in a much larger volume than any other native CITES plant species. Ginseng that has been collected under State or tribal requirements is certified as legally harvested. The State or tribal certificates accompany the ginseng until the time of

export to document the origin of the material.

Under CITES, ginseng is considered either artificially propagated or wild. However, the industry has a number of other designations. In order to obtain more accurate information from exporters, we propose to include a chart in the regulations that describes different types of ginseng, such as wild simulated and cultivated woodsgrown, within the broad categories of wild and artificially propagated.

Native furbearers (§ 23.61): This proposed section consolidates and revises §§ 23.52–23.56. The bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear are included in Appendix II under the provisions of Article II(2)(b) because their parts and products are difficult to distinguish from certain similar CITES Appendix–I and –II species. Approved States and Tribes have procedures for placement of CITES export tags on skins (including furs and pelts) that were legally taken. The presence of a tag on a skin provides us with reasonable assurance that the skin was obtained legally and provides a basis for our legal acquisition finding. We review the information we receive annually from each State or Tribe to determine if there is a need to reevaluate our State-or Tribe-based finding or if the species needs closer monitoring.

Crocodilians (including American alligator) (§ 23.62): This proposed section revises § 23.57 and expands it to incorporate Resolution Conf. 9.22 concerning tagging of all crocodilians. The proposed revision extends the tagging requirements to all crocodilian skins that are being imported, exported, or re-exported. This action would ensure that our requirements for trade in all crocodilians are consistent with the resolution and the international practices of all countries exporting native crocodilians. This standardization of requirements will assist with inspection efforts, reduce risk to wild crocodilian populations, and standardize procedures for importers and exporters. The requirements of the special rules in 50 CFR part 17 concerning the American alligator and certain threatened crocodilians must be met in addition to the requirements of this section. The current requirements for export of American alligator skins remain the same.

Sturgeon caviar (§ 23.63): At COP 10, all sturgeon that were not already included in the CITES appendices were added to Appendix II. Resolution Conf. 10.12 provides recommendations to the Parties to assist in the conservation of these vulnerable species. One specific recommendation is that Parties ''monitor the storage, processing and re-packaging of sturgeon specimens in Customs free zones and free ports, and for airline and cruise line catering.'' Under the ESA, a shipment is considered an import as soon as it is in an area under the jurisdiction of the United States, whether or not it is considered an import under Customs law.

Caviar is regularly served to passengers on airplanes and cruise ships. Although the caviar is exported from the United States, the intent is not to import it into another country, but to serve it for consumption during the trip. We propose to provide specific guidelines to the travel industry on what quantities can be loaded on board and when a CITES document is required. Industry officials will need to carefully determine the amount likely to be consumed on an airplane or cruise ship since any unconsumed caviar that is on board at the foreign destination may be considered an import, even if left on board, and would require CITES documents.

According to industry sources, caviar is perishable and has a normal shelf life of 1 year. Since all sturgeon have been included in the CITES appendices since 1997, we no longer accept pre-Convention certificates for caviar. This practice is consistent with the CITES Notification No. 1999/23, which recommended that no permits or certificates declaring caviar as pre-Convention should be accepted after April 1, 1999. In order to be imported legally into the United States, shipments of sturgeon caviar must be accompanied by the appropriate export or re-export document (see our policy in the December 6, 1999, **Federal Register** (64 FR 68113)) .

Timber (§ 23.64): The Parties recognize that trade in timber may require some variations on standard CITES procedures.

Resolution Conf. 10.13 discusses the implementation of the Convention for timber species. Resolution 10.2 incorporates specific recommendations for timber species listed in Appendix II or III that have an annotation regulating only the trade in logs, sawn wood, and veneer sheets. It allows that under specific circumstances the period of validity for CITES documents for timber may be extended for a maximum of 6 months. It also includes provisions for changing the ultimate consignee for a shipment after export or re-export. We propose to incorporate these recommendations into this section.

Personal sport-hunted trophies (§ 23.65): Some countries allow limited take of Appendix-I species as part of an overall management plan. The export of Appendix-I hunting trophies requires both export and import permits under Article III (see proposed § 23.28). This practice is reaffirmed in Resolution Conf. 2.11(Rev.). Because imports of Appendix-I species cannot be for primarily commercial purposes, Resolutions Conf. 10.14 and 10.15 recommend that trophies of Appendix-I species must be acquired by the owner in the country of export, are being imported as personal items, and will not be sold in the country of import.

We propose to incorporate these requirements into 50 CFR part 23 and clarify what is considered a trophy. In a number of instances, large numbers of fully manufactured products, such as briefcases, handbags, and golf bags, have been imported as part of a ''hunting trophy.'' Manufactured items of Appendix-II and -III species may be imported with the appropriate CITES export or re-export documents, which specifically describe the individual items, rather than including them under a general description of ''trophy.'' It is unlikely that the requirements for import of Appendix-I species could be met for such items. We also would require Appendix-I specimens not be used or transferred for a commercial purpose for those trophies imported for personal use. We would include the specific conditions for leopard hunting trophies as provided in Resolution Conf. 10.14. These requirements would be in addition to any requirements in 50 CFR part 17. A hunter would not be allowed to import more than two leopard trophies in one calendar year, and any skin would need to meet tagging requirements.

Analysis of Proposed Subpart F—Disposal of Confiscated Live Wildlife and Plants

Confiscated live specimens (§ 23.70): Article VIII(4) and (5) outlines the requirements for disposal of confiscated live specimens, and the Parties have adopted Resolution Conf. 10.7 which sets out detailed guidance. For the United States, the general procedures for disposal of forfeited or abandoned property are in 50 CFR part 12. These procedures apply to CITES as well as the other laws that we enforce. We are not proposing to revise 50 CFR part 12, but to add a section to these regulations on the process we use in making a decision to dispose of confiscated live CITES wildlife and plants that have been forfeited or abandoned to our Division of Law Enforcement or APHIS.

Sometimes the country of export would like to have a shipment of confiscated live specimens returned. Although under Article VIII this is one of the options a country should consider, we are not always able to select this option or return specimens quickly. For example, when criminal charges are brought in connection with confiscated specimens, litigation may require us to hold the specimens as evidence for an extended period of time and the court may decide how we are to dispose of them.

Many factors must be considered when live specimens are seized. The most important of these factors is the welfare of the wildlife or plants. Resolution Conf. 10.7 details a number of options for disposal as well as the difficulties associated with each option. We propose to consult this recommended guidance as necessary in making a decision. For wildlife, the options discussed include maintenance in captivity, return to the wild, and euthanasia. For plants, the resolution discusses maintenance in cultivation, return to the wild, and destruction.

In many countries, including the United States, some confiscated specimens have been donated to zoos, aquariums, or botanical gardens. However, this option is not always open when large numbers of common species are seized. The zoological community recognizes that placing animals of low conservation value in limited cage space may benefit those individuals, but may detract from conservation efforts as a whole. As a result, they are setting conservation priorities for cage space. Botanical gardens are in a similar situation.

It is rare that confiscated specimens can or should be returned to the wild. Before return to the wild should be considered, a country must decide if that action would make a significant contribution to the conservation of the species or might be harmful to the conservation of species in the wild. Specimens held in captivity and/or transported may be exposed to a variety of diseases and parasites. Reintroduction of these specimens to the wild could result in introduction of diseases with potentially catastrophic effects. It is also unlikely that the exact point of collection could be determined. Therefore, the specimens could not be returned to their home areas. Introduction into other areas may result in genetic pollution and adverse impacts on the species native to that area. Sometimes range countries request return of confiscated wildlife or plants for educational or related purposes. The least popular solution to disposal of confiscated wildlife, euthanasia, may often be the simplest and most humane option available.

Participation in the Plant Rescue Center Program (§ 23.71): We propose to add this section on how a public institution can participate in our Plant Rescue Center Program. Whenever a shipment of plants arrives in the United States in violation of CITES and the plants are confiscated or seized, the plants are transferred to a participating center. We have enlisted more than 60 public institutions, such as non-profit botanical gardens, arboretums, zoological parks, and research institutions in the United States, to cooperate with us in this program.

Analysis of Proposed Subpart G—CITES Administration

Roles of the Secretariat and the committees (§ 23.75): This proposed section adds to the information in subpart D of the current regulations. It outlines the responsibilities of the Secretariat, which is established under Article XII, and the committees, which were established under resolutions (Resolution Conf. 9.1 (Rev.), which repeals Resolutions Conf. 6.1 and 7.1). The committees provide administrative and technical support to both the Parties and the Secretariat. The resolution also outlines how regional representatives are selected to serve on the various committees and their responsibilities.

Conference of the Parties (COP) (§ 23.76): We propose to add basic information on what a COP entails, how COP locations and dates are determined, and who can attend the meetings.

Notice of a COP (§ 23.77): This proposed section revises §§ 23.31–23.39 to clarify how we provide information to the public concerning a COP and how the public may participate in preparations for it. We propose to continue publishing notices in the **Federal Register** as soon as information is available concerning the location, dates, agenda, proposed amendments to the appendices, proposed resolutions for a COP, and public meetings. Since each notice will provide current information on participation in the public meetings, including the correct address for submission of any written comments and a telephone number for further information, we propose not to include the address and telephone number in 50 CFR part 23.

Development of U.S. negotiating positions (§ 23.78): We propose to reorganize the information in §§ 23.33, 23.35, and 23.38 to show the process we follow in developing our negotiating positions, including how the public can participate in this process. We will continue to publish proposals that the United States is considering and our proposed negotiating positions on agenda items and proposals. We will also continue to hold public meetings to discuss these issues. We propose to no longer publish our final negotiating positions in the **Federal Register**, but rather to make them available in more timely ways, such as posting them on our website and mailing them to people upon request. Some issues are extremely complex and require extensive coordination, and our final negotiating positions may not be available prior to the COP. We also propose to delete § 23.39 of the current regulations and no longer publish an official report after each COP. Information on the results of a COP is available from a number of sources, such as our website or CITES Update, much sooner than an official report could be published and printed. We propose to delete § 23.36 as a separate section since this information is incorporated into other newly proposed sections.

Analysis of Proposed Subpart H—List of Species

Listing criteria for Appendix I or II (§ 23.85): CITES lists species in one of three levels of protection depending on the degree of threat to the survival of the species and the protection in international trade believed to be necessary by the Parties (see proposed § 23.4). In 1992 at COP 8, the Parties directed the Standing Committee to undertake, with the assistance of the Secretariat, a revision of the criteria for amending the appendices in Resolution Conf. 1.1 (referred to as the Berne criteria). This review, carried out in consultation with the Parties, was based on initial technical work done by IUCN in collaboration with species experts. A joint meeting of the Plants and Animals Committees addressed all aspects of this review, in association with the Standing Committee, held in Brussels in September 1993.

From this review, the Parties adopted Resolution Conf. 9.24, which establishes specific criteria for listing species. This proposed section basically adopts this resolution as it is written. When considering any proposal to amend Appendix I or II, the Parties should apply a precautionary approach so that scientific uncertainty should not be used as a reason for failing to act in the best interest of the conservation of the species. We propose to define the term ''precautionary measures'' in proposed § 23.5.

Under Article II, Appendix II should include species that could be threatened with extinction if trade is not monitored

(Article II(2)(a)) and species where trade should be monitored because the species resembles another listed species and could be misidentified while in trade (Article II(2)(b)). In both cases, we are concerned that international trade does not adversely affect the listed species and that it does not develop to a level that is detrimental to the species in the wild. We are concerned that trade does not get to a level where the species would meet the criteria for listing in Appendix I and that the species is maintained at a level consistent with its role in its ecosystem.

To monitor the effectiveness of protection offered by the Convention, range countries in cooperation with the Animals Committee or the Plants Committee are to regularly review the status of species included in Appendices I and II. The Parties will fully review the listing criteria in Resolution Conf. 9.24 before COP 12 (approximately 2002) with regard to the scientific validity of the criteria, definitions, notes, and guidelines and their applicability to different groups of organisms.

Listing criteria for Appendix III (§ 23.86): Article II(3) sets out that Appendix III includes native species that a Party lists to obtain international cooperation in controlling trade. Under Article XVI, a party can include a species in Appendix III by submitting information to the Secretariat. No vote of the Parties is required. The criteria to list a species in Appendix III includes that the species must be native to the listing country, be protected under that country's regulations to prevent or restrict exploitation and control trade, and be in international trade, with an indication that cooperation of other Parties would help to control illegal trade. The listing Party can request the species be removed from Appendix III at any time. By listing a species in Appendix III, trade data and other relevant information can be gathered to assist policy makers in a country determine whether the species should be proposed for inclusion in Appendix II, removed from Appendix III, or retained in Appendix III.

This proposed section incorporates Resolution Conf. 9.25 by outlining the criteria that a country must address to list a species in Appendix III. In addition, it gives a general description of the process we will use to decide if a species native to the United States should be listed in Appendix III. At this time, we have not listed any species in Appendix III, but we proposed several species in the January 26, 2000, **Federal Register** (65 FR 4217).

Organization of the list and exemptions (§§ 23.87–23.88): These proposed sections are a revision and reorganization of current § 23.23. In addition, we propose to discontinue publication of the unofficial list in the CFR, but continue to provide information concerning exempt wildlife or plants and their parts or products in proposed § 23.88. The official CITES list is the one maintained by the Secretariat. It is based on decisions by the Parties and is available from the Secretariat's website or from our office. Although the unofficial list would no longer be in the CFR, we would continue to maintain it because it is in a more detailed and easier to use format. This list would be available on our website and as a printed publication.

Required Determinations

Regulatory Planning and Review

This proposed rule has been reviewed by OMB under Executive Order 12866.

a. This proposed rule will not have an annual economic effect of $100 million or negatively affect a part of the economy, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The purpose of this proposed rule is to clarify and update the regulations that carry out CITES. It is designed to assist individuals and businesses who import and export specimens of CITES species by clearly outlining the requirements that the United States, as well as the other 145 Parties, must follow under the Treaty. As of October 15, 1999, our records showed 5,368 currently valid CITES documents that we have issued (the period of validity for a document ranges from 6 months to 4 years).

The majority of our trading partners for wildlife and plants are CITES Parties. Because most of these Parties are currently implementing the resolutions, the proposed rule should cause little or no change to the way importers are currently doing business. The foreign suppliers are already required by their own country's laws and international customary law to follow the consensus interpretations embodied in the resolutions. In addition, if an importer were to receive a shipment that did not comply with all of the requirements of the country of shipment, the import may violate the Lacey Act Amendments of 1981.

Exporters need to comply with the requirements of the receiving country in addition to U.S. requirements. As a result, many are already complying with the recommendations and interpretations in the CITES resolutions. If a shipment is not in compliance with all applicable resolutions, it may be seized or detained at the destination. The proposed revisions will assist exporters in determining what procedures they need to follow to trade internationally.

These proposed revisions incorporate existing trade requirements that have not previously been published, but are required internationally by a treaty. The publication of the proposed revisions will assist U.S. businesses in complying with the requirements under CITES and in engaging in international trade.

Therefore, we do not expect that this proposed rule would have a significant effect on the volume or dollar value of wildlife and plants imported, introduced from the sea, exported, or re-exported to and from the United States. There is no indication that this proposed rule will result in statistically significant higher or lower levels of trade, permit applications, or permit issuance or denial.

b. This proposed rule will not create inconsistencies with other agencies' actions. As the lead agency for carrying out CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts and products, and issuing import and export documents under CITES.

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

d. This proposed rule will not raise novel legal or policy issues because it only updates and clarifies existing regulations that implement CITES. As a member of CITES, the United States is committed to implementing the consensus interpretations of the Treaty that are embodied in the resolutions collectively approved by the Parties. This proposed rule would clarify the requirements for the import, introduction from the sea, export, and re-export of shipments of CITES specimens and would provide individuals and businesses access to current, clearly written regulations.

Regulatory Flexibility Act

The proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

The overwhelming majority of the entities that import, export, or re-export CITES specimens are considered small as defined under the Regulatory

Flexibility Act. This proposed rule provides these businesses with updated and more clearly written regulations for the import, export and re-export of shipments of CITES specimens. The authority to enforce CITES requirements already exists under the Endangered Species Act and is carried out by regulations contained in 50 CFR part 23.

a. Many rural communities rely on the added income produced by harvesting and selling certain CITES species that occur in the United States, such as the American alligator, American ginseng, bobcat, river otter, Alaska lynx, Alaska brown bear, and Alaska wolf. The majority of consumer products made from these species are processed overseas. In 1997, approximately $24 million in wildlife species and $79 million in ginseng were exported from the United States under CITES. We are not proposing any changes from the existing export regulations and, therefore, do not anticipate any economic effect to the current level of activity.

We recognize that the States have the right and responsibility to manage their wildlife. Many States have monitored the harvest of CITES species since before the Treaty came into effect. Because of this, we have worked with States and Indian Tribes to use the information they collect to make CITES findings on a State-by-State or Tribe-by-Tribe basis where export approval is requested. This system allows us to make findings for all specimens of a particular species from a State or Tribe rather than requiring each applicant to supply the information we need to make legal acquisition and non-detriment findings. When we are able to make State- or Tribe-based findings, at no charge we supply those States and Tribes with CITES export tags. These tags are placed on each skin under State- or Tribe-monitored conditions. The presence of a tag on a skin provides us with reasonable assurance that the skin was acquired legally. By making these administrative findings on a State-wide or reservation-wide basis, we considerably reduce the amount of paperwork required and allow exporters of these species to use streamlined procedures.

In the proposed revisions, we provide the criteria we use in making decisions concerning administrative findings. However, these criteria are the same as we have used since the beginning of such findings. The proposed revisions would provide the public details on how these findings are made.

The proposed changes to the CITES regulations will assist those that rely on income from the export of certain native CITES species to remain competitive when conducting business in international markets. This proposed rule provides the importing and exporting community a better opportunity for obtaining economic gain from international business in CITES specimens.

b. CITES Resolution Conf. 8.16 requires that each wildlife specimen in a traveling live-animal exhibition (often a circus) must be covered by a CITES document specific to that specimen. Currently, many circuses have one document that covers several specimens. Under the proposed revisions, when a document covering multiple specimens expires, the permittee would need to obtain one document for each specimen. As a result, this proposed rule may result in increased permit application processing fees ($25 per application) for a small number of importers and exporters who trade in CITES species. The requirement will be phased in as current documents expire. We estimate that approximately 70 circuses import and export CITES wildlife to and from the United States on a regular basis. If exhibitors do not obtain individual documents for each specimen, they may encounter difficulties at border crossings.

c. CITES Resolution Conf. 10.6 (which incorporates Resolution Conf. 4.12) specifically states that the personal effects exemption that covers tourist souvenirs does not apply to live specimens. In addition, most Parties require CITES documents for all live specimens, even if they are personal items. Resolution Conf. 10.20 provides for the issuance of certificates for personal live wildlife that would be valid for a period of 3 years and allow for multiple imports, exports, and re-exports of the specimens. Current U.S. regulations do not advise the reader of this. However, if an individual leaves the United States with their pet that is protected under CITES (such as a parrot), they risk having the pet seized upon import into another CITES Party. The proposed revisions would advise travelers that they must have a CITES document in order to travel with their CITES pet and provide for the issuance of a 3-year document. In addition, individuals importing live CITES wildlife as pets will be required under this proposed rule to obtain a CITES document prior to arriving in the United States. In most cases, this requirement would ensure that they are not inadvertently violating the Lacey Act by exporting their pet from a CITES Party without an export document since most Parties require CITES documents for all live specimens. On the average between 1996 and 1998, we issued 21 retrospective documents for personal shipments, including live wildlife, annually. Since recipient Parties required individuals to obtain retrospective documents before allowing import of the live wildlife, this requirement will not place an additional paperwork or financial burden, but may actually save time and money.

The proposed regulations will create no other substantial fee or paperwork changes in the permitting process. The changes discussed above are not major in scope and will create only a modest financial or paperwork burden on the affected members of the general public. Therefore, we do not believe that this proposed rule will have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of $100 million or more. This proposed rule provides the importing and exporting community within the United States updated and more clearly written regulations that implement CITES in the United States. This proposed rule will not have a negative effect on this part of the economy.

This proposed rule will affect all importers and exporters equally, and the benefits of having updated guidance on complying with CITES requirements will be evenly spread among all businesses, whether small or large. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule will clarify and update the regulations to carry out CITES, and as such, will provide benefits to all permit applicants in terms of time savings. This proposed rule may result in a small increase in the number of permit applications and permit processing fees for some circuses and pet owners.

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 proposed rule will enable U.S. importers and exporters of CITES species to better understand and comply with the regulations covering international trade in CITES wildlife

and plants. Without these proposed revisions to the regulations, the U.S. importing and exporting community may not be able to effectively compete with foreign-based companies in the international trade of CITES specimens. This proposed rule will assist U.S. businesses in ensuring that they are meeting all required CITES resolutions and decrease the possibility that shipments may be delayed or even seized in another country that has implemented applicable CITES resolutions.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This proposed rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. As the lead agency for carrying out CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts and products, and issuing import and export documents under CITES. This proposed rule affects States only as described in 2.a. above, concerning export of certain native CITES species. Therefore, this proposed rule has no effect on small government's responsibilities.

b. This proposed rule will not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

Under Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule is not considered to have takings implications because it does not further restrict the import, export, or re-export of specimens of CITES specimens. Rather, the proposed rule updates the regulations for the import, export, and re-export of CITES specimens, which will assist the importing and exporting community in carrying out international trade in CITES specimens.

Federalism

These proposed revisions to CFR part 23 do not contain provisions that have Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. These proposed regulations cover U.S. responsibilities under CITES which is an international agreement that focuses on international trade in protected species. The activities of import and export are national in scope and are not sovereign powers reserved to the States. The portions of the proposed regulations which have direct links to the States are basically unchanged and were initially developed after extensive consultation with the States and with the International Association for Fish and Wildlife Agencies.

Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this proposed rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize disagreements, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act and Information Collection

This proposed rule contains information collections for which approvals are required under the Paperwork Reduction Act. The majority of the information collection associated with this proposed rule is covered by OMB approval number 1018–0093 (Forms 3–200–19 through 3–200–49, 3–200–52, and 3–200–53). Any comments on this record collection should be directed to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

We are proposing ten new forms (listed below). These proposed forms are based on forms that are already approved and would require only submission of information specific to the activity covered by the form. The collection of information described for those forms has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13). We 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 proposed information collection will be used to evaluate applications for CITES documents. We will use the information to review applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation, or denial of CITES documents. Your response is required to obtain a CITES document. We estimate the public reporting burden for these reporting requirements to vary from 30 minutes to 40 hours per response with an average of 1 hour per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms.

Comments on this proposed information collection should be directed to the attention of the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. A copy of the comments should also be sent to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240. The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. The new forms and the estimated reporting burdens are as follows:

Form No.	Activity	Total number of respondents	Estimated completion time (hours)	Total annual burden hours	Regulation
3–200–54	Certificate of Ownership for Personally Owned Wildlife	1,000	0.5	500	50 CFR 23.11, 23.36, 23.50.
3–200–55	Registration of Appendix-I Commercial Breeding Operations.				50 CFR 23.11, 23.38, 23.50.
	a. Application & Report	10	4.5	45	
	b. Non-native species study	5	40	200	
3–200–56	Replacement Documents	50	0.5	25	50 CFR 23.11, 23.42.

Form No.	Activity	Total number of respondents	Estimated completion time (hours)	Total annual burden hours	Regulation
3–200–57	Issuance of a Letter for an Exempt Hybrid	10	0.5	5	50 CFR 23.11, 23.35.
3–200–58	Retrospective Documents	30	0.5	15	50 CFR 23.11, 23.43.
3–200–59	Voluntary Registration of Pre-Convention Stocks	15	1.0	15	50 CFR 23.11, 23.37.
3–200–60	Participation in the Plant Rescue Center Program	5	1.0	5	50 CFR 12.30, 23.70, 23.71.
3–200–61	Reports for the American Ginseng CITES Export Programs.	24	1.0	24	50 CFR 23.11, 23.60.
3–200–62	Reports for the Furbearer CITES Export Programs	49	0.5	24.5	50 CFR 23.11, 50 CFR 23.61.
3–200–63	Reports for the American Alligator CITES Export Programs.	9	0.5	4.5	50 CFR 23.11, 23.62.
Totals		1,202	863		

Form No.	Activity	Total number of respondents	Application processing/fee	Total annual costs
3–200–54	Certificate of Ownership for Personally Owned Wildlife	1,000	$25	$25,000
3–200–55	Registration of Appendix-I	10	25	250
	Commercial Breeding Operations—Annual Report	10	1	10
3–200–56	Replacement Documents	50	25	1,250
3–200–57	Issuance of a Letter for an Exempt Hybrid	10	25	250
3–200–58	Retrospective Documents	30	25	750
3–200–59	Voluntary Registration of Pre-Convention Stocks	15	25	375
3–200–60	Participation in the Plant Rescue Center Program	5	N/A	5
3–200–61	Reports for the American Ginseng CITES Export Programs	24	N/A	24
3–200–62	Reports for the Furbearer CITES Export Programs	49	N/A	49
3–200–63	Reports for the American Alligator CITES Export Programs	9	N/A	9
Totals		1,202		27,972

We are specifically seeking public comments as to:

a. Whether the collection of information is necessary for the proper performance of the functions of the Service, including whether the information will have practical utility;

b. The accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

National Environmental Policy Act

The Department of the Interior has determined that the issuance of this action is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.10.

Government-to-Government Relationship With Tribes

Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who participate in international trade of CITES species.

Public Comments Solicited

We invite interested organizations and the public to comment on this proposed rule. It generally reflects the way we currently implement CITES under the current resolutions. We have drafted the proposal as part of our ongoing permits reform effort to simplify procedures, use risk assessment to reduce paperwork while still ensuring effective species conservation, and help people understand how to conduct international trade in CITES species. We are seeking comments, in particular, on whether the provisions of the proposed rule allows the affected public to effectively comply with CITES and whether the proposed rule is written in a manner that the public can easily understand and use.

List of Subjects

50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

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

50 CFR Part 23

Animals, Endangered and threatened species, Exports, Fish, Foreign officials, Foreign trade, Forest and forest products, Imports, Marine mammals, Plants, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

Proposed Regulations

For the reasons given in the preamble, Title 50, Chapter I, Subchapter B of the CFR, is proposed to be amended to read as follows:

PART 10—[AMENDED]

1. The authority citation for part 10 continues to read as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 703–712; 16 U.S.C. 668a–d; 19 U.S.C. 1202; 16 U.S.C. 1531–1544; 16 U.S.C. 1361–1407; 16 U.S.C. 742a–742j–l; 16 U.S.C. 3371–3378.

2. In § 10.12, the definitions of *Country of origin* and *United States* are revised to read as follows:

§ 10.12 Definitions.

* * * * *

Country of origin means the country where the wildlife or plant (including parts and products such as manufactured goods) was taken from the wild or was born or propagated in captivity.

* * * * *

United States means the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

* * * * *

PART 13—[AMENDED]

3. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–l, 1382, 1538(d), 1539, 1540(f), 3374; 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 14583; 31 U.S.C. 9701.

4. Section 13.1 is revised to read as follows:

§ 13.1 General.

(a) A person must obtain a valid permit before commencing an activity for which a permit is required by this subchapter, except as provided in 50 CFR 23.43 for certain non-commercial shipments under CITES.

(b) A person must apply for such a permit under the general permit procedures of this part and any other regulations in this subchapter that apply to the proposed activity.

(1) The requirements of all applicable parts must be met.

(2) A person may submit one application that includes the information required in each part, and a single permit will be issued if appropriate.

5. Section 13.12(a)(1) is revised to read as follows:

§ 13.12 General information requirements on applications for permits.

(a) * * *

(1) Applicant's full name, street address, county, home and work telephone numbers, fax number, and e:mail address, and—

(i) If the applicant resides or is located outside the United States, a street address in the United States and, if conducting commercial activities, the name and address of his or her agent that is located in the United States; and

(ii) If the applicant is an individual, the date of birth, social security number, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or

(iii) If the applicant is a business, corporation, public agency, or institution, the tax identification number, description of the type of business, corporation, agency, or institution, and the name and title of person responsible for the permit (such as president, principal officer, or director);

* * * * *

6. Section 13.22(c) is revised to read as follows:

§ 13.22 Renewal of permits.

* * * * *

(c) *Continuation of permitted activity.* Any person holding a valid, renewable permit may continue the activities authorized by the expired permit until the Service acts on the application for renewal if all of the following conditions are met:

(1) The permit is currently in force and not suspended or revoked;

(2) The person has complied with this section; and

(3) The permit is not a CITES document issued under 50 CFR part 23, which is void upon expiration.

* * * * *

7. Section 13.46 is amended by adding a sentence at the end of the section to read as follows:

§ 13.46 Maintenance of records.

• * * * If the permittee is conducting commercial activities and resides or is located outside the United States, records shall be maintained at a location in the United States that is available for inspection.

PART 17—[AMENDED]

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

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

§ 17.8 [Redesignated as § 17.9]

9. Part 17 is amended by redesignating § 17.8 as § 17.9.

10. New § 17.8 is added to read as follows:

§ 17.8 Import exemption for threatened, CITES Appendix-II wildlife.

Except as provided in paragraph (a) of this section, all prohibitions of § 17.31 and exemptions of § 17.32 shall apply to any specimen of a threatened species of wildlife:

(a) *Import.* Subject to the provision in paragraph (b) of this section, live specimens, or parts and products, of a species listed as threatened under this part may be imported without a threatened species permit under § 17.32 provided the following conditions are met:

(1) The species is listed in Appendix II of CITES (see 50 CFR part 23);

(2) The wildlife was taken from the wild or on a ranch by or for the importer for non-commercial use;

(3) If the specimen is a sport-hunted trophy (see paragraph (c) of this section), the CITES listing is not subject to an annotation for sport-hunted trophies where other specimens of the species are treated as included in Appendix I of CITES (see 50 CFR part 23);

(4) The number of specimens to be imported is reasonably appropriate for the nature of the import;

(5) The specimen is accompanied by a valid CITES document (see 50 CFR 23.23);

(b) *Special rules.* Stricter provisions of any special rule in this part apply in addition to this section; and

(c) *Sport-hunted trophy* means raw or tanned parts of a specimen that was taken by the hunter, who is also the importer, during a sport hunt for personal, non-commercial use. It may include the hide, head, skull, tusks, horns, hair, teeth, claws, meat, bones, or any taxidermied part, including, but not limited to, a taxidermied head, shoulder, or full mount. It does not include articles made from a trophy such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items.

11. Part 23 is revised to read as follows:

PART 23—CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

Subpart A—Introduction

Sec.
23.1 What are the purposes of CITES and these regulations?
23.2 How do I decide if these regulations apply to my shipment or me?
23.3 What other wildlife and plant regulations may apply?
23.4 What are Appendices I, II, and III?
23.5 How are the terms used in these regulations defined?
23.6 What are the roles of the Management and Scientific Authorities?
23.7 What office do I contact for CITES information?
23.8 What are the information collection requirements?

Subpart B—Prohibitions, Exemptions, and Requirements

23.11 What is prohibited?
23.12 How may I travel internationally with my personal and household effects?
23.13 What are the U.S. CITES requirements for urine, feces, and synthetically derived DNA?
23.14 What are the requirements for diplomatic, consular, military, and other persons eligible for waiver privileges under customs law?
23.15 What CITES documents are required to export Appendix-I wildlife?
23.16 What CITES documents are required to export Appendix-I plants?
23.17 What CITES documents are required for international trade?
23.18 What happens if a country enters a reservation for a species?
23.19 What are the requirements for in-transit shipments?
23.20 What information is required on U.S. and foreign CITES documents?
23.21 What code is used to show the source of the specimen?
23.22 What additional information is required on non-Party CITES documents?
23.23 When is a U.S. or foreign CITES document valid?
23.24 What CITES documents do I present at the port?

Subpart C—Application Procedures, Issuance Criteria, and Conditions

23.25 How do I apply for a U.S. CITES document?
23.26 How do we decide to issue or deny a request for a U.S. CITES document?
23.27 What records do I need to apply for a U.S. CITES document?
23.28 What are the requirements for import permits?
23.29 What are the requirements for export permits and re-export certificates?
23.30 What are the requirements for certificates of origin?
23.31 What are the requirements for introduction-from-the-sea certificates?
23.32 What are the requirements for certificates for artificially propagated plants?
23.33 What are the requirements for bred-in-captivity certificates?
23.34 What are the requirements for plant hybrids?
23.35 What are the requirements for wildlife hybrids?
23.36 What are the requirements to travel internationally with my personally owned live wildlife?
23.37 What are the requirements for pre-Convention specimens?
23.38 What are the requirements for registering an Appendix-I commercial breeding operation?
23.39 What are the requirements for export of Appendix-I plants artificially propagated for commercial purposes?
23.40 What are the requirements for registered scientific institutions?
23.41 What are the requirements for traveling live-animal exhibitions?
23.42 What are the requirements to replace lost, damaged, stolen, or accidentally destroyed CITES documents?
23.43 What are the requirements for retrospective CITES documents?
23.44 How long is a CITES document valid?
23.45 What CITES document conditions do I need to follow?

Subpart D—Factors We Consider in Making Certain Findings

23.50 What factors do we consider in making a legal acquisition finding?
23.51 What factors do we consider in making a non-detriment finding?
23.52 What factors do we consider in making a finding of primarily commercial purposes?
23.53 What factors do we consider in making a bred-in-captivity finding?
23.54 What factors do we consider in making an artificially propagated finding?
23.55 What factors do we consider in making a finding of bred or propagated for commercial purposes?
23.56 What factors do we consider in making a finding that an applicant is suitably equipped to house and care for a live specimen?

Subpart E—International Trade in Certain Specimens

23.60 How can I trade internationally in American ginseng?
23.61 How can I trade internationally in furs of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear?
23.62 How can I trade internationally in crocodilian skins and parts of skins, including American alligator skins?
23.63 How can I trade internationally in sturgeon caviar?
23.64 How can I trade internationally in timber?
23.65 How can I trade internationally in personal sport-hunted trophies?

Subpart F—Disposal of Confiscated Live Wildlife and Plants

23.70 How do we dispose of confiscated live wildlife and plants?
23.71 How may I participate in the Plant Rescue Center Program?

Subpart G—CITES Administration

23.75 What are the roles of the Secretariat and the committees?
23.76 What is a Conference of the Parties (COP)?
23.77 How can I obtain information on a COP?
23.78 How does the United States develop negotiating positions for a COP?

Subpart H—Lists of Species

23.85 What are the criteria for listing species in Appendix I or II?
23.86 What are the criteria for listing species in Appendix III?
23.87 How do I find out if a species is listed?
23.88 Are any wildlife and plants, and their parts or products, exempt?

Authority: 27 U.S.T. 1087; 16 U.S.C. 1531 *et seq.*

Subpart A—Introduction

§ 23.1 What are the purposes of CITES and these regulations?

(a) *Treaty.* The regulations in this part implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as CITES, the Convention, the Treaty, or the Washington Convention, TIAS (Treaties and Other International Acts Series) 8249.

(b) *Purpose.* The aim of CITES is to regulate international trade to ensure it is legal and does not threaten the survival of wildlife and plant species in the wild. Countries that have ratified or acceded to CITES (Parties) recognize that:

(1) Wildlife and plants are an irreplaceable part of the natural systems of the earth and must be protected for this and future generations.

(2) The value of wildlife and plants is ever-growing from the viewpoints of aesthetics, science, culture, recreation, and economics.

(3) Although countries should be the best protectors of their own wildlife and plants, international cooperation is essential to protect wildlife and plant species from over-exploitation through international trade.

(4) It is urgent that countries take appropriate measures to prevent illegal trade and ensure that any use of wildlife and plants is sustainable.

(c) *Domestic legislation.* We, the Service, implement CITES through the U.S. Endangered Species Act (ESA).

§ 23.2 How do I decide if these regulations apply to my shipment or me?

Answer the following questions to decide if the regulations in this part apply to your proposed activity:

Question on proposed activity	Answer and action
(a) Is the wildlife or plant species (including parts, products, and hybrids, whether wild-collected or bred, born, grown, or propagated in captivity) listed in Appendices I, II, or III of CITES?	(1) YES. Continue to paragraph (b) of this section. (2) NO. The regulations in this part do not apply.
(b) Is the part, product, or manufactured article a personal or household effect?	(1) YES. See § 23.12. (2) NO. Continue to paragraph (c) of this section.
(c) Is the sample urine, feces, or synthetically derived DNA (deoxyribonucleic acid)?	(1) YES. See § 23.13. (2) NO. Continue to paragraph (d) of this section.
(d) Do you want to import, export, re-export, engage in international trade, or introduce from the sea?	(1) YES. The regulations in this part apply. (2) NO. Continue to paragraph (e) of this section.
(e) Was the specimen that you possess, or want to put in intrastate or interstate commerce, unlawfully acquired, illegally traded, or otherwise subject to conditions set out on the CITES document?	(1) YES. See § 23.11(c) and (d) and sections 9(c)(1) and 11(a) and (b) of the ESA (16 U.S.C. 1538(c)(1) and 1540(a) and (b)). (2) NO. The regulations in this part do not apply.

§ 23.3 What other wildlife and plant regulations may apply?

(a) You may need to comply with other regulations in this subchapter that require a permit or have additional restrictions.

(b) If you are applying for a permit, you must comply with the general permit procedures in 50 CFR part 13.

(c) If you are importing (including introduction from the sea), exporting, or re-exporting wildlife or plants, you must comply with the regulations in 50 CFR part 14 for wildlife or 50 CFR part 24 for plants. Activities with plants are also regulated by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), in 7 CFR parts 355 and 356.

(d) Many CITES species are also covered by one or more parts of this subchapter and have additional requirements:

(1) 50 CFR parts 10 and 21 (migratory bird list and permits).

(2) 50 CFR part 15 (Wild Bird Conservation Act).

(3) 50 CFR part 16 (injurious wildlife).

(4) 50 CFR part 17 (endangered and threatened species).

(5) 50 CFR part 18 (marine mammals).

(6) 50 CFR part 22 (eagle permits).

§ 23.4 What are Appendices I, II, and III?

Species are listed by the Parties at one of three levels of protection (referred to as appendices, see subpart H of this part), which have different requirements. Parties regulate trade in specimens (live and dead) of Appendix-I, -II, or -III species and their hybrids, parts, and products through a system of permits and certificates (CITES documents). Such documents enable Parties to monitor the effects of the volume and type of trade to ensure trade is legal and not detrimental to the survival of the species.

(a) *Appendix I* includes species threatened with extinction that are or may be affected by trade. Requirements to trade in specimens of Appendix-I species include:

(1) Trade must be subject to particularly strict regulation to avoid further endangering their survival and must be authorized only in exceptional circumstances.

(2) The import or introduction from the sea may not be for primarily commercial purposes.

(3) A shipment requires an import permit and an export permit or re-export certificate unless the specimen is accompanied by either a valid CITES exemption document issued by the exporting or re-exporting country or an introduction-from-the-sea certificate.

(b) *Appendix II* includes species that are not presently threatened with extinction but may become so if their trade is not regulated. It also includes species that need to be regulated so that trade in certain other Appendix-I or -II species may be effectively controlled; these species are most commonly listed due to their similarity of appearance to other related CITES species.

(1) CITES does not require import permits for Appendix-II species.

(2) For specimens of Appendix-II species to be traded, each shipment must be accompanied by a CITES document from the exporting or re-exporting country or an introduction-from-the-sea certificate.

(c) *Appendix III* includes species listed by a range country to obtain international cooperation in controlling trade. For specimens of Appendix-III species to be traded, each shipment must be accompanied by an export permit, certificate of origin, or a re-export certificate.

§ 23.5 How are the terms used in these regulations defined?

In addition to the definitions contained in Article I of the Treaty and 50 CFR part 10, and unless the context requires, in this part:

Annotation means an official footnote to the listing of a species in the CITES appendices. A reference annotation provides information that further explains the listing (''p.e.'' for possibly extinct). A substantive annotation is an integral part of a species' listing. It designates whether the listing includes or excludes a geographically separate population, subspecies, species, group of species, or higher taxa and the type of specimens, such as live wildlife or plants or certain parts or products that can be traded. It may include export quotas.

Artificially propagated means a plant (including parts and products) grown under controlled conditions from a legally obtained seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule that meets the criteria in § 23.54.

Bred in captivity means wildlife (including parts and products) that meets the criteria in § 23.53 and is the offspring of legally obtained parents that either mated or otherwise transferred egg and sperm under controlled conditions if reproduction is sexual; or of parents that were maintained under controlled conditions when development of the offspring began if reproduction is asexual.

Certificate means a CITES document designated as a re-export or other certificate.

CITES document or CITES exemption document means any certificate, permit,

or other document issued by a Management Authority of a Party or a non-Party whose name and address is on file with the Secretariat to authorize the international movement of CITES specimens.

Commercial means an activity whose purpose is to obtain economic benefit, including profit (whether in cash or in kind) and is directed toward resale, exchange, provision of a service, or other form of economic use or benefit.

Conference of the Parties (COP) refers to the meetings of the Parties to consider amendments to the appendices and resolutions to improve the implementation of CITES

Cultivar means a horticulturally derived variety where humans select for specific morphological, physiological, or other characteristics, such as color, a large flower, or disease resistance.

Cultivated refers to a plant that is grown, tended, or fostered by humans for human use. A cultivated plant can be treated as artificially propagated under CITES only if it meets the criteria in § 23.54.

Export means to send or carry out of a country (for export from the United States, see 50 CFR part 14).

Flasked means plant material obtained *in vitro,* in solid or liquid media, transported in sterile containers.

Founder stock means the original breeding or propagating specimens that produced the subsequent generations of captive specimens and can be either pre-Convention, previously imported into the United States, or removed from the wild if the species is native to the United States.

Hybrid means any wildlife or plant that results from a cross of genetic material between two separate taxa, when one or both are listed in Appendix I, II, or III. See § 23.34 for plant hybrids and § 23.35 for wildlife hybrids.

Import means to bring or carry into a country (for import into the United States, see 50 CFR part 14).

International trade means the import, introduction from the sea, export, or re-export across jurisdictional or international boundaries for any purpose whether commercial or non-commercial.

In-transit shipment means the immediate transshipment of any wildlife or plant through an intermediary country when the specimen remains under customs control.

Introduction from the sea means to directly transport into a country any specimen that was taken in the marine environment not under the jurisdiction of any country, including the air above the sea, the sea-bed, and subsoil beneath the sea.

Management Authority means a governmental agency officially designated by, and under the supervision of, a Party or non-Party to implement CITES, including the granting of CITES documents on behalf of that country.

Parental stock mean the wildlife or plants that are the immediate parents of a specimen.

Party means a country that has ratified or acceded to CITES.

Permit means a CITES document designated as an export or import permit.

Precautionary measures mean that the actions we take will be in the best interest of the conservation of the species, when there is uncertainty about the status of a species or the impact of trade on the conservation of a species.

Pre-Convention means a specimen that was removed from the wild or held in captivity or a controlled environment before the date the species was first listed on any appendix of CITES.

Primarily commercial purposes means an activity whose non-commercial aspects do not clearly predominate (see § 23.52).

Propagule means a structure, such as a cutting, seed, or spore, that propagates a plant.

Ranching means the rearing in a controlled environment of eggs or juvenile wildlife specimens taken from the wild.

Readily recognizable means any specimen that appears from a visual, physical, scientific, or forensic examination or test; an accompanying document, packaging, mark, or label; or any other circumstances to be a part or product of any CITES wildlife or plant, unless such part or product is specifically exempt from the provisions of CITES or this part.

Re-export means to send or carry out of a country any wildlife or plant (including parts and products) previously imported or introduced from the sea into that country, whether or not the specimen was altered since import or introduction.

Reservation means the action taken by a Party to inform the Secretariat that it is not bound by the effect of a specific listing (see § 23.18).

Scientific Authority means a governmental or independent scientific institution or entity officially designated by a Party or non-Party to implement CITES, including making scientific findings.

Secretariat means the entity designated by the Treaty to perform certain administrative functions (see § 23.75).

Shipment means any CITES specimen in international trade whether for commercial or non-commercial use, including any personal item.

Species means any species, subspecies, variety, or geographically separate population of that species.

Specimen means any wildlife or plant, whether alive or dead. For Appendix-I and -II wildlife and Appendix-I plants, this term includes any readily recognizable part or product. For Appendix-III wildlife and Appendix-II and -III plants, all readily recognizable parts or products are included, except as annotated in the appendices.

Sport-hunted trophy means raw or tanned parts of a specimen that was taken by the hunter, who is also the importer, exporter, or re-exporter, during a sport hunt for personal, non-commercial use. It may include the hide, head, skull, tusks, horns, hair, teeth, claws, meat, bones, or any taxidermied part, including, but not limited to, a taxidermied head, shoulder, or full mount. It does not include articles made from a trophy, such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items.

Sustainable use means the use of a species in a manner and at a level that maintain wild populations at biologically viable levels for the long term. Such use involves a determination of the productive capacity of the species and its ecosystem, to ensure that utilization does not exceed those capacities or the ability of the population to reproduce, maintain itself, and perform its role or function in its ecosystem.

Trade means the same as international trade.

Traveling live-animal exhibition means an entity that uses live wildlife for display or entertainment, such as a circus or performing act, where the exhibition is temporarily moving internationally.

§ 23.6 What are the roles of the Management and Scientific Authorities?

Under Article IX of the Treaty each Party must designate a Management and Scientific Authority to implement CITES for that country. If a non-Party wants to trade with a Party, it must also designate such Authorities. The name and address of these offices must be sent to the Secretariat to be included in the Directory. In the United States, different offices within our agency have been designated the Management and

Scientific Authority and do the following:

Roles	Scientific authority	Management authority
(a) Provide scientific advice and recommendations, including advice on biological findings for applications for certain CITES documents. Evaluate the conservation status of species to determine if a species listing or change in listing is warranted	X	
(b) Review applications for CITES documents and issue or deny them based on findings required by CITES		X
(c) Communicate with the Secretariat and other countries on scientific, administrative, and enforcement issues	X	X
(d) Monitor trade	X	X
(e) Produce annual reports on CITES trade		X
(f) Coordinate with State conservation and Federal agencies on CITES issues, such as the status of native species, development of policies, negotiating positions, and law enforcement activities	X	X
(g) Communicate with the scientific community, the public, and media about CITES issues. Conduct public meetings and publish notices to gather input from the public on the administration of CITES and the conservation and trade status of domestic and foreign species traded internationally	X	X
(h) Represent the United States at the meetings of the Conference of the Parties (COP), on committees (see subpart G of this part), and on CITES work groups. Consult with other countries on CITES issues and the conservation status of species. Prepare discussion papers and proposals for new or amended resolutions and species listings for consideration at the COP	X	X
(i) Provide assistance for the enforcement of CITES, including the inspection and clearance of shipments. Cooperate with enforcement officers at the Secretariat, International Criminal Policy Organization—Interpol, and World Customs Organization to facilitate the exchange of information between enforcement bodies and for training purposes		X
(j) Provide financial and technical assistance to other governmental agencies and CITES officials of other countries	X	X

§ 23.7 What office do I contact for CITES information?

Contact one of the following offices to receive information about CITES:

Type of information	Office to contact
(a) *CITES administrative and management issues:* CITES documents, including application forms Information on the COP List of CITES species Names and addresses of other countries' Management and Scientific Authority offices Notifications, resolutions, and decisions Standing Committee documents and issues	Office of Management Authority U.S. Fish and Wildlife Service 4401 North Fairfax Drive, Room 700 Arlington, Virginia 22203 Toll Free: (800) 358–2104/permit questions Tel: (703) 358–2095/other questions Fax: (703) 358–2281/permits Fax: (703) 358–2298/other issues E-mail: r9IA OMA@fws.gov Fax retrieval system: (800) 770–0150 or (703) 358–2348 Website: international.fws.gov

Type of information	Office to contact
(b) *Scientific issues:* Animals Committee documents and issues Findings regarding suitability of facilities Listing of species in the appendices and relevant resolutions Names and addresses of other countries' Scientific Authority offices and scientists involved with CITES-related issues Non-detriment and other scientific findings Plants Committee documents and issues	Office of Scientific Authority U.S. Fish and Wildlife Service 4401 North Fairfax Drive, Room 700 Arlington, Virginia 22203 Tel: (703) 358–1708 Fax: (703) 358–2276 E-mail: r9osa@fws.gov Website: international.fws.gov
(c) *Wildlife clearance procedures:* Information about wildlife port office locations Procedures for the import (including introduction from the sea), export, and re-export of wildlife, including the inspection and clearance of shipments, and filing a Declaration of Importation or Exportation of Fish or Wildlife (Form 3–177) Validation of CITES wildlife documents	Office of Law Enforcement U.S. Fish and Wildlife Service P.O. Box 3247 Arlington, Virginia 22203 Tel: (703) 358–1949 Fax: (703) 358–2271 Website: www.le.fws.gov
(d) *Plant clearance procedures:* Information about plant port office locations Procedures for the import (including introduction from the sea), export, and re-export of plants, including the inspection and clearance of shipments Validation of CITES plant documents	U.S. Department of Agriculture APHIS/PPQ 4700 River Road Riverdale, Maryland 20737–1236 Toll Free: (877) 770–5990/permit questions Tel: (301) 734–5371/other CITES issues Fax: (301) 734–5786/permit questions Fax: (301) 734–8693/other CITES issues Fax retrieval system: (301) 734–4327 Website: www.aphis.usda.gov/ppq
(e) *Official list of CITES species:*	CITES Secretariat Website: www.cites.org

§ 23.8 What are the information collection requirements?

(a) The Office of Management and Budget approved the information collection requirements for application forms 3–200–19 through 3–200–53 contained in this part under 44 U.S.C. 3507 and assigned OMB Control Number 1018–0093. New application forms 3–200–54 through 3–200–63 have been submitted to OMB for assignment of an approval number.

(b) When using a form, we cannot collect or sponsor the collection of information, and you are not required to provide information, unless the form displays a currently valid OMB control number.

(c) We are collecting this information to evaluate applications and make decisions under this part on whether to issue, suspend, revoke, or deny a request for a CITES document.

(d) We are also collecting information to review State and tribal management programs for CITES species to streamline the permitting process for species taken under these programs.

(e) You must respond to our request for information in order to get or retain a CITES document.

(f) We estimate the public reporting burden for the collection of information under this part to vary from 20 minutes to 40 hours per response with an average of 1 hour. This estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms.

(g) You may direct comments on this information collection to the attention of the Desk Officer for the Interior Department, Office of Management and Budget, 1849 C Street, NW, Washington, DC 20503, with a copy to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Subpart B—Prohibitions, Exemptions, and Requirements

§ 23.11 What is prohibited?

If you are subject to the jurisdiction of the United States, it is unlawful for you to conduct any of the following activities unless you meet the requirements of this part:

(a) Import, export, re-export, or engage in international trade with any specimen of a species listed in Appendix I, II, or III of CITES.

(b) Introduce from the sea any specimen of a species listed in Appendix I or II of CITES.

(c) Possess any specimen of a species listed in Appendix I, II, or III of CITES imported, exported, re-exported, introduced from the sea, or traded contrary to the provisions of CITES, the ESA, or this part.

(d) Attempt to commit, solicit another to commit, or cause to be committed any of the activities described in paragraphs (a) through (c) of this section.

§ 23.12 How may I travel internationally with my personal or household effects?

(a) *Purpose.* Article VII(3) of the Treaty recognizes a limited exemption for the international movement of personal and household effects.

(b) *Stricter national legislation.* The exemption for personal and household effects does not apply if a country prohibits or restricts the import, export, or re-export of the item.

(1) You or your shipment must be accompanied by any document required by a country under its stricter national legislation.

(2) In the United States, this exemption does not relieve you from obtaining permission needed under other regulations in this subchapter (see § 23.3).

(c) *Required CITES documents.* You must obtain a CITES document for personal or household effects if one of the following applies:

(1) The Management Authority of the importing, exporting, or re-exporting country requires a CITES document.

(2) You or your shipment does not meet all of the conditions for an exemption as provided in paragraphs (d) through (g) of this section.

(d) *Personal effects.* You do not need a CITES document to import, export, or re-export any part, product, or manufactured article of a legally acquired Appendix-II or -III wildlife or plant, including a tourist souvenir, to or from the United States if all of the following conditions are met:

(1) No live wildlife or plant (including eggs or non-exempt seeds) is included.

(2) No item from an Appendix-I species is included, except for certain worked African elephant ivory as provided in paragraph (g) of this section.

(3) No sturgeon caviar (Order *Acipenseriformes*) is included except as provided in paragraph (f) of this section.

(4) You personally own and possess the item for non-commercial purposes, including any item intended as a personal gift.

(5) The item and quantity of items is reasonably necessary or appropriate for the nature of your trip or stay.

(6) You are either wearing the item as clothing or an accessory or taking it as part of your personal baggage, which is being carried by you or checked as baggage on the same plane, boat, car, or train as you.

(7) The item was not mailed or shipped separately.

(e) *Household effects.* You do not need a CITES document to import, export, or re-export any part, product, or manufactured article of a legally acquired Appendix-II or -III wildlife or plant that is part of a shipment of your household effects when moving your residence to or from the United States, if all of the following conditions are met:

(1) No live wildlife or plant (including eggs or non-exempt seeds) is included.

(2) No item from an Appendix-I species is included, except for certain worked African elephant ivory as provided in paragraph (g) of this section.

(3) No sturgeon caviar (Order *Acipenseriformes*) is included.

(4) You personally own the item and are moving it for non-commercial purposes.

(5) The item and quantity of items is reasonably necessary or appropriate for household use.

(6) You import or export your household effects within 1 year of moving your residence.

(7) The shipment, or shipments if you cannot move all of your household effects at one time, contains only items purchased, inherited, or otherwise acquired before you moved.

(f) *Sturgeon caviar.* You may import, export, or re-export 250 grams or less of caviar of Appendix-II sturgeon (in the Order *Acipenseriformes* and not listed as endangered or threatened under the ESA) without a CITES document as a personal effect if it meets the requirements in paragraph (d) of this section. To import, export, or re-export more than 250 grams of caviar, you must have a valid CITES document for the entire quantity.

(g) *African elephant worked ivory.* You may export or re-export from the United States worked African elephant (*Loxodonta africana*) ivory and then re-import it without a CITES document if you meet all of the following:

(1) The worked ivory is a personal or household effect that meets the requirements of paragraph (d) or (e) of this section, except it is not a gift.

(2) You are a U.S. resident, owned the worked ivory before leaving the United States, and intend to bring the item back to the United States.

(3) The ivory is substantially worked and is not raw. Raw ivory means a tusk, or a piece of tusk, which is polished or unpolished, unaltered, or minimally carved, including ivory mounted on a stand or part of a trophy.

(4) When you return, you are able to provide records, receipts, or other documents to show that you possessed the ivory before you left the United States.

§ 23.13 What are the U.S. CITES requirements for urine, feces, and synthetically derived DNA?

(a) *CITES documents.* We do not regulate any sample of urine, feces, or synthetically derived DNA under CITES but some countries may.

(1) You must obtain any collection permit and/or CITES document required by the foreign country.

(2) If the foreign country requires you to have a U.S. CITES document for these kinds of samples, we will treat the sample as regulated and you must apply for a CITES document.

(b) *Urine and feces.* Except as provided in paragraph (a) of this section, we consider urine and feces to be wildlife by-products, rather than parts or products, and exempt them from the requirements of CITES and this part.

(c) *DNA.* We differentiate between DNA directly extracted from blood and tissue and DNA synthetically derived as follows:

(1) A DNA sample directly derived from wildlife or plant tissue is regulated by CITES and this part.

(2) A DNA sample synthetically derived that does not contain any part of the original template is exempt from the requirements of CITES and this part.

§ 23.14 What are the requirements for diplomatic, consular, military, and other persons eligible for waiver privileges under customs law?

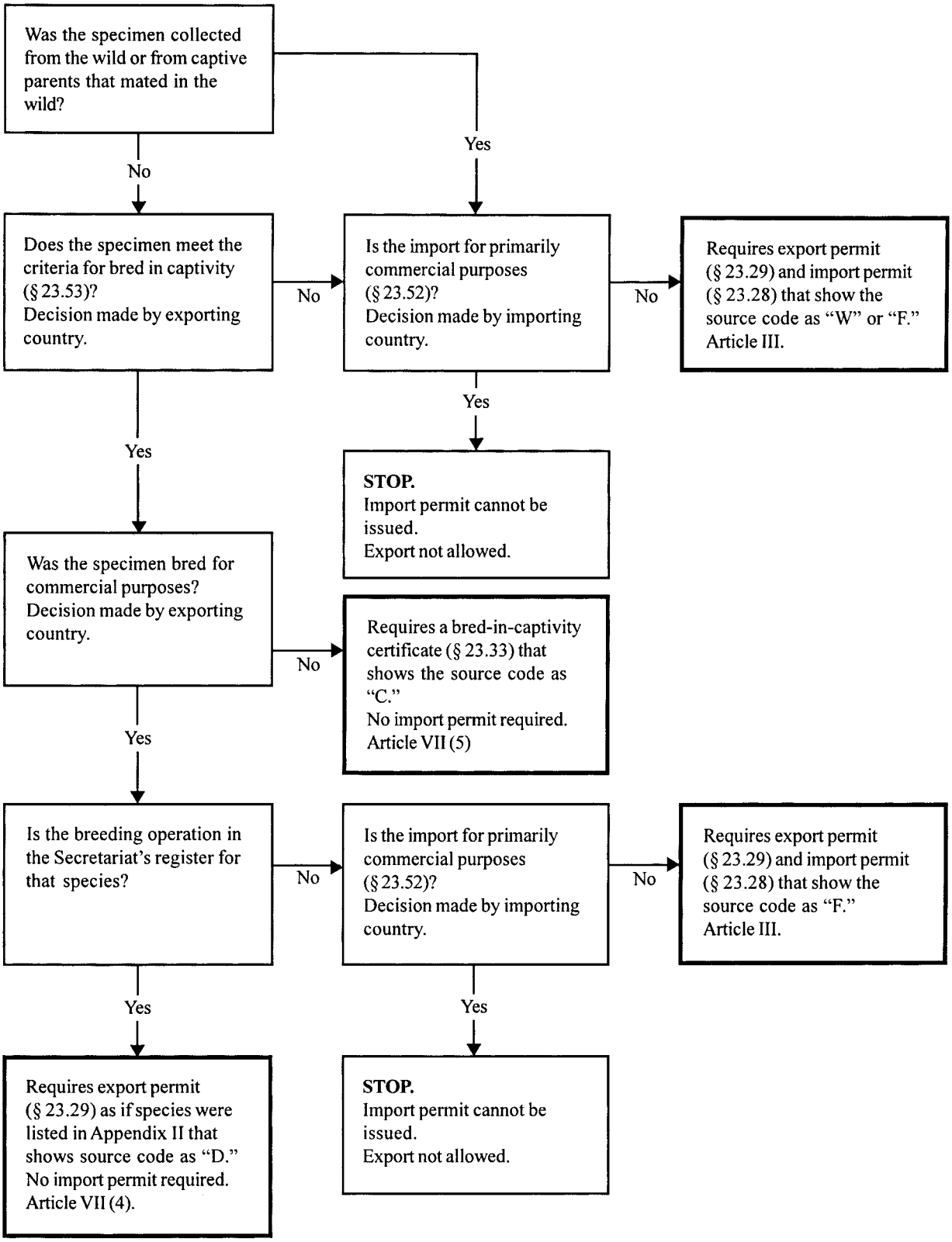
A person receiving duty-free and inspection waiver privileges under customs laws is not exempt from the requirements of CITES or the regulations in this part.

§ 23.15 What CITES documents are required to export Appendix-I wildlife?

Answer the questions in the following decision tree to find out the section in the regulations in this part that applies to the type of CITES document you need to export Appendix-I wildlife:

BILLING CODE 4310–55–P

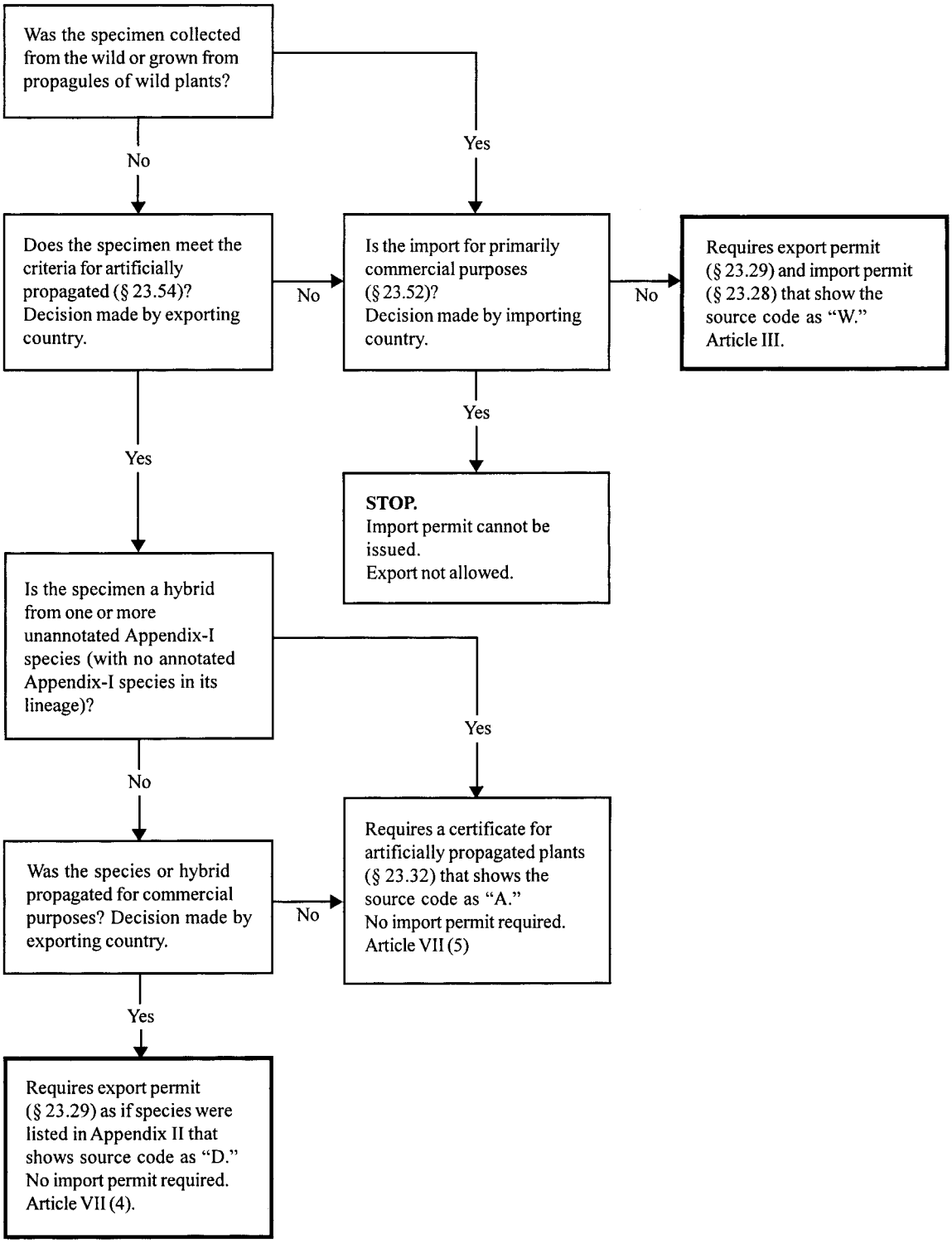
Decision Tree for Export of Appendix-I Wildlife



§ 23.16 What CITES documents are required to export Appendix-I plants?

Answer the questions in the following decision tree to find out the section in the regulations in this part that applies to the type of CITES document you need to export Appendix-I plants:

Decision Tree for Export of Appendix-I Plants



BILLING CODE 4310–55–C

§ 23.17 What CITES documents are required for international trade?

(a) *Purpose.* Articles III, IV, and V of the Treaty give the types of standard CITES documents that must accompany an Appendix-I, -II, or -III specimen in international trade. Article VII recognizes some exemptions and provides that a CITES document must accompany most exempt specimens.

(b) *Stricter national legislation.* Before importing, introducing from the sea, exporting, or re-exporting a specimen, check with the Management Authorities of all countries concerned to obtain any documentation required under stricter national legislation.

(c) *CITES documents.* Except as provided in the regulations in this part, you must have a valid CITES document to engage in international trade with any CITES specimen.

(d) *CITES exemption documents.* The following table lists the CITES exemption document that you must obtain before conducting a proposed activity with an exempt specimen. The first column alphabetically lists the type of specimen. The last column indicates the section of this part that contains information on the application procedures, provisions, issuance criteria, and conditions specific to each CITES exemption document, as follows:

Type of specimen	Appendix	CITES exemption document	Section
(1) Artificially propagated plant (see paragraph (d)(4) of this section for an Appendix-I plant propagated for commercial purposes).	I,II, or III	[1] CITES document with source code ''A'' ...	23.32
(2) Artificially propagated plant from a country that has provided copies of the certificates, stamps, and seals to the Secretariat.	II or III	[1] Phytosanitary certificate with CITES statement.	23.20(f)
(3) Bred-in-captivity wildlife (see paragraph (d)(5) of this section for Appendix-I wildlife bred for commercial purposes).	I,II, or III	[1] CITES document with source code ''C'' ...	23.33
(4) Commercial propagation of an Appendix-I plant.	I	[1] CITES document with source code ''D'' ...	23.39
(5) Commercial registered breeding operation for Appendix-I wildlife.	I	[1] CITES document with source code ''D'' ...	23.38
(6) Hybrid	I, II, or III	[1] CITES document or certification letter from a Management Authority.	23.34 23.35
(7) In-transit shipment	I, II, or III	CITES document designating importer and country of final destination.	23.19
(8) Introduction from the sea under a pre-existing treaty, convention, or international agreement for that species.	I or II	Document required by applicable treaty, convention, or international agreement.	23.31(d)
(9) Personally owned live wildlife for multiple cross-border movement.	I, II, or III	[2] CITES certificate of ownership	23.36
(10) Pre-Convention speciment	I, II, or III	[1] CITES document indicating pre-Convention status.	23.37
(11) Registered scientific institution for non-commercial loan, donation, or exchange of specimens.	I, II, or III	[3] A label indicating CITES and the registration codes of both institutions and, in the United States, a CITES certificate of scientific exchange that registers the institution.	23.40
(12) Traveling live-animal exhibition	I, II, or III	[2] CITES document indicating pre-Convention or bred-in-captivity status.	23.41

[1] Issued by the Management Authority in exporting or re-exporting country.
[2] Issued by the Management Authority in the exporting country.
[3] Registration codes assigned by the Management Authorities in both exporting and importing countries.

(e) *Import permits, export permits, re-export certificates, and certificates of origin.* You must obtain the following valid CITES documents before conducting the proposed activity, unless one of the exemptions in paragraph (d) of this section or introduction from the sea in paragraph (f) of this section applies:

Appendix	Import permit (§ 23.28)	Export permit, Re-export Certificate, (§ 23.29) or Certificate of Origin (§ 23.30)
I	[1] Required	Required.
II	Not Required	Required.
III	Not Required	Required: • An export permit if coming from a country that listed the species. • A re-export certificate if being re-exported from any country. • A certificate of origin if originating in a country other than the listing country or as annotated in the listing.

[1] The Management Authority of the importing country has granted the import permit or confirmed that it will be granted before an export permit for a live or dead specimen or a re-export certificate for a live specimen can be issued. A re-export certificate for a dead specimen can be issued without confirmation that the import permit has been issued, but the import permit is required before the import can be allowed.

(f) *Introduction-from-the-sea documents.* For introduction from the sea, you must obtain the following valid CITES documents before conducting the proposed activity, unless the exemption in paragraph (d)(8) of this section applies:

Appendix	Either	Or	Import Permit (§ 23.28)
	Introduction-from-the-Sea Certificate (§ 23.31)	Re-export Certificate (§ 23.29)	
I	Required	[1] Required	Required
II	Required	[1] Required	Not required
III	Not required	[2] Required	Not required

[1] The export of a specimen that was previously introduced from the sea will be treated as a re-export.
[2] Although an Appendix-III specimen taken from the marine environment beyond any country's jurisdiction does not require any CITES document to be introduced from the sea, the subsequent export of the specimen would require the issuance of a certificate of origin.

§ 23.18 What happens if a country enters a reservation for a species?

(a) *Purpose.* CITES is not subject to general reservations. Articles XV, XVI, and XXIII of the Treaty allow a specific reservation to be entered on a species included in Appendix I, II, or III, or on parts or products from a species included in Appendix III.

(b) *General provision.* A Party or a country in the process of acceding to CITES can enter a reservation as follows:

(1) A Party must provide written notification to the Depositary Government (Switzerland) on a specific new or amended listing in the appendices within 90 days after the COP that adopted the listing.

(2) A country must provide written notification on a specific species' listing when it ratifies or accedes to CITES.

(c) *Required CITES documents.* Except as provided in (c)(2) of this paragraph, Parties treat a reserving Party as if it were a non-Party for trade in the species concerned (including parts and products). A shipment must be accompanied by a valid CITES document, as follows:

If:	Then the CITES document must indicate the specimen is listed in:
(1) The trade between a Party and a reserving Party	The appendix in which the species is listed in the CITES is appendices.
(2) A shipment is between a reserving Party and another reserving Party or non-Party and is transiting a Party.	(i) Appendix II if the species is listed in Appendix I. (ii) Appendix II if the species is listed in Appendix II. (iii) Appendix III if the species is listed in Appendix III.

§ 23.19 What are the requirements for in-transit shipments?

(a) *Purpose.* Article VII(1) of the Treaty allows for in-transit shipments. To control any illegal trade Parties are to take measures to check for valid CITES documents when a shipment is moving through an intermediary country.

(b) *Document requirements.* An in-transit shipment does not require a CITES document from an intermediary country, but must be accompanied by all of the following documents:

(1) A valid original CITES document that designates the name of the importer in the country of final destination and is issued by the Management Authority of the exporting or re-exporting country, unless the item qualifies as a personal or household effect (see § 23.12).

(2) For shipment of an Appendix-I specimen, a copy of a valid import permit that designates the name of the importer in the country of final destination, unless the CITES document

in (b)(1) of this paragraph is an CITES exemption document (see § 23.17).

(3) Transportation and routing documents that show the shipment has been consigned to the same importer and country of final destination as designated on the CITES document.

(c) *Shipment requirements.* An in-transit shipment, including an on-board store of an airplane, must meet the following:

(1) When in an intermediary country, only stay for the time needed to transfer the specimen to the mode of transport used to continue to the final destination and remain under customs control. Other than during temporary transfer, the specimen may not be stored in a duty-free, bonded, or other kind of warehouse.

(2) At any time during transit, not be sold, manipulated, or split.

(d) *Reserving Party or non-Party.* All the requirements of this section apply to shipments to or from a reserving Party or non-Party that are being transhipped through a Party. The CITES document must treat the specimen as listed in the appendix as provided in § 23.18(c).

(e) *Specimen protected by other regulations.* Shipment of a specimen that is also listed as a migratory bird (50 CFR part 10), injurious wildlife (50 CFR part 16), endangered or threatened species (50 CFR parts 17 and 217–227), marine mammal (50 CFR parts 18 and 216), or bald or golden eagle (50 CFR part 22), and is moving through the United States is considered an import, and cannot be traded as an in-transit shipment.

§ 23.20 What information is required on U.S. and foreign CITES documents?

(a) *Purpose.* Article VI of the Treaty provides standard information that must be on a permit and certificate issued under Articles III, IV, and V. To identify any false or invalid document, a CITES document, including any CITES exemption document, must contain standardized information to allow a Party to verify that the specimen being shipped is the one listed on the document.

(b) *CITES form.* A CITES document issued by a Party must be on a form printed in one or more of the three working languages of CITES (English, Spanish, or French). A CITES document from a non-Party may be in the form of a permit or certificate, letter, or any other form that clearly indicates the nature of the document and includes the information in paragraphs (c) through (e) of this section and the additional information in § 23.22.

(c) *Required information.* Except for a phytosanitary certificate used as a CITES certificate for artificially propagated plants in paragraph (f) of this section, a CITES document issued by a Party or non-Party must contain the information set out in this paragraph (listed alphabetically). Specific types of CITES documents must also contain the additional information identified in paragraph (e) of this section. A CITES document is only valid with the following information:

Key phrase	Required information
(1) Appendix	The appendix of CITES on which the species, subspecies, or population is listed. A certificate of origin is valid only for Appendix-III specimens and is not required to list the appendix.
(2) Applicant's signature	The applicant's signature, if the CITES document includes a place for it.
(3) Bill of lading or air waybill.	As applicable for export or re-export by ocean or air, the bill of lading or air waybill number as recorded on the CITES waybill document by the inspecting official at the port, if the document includes a place for it.
(4) Dates	Date of issue and date of expiration (''valid until date'' on the standardized CITES form), which is midnight of the date on the CITES document. See § 23.44 for the length of validity for different types of CITES documents.
(5) Description of the specimen.	A complete description of the specimen, including whether live or the type of goods. The sex and age of a live specimen should be recorded, if possible. Such information must be in English, Spanish, or French on a CITES document from a Party.
(6) Document number	A unique control number. We use a unique 12-character number. The first two characters are the last two digits of the year of issuance, the next two are the two-letter ISO country code, followed by a six-digit serial number, and two digits or letters used for national informational purposes.
(7) Humane transport of live wildlife.	If the CITES document covers the export or re-export of live wildlife, a statement that the permit is only valid if the live wildlife transport conditions comply with the CITES Guidelines for Transport of Live Animals (available from the Office of Management Authority, see § 23.7) or, in the case of air transport, with the International Air Transport Association Live Animal Regulations. The shipment must comply with container requirements of the Live Animal Regulations (LAR), 26th edition, October 1, 1999, by the International Air Transport Association (IATA). The incorporation by reference of the LAR was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from IATA in Montreal, Canada, by calling 800–71–66–32–60 or ordering through the Internet at http://www.iataonline.com. Copies may be inspected at the Office of Management Authority (see § 23.7) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.
(8) Indentification of the specimen.	Any unique identification number or mark (such as a tag, band, ring, microchip, and serial number), including any mark required under a CITES resolution.

Key phrase	Required information
(9) Management Authority	The complete name and address of the issuing Management Authority as included in the CITES Directory, which is available from the Office of Management Authority (see § 23.7).
(10) Name and address	The complete name and address, including country, of the exporter (consignor) and importer (consignee).
(11) Purpose of transaction	The purpose of the transaction, using one of the codes given in paragraph (d) of this section, if possible. The code is determined by the issuing Management Authority through information submitted with an application. This is not required for a certificate of origin.
(12) Quantity	The quantity of specimens authorized to be in the shipment and, if appropriate, the unit of measurement, which should be in metric: (i) The unit of measurement should be appropriate to the type of specimen and, if possible, agree with the preferred or alternative unit that is to be used in the CITES annual report. General descriptions such as ''one case'' or ''one batch'' are not acceptable. (ii) Weight should be in kilograms. If weight is used, net weight (weight of the specimen alone) must be stated, not gross weight that includes the weight of the container or packaging. (iii) Volume, when used for timber, should be in cubic meters. (iv) For re-export, if the type of good has not changed since being imported, the same unit of measurement as on the export permit must be used, except to change to units that are to be used in the CITES annual report.
(13) Scientific name	The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES or the ESA, using standard nomenclature as it appears in the CITES appendices or the references adopted by the COP. A list of current references is available from us or the Secretariat's website (see § 23.7). A CITES document may contain higher taxon names in lieu of the species name only under one of the following circumstances: (i) When the COP has agreed that the use of a higher taxon name is acceptable for use on CITES documents. (ii) When the issuing Party can show the use of a higher taxon name is well justified and has communicated the justification to the Secretariat. (iii) The item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species level.
(14) Seal or stamp	The embossed seal or ink stamp of the issuing Management Authority.
(15) Security stamp	If a Party uses a security stamp, the stamp is canceled by an authorized signature and a stamp or seal, preferably embossed. The number of the stamp must also be recorded on the CITES document. Each page of an attached annex must also contain a stamp that is canceled and recorded.
(16) Signature	An original signature of a person authorized to sign CITES documents for the issuing Management Authority. The signature must be on file with the Secretariat.
(17) Source	The source of the specimen, except for a certificate of origin which must certify that the specimen originated in the exporting country. See § 23.21 for a list of codes.
(18) Treaty name	Either the full name, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or the CITES logo.
(19) Type of CITES document	The type of CITES document (import, export, re-export, or other). If marked ''other,'' the CITES document must indicate the type of document, such as introduction-from-the-sea, pre-Convention, bred-in-captivity, scientific exchange, certificate of ownership, or artificially propagated. If multiple types are authorized on one CITES document, the type that applies to each specimen must be clearly indicated.
(20) Validation or certification	The actual quantity of specimens exported or re-exported: (i) Using the same units of measurement as those on the CITES document. (ii) Validated or certified by the stamp or seal and signature of the authority that carried out the inspection at the time of export or re-export.

(d) *Purpose of transaction.* If possible, the CITES document should contain one of the following codes:

Code	Purpose of transaction
B	Breeding in captivity or artificial propagation
E	Education

Code	Purpose of transaction
G	Botanical garden
H	Hunting trophy
L	Law enforcement
M	Biomedical research
N	Reintroduction or introduction into the wild
P	Personal
Q	Circus and traveling exhibition
S	Scientific purpose
T	Commercial
Z	Zoo

(e) *Additional required information.* The following describes the additional information that is required for specific types of documents (listed alphabetically):

Type of document	Additional required information
(1) Amended or renewed CITES document (see §§ 13.22 and 13.23).	The number and date of issue of the amended CITES document and reason for the change.
(2) Annex (such as an attached inventory conditions, or continuation pages of a CITES document).	The page number, document number, and date of issue on each page of an annex that is attached as an integral part of a CITES document. The signature and ink stamp or seal, preferably embossed, of the Management Authority issuing the CITES document must also be included on each page of the annex. The CITES document must indicate the total number of pages.
(3) Certificate of origin	A statement that the specimen originated in the country that issued the certificate.
(4) Copy	Where a copy of a CITES document is used in place of the original, a statement on the face of the document by the Management Authority authorizing the use of a copy.
(5) Export permit for a commercial registered breeding operation or nursery— Appendix-I specimens.	The registration number of the operation or nursery assigned by the Secretariat, and if the exporter is not the registered operation or nursery, the name of the registered operation or nursery.
(6) Export permit with species' quota	Numbers of specimens, such as 500/1000, that were: (i) Exported thus far in the current calendar year, including those covered by the permit. (ii) Included in the current annual quota.
(7) Import permit (Appendix-I specimen)	A certification that the specimen will not be used for primarily commercial purposes and, for a live specimen, that the recipient has suitable facilities and expertise to house and care for it.
(8) Lost, damaged, stolen, or accidentally destroyed CITES document.	When a CITES document is issued to replace an already issued CITES document, the number and date of issue of the CITES document that was replaced and reason for replacement.
(9) Pre-Convention certificate	(i) An indication that the specimen covered by the CITES document is pre-Convention. (ii) A date that shows the specimen was acquired before the pre-Convention date (see § 23.5).

Type of document	Additional required information
(10) Re-export certificate	(i) The country of origin, the number of the export permit of that country, and the date of issue. (ii) If previously re-exported, the country of last re-export, the number of the re-export certificate of that country, and the date of issue. (iii) If all or part of this information is not known, a justification must be given.
(11) Retrospective CITES document	A clear statement that the CITES document is issued retrospectively and the reason for issuance.

(f) *Phytosanitary certificate.* A Party that uses a phytosanitary certificate as a CITES document for the export of artificially propagated Appendix-II and -III plants and artificially propagated hybrids of unannotated Appendix-I plants must include all of the following information:

(1) The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES, using standard nomenclature as it appears in the CITES appendices or the references adopted by the COP.

(2) The type (such as live plant or bulb) and quantity of the specimen authorized to be in the shipment.

(3) A stamp, seal, or other specific indication stating that the specimen is artificially propagated as defined by CITES (see § 23.54).

§ 23.21 What code is used to show the source of the specimen?

The Management Authority must indicate on the CITES document the source of the specimen using one of the following codes:

Source of specimen	Code
(a) Artificially propagated plants: (1) An Appendix-II or -III artificially propagated plant (see § 23.54) or hybrid of unannotated Appendix-I species or other taxa whether artificially propagated for commercial or non-commercial purposes, as well as parts and products. (2) An Appendix-I plant species or hybrid of annotated Appendix-I species artificially propagated for non-commercial purposes, as well as parts and products.	A
(b) Bred-in-captivity wildlife: (1) Appendix-II or -III wildlife bred in captivity (see § 23.53) for commercial or non-commercial purposes, as well as parts and products. (2) Appendix-I wildlife bred in captivity for non-commercial purposes, as well as parts and products.	C
(c) Propagated or bred for commercial purposes: (1) An Appendix-I plant species or hybrid of annotated Appendix-I species artificially propagated for commercial purposes, as well as of parts and products. (2) Appendix-I wildlife bred in captivity for commercial purposes, as well as parts and products, at an operation registered with the Secretariat.	D
(d) Wildlife born in captivity of parents that mated in captivity (first (F1) or subsequent generations) that do not qualify as bred in captivity (see § 23.53), as well as parts and products.	F
(e) Confiscated or seized specimens	I
(f) Ranched wildlife (wildlife that originated from a ranching operation)	R
(g) Source unknown (must be justified on the face of the CITES document)	U
(h) Specimens taken from the wild: (1) For wildlife, this includes a specimen born in captivity from an egg collected from the wild or from wildlife that mated or exchanged genetic material in the wild. (2) For plants, it includes a specimen grown in captivity from a propagule collected from a wild plant.	W

§ 23.22 What additional information is required on non-Party CITES documents?

(a) *Purpose.* Under Article X of the Treaty, a Party may accept a CITES document issued by competent authorities in a non-Party only if the document substantially conforms to the requirements of the Treaty.

(b) *Additional certifications.* In addition to the information in § 23.20(c) through (e), CITES documents issued by non-Parties must contain the following certifications on the face of the document:

Activity	Certification
(1) Export	(i) The Scientific Authority has advised that the export will Export not be detrimental to the survival of the species. (ii) The Management Authority is satisfied that the specimen was legally acquired.
(2) Export or re-export of a live plant.	The live plant will be transported so as to minimize the risk of injury or damage to the health of the specimen.
(3) Import	The import will be for purposes that are not detrimental to the survival of the species.

§ 23.23 When is a U.S. or foreign CITES document valid?

(a) *Purpose.* Article VIII of the Treaty provides that Parties take appropriate measures to enforce the Convention to prevent illegal trafficking in wildlife and plants.

(b) *Original CITES documents.* A separate original or a certified true copy of a CITES document must be issued before the import, introduction from the sea, export, or re-export and must accompany each shipment of specimens.

No copy may be used in place of an original except when endorsed on its face by the issuing Management Authority. Fax or electronic copies are not acceptable.

(c) *Acceptance of CITES documents.* We will accept a CITES document as valid for import, introduction from the sea, export, and re-export only if the document meets the requirements of §§ 23.20 and 23.22, subparts C and E of this part, and the following conditions:

Key phrase	Conditions for an acceptable CITES document
(1) Altered or modified CITES document.	The CITES document has not been altered (by rubbing or scratching out), added to, or modified in any way unless the change is validated on the document by the stamp and signature of the issuing Management Authority.
(2) Commercial registered breeding operation for Appendix-I wildlife from a Party.	(i) The operation is in the Secretariat's register. (ii) Each specimen is specifically marked and the mark is described on the CITES document.
(3) Commercial registered nursery for Appendix-I plants from Parties.	The operation is in the Secretariat's register.
(4) Conditions	All conditions on the CITES document are met.
(5) Extension of validity	The validity of a CITES document may not be extended except as provided in § 23.64 for certain timber species.
(6) Humane transport	(i) The live wildlife was transported in compliance with the CITES Guidelines for Transport of Live Animals or, in the case of air transport, the International Air Transport Association Live Animal Regulations. (ii) The live plant was transported so as to minimize the risk of injury or damage to the health of the specimen.
(7) Management Authority and Scientific Authority.	The CITES document was issued by a Party or non-Party that has designated a Management Authority and Scientific Authority and has provided information on these authorities to the Secretariat.
(8) Name of importer and exporter.	A CITES document is specific to the name on the face of the document and may not be transferred or assigned to another person.
(9) Phytosanitary certificate	A phytosanitary certificate can be used as a certificate for artificially propagated plants only if the issuing Party has provided copies of the certificates, stamps, and seals to the Secretariat.
(10) Pre-Convention	For a CITES document designating the specimen as pre-Convention, the date of acquisition must be before the date the species was first listed in the CITES appendices, and the specimen must be considered pre-Convention by both the importing and exporting countries.
(11) Ranched	For any ranched specimen of a species transferred from Appendix I to Appendix II because of ranching, international trade cannot involve a non-Party or a Party that holds a reservation on the species. Check our website for a list of these species (see § 23.7).

Key phrase	Conditions for an acceptable CITES document
(12) Registered scientific institutions.	Both importing and exporting scientific institutions are in the Secretariat's register for scientific exchange.
(13) Shipment contents	The contents of the shipment match the description of specimens provided on the CITES document, including the quantity, units, and species. A shipment cannot contain more specimens or different species than certified or validated on the CITES document at the time of export or re-export. The quantity of each specimen may be less than, but not more than, the quantity stated for that specimen on the CITES document at the time of issuance.
(14) Quotas	For species with a quota on file with the Secretariat, the quantity exported from a country does not exceed the quota.
(15) Wild-collected wildlife specimens.	Wild-collected wildlife specimens (indicated on the CITES document with a source code of ''W'') are not coming from a country that is outside the range of the species, unless we have information that shows the species has been established in the wild in that country through accidental introduction or other means.

(d) *Verification of CITES documents.*K We may request verification of CITES documents from the Secretariat or a foreign Management Authority before deciding whether to accept a CITES document under some circumstances, including, but not limited to, the following:

(1) We receive reliable information from the COP, Standing Committee, Secretariat, or other credible source that indicates the improper implementation of CITES by the country concerned.

(2) We have reasonable grounds to believe that a CITES document is not valid or authentic because the species is being traded in a manner detrimental to the survival of the species or in violation of foreign wildlife or plant laws, or the applicable Scientific Authority finding has not been made.

(3) If the re-export certificate refers to an export permit that does not exist or is not valid.

(4) We have reasonable grounds to believe that the document is fraudulent or has unauthorized changes.

(5) We have reasonable grounds to believe that the specimens identified as bred in captivity or artificially propagated are wild specimens.

(6) The import of a specimen designated as bred in captivity or artificially propagated is from a non-Party. For an Appendix-I specimen, we must consult with the Secretariat.

(7) For a retrospectively issued CITES document, if both the importing and exporting or re-exporting countries' Management Authorities have not agreed to the issuance of the document.

(e) *Information bulletin.* If we determine, based on reliable information received from the Secretariat, Standing Committee, or other sources that a country is not effectively implementing or complying with CITES, we will issue an information bulletin indicating what action we will take on shipments involving that country. We may restrict the acceptance of CITES documents from that country, either for all CITES species or for only certain species.

§ 23.24 What CITES documents do I present at the port?

(a) *Purpose.* Article VIII of the Treaty provides that Parties establish an inspection process that takes place at a port of exit and entry. Inspecting officials must verify that valid CITES documents accompany shipments and take enforcement action when shipments do not comply with the Convention.

(b) *Process.* Officials in each country inspect the shipment and validate or certify the CITES document. In the United States, you must follow the clearance requirements for wildlife in 50 CFR part 14 or plants in 7 CFR 355.22. The table in this paragraph (b) provides information on:

(1) The types of original CITES documents you must present to be validated or certified by the inspecting official in order to export or re-export from a country.

(2) When you need to surrender a copy of the original CITES document to the inspecting official at the time of export or re-export.

(3) When you need to surrender the original CITES document to the inspecting official at the time of import or introduction from the sea.

Type of CITES document	Present original for export or re-export validation or certification	Surrender copy upon export or re-export	Surrender original upon import or introduction from the sea
Artifically propagated plants	Required	Required	Required.
Bred-in-captivity wildlife (for Appendix-I species, only includes wildlife bred for non-commercial purposes).	Required	Required	Required.
Certificate of origin	Required	Required	Required.
Certificate of ownership	Required	Required	Not required; submit copy.
Commercial registered breeding operation	Required	Required	Required.
Commercial registered nursery	Required	Required	Required.
Export permit	Required	Required	Required.
Hybrid	[1] Required	Required	Required.
Import permit	Not required	Required	Required.

Type of CITES document	Present original for export or re-export validation or certification	Surrender copy upon export or re-export	Surrender original upon import or introduction from the sea
Introduction from the sea	Not applicable	Not applicable	Required.
Multiple-use permit	Required	Required	Not required; submit copy.
Pre-Convention document	Required	Required	Required.
Re-export certificate	Required	Required	Required.
Registered scientific institution CITES label	Not required	Not required	Not required.
Replacement document where a shipment has been made and is in a foreign country.	Not required	Not required	Required.
Replacement document where a shipment has not left the United States.	Required	Required	Required.
Retrospective document	Not required	Not required	Required.
Traveling live-animal exhibition	Required	Required	Not required; submit copy.

[1] Certification letter may not require validation.

Subpart C—Application Procedures, Issuance Criteria, and Conditions

§ 23.25 How do I apply for a U.S. CITES document?

(a) To apply for a U.S. CITES document, you must complete a standard application form and submit it with the processing fee, unless you are fee exempt (see 50 CFR 13.11(d)), to one of the following offices (see § 23.7):

Type of CITES document	Contact office
(1) All types of CITES documents	Office of Management Authority.
(2) Export of furs or skins of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear, and American alligator (see § 23.61).	Division of Law Enforcement at certain designated ports or regional offices.
(3) Re-export of Appendix-II and -III wildlife (unless a permit is required under any other part in this subchapter).	Division of Law Enforcement at certain designated ports or regional offices.
(4) Export of a sport-hunted trophy, its parts or products, of the Alaskan population of black bear (*Ursus americanus*).	Division of Law Enforcement at certain ports in Alaska.

(b) If you do not know the type of CITES document you need for your shipment, go to §§ 23.15–23.17.

(c) If a species is also listed under another part of this subchapter (such as endangered or threatened, see § 23.3), the requirements of all parts must be met. You may submit a single application that contains all the information needed to meet the requirements of CITES and other applicable parts.

(d) You must also follow the general permit procedures in 50 CFR part 13.

(e) You should review the issuance criteria of all applicable regulations in this subchapter that apply to the type of permit you are seeking before completing the application form.

(f) We will review your application to assess whether it contains the information needed to make the required findings.

(1) Based on available information, we will decide if any of the exemptions apply and what type of CITES document you need.

(2) If we need additional information, we will contact you. If you do not provide the information within 45 calendar days, we will place your application in our inactive files. When you provide the additional information, you may ask that we reactivate your application.

§ 23.26 How do we decide to issue or deny a request for a U.S. CITES document?

(a) Upon receiving a complete application, we will decide whether to issue a CITES document by considering:

(1) The general criteria in 50 CFR 13.21(b) and, if the species is protected under a separate law or treaty, criteria in any other applicable parts.

(2) The CITES issuance criteria provided in this subpart (see subpart D of this part for factors we consider in making certain of these findings).

(b) As needed, we will forward a copy of the application to the Office of Scientific Authority, State or other Federal government agencies, or other applicable experts. We may also query the Secretariat or foreign Management or Scientific Authorities for information to use in making the required findings.

(c) You must provide information to satisfy us that all criteria specific to the proposed activity are met before we can issue a CITES document.

(d) We will base our decision on whether to issue or deny the application on the best available information.

§ 23.27 What records do I need to apply for a U.S. CITES document?

(a) When you apply for a U.S. CITES document, you will be asked to provide information that shows the origin of the specimen.

(1) You need to provide sufficient information for us to determine if the issuance criteria in this part are met (see

the section in this subpart for each type of CITES document).

(2) Depending on the type of CITES document, you will need records to show that the specimen or founder stock was legally acquired (see § 23.50), that founder stock was acquired without detriment to the species, and that the proposed activity will not be detrimental to the survival of the species (see § 23.51).

(b) Documents to be provided in permit applications include, but are not limited to, the following:

Source of specimen	Types of records to keep
(1) Born, bred, grown, or propagated in captivity (see wild-collected if the wildlife was born in captivity from an egg collected from the wild or from parents that mated or exchanged genetic material in the wild, or the plant was grown in captivity from a propagule collected from a wild plant).	(i) Records that identify the breeder or propagator: (A) Signed and dated statement that the specimen was bred or propagated by the breeder or propagator. (B) Name and address of the breeder or propagator. (C) Identification of the specimen, including birth, hatch, or propagation date. For wildlife the identifying information could include sex, size, band number, or other markings. (ii) Examples of documents that help identify a breeder or propagator: (A) International Species Inventory System (ISIS) records. (B) Veterinary certificates. (C) Plant nursery licenses and USDA General Permit. (iii)Records that document the breeding or propagating of specimens at the facility: (A) Number of wildlife (by sex and age- or size-class) and plants at the facility. (B) How long the facility has been breeding or propagating the specimens. (C) Annual production and mortalities. (D) Number sold or transferred annually. (E) Number added from other sources annually. (F) Transaction records with the date, quantity of specimens, and name and address of seller. (G) Marking system, if applicable. (H) Photographs or video of facility, including for wildlife any activities during nesting and production and rearing of young. (iv) If a plant is propagated from exempt plant material (see § 23.88(c)), records that document the name and address of the person who sold you the plant material. If you will be seeking a certificate for artificially propagated plants for plants grown from exempt seeds, records that document the cultivated origin of the seed.
(2) Confiscated or seized	Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment that demonstrates the applicant's legal possession.
(3) Imported previously	(i) Copies of canceled CITES documents that accompanied shipments into the United States. (ii) For wildlife, copies of a cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3–177) for each shipment.
(4) Multiple ownership/purchased	(i) Records that show the specimen's origin (pre-Convention, previously imported, wild-collected, or born, bred, grown, or propagated in captivity in the United States). (ii) Records that document the history of all transfers in ownership. (iii) Each record needs to specifically identify the specimen and give the name and address of the owner.
(5) Ranched or farmed	Records documenting that the specimens were taken under a State-approved program and that all State requirements were met.
(6) Wild-collected	Records, such as permits, licenses, and/or tags, that the specimen or the founder stock was legally removed from the wild under relevant foreign, Federal, tribal, State, or local wildlife or plant conservation laws or regulations:

Source of specimen	Types of records to keep
	(i) If taken on private or tribal land, permission of the landowner. (ii) If taken in a national, State, or local park, refuge, or protected area, permission from the applicable agency. (iii) If taken on public land and no permit is required, a statement from the appropriate State or other governmental agency.

(c) You should keep records for as long as you possess the specimen, and, if you sell, donate, or transfer ownership of the specimen, you should provide records to the new owner on the origin of the specimen.

§ 23.28 What are the requirements for import permits?

(a) *Purpose.* Article III(3) of the Treaty sets out the conditions under which a Management Authority can grant an import permit.

(b) *U.S. application forms.* Complete and submit the appropriate form for the proposed activity to the Office of Management Authority (see § 23.7):

Type of application for import permits for Appendix-I specimens	Form No.
CITES:	
African Elephant and Leopard Sport-hunted Trophies	3–200–19
Appendix-I Plants	3–200–35
Appendix-I Wildlife	3–200–31
Appendix-I Wildlife Biological Samples	3–200–38
Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Wildlife	3–200–37
Marine Mammal Protection Act and CITES:	
Marine Mammals	3–200–43
Wild Bird Conservation Act and CITES:	
Personal Pet Bird	3–200–46
Scientific Research or Zoological Breeding/Display	3–200–47
Under an Approved Cooperative Breeding Program	3–200–48

(c) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Issuance criteria for import permits for Appendix-I specimens	Section
(1) The proposed import would be for purposes which are not detrimental to the survival of the species	23.51
(2) The purpose of the import is not for primarily commercial purposes	23.52
(3) The recipient is suitably equipped to house and care for the live wildlife or plants to be imported.	23.56
(4) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP	23.20
(5) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen	23.20

(d) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following:

(1) You may import and subsequently use the wildlife or plant only for the purposes stated in your application and specifically approved and conditioned in the permit. To ensure that the specimen will not be used for primarily commercial purposes after import, you must get a letter of approval from us to use the specimen for a different purpose or transfer the specimen where it will be used for a different purpose.

(2) You may not import, subsequently use, or transfer the specimen for any commercial purpose.

(3) The specimen may not be used by you or any other person to establish or participate in an operation or nursery that is breeding or propagating the species for commercial purposes.

§ 23.29 What are the requirements for export permits and re-export certificates?

(a) *Purposes.* Articles III, IV, and V of the Treaty set out the conditions under which a Management Authority may grant an export permit or re-export

certificate for Appendix-I, -II, and -III specimens.

(b) *U.S. application forms.* Complete and submit the appropriate form for the proposed activity to the Office of Management Authority or Form 3–200–26 to the Division of Law Enforcement at certain designated ports or regional offices (see § 23.7):

Type of application for export permits and re-export certificates	Form No.
CITES:	
American Ginseng	3–200–34
Captive-born Raptors—Export only	3–200–25
Captive-born Wildlife (except raptors)—Export only	3–200–24
Furs or Skins of Bobcat, River Otter, Alaska lynx, Alaska Gray Wolf, Alaska Brown Bear, or American Alligator	3–200–26
Plants	3–200–32
Trophies of Alaska Black Bear	3–200–26
Trophies by Taxidermists	3–200–28
Wildlife	3–200–27
Wildlife—Re-export only of Appendix-II and -III specimens from some Law Enforcement offices	3–200–26
Wildlife Biological Specimens	3–200–29
Endangered Species Act and CITES:	
ESA Plants	3–200–36
ESA Wildlife	3–200–37
ESA Wildlife Biological Samples	3–200–29
Marine Mammal Protection Act and CITES:	
Marine Mammals	3–200–53

(c) *A plant propagated from exempt plant material.* A plant grown from exempt plant material (see § 23.88(c)) is regulated by CITES.

(1) The proposed shipment of the specimen is treated as an export even if the exempt plant material from which it was derived was previously imported into the United States.

(2) When you apply for a CITES document, the plant may be eligible for an export permit under this section or a certificate for artificially propagated plants (§ 23.32) depending on the species and the records you have on the origin of the exempt plant material. See § 23.27 for the type of records you need.

(3) See § 23.54(f) on what we consider in deciding if a plant grown from exempt plant material qualifies as artificially propagated.

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) For an export permit:

Issuance criteria for export permits	Appendix			Section
	I	II	III	
(i) The wildlife or plant was legally acquired	Yes	Yes	Yes	23.50
(ii) The proposed export would not be detrimental to the survival of the species.	Yes	Yes	N/A	23.51
(iii) An import permit has already been granted or the Management Authority of the importing country has confirmed that it will be granted.	Yes	N/A	N/A	23.17
(iv) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.	Yes	Yes	YES	23.20
(v) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen.	Yes	Yes	Yes	23.20
(vi) For Appendix-III, the specimen originated in a country that listed the species.	N/A	N/A	Yes	23.17

(2) For a re-export certificate:

Issuance criteria for re-export certificates	Appendix			Section
	I	II	III	
(i) The wildlife or plant was legally acquired	Yes	Yes	Yes	23.50
(ii) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.	Yes	Yes	Yes	23.20
(iii) For live specimens, an import permit has already been granted or the Management Authority of the importing country has confirmed that it will be granted.	Yes	N/A	N/A	23.17
(iv) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.	Yes	Yes	Yes	23.20
(v) For re-export of specimens introduced from the sea under an international treaty, convention, or agreement that was in force for the species' protection on July 1, 1975, the specimens were taken in accordance with that treaty, convention, or agreement.	Yes	Yes	N/A	23.31
(vi) For re-export of confiscated Appendix-II specimens only, the proposed re-export would not be detrimental to the survival of the species.	N/A	Yes	N/A	23.50

(e) *Confiscated specimen.* A Management Authority may issue a re-export certificate for a confiscated specimen when the certificate indicates the specimen was confiscated and when the re-export is for one of the following:

(1) For any CITES species, the return of a live specimen to the country of export (see subpart F), placement of a live specimen in a rescue center, or judicial use.

(2) For an Appendix-II or -III species, the disposal of the specimen in the best manner possible to benefit enforcement and administration of the Convention.

§ 23.30 What are the requirements for certificates of origin?

(a) *Purpose.* Article V(3) of the Treaty explains when a shipment of Appendix-III specimens must be accompanied by a certificate of origin.

(b) *U.S. application forms.* For a certificate of origin to export specimens that are listed in Appendix III by another country, but originated in the United States, complete and submit one of the following forms to the Office of Management Authority (see § 23.7):

(1) Application Form 3–200–27 for wildlife.

(2) Application Form 3–200–32 for plants.

(c) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The specimen originated in the United States.

(2) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.

(3) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.

§ 23.31 What are the requirements for introduction-from-the-sea certificates?

(a) *Purpose.* Articles III(5), IV(6), and IV(7) of the Treaty set out the conditions under which a Management Authority may grant a certificate of introduction from the sea.

(b) *U.S. application form.* Complete and submit Form 3–200–31 to the Office of Management Authority (see § 23.7).

(c) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Issuance criteria for introduction-from-the-sea certificates	Appendix		Section
	I	II	
(1) The proposed introduction from the sea would not be detrimental to the survival of the species.	Yes	Yes	23.51
(2) The purpose of the import is not for primarily commercial purposes	Yes	N/A	23.52
(3) The recipient is suitably equipped to house and care for live wildlife or plants	Yes	N/A	23.56
(4) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.	Yes	Yes	23.20
(5) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.	Yes	Yes	23.20

(d) *Exemption.* As allowed under Article XIV(4) and (5) of the Treaty, you may directly transport into the United States any Appendix-II wildlife or plant taken in the marine environment that is not under the jurisdiction of any

country without a CITES document when all of the following conditions are met:

(1) The United States is a party to an international treaty, convention, or agreement that affords protection to the species and was in force on July 1, 1975.

(2) The ship that harvested the specimen is registered to the United States.

(3) The specimen was taken in accordance with the international treaty, convention, or agreement, including any quotas.

(4) The shipment is accompanied by any official document required under the international treaty, convention, or agreement or otherwise required by U.S. law.

(5) To re-export specimens, you must obtain a certificate from the Office of Management Authority (see § 23.7) that the specimens were taken in accordance with the provision of the pre-CITES international treaty, convention, or agreement.

(e) *Appendix III.* Introduction-from-the-sea certificate requirements do not apply to Appendix-III species.

§ 23.32 What are the requirements for certificates for artificially propagated plants?

(a) *Purpose.* Article VII(5) of the Treaty, grants an exemption to plants that are artificially propagated and a Management Authority grants a certificate.

(b) *General provisions.* We may grant a certificate for plants artificially propagated at your facility or acquired from another facility provided we find that the criteria in paragraph (d) of this section are met.

(1) For an Appendix-I plant species or a hybrid of an annotated Appendix-I species, only specimens that are artificially propagated for non-commercial purposes are eligible for this exemption. See § 23.39 for export of Appendix-I plants artificially propagated for commercial purposes.

(2) The certificate and any subsequent re-export certificate (§ 23.29) must show the source code as ''A'' for artificially propagated.

(3) For Appendix-I specimens that satisfy the requirements of this section, no CITES import permit is required.

(c) *U.S. application form.* Complete and submit Form 3–200–33 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Issuance criteria for certificates for artificially propagated plants	Appendix			Section
	I	II	III	
(1) The plant was legally acquired	Yes	Yes	Yes	23.50
(2) The plant was artificially propagated	Yes	Yes	Yes	23.54
(3) The Appendix-I species and hybrids of annotated Appendix-I species were propagated for non-commercial purposes.	Yes	N/A	N/A	23.32
(4) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.	Yes	Yes	Yes	23.20
(5) The live plant will be prepared and shipped so as to minimize risk of injury or damage to the health of the specimen.	Yes	Yes	Yes	23.20

(e) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You may not export or re-export plants removed from the wild or grown directly from wild seed, and their parts and products under this certificate.

(2) You may not export specimens of Appendix-I species and hybrids of annotated Appendix-I species propagated for commercial purposes under this certificate.

(3) You may export native plants under this certificate only when specifically approved for export and listed on the certificate, inventory sheet, or an approved species list.

(4) You may export specimens under a higher taxon name only if you identified the taxon in your application and we approved it on this certificate.

§ 23.33 What are the requirements for bred-in-captivity certificates?

(a) *Purpose.* Article VII(5) of the Treaty grants an exemption to wildlife that is bred in captivity and a Management Authority grants a certificate.

(b) *General provisions.* We may grant a certificate for wildlife bred in captivity at your facility or acquired from another facility provided we find that criteria in paragraph (d) of this section are met.

(1) For Appendix-I wildlife, only specimens that are bred in captivity for non-commercial purposes are eligible for this exemption. *See* § 23.38 for registration of an Appendix-I commercial breeding operation.

(2) The certificate and any subsequent re-export certificate (§ 23.29) must show the source code as ''C'' for bred in captivity.

(3) For Appendix-I specimens that satisfy the requirements of this section, no CITES import permit is required.

(c) *U.S. application form.* Complete and submit Form 3–200–24 to the Office of Management Authority (*see* § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Issuance criteria for bred-in-captivity certificates	Appendix			Section
	I	II	III	
(1) The wildlife was legally acquired	Yes	Yes	Yes	23.50

Issuance criteria for bred-in-captivity certificates	Appendix			Section
	I	II	III	
(2) The wildlife was bred in captivity	Yes	Yes	Yes	23.53
(3) The Appendix-I species were bred for non-commercial purposes [1]	Yes	N/A	N/A	23.33
(4) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.	Yes	Yes	Yes	23.20
(5) The live wildlife will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.	Yes	Yes	Yes	23.20

[1] This issuance criterion does not apply to live wildlife that is part of a traveling live-animal exhibition.

§ 23.34 What are the requirements for plant hybrids?

(a) *General provisions.* Except as provided in paragraph (b) of this section, the export, re-export, or import of a plant hybrid must be accompanied by a valid CITES document, as follows:

If the plant is:	Then the specimen is:
(1) An artificially propagated hybrid of one or more unannotated Appendix-I species or other taxa.	Treated as if listed in Appendix II.
(2) A hybrid that includes two or more CITES species in its lineage and is not a specimen covered in paragraph (a)(1) of this section.	Considered to be listed in the more restrictive appendix, with Appendix I being the most restrictive and Appendix III the least.
(3) A hybrid that includes one CITES species in its lineage and is not a specimen covered in paragraph (a)(1) of this section.	Considered to be listed in the appendix in which the species is listed in the CITES appendices.

(b) *Exception.* Plant hybrids may be excluded from CITES controls by an annotation in Appendix II or III (see § 23.88).

§ 23.35 What are the requirements for wildlife hybrids?

(a) *Definition of recent lineage.* Recent lineage for the purposes of this section means the last four generations of that specimen's ancestry (direct line of descent).

(b) *General provisions.* Except as provided in paragraph (c) of this section, the export, re-export, or import of a wildlife hybrid must be accompanied by a valid CITES document that shows the hybrid listed in the following appendix:

If at least one specimen in the recent lineage is included in:	Then the specimen is included in:
(1) Appendix I	Appendix I.
(2) Appendix II, and an Appendix-I species is not included in the recent lineage	Appendix II.
(3) Appendix III, and an Appendix-I or -II species is not included in the recent lineage	Appendix III.

(c) *Exempt wildlife hybrid.* Shipment of a wildlife hybrid that does not have CITES specimens in its recent lineage (exempt wildlife hybrid) must be accompanied by either a CITES document or a letter issued by us or a foreign Management Authority. The letter must describe the specimen, provide the scientific name, and certify that the wildlife contains no CITES specimens in the last four generations of its ancestry.

(d) *U.S. application for an exempt wildlife hybrid.* To apply for a hybrid exemption letter, provide the following to the Office of Management Authority (see § 23.7), or complete and submit application Form 3–200–57:

(1) A signed and dated request for a hybrid exemption letter.

(2) Your name and address.

(3) The name and address of the recipient in the foreign country.

(4) The scientific and common names of the species in the hybrid.

(5) Description of the wildlife, including sex and birth date, if known.

(6) Information that shows a CITES species does not occur in the last four generations of the specimen's ancestry. This includes, but is not limited to, a pedigree or official registration showing direct lineage.

(7) The U.S. port through which the export or re-export will occur.

(e) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The wildlife hybrid does not include any CITES specimen in its recent lineage.

(2) The scientific name of the CITES specimen that is in the lineage of the hybrid is standard nomenclature in the CITES appendices or references adopted by the COP.

§ 23.36 What are the requirements to travel internationally with my personally owned live wildlife?

(a) *Purpose.* A Management Authority may use the exemption in Article VII(3) of the Treaty to issue a certificate of ownership that approves cross-border movements of personally owned live wildlife.

(b) *General provisions.* You, the owner of live wildlife, may apply for a certificate of ownership if you frequently take the wildlife with you for companionship or a non-commercial competition to another country.

(1) You must obtain the certificate from the Management Authority in the country where you usually live.

(2) If offspring are born or you acquire specimens while you are traveling in another country, you must obtain the appropriate CITES document for the export or re-export of the wildlife, not a certificate of ownership, from the Management Authority of that country.

(3) Upon return home, you may apply for a certificate of ownership for wildlife born or acquired overseas.

(c) *U.S. application form.* Complete and submit Form 3–200–54 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) You own the live wildlife and the cross-border movement is for personal companionship or use in a non-commercial competition, such as falconry.

(2) You usually live in the United States.

(3) The wildlife was legally acquired (see § 23.50).

(4) You do not intend to sell or otherwise transfer the wildlife while traveling internationally.

(5) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.

(6) The Management Authority of the country of import has agreed to the cross-border movement.

(7) The wildlife is appropriately identified or securely marked.

(8) The wildlife is transported and cared for in a way that minimizes risk of injury, damage to the health, or cruel treatment of the specimen.

(e) *Standard conditions.* In addition to the conditions in § 23.45, all of the following conditions must be met:

(1) You may transport the wildlife for non-commercial purposes only.

(2) You must accompany the wildlife during any cross-border movement.

(3) You may not sell or otherwise transfer the specimen while traveling internationally.

(4) You must retain the original certificate and have it validated at each border crossing.

(5) If the certificate is lost, stolen, or accidentally destroyed, you must obtain a replacement certificate from the issuing Management Authority (see § 23.42).

(6) If you no longer own the live wildlife, the original certificate must be immediately returned to the issuing Management Authority.

§ 23.37 What are the requirements for pre-Convention specimens?

(a) *Purpose.* Article VII(2) of the Treaty allows international trade in pre-Convention specimens when the exporting or re-exporting country is satisfied that the specimen was acquired before the provisions of CITES applied to it and issues a CITES document to that effect.

(b) *General provisions.* The following general provisions apply:

(1) Trade in specimens under the pre-Convention exemption is only possible if the specimen is considered pre-Convention by both the importing and exporting countries.

(2) When a species is transferred from one appendix to another (such as Appendix II to Appendix I), the pre-Convention date is the date the species was first listed under CITES.

(3) For qualifying Appendix-I specimens, no CITES import permit is required.

(4) The pre-Convention exemption does not apply to offspring of any wildlife or plants born or propagated after the date the species was first listed under CITES.

(c) *U.S. application form.* Complete and submit Form 3–200–23 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The wildlife or plant (including parts and products) was removed from the wild or held in captivity or a controlled environment before the date CITES first applied to it.

(2) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.

(3) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.

(4) For the re-export of a pre-Convention specimen previously imported under a CITES document, the wildlife or plant was legally acquired (see § 23.50).

(e) *U.S. inventory.* If you possess an inventory or stockpile of specimens of species newly listed, the following applies:

(1) You may register with us the inventory or stockpile that you possessed before the effective date of the listing. Complete and submit application form 3–200–59 to the Office of Management Authority (see § 23.7). This registration will expedite the review of applications for pre-Convention certificates.

(2) If you wish to commercially export or re-export pre-Convention stock after the effective date of listing and have not registered your inventory, we will require convincing evidence that the specimens are pre-Convention. This evidence may include information from your recordkeeping system that shows an audit trail of initial stock and quantities exported, re-exported, sold or disposed of domestically, and new stock acquired since the listing.

§ 23.38 What are the requirements for registering an Appendix-I commercial breeding operation?

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I specimens that are bred in captivity for commercial purposes shall be treated as if they were listed in Appendix II.

(b) *General provisions.* If you are breeding Appendix-I wildlife for commercial purposes, you may apply to register your operation.

(1) If you are proposing to breed non-native species, you must conduct a study of ecological risks that the escape of specimens may pose to the ecosystem and native species and how to prevent any negative effects.

(2) In the United States, upon receipt of a complete registration request from a U.S. operation, we will publish a notice of receipt in the **Federal Register.** Each notice will invite interested entities to submit written data, views , or comment with respect to the registration request within 30 days after the date of the notice.

(3) If we are satisfied that the operation meets the conditions for registration, we will send the request from a U.S. operation to the Secretariat or provide comments to the Secretariat on requests by other Parties.

(4) If the request is the first registration for a species, the Secretariat will refer it to the appropriate experts for advice and notify the Parties of the registration request. If any Party objects to the registration within a 120-day comment period, approval of the registration will require a two-thirds majority vote by Parties at the next COP or by a postal vote.

(5) If other operations have already been registered for the species, the Secretariat may send the request to appropriate experts for advice if significant new information is available or if there are other reasons for concern.

(6) If the Secretariat is not satisfied that the operation meets the conditions for registration, it will provide the submitting Management Authority with an explanation of the reasons for rejection and indicate the specific conditions that must be met before the registration can be accepted.

(7) When the Secretariat is satisfied that the operation meets the registration requirements, it will include the operation in its register.

(8) Operations are assigned an identification number and listed in the official register. Registration is not final until the Secretariat notifies all Parties.

(9) A Management Authority may apply special criteria for the registration of operations intending to breed specimens of species that are known to be difficult to breed in captivity, species that have specific requirements for successful breeding in captivity, or specimens that are known to be difficult to distinguish from wild-taken specimens when in trade.

(10) If a Party believes that a registered operation does not meet the bred-in-captivity requirements, it may, after consultation with the Secretariat and the Party concerned, propose that the COP delete the operation from the register by a two-thirds vote of the Parties.

(11) The registering Management Authority must monitor registered operations to ensure that they continue to meet the registration requirements.

(12) A Party may unilaterally request the removal of a registered operation within its jurisdiction by notifying the Secretariat.

(c) *U.S. application to register.* Complete and submit Form 3–200–55 to the Office of Management Authority (see § 23.7).

(d) *Criteria.* For your breeding operation to be registered, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Criteria for registering an Appendix-I breeding operation	Section
(1) The specimen was bred for commercial purposes	23.38
(2) The founder stock was legally acquired	23.50
(3) The wildlife was bred in captivity	23.53
(4) Where the establishment of a breeding operation involves the removal of animals from the wild (allowable only under exceptional circumstances), the operation must demonstrate to the satisfaction of the Management Authority and the Secretariat that the removal is or was not detrimental to the conservation of the species	N/A
(5) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP	23.20
(6) The breeding operation will make a continuing, meaningful contribution to the conservation of the species, as warranted by the conservation needs of the species	N/A

(e) *Standard conditions of the registration.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You must uniquely mark, as proposed at the time of registration, all specimens from the breeding operation. Birds must have closed bands.

(2) You may not import Appendix-I specimens for primarily commercial purposes (such as to establish a commercial captive-breeding operation) except from breeding operations registered for that species.

(3) You must provide information each year on the year's production and your current breeding stock. You may provide the information by mail, fax, or e-mail.

(4)You must allow our agents to enter the premises at any reasonable hour to inspect wildlife held or to inspect, audit, or copy applicable records.

(f) *Export procedure for registered operations.* Appendix-I species bred at a registered operation are treated as if listed in Appendix II.

(1) The export permit (see § 23.29) may be granted to the registered operation or to persons who have purchased a specimen that originated at the registered operation if the specimen has the unique mark applied by the operation.

(2) The export permit must show the source code as ''D'' and give the identification number of the registered breeding operation where the specimens originated.

(3) Any subsequent re-export certificates (§ 23.29) for these specimens must also show the source code as ''D'' and give the number of the breeding operation.

(4) No CITES import permit is required for qualifying specimens.

§ 23.39 What are the requirements for export of Appendix-I plants artificially propagated for commercial purposes?

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I plants artificially propagated for commercial purposes shall be treated as if they were listed in Appendix II.

(b) *General provisions.* An export permit can be issued for specimens of Appendix-I species and hybrids of annotated Appendix-I species artificially propagated for commercial purposes at your facility or acquired from other facilities when the species meets the criteria in paragraph (d) of this section. These artificially propagated specimens are treated as if listed in Appendix II.

(1) The export permit is valid for only 6 months and must show the source code as ''D'' for plants artificially propagated for commercial purposes.

(2) Any subsequent re-export certificate (§ 23.29) for these specimens must also show the source code as ''D.''

(3) No CITES import permit is required for qualifying specimens.

(c) *U.S. application form.* Complete and submit Form 3–200–33 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

Issuance criteria for export permits	Section
(1) The specimen was propagated for commercial purposes	23.39
(2) The founder stock was legally acquired	23.50
(3) The proposed export would not be detrimental to the survival of the species	23.51
(4) The plant was artificially propagated	23.54
(5) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP	23.20
(6) The live plant will be prepared and shipped so as to minimize risk of injury or damage to the health of the specimen	N/A

(e) *Nursery registration.* [Reserved]

§ 23.40 What are the requirements for registered scientific institutions?

(a) *Purpose.* Article VII(6) of the Treaty grants an exemption that allows international trade in certain specimens for non-commercial loan, donation, or exchange between scientific institutions.

(b) *General provisions.* Scientific institutions must register with the Management Authority in their country. Scientists who wish to use this exemption must be affiliated with a registered scientific institution.

(1) The Management Authority will assign the institution a five-character code, consisting of the ISO country code and a unique, three-digit number. In the case of a non-Party, the Secretariat will ensure that the institution meets the standards and assign it a unique code.

(2) The Management Authority communicates the name, address, and assigned code to the Secretariat, who maintains a list of registered scientific institutions and provides that information to all Parties.

(3) A registered scientific institution does not need separate CITES documents for the non-commercial loan, donation, or exchange of preserved, frozen, dried, or embedded museum specimens, herbaria specimens, or live plant material with another registered institution. The shipment must have an external label that contains specified information.

(c) *U.S. application to register.* To register, complete and submit application Form 3–200–39 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You, a registered scientific institution, must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) Collections of wildlife or plant specimens are permanently housed and professionally curated, and corresponding records are kept.

(2) Specimens are accessible to all qualified users, including those from other institutions.

(3) Records are properly accessioned in a permanent catalog.

(4) Records are permanently maintained for loans and transfers to other institutions.

(5) Specimens are acquired primarily for research that is to be reported in scientific publications.

(6) Collections are prepared and arranged in a way that ensures their utility.

(7) Specimen labels, permanent catalogs, and other records are accurate.

(8) Specimens are lawfully acquired and possessed under a country's national wildlife and plant laws.

(9) Appendix-I specimens are permanently and centrally housed under the direct control of the institution that manages them in a way that prevents their use for decoration, trophies, or commercial purposes.

(e) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You are only authorized to send and receive preserved, frozen, dried, or embedded museum specimens, herbaria specimens, or live plant material as a non-commercial loan, donation, or exchange.

(2) You and the receiving or sending scientific institution must be registered by the applicable Management Authorities, and the registrations must be on file with the Secretariat.

(3) You must ship specimens only for scientific research and not for use as decoration, trophies, or commercial purposes.

(4) You must affix a customs declaration label to the outside of each shipping container or package that contains all of the following:

(i) The acronym ''CITES.''

(ii) A description of the contents (such as ''herbarium specimens'').

(iii) The names and addresses of the sending and receiving institutions.

(iv) The signature of a responsible officer of the sending registered scientific institution.

(v) The scientific institution codes of both registered scientific institutions involved in the loan, donation, or exchange.

(5) You must have information to show that specimens were legally acquired in the country of origin and/or legally imported.

(6) You are only authorized to receive specimens that are under the authority of a registered scientific institution and have been permanently and accurately recorded by the sending institution.

(7) You are authorized to import, export, or re-export preserved, frozen, dried, or embedded biological tissue samples, including blood and tissue samples, that will be partially destroyed during analysis provided a portion of the sample is maintained at the museum for future scientific reference. This does not include samples that will be completely destroyed during analysis.

§ 23.41 What are the requirements for traveling live-animal exhibitions?

(a) *Purpose.* Article VII(7) of the Treaty grants an exemption for specimens that qualify as bred in

captivity or pre-Convention and are part of a traveling live-animal exhibition.

(b) *General provisions.* You, as an exhibition wishing to travel internationally with live wildlife, must register with the Management Authority in the country where the exhibition is usually based.

(1) You must obtain an original pre-Convention or bred-in-captivity certificate for each specimen that indicates it is part of a traveling live-animal exhibition (see § 23.5).

(2) Parties should not collect the original certificate at their borders but should treat this CITES document like a passport for export and re-export from each country.

(3) Parties should check specimens closely to determine that the specimen matches the certificate and ensure that each specimen is being transported and cared for in a manner that minimizes the risk of injury, damage to the health, or cruel treatment of the specimen.

(4) If offspring are born or you acquire specimens while traveling in another country, you must obtain the appropriate CITES document for the export or re-export of the wildlife from the Management Authority of that country (for persons subject to the jurisdiction of the United States, the purchase in foreign commerce or import of any ESA species also requires a permit from the Office of Management Authority, see 50 CFR part 17).

(5) Upon return home, you may apply for a traveling live-animal exhibition certificate for wildlife born or acquired overseas.

(c) *U.S. application form.* Complete and submit Form 3–200–30 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) You own the live wildlife, and the cross-border movement is for display or entertainment purposes, and not for breeding or other purposes.

(2) You are based in the United States.

(3) The specimen meets the issuance criteria for a pre-Convention certificate in § 23.37(d) or a bred-in-captivity certificate in § 23.33(d).

(4) You do not intend to sell or otherwise transfer the wildlife while traveling internationally.

(5) The wildlife is securely marked or identified in such a way that border officials can verify that the certificate and specimen correspond.

(e) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) The certificate may be used by you, but must not be transferred or assigned to another person or traveling live-animal exhibition.

(2) You must transport internationally the specimen only for display or entertainment purposes, not for breeding or other purposes.

(3) You must retain the original certificate and have it validated at each border crossing.

(4) You must not sell or otherwise transfer the specimen while traveling internationally.

(5) If the certificate is lost, stolen, or accidentally destroyed, you must obtain a replacement certificate only from the issuing Management Authority (see § 23.42).

(6) If you no longer own the wildlife, the original certificate must be immediately returned to the issuing Management Authority.

§ 23.42 What are the requirements to replace lost, damaged, stolen, or accidentally destroyed CITES documents?

(a) *General provisions.* A Management Authority may issue duplicate CITES documents to replace lost, damaged, stolen, or accidentally destroyed CITES documents under the following general provisions:

(1) For commercial shipments, the issuing Management Authority should immediately inform the Management Authority in the country of destination and the Secretariat or send them a copy of the replacement CITES document.

(2) The replacement CITES document must indicate that it is a ''true copy of the original'' and include the number and expiration date of the document being replaced and the reason for replacement.

(b) *U.S. application procedures.* To amend or renew a CITES document, see 50 CFR part 13. To apply for a replacement CITES document, you must provide all of the following:

(1) Complete and submit application Form 3–200–56 to the Office of Management Authority (see § 23.7).

(2) Submit an application processing fee unless you are fee exempt (see 50 CFR 13.11(d)).

(3) Consult the list to find the types of information you need to provide (more than one circumstance may apply to you):

If:	Then:
(i) The shipment has already occurred.	Provide copies of: (A) For wildlife, the validated CITES document and cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3–177). (B) For plants, the validated CITES document. (C) Any correspondence you have had with the shipper or importing country's Management Authority concerning the shipment.
(ii) The original CITES document no longer exits.	Submit a signed, dated, and notarized statement that: (A) Refers to the permit number and describes the circumstances that resulted in the loss or destruction of the original CITES document. (B) States whether the shipment has already occurred. (C) Requests a replacement U.S. CITES document.
(iii) An original CITES document exists but has been damaged.	Submit the original damaged CITES document and a signed, dated, and notarized statement that: (A) Describes the circumstances that resulted in the CITES document being damaged. (B) States whether the shipment has already occurred. (C) Requests a replacement U.S. CITES document.

(c) *Issuance criteria.* For us to issue or accept a replacement CITES document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) You have fully explained the circumstances responsible for the lost, damaged, stolen, or accidentally destroyed CITES document and they are reasonable.

(2) If the shipment has already been made, the Management Authority of the importing country has indicated it will accept the replacement CITES document.

(d) *Standard conditions*. In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) If the original CITES document is found, you must return it to the issuing Management Authority.

(2) A CITES document issued for a shipment that has already occurred does not require validation.

(e) *Validation*. For an export or re-export that has not left the United States, follow the procedures in § 23.24. If the shipment has been made and is in a foreign country, submit the original un-validated replacement CITES document to the appropriate foreign authorities. We will not validate the replacement CITES document for a shipment that has already been shipped to a foreign country.

§ 23.43 What are the requirements for retrospective CITES documents?

(a) *General provisions*. Except as provided in paragraph (b) of this section, a Management Authority will not:

(1) Issue CITES documents retrospectively.

(2) Provide exporters, re-exporters, and/or consignees in importing countries with declarations about the legality of specimens exported or re-exported from their countries without the required CITES document.

(3) Provide exporters, re-exporters, and/or consignees in importing countries with declarations about the legality of CITES documents that at the time of export, re-export, or import did not meet the requirements of CITES.

(4) Accept CITES documents, including ones for in-transit shipments, that were issued retrospectively.

(b) *Special provisions.* A Management Authority can issue or accept a retrospective CITES document only if the Management Authorities of the importing and exporting countries, after a prompt and thorough investigation and in close consultation, are satisfied that all the following conditions are met:

(1) The request for a retrospective CITES document is being made at the time the shipment is being imported.

(2) The exporter, re-exporter, or importer is not responsible for the irregularities.

(3) The export, re-export, or import of the specimens are otherwise in compliance with CITES and the relevant national legislation of the countries involved.

(4) The Management Authority sends a copy of any retrospective CITES document to the Secretariat. It must contain a statement that it was issued retrospectively and give the reason for the issuance.

(c) *U.S. application*. You must provide the following information to the Office of Management Authority (§ 23.7):

(1) A completed application Form 3–200–58.

(2) A completed application form for the type of activity you conducted (see § 23.17).

(d) *Issuance criteria.* For us to issue or accept a retrospective CITES document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The wildlife or plant has been exported, re-exported, or introduced from the sea without a valid CITES document and was presented to the appropriate official for inspection at the time of import.

(2) The wildlife or plants would have qualified for the applicable CITES document if you had applied for it before importing, introducing from the sea, exporting, or re-exporting the specimen.

(3) The import, introduction from the sea, export, or re-export did not require a U.S. permit under another part of this subchapter.

(4) As provided in paragraph (e) of this section, the irregularities are not attributable to you or an agent on your behalf.

(5) The importing Management Authority has agreed to accept the retrospectively issued CITES document.

(e) *Irregularities*. In the United States, irregularities include one of the following:

(1) You tried to find out the requirements and can show that you were misinformed about CITES requirements by an employee of the U.S. Fish and Wildlife Service, APHIS (for plants), or the Management Authority in the foreign country that should have informed you about CITES documents.

(2) The wildlife or plant item qualifies as a personal or household effect (see § 23.12).

(3) For live Appendix-II or -III wildlife or plants, the specimen is owned by you for your personal use, accompanied you as personal baggage, and number no more than two.

(4) For a pre-Convention Appendix-I wildlife or plant, you own the specimen for your personal use and it accompanied you as personal baggage.

(f) *Validation*. Submit the original un-validated retrospective CITES document to the appropriate foreign authorities. We will not validate the retrospective CITES document for a shipment that has already been shipped to a foreign country.

§ 23.44 How long is a CITES document valid?

(a) *Purpose.* Article VI(2) of the Treaty sets the time period within which an export permit is valid. Validity periods for other CITES documents are prescribed in this section.

(b) *Time of validity.* CITES documents are valid only if presented for import or introduction from the sea within the time of validity (before midnight of the expiration date) noted on the face of the document.

(1) An export permit and re-export certificate will be valid for no longer than 6 months from the issuance date.

(2) An import permit, introduction-from-the-sea certificate, and certificate of origin will be valid for no longer than 12 months from the issuance date.

(3) A certificate for traveling live-animal exhibitions and certificate of ownership will be valid for no longer than 3 years from the issuance date.

(4) Other CITES documents will state the length of their validity, but no U.S. CITES document will be valid for longer than 4 years from the issuance date.

(c) *Extension of validity.* The validity of a CITES document may not be extended beyond the expiration date on the face of the document, except under limited circumstances for certain timber species as outlined in § 23.64.

§ 23.45 What CITES document conditions do I need to follow?

(a) *General conditions.* You must comply with all of the following general conditions:

(1) For a U.S. CITES document, you must comply with the provisions of 50 CFR part 13 as conditions of the document. You must comply with all applicable foreign, local, State, tribal, or Federal wildlife or plant conservation laws, as well as the regulations in this subchapter, including, but not limited to, any that require permits.

(2) For export and re-export of live wildlife, the CITES document is only valid if the transport conditions comply with the CITES Guidelines for Transport of Live Animals or, in the case of air transport, with the International Air Transport Association Live Animal Regulations.

(3) For export and re-export of live plants, you must prepare and ship the

specimens so as to minimize the risk of injury or damage to health. You must ensure that living specimens to be shipped are healthy.

(4) You must return the original CITES document to the issuing office if you do not use it, it expires, or you request renewal or amendment.

(5) When appropriate, a Management Authority may require that you identify Appendix-II and -III wildlife or plants with a mark. All live Appendix-I wildlife must be securely marked or uniquely identified.

(b) *Standard conditions.* You must comply with the standard conditions provided in this part for specific types of CITES documents.

(c) *Special conditions.* We may condition a CITES document with special conditions based on the needs of the species or the proposed activity. You must comply with any special conditions contained in or attached to a CITES document.

Subpart D—Factors We Consider in Making Certain Findings

§ 23.50 What factors do we consider in making a legal acquisition finding?

(a) *Purpose.* Articles III, IV, and V of the Treaty require a Management Authority to make a legal acquisition finding before granting export permits and re-export certificates.

(b) *Legal acquisition.* Legal acquisition refers to both:

(1) Whether the specimen and its founder stock were traded internationally in accordance with the provisions of CITES.

(2) Whether the specimen and its founder stock were obtained in accordance with the provisions of national laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws.

(c) *General provisions.* We must make a finding that a specimen was legally acquired before we can issue certain kinds of CITES documents.

(1) We make this decision on a case-by-case basis considering all available information.

(2) As provided in paragraphs (d) through (j) of this section, you, the applicant, must provide sufficient information to establish the origin of the specimen and whether it was legally acquired (see § 23.27 for details on recordkeeping or the applicable application form referenced in subpart C of this part).

(3) For States and Tribes that have requested export approval on a State-wide or reservation-wide basis and that have management programs that provide us with the information necessary to make administrative findings, we make legal acquisition findings on a State or tribal basis. Permit applications for exports under these administrative findings must be accompanied by information showing that the specimens were legally acquired under State or tribal requirements.

(4) As necessary, we consult with foreign Management or Scientific Authorities, the CITES Secretariat, State conservation agencies, enforcement staff within our agency and APHIS, and other appropriate experts.

(d) *Personal use.* To establish legal acquisition of any specimen to be exported or re-exported for your personal use, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria (If any of the following criteria do not apply, then you must comply with paragraphs (e) through (i) of this section.):

(1) You acquired the specimen in the United States and personally own and possess it for strictly non-commercial purposes.

(2) The number of specimens is reasonably appropriate for the nature of your export or re-export as personal use.

(3) There is no persuasive evidence of illegal transactions involving the specimen.

(4) You must provide information on the origin of parental or founder stock, if we request it as provided in paragraph (f)(2) of this section.

(5) You must provide information to show legal acquisition:

If the specimen was:	Then you must provide:
(i) Born, bred, propagated, or grown in captivity in the United United States (see wild-collected if the wildlife was born in captivity from an egg collected from the wild or from parents that mated or exchanged genetic material in the wild, or the plant was grown in captivity from a propagule collected from a plant).	A signed breeder's or propagator's statement (see § 23.27) or a statement with the name and address of breeder or propagator, date of sale or transfer, species, and birth or hatch date for wildlife.
(ii) Imported previously by someone other than the applicant.	Copies of a canceled CITES or other import documents under which the specimen was exported or re-exported.
(iii) Of unknown origin	A complete description of the circumstances under which you acquired it (such as where, when, and from whom you acquired the specimen), including your efforts to obtain information on the origin of the specimen.
(iv) Taken from the wild in the United States	Information showing the specimen was legally removed from the wild under relevant wildlife or plant conservation laws or regulations.

(e) *Multiple ownership.* In addition to meeting the requirements of paragraphs (f) through (i) of this section, if you were not the importer, collector from the wild, or breeder or propagator, you must show a clear record of the history of ownership that identifies the specimen and, if applicable under paragraph (f) of this section, its founder stock through each owner.

(f) *Born, bred, grown, or propagated in captivity.* For the export of specimens that are born, bred, grown, or propagated in captivity, we need reasonable proof that the founder stock or parental stock was legally acquired. For wildlife that was born in captivity from an egg collected from the wild from parents that mated or exchanged genetic material in the wild, or a plant that was grown in captivity from a propagule collected from a wild plant, go to paragraph (h) of this section.

(1) You must provide information as follows:

If the species is listed in:	Then you must establish that:
(i) Appendix I	The founder stock was legally acquired.
(ii) Appendix II or III and the founder stock was collected from the wild in the United States.	The founder stock was legally acquired.
(iii) Appendix II or III and the founder stock was not collected from the wild in the United States, except for a plant grown from exempt plant material (see § 23.88(c)).	The parental stock was legally acquired and, if requested under paragraph (f)(2) of this section, founder stock was legally acquired.

(2) You must also provide information to establish that the founder stock was legally acquired if we request it based on any of the following factors:

(i)The species is uncommon in captivity in the United States.

(ii) The species has not been documented to breed or propagate readily in captivity.

(iii) There is significant illegal trade in the species.

(iv) There is little or no record of legal import of the species into the United States.

(v) Range countries do not allow commercial export, or allow only limited, non-commercial export, of the species.

(g) *Imported previously.* For the re-export of specimens that were previously imported into the United States:

(1) You must provide information to satisfy us that the specimen was legally imported.

(2) We consider any reliable, relevant information we receive concerning the validity of a CITES document, regardless of whether the specimen has been imported and the shipment cleared by us or APHIS.

(h) *Wild-collected in the United States.* For specimens collected from the wild in the United States:

(1) You must provide information showing the legal collection of any specimen.

(2) We consider the site where the specimen was collected, whether the species is known to occur at that site, the abundance of the species at that site, and whether permission of the appropriate management agency or landowner was obtained to collect the specimen.

(i) *Confiscated specimens.* We may issue CITES documents to export or re-export confiscated Appendix-II and -III wildlife or plants under the following circumstances:

(1) You must provide a copy of the legal document that shows the transfer of the confiscated specimen to you and shows that any conditions on the document have been met.

(2) If the specimen is offspring of the confiscated wildlife or plant, you must provide information that it is the offspring of the documented confiscated specimen.

(3) All CITES findings must be made, including the finding by the Office of Scientific Authority that the export or re-export will not be detrimental to the survival of the species (see § 23.51).

(j) *Donated specimens of unknown origin.* We may issue CITES documents to export or re-export donated wildlife or plants of unknown origin under the following circumstances:

(1) You are a public institution (see 50 CFR 10.12) that did not solicit the donation.

(2) You follow standard recordkeeping practices and make reasonable efforts to obtain supporting information on the origin of the specimen.

(3) You provide information to show you made a reasonable effort to find a suitable recipient in the United States.

(4) The export or re-export will provide a conservation benefit to the species.

(5) There is no persuasive information of illegal transactions involving the specimen.

(6) The export or re-export is non-commercial, with no money or barter exchanged except for shipping costs.

(7) There is no history of institutions receiving a series of rare and valuable specimens or a large quantity of wildlife or plants of unknown origin.

(8) All other CITES findings must be made, including the finding by the Office of Scientific Authority that the export or re-export will not be detrimental to the survival of the species (see § 23.51).

§ 23.51 What factors do we consider in making a non-detriment finding?

(a) *Purpose.* Articles III and IV of the Treaty require that before we issue a CITES document we find that a proposed export or introduction from the sea of Appendix-I or -II specimens is not detrimental to the survival of the species and that a proposed import of an Appendix-I species is not for purposes that would be detrimental to the survival of the species.

(b) *Types of detriment.* Detrimental activities, depending on the species, could include, among other things, non-sustainable use (see § 23.5) and proposed activities that would pose a net harm to the status of the species in the wild. For Appendix-I species, it also includes use or removal from the wild that results in habitat loss or destruction, interference with recovery efforts for a species, or stimulation of further trade.

(c) *General factors.* The applicant must provide sufficient information for us to make a finding of non-detriment. In addition to factors in paragraphs (d) and (e) of this section, we will consider whether:

(1) There is scientific information that demonstrates the proposed activity represents sustainable use.

(2) The removal of the animals or plants from the wild is part of a scientifically based sustainable-use management plan, if established, that is designed to eliminate over-utilization of the species.

(3) If there is no sustainable-use management plan established, the removal of the plants or animals from the wild would not contribute to the over-utilization of the species, considering both domestic and international uses.

(4) The proposed activity, including the methods used to acquire the specimen, would pose no net harm to the status of the species in the wild.

(5) The proposed activity would not lead to long-term declines that would place the viability of the affected population in question.

(6) The proposed activity would not lead to significant habitat or range loss or restriction.

(d) *Additional factor for Appendix-II species.* In addition to the general factors in paragraph (c) of this section, we will consider whether the intended export of an Appendix-II species would be unsustainable or cause a significant risk that the species would qualify for inclusion in Appendix I.

(e) *Additional factors for Appendix-I species.* In addition to the general factors in paragraph (c) of this section,

we will consider whether the proposed activity:

(1) Would not cause an increased risk of extinction for either the species as a whole or the population from which the specimen was obtained.

(2) Would not interfere with the species' recovery.

(3) Would stimulate additional trade in the species. If the proposed activity does stimulate trade, we will consider whether the anticipated increase in trade would lead to the decline of the species.

(f) *How we make our findings.* We base the non-detriment finding on the best available biological information. We also consider trade information, including trade demand, or other scientific management information.

(1) We consult with the States, other Federal agencies, experts, and the range countries of the species.

(2) We consult with the Secretariat and other Parties to monitor the level of trade that is occurring in the species.

(3) Based on the factors in paragraphs (c) through (e) of this section, we evaluate the biological impact of the proposed activity.

(4) In cases where insufficient information is available or the factors above are not satisfactorily addressed, we act in a precautionary manner and would be unable to make the required finding of non-detriment.

(g) *Risk assessment.* We review the status of the species in the wild and the degree of risk the proposed activity poses to the species to determine the level of scrutiny needed to make a finding. We give greater scrutiny, require more detailed information, and make our decisions in a more precautionary manner for activities that pose a greater risk to a species in the wild. We consider the cumulative risks, recognizing that each aspect of international trade has a continuum of risk (from high to low) associated with it as follows:

(1) Status of the species: From Appendix I to Appendix II.

(2) Origin of the specimen: From wild-collected specimens to captive or cultivated specimens that cannot be considered artificially propagated or bred in captivity to specimens that are artificially propagated or bred in captivity.

(3) From plants grown from non-exempt seeds or seedlings to plants grown from exempt seeds or seedlings.

(4) From native species to non-native species.

(5) From high potential for invasive effects to limited potential for invasive effects.

(6) From high volume of commercial trade to low volume of trade.

(7) From commercial shipment to non-commercial shipment.

(8) From high occurrence of illegal trade to low occurrence of illegal trade.

(9) From high risk of disease transmission to limited risk of disease transmission.

(10) From listed under Article II(1) or II(2)(a) of the Treaty to listed under Article II(2)(b).

(h) *Quotas for Appendix-I species.* When an export quota has been set by the COP for an Appendix-I species, we will consider the scientific and management aspects used as the basis of the quota when we make our non-detriment finding. We will contact the Scientific and Management Authorities of the exporting country for further information if needed.

§ 23.52 What factors do we consider in making a finding of primarily commercial purposes?

(a) *Purpose.* Under Article III, paragraphs 3(c) and 5(c) of the Treaty, an import permit or an introduction-from-the-sea certificate for Appendix-I species can be issued only if the Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes.

(b) *General principles.* We will follow these general principles in making a decision on whether a proposed activity is for primarily commercial purposes:

(1) Trade in Appendix-I species must be subject to particularly strict regulation and authorized only in exceptional circumstances.

(2) The definition of ''commercial'' in § 23.5 applies.

(3) We will look at all aspects of the intended use of the import or introduction from the sea. If the non-commercial aspects do not clearly predominate, we will consider the import or introduction to be primarily commercial.

(4) The burden of proof for showing that the intended use is clearly non-commercial is on you, the applicant.

(5) While the nature of the transaction between the owner in the country of export and the recipient in the country of import or introduction may be commercial, it is the intended use of the specimen that must not be for primarily commercial purposes.

(6) All net profits generated in the United States must be used for the conservation of the Appendix-I species in a range country.

(7) Net profit includes all funds or other valuable considerations (including enhanced value of common stock shares) received or attained by you or those affiliated with you as a result of the import or introduction, to the extent that such funds or other valuable considerations exceed the reasonable expenses that are properly attributable to the proposed activity.

(c) *Examples.* The following are examples of categories of transactions in which the non-commercial aspects may predominate depending on the facts of each situation. The discussions of each example provide further guidance in assessing the actual degree of commerciality on a case-by-case basis. These examples outline the circumstances commonly encountered. They do not cover all situations where import or introduction could be found not to be for primarily commercial purposes.

(1) *Purely private use.* A specimen that is imported or introduced purely for private use is not considered to be for primarily commercial purposes. An example is the import of a personal sport-hunted trophy by the person who hunted the wildlife for display in his or her own home.

(2) *Scientific purposes.* The import or introduction of an Appendix-I specimen may be permitted in situations where it is being imported or introduced by a scientist or scientific institution and the resale, commercial exchange, or exhibit for economic benefit of the specimen is not the primary intended use.

(3) *Conservation, education, or training.* Generally an Appendix-I specimen may be imported or introduced by government agencies or non-profit institutions for purposes of conservation, education, or training. For example, a specimen could be imported or introduced primarily to train customs staff in effective CITES control.

(4) *Biomedical industry.* Import or introduction of an Appendix-I specimen by an institution or company in the biomedical industry is initially presumed to be commercial since specimens are typically imported or introduced to develop and sell products that promote public health for profit. However, if the importer clearly shows that the sale of products is only incidental to public health research and not for the primary purpose of economic benefit or profit, then such an import or introduction could be considered as scientific research under paragraph (c)(2) of this section if the principles of paragraph (b) of this section are met.

(5) *Captive-breeding programs.* As a general rule, import or introduction of an Appendix-I specimen for a captive-breeding program must have as a priority, the long-term protection and recovery of the species in the wild. The

captive-breeding program must be part of a program aimed at the recovery of the species in the wild and be undertaken with the support of a country within the species' native range. Any profit gained must be used to support this recovery program. If a captive-breeding operation plans to sell surplus specimens to help offset the costs of its program, import or introduction would only be allowed if any profit would be used to support the captive-breeding program to the benefit of the Appendix-I species, not for the personal economic benefit of a private individual or share-holder.

(6) *Professional dealers.* Import or introduction by a professional dealer who states a general intention to eventually sell the specimen to an undetermined recipient would be considered to be for primarily commercial purposes. However, import or introduction through a professional dealer by a qualified applicant may be acceptable if the ultimate intended use would be for one of the purposes set out in paragraphs (c)(2), (3), and (5) of this section and where a binding contract, conditioned on the granting of permits, is in place.

(d) *For-profit entities.* Commercial organizations may be considered for an import permit or introduction-from-the-sea certificate, but the nature of these kinds of organizations to carry out activities in the pursuit of gain or profit, makes it more difficult for us to find that a proposed import or introduction is not to be used for primarily commercial purposes.

(e) *General information.* As provided in paragraphs (b) and (c) of this section, you must provide sufficient information to establish that the intended use of the specimen is not for primarily commercial purposes. This includes, but is not limited to:

(1) A description of your proposed activities, including any public outreach that may increase revenue and the disposition of any offspring.

(2) A statement of the reasons you believe your proposed activities are not primarily commercial.

(3) If there is any anticipated net profit, a description of any conservation project to be funded and, if the species was or is to be taken from the wild, how the project benefits the species in its native range (including agreements, time frames for accomplishing tasks, and anticipated benefits to the species).

(4) A plan to monitor any proposed conservation project, including expenditure of funds or completion of tasks.

(5) You must also provide the additional information in paragraph (f) of this section if you are a for-profit entity or if we request it based on any of the following factors:

(i) The species is uncommon in captivity in the United States.

(ii) The species has high public appeal.

(iii) The proposed use of the specimen could be capable of generating substantial revenues.

(f) *Additional information.* You must provide a statement from a licensed, independent certified public accountant that your internal accounting system is sufficient to account for and track funds generated by the proposed activities. You must also provide one of the following:

(1) A detailed analysis of expected revenue (both direct and indirect) and expenses to show any anticipated net profit and how you will track funds.

(2) A description of how your proposed activities will benefit the Appendix-I species in its native range and how the costs of providing that conservation benefit equal or exceed any net profit anticipated from the proposed activities.

§ 23.53 What factors do we consider in making a bred-in-captivity finding?

(a) *Purpose.* Article VII, paragraphs 4 and 5 of the Treaty, provides exemptions that allow for the special treatment of wildlife that was bred in captivity (see §§ 23.33 and 23.38).

(b) *Definitions.* The definition of ''bred in captivity'' relies on the following terms:

(1) A *controlled environment* means one that is actively manipulated for the purpose of producing specimens of a particular species, that has boundaries designed to prevent specimens, including eggs or gametes, from entering or leaving the controlled environment, and has general characteristics which may include artificial housing, waste removal, provision of veterinary care, protection from predators, and artificially supplied food.

(2) A *first-generation (F1) offspring* is a specimen produced in a controlled environment from parents at least one of which was conceived in or taken from the wild.

(3) An *offspring of second generation (F2) or subsequent generations* is a specimen produced in a controlled environment from parents that were also produced in a controlled environment.

(4) The *breeding stock* of an operation means the ensemble of all the wildlife in the operation used for reproduction.

(c) *Bred-in-captivity criteria.* For a specimen to qualify as bred in captivity, we must find all the following criteria are met:

(1) If reproduction is sexual, the specimen was born to parents that either mated or transferred gametes in a controlled environment.

(2) If reproduction is asexual, the parents were in a controlled environment when development of the offspring began.

(3) The breeding stock meets the criteria in paragraph (d) of this section.

(d) *Breeding stock.* The breeding stock must meet all of the following criteria:

(1) Was established according to the provisions of CITES and relevant national laws.

(2) Was established in a manner not detrimental to the survival of the species in the wild.

(3) Is maintained with only occasional introduction of wild specimens as provided in paragraph (e) of this section.

(4) Has consistently produced offspring of second generation or subsequent generations in a controlled environment or the captive population of the species in the United States is managed in a way demonstrated to be capable of reliably producing second-generation offspring.

(e) *Addition of wild specimens.* A breeder may introduce a very limited number of wild specimens (including eggs or gametes) into the breeding stock provided all of the following conditions are met:

(1) The specimen was acquired in accordance with the provisions of CITES and relevant national laws.

(2) The specimen was acquired in a manner not detrimental to the survival of the species in the wild.

(3) The specimen was added either to prevent or alleviate deleterious inbreeding, with the amount of such addition determined by the need for new genetic material, or to dispose of confiscated animals according to § 23.70.

§ 23.54 What factors do we consider in making an artificially propagated finding?

(a) *Purpose.* Article VII, paragraphs 4 and 5, of the Treaty provides exemptions for the special treatment of plants that were artificially propagated (see §§ 23.32 and 23.39).

(b) *Controlled conditions* means a non-natural environment that is intensively manipulated by human intervention for the purpose of producing selected species or hybrids. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed control, irrigation, or nursery operations such as potting, bedding, or protection from weather.

(c) *Artificially propagated criteria.* For a plant specimen to qualify as

artificially propagated, we must find all the following criteria are met:

(1) A plant (including parts and products) must be grown from a seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule under controlled conditions.

(2) The cultivated parental stock used for artificial propagation must have been established according to the provisions of CITES and relevant national laws;

(3) The cultivated parental stock must have been established in a manner not detrimental to the survival of the species in the wild; and

(4) The cultivated parental stock must be managed so that long-term maintenance of the cultivated stock is guaranteed.

(d) *Seeds.* A seed of a species listed in Appendix I or listed in Appendix II or III with an annotation to include seeds is artificially propagated only when the criteria in paragraph (c) of this section are met.

(e) *Grafted plant.* A grafted plant is artificially propagated only when both the rootstock and the graft have been artificially propagated according to paragraph (c) of this section.

(f) *Exempt plant material.* A plant grown from:

(1) A flasked seedling or tissue culture is considered artificially propagated, provided we have reasonable grounds to believe the specimen did not originate from wild propagules.

(2) A plant from an exempt seed will not be considered artificially propagated if the seed is of wild origin. If limited information is available on the origin of the seeds, we will consider whether the species is commonly artificially propagated and the expected level of seed collection from the wild, in making a finding of whether the plant qualifies as artificially propagated.

(g) *Timber.* Timber taken from trees grown in a monospecific plantation is considered artificially propagated.

§ 23.55 What factors do we consider in making a finding of bred or propagated for commercial purposes?

(a) *General provisions.* To decide whether to grant an exemption under Article VII(4) or Article VII(5) of the Treaty, we must make a finding on whether an Appendix-I specimen was bred or propagated for commercial purposes.

(1) We make this decision on a case-by-case basis considering all available information.

(2) The definition of ''commercial'' in § 23.4 applies.

(3) We assess the total circumstances surrounding the intention of the public, private, non-profit, or commercial (for-profit) entity in carrying out the captive breeding or propagation activity.

(4) We consider the reproductive biology of the species and all aspects of the breeding or propagation program at the facility.

(5) As necessary, we consult with experts.

(b) *Required information.* You, the applicant, must provide sufficient information to establish whether you have bred or propagated a specimen for commercial purposes. This includes, but is not limited to:

(1) A description of the overall goals and objectives of the breeding or propagation program.

(2) Information on the program, such as management of genetic stock, size of breeding or propagation stock, approximate number of specimens produced each year, maximum number of individuals that can be maintained at the facility, how you decide stock is surplus, and how you plan to dispose of any surplus stock.

(3) Information demonstrating the commercial or non-commercial nature of the proposed trade. This includes the number of specimens of the species you placed outside your facility in the last 5 years, purpose of each transaction, any net profit gained, and anticipated transactions in the next year.

§ 23.56 What factors do we consider in making a finding that an applicant is suitably equipped to house and care for a live specimen?

(a) *Purpose.* Under Article III(3)(b) and (5)(b) of the Treaty, an import permit or introduction-from-the-sea certificate for a live specimen of an Appendix-I species can be issued only if we are satisfied that the proposed recipient is suitably equipped to house and care for it.

(b) *General principles.* We will follow these general principles in making a decision on whether an individual or institution has facilities that would provide proper housing to maintain the specimens for the intended purpose, and whether persons caring for the specimen have the expertise to provide proper care and husbandry or horticultural practices.

(1) All individuals or institutions that would be receiving a specimen must be identified in an application and their facilities approved by us, including individuals or institutions that are likely to receive a specimen within 1 year of it arriving in the country.

(2) You, the applicant, must provide sufficient information for us to make a finding, including, but not limited to, a description of the facility, photographs, or construction plans, and resumes of the recipient or staff who will care for the specimen.

(3) We look at all possible uses of the specimen, including the possibility of offspring being produced even though breeding is not the main purpose of the import or introduction.

(4) We use the best available information on the requirements of the species in making a decision, and will consult with other Federal and State agencies and experts, as appropriate.

(5) The degree of scrutiny that we give an application is based on biological and husbandry or horticultural needs of the species.

(c) *Specific factors considered for wildlife.* In addition to the general provisions in paragraph (e) of this section, we consider the following factors in evaluating suitable housing and care for wildlife:

(1) Sufficient space, both indoors and outdoors if appropriate, to allow the wildlife to move, behave in a normal manner, and interact with other members of its species, as necessary.

(2) Appropriate forms of environmental enrichment, such as nesting material, perches, climbing apparatus, ground substrate, or other species-specific materials or objects.

(3) If the wildlife is on public display, an off-exhibit area, consisting of indoor and outdoor accommodations that can house the wildlife on a long-term basis.

(4) A plan to house and care for any offspring and disposition of any offspring that will not remain at the facility.

(5) Provision of water and nutritious food of a nature and in a way that are appropriate for the species.

(6) An individual or staff that is properly trained and experienced in providing daily care and maintenance for the species being imported or introduced, or closely related species.

(7) Readily available veterinarian care or veterinary staff experienced with the species or a closely related species, including emergency care.

(d) *Specific factors considered for plants.* (1) Sufficient space, appropriate lighting, and environmental conditions to ensure proper growth and reproduction.

(2) An individual or staff with experience with the imported species or related species with similar horticultural requirements.

(e) *General factors considered for wildlife and plants.* In addition to the specific provisions in paragraph (c) or (d) of this section, we will consider the following factors in evaluating suitable housing and care for wildlife and plants:

(1) Adequate enclosures or holding areas to prevent escape or unplanned

exchange of genetic material with specimens of the same or different species outside the facility.

(2) Appropriate security to prevent theft of specimens and measures taken to rectify any previous theft or security problem.

(3) A reasonable survival rate of specimens of the same species or closely related species at the facility, including number of births or plants propagated, mortalities for the previous 5 years, significant injuries to wildlife or damage to plants, and occurrence of significant disease outbreaks over the previous 5 years, and measures taken to prevent similar moralities, injuries, damage, or diseases. Significant injuries, damage, or disease outbreaks are those that are permanently debilitating or reoccurring (more than twice in the previous 5 years) or which affect behavior, breeding, educational use, or other conservation uses of the specimen.

(4) Sufficient funding on a long-term basis to cover the cost of maintaining the facility and the specimens imported.

(f) *Incomplete facilities or insufficient staff.* For applications submitted to us before the facilities to hold the specimens are completed or the staff is identified or properly trained:

(1) We will review all available information, including construction plans or intended staffing, and make a finding based on this information.

(2) We will place a condition in any positive finding that the import cannot occur until the facility has been completed or the staff hired and/or trained and approved by us.

Subpart E—International Trade in Certain Specimens

§ 23.60 How can I trade internationally in American ginseng?

(a) *General provisions.* Whole plants and roots (whole, sliced, and parts, excluding manufactured parts or products, such as powders, pills, extracts, tonics, teas, and confectionery) of American ginseng (*Panax quinquefolius*), whether wild or artificially propagated, are included in Appendix II.

(1) Wild ginseng categories include:

	Wild	Wild simulated	Wild cultivated
Cultivation	None	Planting of seeds or roots only.	Intensive. .
Fungicide use	None	None	Extensive.
Habitat	Within natural range, in suitable ginseng habitat.	Within natural range, in suitable ginseng habitat.	Grown in fields, whether within the natural range, or not.
Harvest Methods	Dug by hand	Dug by hand	Often dug by mechanical means.
Origin	Naturally occurring	Wild seeds or roots planted in natural habitat.	Wild seeds or roots.

(2) Artificially propagated ginseng (also referred to as cultivated ginseng) categories include:

	Cultivated	Cultivated Woodsgrown
Cultivation	Intensive	When planted, largest rocks removed and drainage ditches may be dug around beds.
Fungicide use	Extensive	Extensive.
Habitat	Grown in fields, whether within the natural range or not..	Grown in woods similar to natural habitat, whether within the natural range or not.
Harvest Methods	Often dug by mechanical means	Dug by hand.
Origin	Cultivated seeds or roots	Cultivated seeds or roots.

(b) *Approved export.* States and Tribes set up and maintain ginseng management and harvest programs designed to monitor and protect American ginseng from over-harvest. For States and Tribes with management programs that provide us with the necessary information, we make administrative findings on a State-wide or reservation-wide basis. States and Tribes for which these administrative findings have been made are requested to complete and submit form 3–200–61 as an annual report to provide information on the previous year's harvest to us by May 31 of each year. Annual reports should include at least the following:

(1) Pounds of wild ginseng and artificially propagated ginseng harvested.

(2) For wild ginseng, average number of roots per pound.

(3) Average age of wild-harvested plants estimated by counting bud scars or converting dry weight to age.

(4) Trends in abundance of wild ginseng populations, preferably as measured in field surveys.

(5) Information that the export of ginseng will not be detrimental to the survival of the species in the wild in that State or on tribal lands.

(6) Information on, and a copy of, any changes in ginseng laws or regulations.

(c) *New State-wide or reservation-wide export approval for wild ginseng.* States or Tribes that wish to set up a new management program for wild ginseng to obtain export approval on a

State or tribal basis must provide us with sufficient information to determine that the export of ginseng will not be detrimental to the survival of the species in the wild in that State or on tribal lands, and that the ginseng was legally obtained.

(d) *New State-wide or reservation-wide export approval for cultivated ginseng.* States or Tribes that wish to set up a new management program for cultivated ginseng to obtain export approval on a State or tribal basis must be able to document the source of the ginseng used. In addition, they should develop procedures to minimize the risk that wild-collected plants would be claimed as cultivated.

(e) *U.S. application forms.* A list of approved States and Tribes and application forms can be obtained from our website or by contacting us. Complete and submit the applicable form to the Office of Management Authority (see § 23.7):

Type of application for export or re-export of Ginseng	Form No.
(1) Artificially Propagated Ginseng from an Approved State or Tribe (see § 23.29 for export requirements)	3–200–32
(2) Wild Ginseng from an Approved State or Tribe	3–200–33
(3) Wild or Artificially Propagated Ginseng NOT from an Approved State or Tribe	3–200–34

§ 23.61 How can I trade internationally in furs of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear?

(a) *Approved export.* States and Tribes set up and maintain management programs for certain native furbearers that are included in CITES based on Article II(2)(b) of the Treaty (see § 23.85). For States and Tribes whose programs provide us with sufficient information to determine that the export of the specimens from that State or Tribe will not be detrimental to the survival of the species in the wild that the species was listed to protect, that the species does not decline to a point that it might qualify for listing itself, and that the specimens were legally obtained, we make administrative findings on a State-wide or reservation-wide basis. States and Tribes for which these administrative findings have been made are requested to complete and submit to us by April 30 of each year form 3–200–62 as an annual report containing information on the previous harvest season. Annual reports can refer to information provided in previous years if there has been no change and should include at least the following:

(1) For each furbearer species, the number of specimens taken (by trapping as well as other methods) and the number of animals tagged (if different).

(2) A statement based on the State's or Tribes's professional assessment of the status of each species involved, including whether the population is stable, increasing, or decreasing, and at what rate; and whether the harvest will not be detrimental.

(3) A description of the types of information on which the assessment is based; for example, an analysis of carcass demographics; population models; analysis of past harvest levels as a function of fur prices or trapper effort; or indices of abundance independent of harvest information, such as scent station surveys, archer surveys, track or scat surveys, or road kill counts.

(4) Copies of any relevant reports for any furbearer species that the State or Tribe has prepared for the year in question as part of its existing management program for the species.

(5) Information on, and a copy of, any changes in furbearer laws or regulations.

(b) *CITES export tags.* We provide CITES export tags to States and Tribes for which administrative findings have been made. Each fur, including skins and pelts, to be exported must have a CITES export tag permanently attached.

(1) The tag must be inserted through the fur and permanently locked in place using the locking mechanism of the tag.

(2) The legend on CITES export tags include a CITES logo, an abbreviation for the State or Indian Tribe of harvest and the species (BCAT = bobcat, ROTR = river otter, LYNX = Alaska lynx, WOLF = Alaska gray wolf, and GBR = Alaska brown bear), the season of taking, and a unique serial number.

(c) *U.S. application forms.* A list of approved States and Tribes and application forms can be obtained from our website or by contacting us. Complete and submit the applicable form to the Office of Management Authority or to the appropriate Law Enforcement office (see § 23.7):

Type of application for export or re-export of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear	Submit to	Form No.
(1) Export or re-export of furs from an approved State or Tribe (you must include a list of tag numbers with your application for export).	Law Enforcement or Office of Management Authority.	3–200–26 or 3–200–27
(2) Export of furs NOT from an approved State or Tribe (see § 23.29 for export requirements).	Office of Management Authority.	3–200–27
(3) Re-export of furs NOT from an approved State or Tribe (see § 23.29 for export requirements).	Law Enforcement or Office of Management Authority.	3–200–26 or 3–200–27
(4) Export of live specimens (see § 23.29 for export requirements).	Office of Management Authority.	3–200–27
(5) Re-export of live specimens	Law Enforcement or Office of Management Authority.	3–200–26 or 3–200–27

Type of application for export or re-export of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear	Submit to	Form No.
(6) Export of manufactured products	Office of Management Authority.	3–200–27
(7) Re-export of manufactured products	Law Enforcement or Office of Management Authority.	3–200–26 or 3–200–27

(d) *Broken CITES export tags.* Furs with broken tags may not be exported.

(1) When a tag breaks and the State of harvest cannot replace it, you may apply to us for a replacement tag before or when you apply for an export permit. You must provide information to show that the fur was legally acquired and give us the broken tag.

(2) If we are satisfied that the fur was legally acquired, we will replace the broken tag with a CITES replacement tag.

(e) *Finished furs and manufactured products.* A finished fur or manufactured fur product is not required to have a tag attached, but you must surrender the tag from the fur used to make the product when you apply for a CITES export permit.

§ 23.62 How can I trade internationally in crocodilians skins and parts of skins, including American alligator skins?

(a) *General.* For the purposes of this section, crocodilian refers to all species of alligator, caiman, crocodile, and gavial.

(b) *Crocodilian skins.* Skins includes whole or partial skins or flanks. You may import, export, or re-export crocodilian skins, including unmounted sport-hunted trophies, only if each skin is tagged prior to export. The tag must be non-reusable, inserted through the skin, and permanently locked in place using the locking mechanism of the tag. Unless a replacement tag under paragraph (d) of this section has been authorized, the tag must:

(1) Be self-locking, heat resistant, and inert to chemical and mechanical processes.

(2) Be permanently stamped with the two-letter code for the country of origin, a unique serial number, a standardized species code, and the year of production or harvest.

(c) *Parts of crocodilian skins.* You may import, export, or re-export crocodilian parts, including tails, throats, feet, backstrips, and other parts when the following conditions are met:

(1) Parts must be packed in transparent sealed containers.

(2) The containers must be clearly marked with a parts tag or label that includes a description of the contents, the total weight (contents and container), and the number of the CITES document.

(d) *Skins with broken, cut, or missing tags.* Skins with broken, cut, or missing tags may not be imported, exported, or re-exported.

(1) Replacement tags must meet all the requirements in paragraph (b) of this section except they do not require the country of origin code or the species code.

(2) In the United States, when a tag breaks and the State of harvest cannot replace it, you may apply to us for a replacement tag before or when you apply for an export permit. You must provide information to show that the skin was legally acquired and give us the broken tag. If we are satisfied that the skin was legally acquired, we will replace the broken tag with a CITES replacement tag.

(e) *Manufactured crocodilian products and meat.* A manufactured crocodilian product is not required to have a tag attached. When you apply for an export permit for an item manufactured in the United States, you must surrender the tags from the skins used to make the item. The export of meat does not require a tag.

(f) *Documentation requirements.* CITES documents for crocodilian skins must contain all information that is given on the tag. This information must be included on the CITES document itself or on an annex (see § 23.20(e)(2)).

(g) *Approved export for American alligator (Alligator mississippiensis).* States and Tribes set up and maintain alligator management programs. For States and Tribe with programs that provide us with sufficient information to determine that the export of the alligator skins, parts, or products will not be detrimental to the survival of the species in the wild in that State or on tribal lands, and that the alligators were legally obtained, we are able to make administrative findings on a State-wide or reservation-wide basis. States and Tribes for which administrative findings have been made are requested to complete and submit to us by May 31 of each year form 3–200–63 as an annual report containing information on the previous harvest season. Annual reports can refer to information provided in previous years if it has not changed. Annual reports should include at least the following:

(1) The number of skins from wild, ranched, and farmed alligators tagged in the State or Tribe.

(2) A statement, based on the State's or Tribe's professional assessment of the status of their alligator population, such as whether the population is stable, increasing, or decreasing, and at what rate; and whether the harvest will not be detrimental.

(3) For wild alligators, information on harvest of nuisance alligators, whether there is a wild alligator hunt, methods used to determine harvest levels, demographics of the harvest, and methods used to determine the total number and population trends of alligators in the wild.

(4) For ranched alligators, information on whether collecting and rearing of eggs or hatchlings is allowed, what factors are used to set the harvest level, and whether or not any alligators are returned to the wild.

(5) For captive-bred (see § 23.53) alligators, information on the sources of the breeding stock, numbers of alligators produced through captive breeding, and whether any captive-bred alligators are returned to the wild.

(6) Copies of any relevant reports that the State or Tribe has prepared for the year in question as part of its existing management program for the American alligator.

(7) Information on, and a copy of, any changes in American alligator laws or regulations.

(h) *American alligator export tags.* We provide CITES export tags to States and Tribes for which administrative findings have been made. The CITES export tags include a CITES logo, an abbreviation for the State or Indian Tribe of harvest and the species (MIS = *Alligator mississippiensis*), the season of taking, and a unique serial number.

(i) *U.S. application forms.* A list of approved States and Tribes and application forms can be obtained from our website or by contacting us. Complete and submit the applicable form to the Office of Management Authority or to the appropriate Law Enforcement office (see § 23.7):

Type of application for export or re-export of crocodilians, including american alligator	Submit to:	Form no.
(1) Export or re-export of American alligator skins, parts, or products from an approved State or Tribe:. (i) For export or re-export of skins, you must include all of the information on the CITES tags (species, year of take, and unique serial number).. (ii) For export of parts or products, you must include Authority the information on the CITES tags that were on the skins from which the parts or products originated.	Law Enforcement or Office of Management Authority.	3–200–26 or 3–200–27
(2) Export of American alligator skins, parts, or products NOT from an approved State or Tribe (see § 23.29 for export requirements).	Office of Management Authority.	3–200–27
(3) Re-export of American alligator skins, parts, or products NOT from an approved State or Tribe.	Law Enforcement or Office of Management Authority.	3–200–26 or 3–200–27
(4) Export of live specimens of American alligator and other crocodilians (see § 23.29 for export requirements).	Office of Management Authority.	3–200–27
(5) Re-export of live specimens of American alligator and other crocodilians.	Law Enforcement or Office of Management Authority.	3–200–27
(6) Export of other crocodilian skins, parts, or products	Office of Management Authority.	3–200–27
(7) Re-export of other crocodilian skins, parts, or products	Law Enforcement or Office of Management Authority.	3–200–26 or 3–200–27

§ 23.63 How can I trade internationally in sturgeon caviar?

(a) *Pre-Convention.* Sturgeon caviar may not be imported, exported, or re-exported under a pre-Convention certificate.

(b) *General provision.* Except as provided for personal effects in § 23.12(f) and for on-board passenger consumption in paragraph (c) of this section, the import, export, or re-export of Appendix-II sturgeon (Order Acipenseriformes and not listed under the ESA) caviar requires valid CITES documents (see § 23.29 for export permits and re-export certificates).

(c) *On-board passenger consumption.* An airplane or cruise ship may export or re-export sturgeon caviar from the United States without a CITES document if the following conditions are met:

(1) The caviar is legally acquired and only for passenger consumption during each specific flight or cruise.

(2) The quantity of caviar placed on board for each specific flight or cruise cannot exceed 250 grams per passenger intended to be served caviar (such as first class passengers), and must be consumed or disposed of before arrival in another country.

§ 23.64 How can I trade internationally in timber?

(a) *General provisions:* Trade in timber species listed in Appendix II or III and annotated to include only logs, sawn wood, and veneer sheets must follow the CITES requirements of this part, except as provided in paragraphs (b) and (c) of this section.

(b) *Change in destination.* A Management Authority may change the name and address of the importer (consignee) indicated on the CITES document after the shipment has left the exporting or re-exporting country under the following conditions:

(1) The quantity imported is the same as the quantity certified by a stamp or seal and signature of the Management Authority on the CITES document at the time of export or re-export.

(2) The number of the bill of lading of the shipment is on the CITES document, and the bill of lading is presented at the time of import.

(3) The import takes place before the CITES document expires, and the period of validity has not been extended.

(4) The Management Authority includes the following statement in block 5 of the CITES document: ''Import into the [country] permitted in accordance with Resolution Conf. 10.2 (section VII.) on [date].'' The modification is certified with an official stamp and signature.

(5) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and the Secretariat.

(c) *Extension of CITES document validity.* A Management Authority may extend the validity of an export permit or re-export certificate beyond the normal maximum of 6 months after the date of issue under the following conditions:

(1) The shipment has arrived in the port of final destination before the CITES document expires, is being held in customs bond, and is not considered imported.

(2) The time extension does not exceed 6 months from the date of expiration of the CITES document and no previous extension has been granted.

(3) The Management Authority has included in block 5 of the CITES document the date of arrival and the new date of expiration on the document, certifying the modification with an official stamp and signature.

(4) The shipment is imported into the country from the port where the Management Authority granted the extension and before the amended CITES document expires.

(5) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and to the Secretariat.

§ 23.65 How can I trade internationally in personal sport-hunted trophies?

(a) *General provisions.* Except as provided for personal and household effects in § 23.12, the import, export, or

re-export of personal sport-hunted trophies requires valid CITES documents.

(b) *Definition.* Your trophy must meet the definition of ''sport-hunted trophy'' in § 23.5.

(c) *Use after import.* You may use your sport-hunted trophy for the following purpose after import:

If the species is listed in	Allowed use once imported is:
(1) Appendix I	Only personal; may not be used or transferred for a commercial purpose.
(2) Appendix II with a species' annotation for sport-hunted trophies where other specimens of that species are treated as included in Appendix I.	Only personal; may not be used or transferred for a commercial purpose.
(3) Appendix II (other than paragraph (c)(2) of this section) or Appendix III.	Any purpose.

(d) *Leopard (Panthera pardus) conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You may import no more than two trophies in any calendar year.

(2) Each raw or tanned skin imported or re-exported must have a self-locking tag attached which indicates the county of export, the number of the specimen in relation to the annual quota, and the calendar year in which the specimen was taken in the wild.

(3) The export permit or re-export certificate must contain the information from the tag.

Subpart F—Disposal of Confiscated Live Wildlife and Plants

§ 23.70 How do we dispose of confiscated live wildlife and plants?

(a) *Purpose.* Article VIII of the Treaty requires that Parties confiscate specimens that are traded in violation of CITES or return them to the country of export.

(b) *Consultation process.* Before making a decision on the disposal of confiscated specimens, the Management Authority may consult with the Scientific Authority, the Management Authority in the country of export, and other relevant governmental and non-governmental experts.

(c) Disposal options. 50 CFR part 12 provides the options on how we dispose of forfeited and abandoned wildlife and plants. These include maintenance in captivity either in the United States or in the country of export, return to the wild under limited circumstances, sale of certain Appendix-II or -III specimens, euthanasia, or destruction.

(d) *Action plans.* CITES Parties are urged to develop action plans for the disposal of confiscated specimens.

(1) We use a plant rescue center program for confiscated plants. Participants in this program may also assist APHIS in holding seized specimens as evidence pending any legal decisions.

(2) We dispose of confiscated live wildlife on a case-by-case basis at the time of seizure and consider the quantity, protection level, and husbandry needs of the wildlife.

§ 23.71 How may I participate in the Plant Rescue Center Program?

(a) *Purpose.* We have established the Plant Rescue Center Program to dispose of confiscated live plants as quickly as possible to prevent damage to or loss of the plants.

(b) *Criteria.* Institutions interested in participating in this program must:

(1) Be a public institution (see 50 CFR 10.12), such as a public, non-profit botanical garden, arboretum, zoological park, or research institution.

(2) Be willing to transfer confiscated plants from the port where they were confiscated to their facilities at their own expense.

(3) Accept and maintain a plant shipment as a unit for a minimum of 30 days in the event the country of export or re-export requests return of the shipment.

(c) *Application.* Institutions wishing to participate must complete and submit application Form 3–200–60 to the Office of Management Authority (see § 23.7).

Subpart G—CITES Administration

§ 23.75 What are the roles of the Secretariat and the committees?

(a) *Secretariat.* The Secretariat is headed by the Secretary General and implements the policies of the COP and the Standing Committee. The functions of the Secretariat are listed in Article XII of the Treaty and include, in part:

(1) Providing Parties with trade information and technical support.

(2) Acting as a liaison among Parties.

(3) Contracting scientific and technical studies.

(4) Informing governments and the public about CITES wildlife and plant trade developments.

(5) Investigating possible CITES violations and threats to wildlife and plants due to trade.

(6) Organizing meetings of the COP.

(7) Providing coordination and consultation on proposed amendments to Appendix I or II, notifying the Parties of Appendix-III listings, and periodically publishing current lists of species included in the appendices.

(8) Preparing annual reports to the Parties.

(9) Carrying out tasks directed by the COP or technical committees.

(10) Making recommendations for effective implementation of CITES.

(b) *Committees.* The Parties have established five committees to provide administrative and technical support to the Parties and to the Secretariat. The COP may charge any of these committees with tasks.

(1) The Standing Committee steers the work and performance of the Convention between COP's. This Committee oversees development and execution of the Secretariat's budget, coordinates and advises other committees, appoints working groups, and carries out activities on behalf of the Parties between COP's. Regional representatives are elected by the COP as members of this Committee.

(2) The Animals Committee and the Plants Committee compile and evaluate data on Appendix-II species that are considered significantly affected by trade; periodically review the status of wildlife and plant species included in the appendices; advise range countries on management techniques when requested; draft resolutions on wildlife and plant matters for consideration by the Parties; assist the Nomenclature and Identification Manual Committees on issues concerning wildlife and plant species; and report to the COP and the Standing Committee. The Animals Committee also deals with the transport of live animals.

(3) The Identification Manual Committee provides guidance and

coordination in the preparation of identification manuals for wildlife and plant species to assist Parties in the accurate identification of specimens listed in the CITES appendices.

(4) The Nomenclature Committee is responsible for developing or identifying standard nomenclature references for wildlife and plants and making recommendations on nomenclature to the COP, other Committees, working groups, and the Secretariat.

§ 23.76 What is a Conference of the Parties (COP)?

(a) *Purpose.* Article XI of the Treaty provides general guidelines for meetings of the Parties. The Parties currently meet for 2 weeks every 2 to 3 years. At these meetings, the Parties consider amendments to the appendices and resolutions to improve implementation of CITES. The Parties adopt amendments to the lists of species in Appendix I and II and resolutions by a two-thirds majority of Parties present and voting. The Secretariat or any Party may also submit reports on wildlife and plant trade for consideration.

(b) *COP locations and dates.* At a COP, Parties interested in hosting the next meeting notify the Secretariat. The Parties vote to select the location of the next COP. Once a country has been chosen, that country works with the Secretariat to set the date. The Parties are then notified of the date for the next COP.

(c) *Attendance at a COP.* All Parties may participate and vote at a COP. Non-Party countries may participate, but may not vote. Organizations technically qualified in protection, conservation, or management of wildlife or plants may participate in a COP as observers if they are approved, but they are not eligible to vote.

(1) International organizations should apply to the CITES Secretariat for approval of observer status.

(2) National organizations must apply to the Management Authority of the country where they are located for approval of observer status.

§ 23.77 How can I obtain information on a COP?

(a) As we receive information on an upcoming COP from the CITES Secretariat, we will publish notices in the **Federal Register**. The notices will provide:

(1) A summary of the information we have received with an invitation for the public to comment and provide information on the agenda, proposed amendments to the appendices, and proposed resolutions.

(2) Information on times, dates, and locations of public meetings.

(b) We will post information concerning upcoming COP's on our website.

§ 23.78 How does the United States develop negotiating positions for a COP?

(a) In developing negotiating positions for a COP, we:

(1) Consult with appropriate Federal and State agencies, foreign governmental agencies, and others.

(2) Review the comments received in response to **Federal Register** notices concerning proposals related to an upcoming COP.

(3) Publish a notice that includes a summary of the information and comments that we received, a summary of our proposed negotiating positions, and the reasons for those proposed positions.

(4) Request public input and comments on the proposed positions.

(5) Schedule at least one public meeting.

(6) Submit all draft resolutions and other documents to the Secretariat at least 150 days before the COP.

(7) Submit proposals for amendment of the appendices, if all range countries have been consulted, 150 days before the meeting. If the range countries are not consulted, the proposal must be submitted 330 days before the COP.

(8) Provide the public with our final negotiating positions.

(b) The Director may publish a notice in the **Federal Register** that modifies or suspends any of these procedures if following the procedures would interfere with the timely or appropriate development of negotiating positions.

(c) We may receive additional information at a COP or circumstances may develop that have an impact on our published negotiating positions. As a result, the United States representatives to a COP may find it necessary to modify, reverse, or abandon any of those positions where to do so would be in the best interests of the United States.

Subpart H—Lists of Species

§ 23.85 What are the criteria for listing species in Appendix I or II?

(a) *Purpose.* Article XV of the Treaty sets out the procedures for amending CITES Appendices I and II. A species must meet appropriate biological and trade criteria to be listed.

(b) *Listing a species in Appendix I.* Any species that meets at least one biological criterion specified in the CITES listing criteria resolution and is known to be in trade, is probably in trade, has a potential international demand, or might enter trade if not subject to strict controls should be included in Appendix I.

(1) When determining whether a species qualifies for inclusion in Appendix I, we will utilize the best available scientific and biological information, and evaluate that information against the criteria adopted by the Parties.

(2) Those criteria include factors pertaining to: the size of the wild population; ongoing, past, or potential population or distribution declines; population fragmentation; habitat availability or quality; area of distribution, range fragmentation; species-specific vulnerabilities due to biology, behavior, or other factors, including migration; patterns of exploitation; threats from factors such as the effects of pathogens, competitors, parasites, predators, hybridization, introduced species and the effects of toxins and pollutants; or decreases in reproductive potential.

(c) *Listing a species in Appendix II due to potential threats.* Any species that meets either of the criteria identified in the CITES listing criteria resolution for Appendix II qualifies for inclusion in Appendix II. Those criteria are:

(1) It is known or expected that unless trade in the species is subject to strict regulation, it will meet at least one of the criteria for inclusion in Appendix I in the near future.

(2) It is known or expected that the harvesting of specimens from the wild for international trade has or will have a detrimental impact on the species by either exceeding the level that can be sustainably harvested or reducing it to a population size where its survival would be threatened by other influences.

(d) *Listing a species in Appendix II due to similarity of appearance.* Any species that meets either of the criteria identified in the CITES listing criteria resolution for Appendix II due to similarity of appearance and related factors qualifies for inclusion in Appendix II. Those criteria are:

(1) The specimen resembles specimens of a species included in Appendix II due to criteria in paragraph (c) of this section or in Appendix I, such that a non-expert, with reasonable effort, is unlikely to be able to distinguish between them.

(2) The species is a member of a taxon of which most of the species are included in Appendix II due to criteria in paragraph (c) of this section or in Appendix I, and the unlisted species should be listed to bring trade in listed ones under effective control.

(e) *Other issues.* The Parties have addressed other issues pertaining to listing of species in the CITES appendices. We will evaluate any potential changes to the appendices taking those other issues (as specified in the CITES listing criteria resolution) into consideration, including but not limited to: split-listing, listing of higher taxa, specific plant-related listing issues, use of subspecies, and the listing of hybrids.

(f) *Precautionary measures.* When considering changes to the CITES appendices, in the case of uncertainty in regard to the status of a species or the impact of trade on the conservation of a species, we will act in the best interest of the conservation of the species. We will evaluate any potential transfers from Appendix I to II or removal of species from the appendices in the context of the precautionary measures in the CITES listing criteria resolution.

(g) *Proposal.* If it is felt that a species qualifies for inclusion or removal from the CITES appendices, a proposal must be submitted to the Secretariat for consideration by the COP. The proposal should indicate the intent of the specific action (such as inclusion in Appendix I or II, or transfer from Appendix I to II) and the criteria against which the proposal is to be judged. The proposal must be in a prescribed format with all of the components addressed in the CITES listing criteria resolution. Contact the Office of Scientific Authority (see § 23.7) for either a copy of the format or the resolution which includes the prescribed format. Any proposal submitted by the United States will conform with the proposal format in the CITES listing criteria resolution.

§ 23.86 What are the criteria for listing species in Appendix III?

(a) *Purpose.* Article XVI of the Treaty sets out the procedures for amending Appendix III.

(b) *General procedure.* A Party may unilaterally, at any time, submit a species to be included in Appendix III to the CITES Secretariat. The Secretariat will notify the Parties.

(c) *Criteria for listing.* For a Party to list a species in Appendix III, all of the following criteria must be met:

(1) The species must be native to the country listing the species.

(2) The species must be protected under that country's regulations to prevent or restrict exploitation and control trade, and the regulations are being implemented.

(3) The species is in international trade and there are indications that the cooperation of other Parties would help to control illegal trade.

(4) The listing Party must inform the Management Authorities of other range countries, the known major importing countries, the Secretariat and the Animals Committee or the Plants Committee that it is considering the listing and seek their opinion on the potential effects of the listing.

(d) *Annotation.* The listing Party may annotate the Appendix-III listing to include only specific parts, products, derivatives or life stages, as long as the Secretariat is notified of the annotation.

(e) *U.S. procedure.* The procedure to list a species native to the United States in Appendix III is as follows:

(1) We will consult with and solicit comments from all States where the species occurs and all other range countries.

(2) We will publish a proposed listing in the **Federal Register** to solicit comments from the public.

(3) If after evaluating the comments and available information we determine the species should be included in Appendix III, we will notify the Secretariat of the listing and publish a notice in the **Federal Register**.

(4) The listing will become effective 90 days after the Secretariat notifies the Parties of our request.

(f) *Removing a species from Appendix III.* We will monitor the international trade in Appendix-III species listed by us and periodically evaluate whether the species continues to meet the listing criteria in paragraph (b) of this section. We will remove a species from Appendix III provided all of the following criteria are met:

(1) International trade in the species is very limited (fewer than 5 shipments per year or fewer than 100 individual animals or plants).

(2) Legal and illegal trade in the species, including international trade or interstate commerce, is determined not to be a concern.

(g) *Transferring a species from Appendix III to Appendix I or II.* If, after monitoring the trade and evaluating the status of an Appendix III species we listed, we determine that the species meets the criteria in § 23.85(b), (c), or (d) for listing in Appendix I or II, we will consider whether to submit a proposal to amend the listing at the next COP.

§ 23.87 How do I find out if a species is listed?

(a) *CITES list.* The official CITES list includes species of wildlife and plants placed in Appendix-I, -II, and -III in accordance with the provisions of Articles XV and XVI of the Treaty. This list is maintained by the CITES Secretariat based on decisions of the Parties. You may access the official list from the CITES website (www.cites.org).

(b) *Unofficial list.* For your convenience, we maintain an unofficial list in an easy-to-use format that is available from our website or as a printed publication (see § 23.7).

§ 23.88 Are any wildlife or plants, and their parts or products, exempt?

All living or dead wildlife and plants in Appendix I, II, and III and all their readily recognizable parts and products must meet the requirements of CITES and this part, except:

(a) Parts and products of Appendix-III wildlife or Appendix-II or -III plants that are specifically included by annotation.

(b) An Appendix-II or -III plant hybrid may be excluded from CITES controls by an annotation in the CITES list.

(c) The following plant materials are exempt:

Plant listing	Exempt parts or products
(1) Appendix-II and -III plants [1].	(i) Flasked seedlings or tissue culture. (ii) Spores and pollen (including pollinia). (iii)Seeds (other than Mexican Cactaceae originating from Mexico). (iv) Cut flowers of artificially propagated plants.
(2) In addition, for Appendix-II Cactaceae species [1].	From artificially propagated or naturalized plants: (i) Separate stem joints (pads) and their parts and products of the genus *Opuntia* subgenus *Opuntia.* (ii) Fruits and their parts and products.

Plant listing	Exempt parts or products
(3) In addition, for Appendix-II Orchidaceae species [1].	Fruits and their parts and products for artificially propagated plants of *Vanilla* species.
(4) For Appendix-I Orchidaceae species.	Flasked seedlings or tissue culture.

[1] An artificially propagated hybrid of one or more unannotated Appendix-I species is treated as if listed in Appendix-II if no individual plant in its lineage is an annotated Appendix-I species.

Dated: November 30, 1999.

Donald J. Barry,

Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 00–9980 Filed 5–5–00; 8:45 am]

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Federal Register

Monday,
May 8, 2000

Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 38
Southwestern Polytechnic Institute (SIPI) Personnel System; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 38

RIN 1076—AE02

Southwestern Polytechnic Institute (SIPI) Personnel System

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Indian Affairs is proposing to amend its regulations to allow the Southwestern Indian Polytechnic Institute to develop a new alternative personnel system.

DATES: Written comments on the proposed rule must be filed June 7, 2000. A public hearing will be held on June 8, 2000.

ADDRESSES: You may send written comments on the proposed rule and written comments to supplement oral testimony to: Dr. Carolyn Elgin, President, Southwestern Indian Polytechnic Institute, P. O. Box 10146, 9169 Coors Boulevard, NW, Albuquerque, New Mexico 87184.

FOR FURTHER INFORMATION CONTACT: David Parrish, Dean of Administration, at (505) 346–2340.

SUPPLEMENTARY INFORMATION:

Review of Comments: Comments will be available for inspection at SIPI, Room 107, 9169 Coors Boulevard, NW, Albuquerque, New Mexico, 87184. Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. This 30 day time frame is necessary to ensure that statutory requirements for implementation no later than October 31, 2000 are met. A public hearing will be held on June 8, 2000.

Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address and other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor request(s) for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submission from organizations and from individuals identifying themselves as representatives or officials of organizations.

Public Hearing: A public hearing will be held at SIPI, Library Building, Board of Regents Conference, 9169 Coors Boulevard, NW, Albuquerque, New Mexico, 87184. Any person who wants to participate in the public hearing should notify the person identified under **FOR FURTHER INFORMATION CONTACT** section.

(1) If no one expresses an interest in participating in a hearing at the given location on the given date, we will not hold the hearing. If only one person expresses an interest, we may hold a public meeting rather than a hearing, and we will include the results in the Administrative Record.

(2) If we hold a hearing, we will continue the hearing until everyone who wants to testify has done so. We will include the results in the Administrative Record.

At the time of the hearing, interested persons or institutions may present written or oral comments on the proposed rule. The hearing will be informal. However, anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. He will then plan the hearings and provide sufficient time for all interested persons and institutions to be heard. Priority will be given to those on the schedule. Other individuals may speak during any remaining available time. Each speaker's presentation will be limited to 10 minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

This demonstration project is initiated under the authority of Pub. L. 105–337. The congress believes that SIPI requires more flexibility and autonomy in their personnel activities than is currently allowed by the Office of Personnel Management regulations (Title 5, U.S.C.). The Congress further required that if a demonstration project is implemented, that it be implemented no later than October 31, 2000. This demonstration project allows SIPI to develop a completely new personnel system to meet the unique needs of the SIPI mission. This project is designed to increase the flexibility of training modules and services provided to the students attending SIPI. To accomplish these goals, a separation from Title 5 requirements was necessary.

Background

Individuals employed at the Southwestern Indian Polytechnic Institute (SIPI) are currently covered under Title 5 of the CFR (Administrative Personnel). Under the demonstration project, SIPI employees will no longer be covered by Title 5 of the CFR, but will be covered by Part 38 of Title 25 (Indians), as established in this proposed rule. This action will allow SIPI greater autonomy in administration and improvement of the academic program while maintaining SIPI and its employees as an integral part of the Bureau of Indian Affairs. Under this demonstration project, employees at SIPI will be converted to the Excepted Service and all future appointments to positions at SIPI will be in the Excepted Service. SIPI Management will establish qualifications and classifications standards that will directly support the mission of SIPI in providing quality education programs for its students. The employee compensation and pay system will be converted to that of the current contract education pay system with no loss of pay or benefits. The current Title 5 benefits (*ie.* Retirement, Health, Life Insurance and Thrift Savings Plan) will be continued. The current annual and sick leave program will be continued. A new 5 step performance evaluation system will be utilized under the project. Any collective bargaining agreement in effect on the day before this demonstration project commences shall be recognized by SIPI until the earlier of:

(1) The date occurring 3 years after the commencement date of the project;

(2) The date as of which the agreement is scheduled to expire (disregarding any option to renew); or

(3) such date as may be determined by mutual agreement of the parties.

Termination of the Demonstration Project

This demonstration project will terminate on October 31, 2005, or on such date beyond October 31, 2005, as deemed necessary to validate the results of the project, or as determined by Congress.

Discussion

This proposed rule will expedite the employment and utilization of future employees with qualifications that more readily reflect the needs of the Institution than is currently allowed under Office of Personnel Management regulations. It will also provide the administration of SIPI with the flexibility to modify program requirements and more appropriately assign employees to reflect changing requirements.

Regulatory Planning and Review (E.O. 12866)

These proposed regulations are not a significant regulatory action because they affect only a small number of employees (approximately 185) and

have no additional affect on SIPI employees beyond the current approved budget. Therefore, they are subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will have no effect beyond the current approved budget which is less than $6 million.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department certifies that these proposed regulations will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only effects the 185 total positions located at SIPI and has no economic impact on the incumbents of those positions.

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 any annual effect on the economy beyond the current approved budget of less that $6 million.

(b) Will not cause any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have any adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose any unfunded mandate on State, local, or tribal governments or the private sector. The rule does not have any effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have any takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule does not propose any regulation that:

(1) Has any direct effect on the States, the relationship between national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Impose any compliance costs on State and local governments; or,

Executive Order 13132

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule does not propose any regulation that:

(1) Has any direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Impose any direct compliance costs on State and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, '' Consultation and Coordination with Indian Tribal Governments.'' Because the proposed rule does not affect the Indian tribal governments, the funding and consultation requirement of Executive Order 13084 does not apply.

Civil Justice Reform (Executive Order 12988)

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

Paperwork Reduction Act

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

National Environmental Policy Act

This rule does not constitute a major Federal action affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13084)

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084. Because the proposed rule would not affect the Indian tribal governments, the funding and consultation requirement of Executive Order 13084 does not apply.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. President Clinton's Presidential memorandum of June 2, 1998 required us to write new regulations in plain language. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example, § 38.15 Southwest Indian Polytechnic Institute. (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: *Execsec@ios.doi.gov* .

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the provisions of the Public Law. Persons making written submissions should file with the Southwestern Indian Polytechnic Institute. A copy of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with SIPI, and all written communications relating to the proposed rule between SIPI and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will

be available for inspection and copying at the address indicated in the **ADDRESSES** section.

List of Subjects in 25 CFR Part 38

Indians—education.

Words of Issuance

For the reasons stated in the summary, the Department of the Interior proposes to amend Title 25 CFR, as follows:

PART 38—EDUCATION PERSONNEL

1. The authority for part 38 is revised to read as follows:

Authority: Secs. 1131 and 1135 of the Act of November 1, 1978 (92 Stat. 2322 and 2327; 25 U.S.C. 2011 and 2015); Secs. 511 and 512 of Pub. L. 98–511; and Secs. 8 and 9 of Pub. L. 99–89 (Indian Education Technical Amendments Act of 1985) and Title V of Pub. L. 100–297 (Indian Education Amendments of 1988) and Pub. L. 105–337.

2. A new § 38.15 is added to read as follows:

§ 38.15 Southwestern Indian Polytechnic Institute.

The Southwest Indian Polytechnic Institute has an independent personnel system established under Pub. L. 105–337, the Administrative Systems Act of 1998, 112 Stat. 3171. The details of this system are in the Bureau of Indian Affairs Manual at 62 BIAM, which may be found in Bureau of Indian Affairs Area and Agency offices, Education Line Offices and the Central office in Washington, DC.

Dated: April 25, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–11072 Filed 5–5–00; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1615/P.L. 106–192

Lamprey Wild and Scenic River Extension Act (May 2, 2000; 114 Stat. 233)

H.R. 1753/P.L. 106–193

Methane Hydrate Research and Development Act of 2000 (May 2, 2000; 114 Stat. 234)

H.R. 3090/P.L. 106–194

To amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes. (May 2, 2000; 114 Stat. 239)

H.J. Res. 86/P.L. 106–195

Recognizing the 50th anniversary of the Korean War and the service by members of the Armed Forces during such war, and for other purposes. (May 2, 2000; 114 Stat. 244)

S. 1567/P.L. 106–196

To designate the United States courthouse located at 223 Broad Avenue in Albany, Georgia, as the ''C.B. King United States Courthouse''. (May 2, 2000; 114 Stat. 245)

S. 1769/P.L. 106–197

To exempt certain reports from automatic elimination and sunset pursuant to the Federal Reports Elimination and Sunset Act of 1995, and for other purposes. (May 2, 2000; 114 Stat. 246)

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37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–038–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–038–00165–9)	32.00	Oct. 1, 1999
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–038–00170–5)	30.00	Oct. 1, 1999
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–038–00174–8)	8.00	Oct. 1, 1999
90–139	(869–038–00175–6)	26.00	Oct. 1, 1999
140–155	(869–038–00176–4)	15.00	Oct. 1, 1999
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–1)	27.00	Oct. 1, 1999
200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–038–00181–1)	39.00	Oct. 1, 1999
20–39	(869–038–00182–9)	26.00	Oct. 1, 1999
40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
70–79	(869–038–00184–5)	39.00	Oct. 1, 1999
80–End	(869–038–00185–3)	40.00	Oct. 1, 1999
48 Chapters:			
1 (Parts 1–51)	(869–038–00186–1)	55.00	Oct. 1, 1999
1 (Parts 52–99)	(869–038–00187–0)	30.00	Oct. 1, 1999
2 (Parts 201–299)	(869–038–00188–8)	36.00	Oct. 1, 1999
3–6	(869–038–00189–6)	27.00	Oct. 1, 1999
7–14	(869–038–00190–0)	35.00	Oct. 1, 1999
15–28	(869–038–00191–8)	36.00	Oct. 1, 1999
29–End	(869–038–00192–6)	25.00	Oct. 1, 1999
49 Parts:			
1–99	(869–038–00193–4)	34.00	Oct. 1, 1999
100–185	(869–038–00194–2)	53.00	Oct. 1, 1999
186–199	(869–038–00195–1)	13.00	Oct. 1, 1999
200–399	(869–038–00196–9)	53.00	Oct. 1, 1999
400–999	(869–038–00197–7)	57.00	Oct. 1, 1999
1000–1199	(869–038–00198–5)	17.00	Oct. 1, 1999
1200–End	(869–038–00199–3)	14.00	Oct. 1, 1999
50 Parts:			
1–199	(869–038–00200–1)	43.00	Oct. 1, 1999
200–599	(869–038–00201–9)	22.00	Oct. 1, 1999

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[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.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.