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Presidential Documents

Title 3—

The President

Proclamation 7655 of March 24, 2003

Cancer Control Month, 2003

By the President of the United States of America

A Proclamation

Millions of Americans are winning the fight against cancer, but much work remains. More than 3,500 Americans are diagnosed with cancer each day, and more than 45,000 will die from the disease this month. Yet, experts believe that half of all cancer deaths are preventable. With exercise, nutrition, and healthy behavior, we can help prevent this deadly disease and save lives. During Cancer Control Month, we renew our commitment to over coming cancer by learning more about its prevention and early detection.

To protect against disease, Americans can make smart choices that will lead to longer, healthier lives. A critical step that Americans can take to improve their health and reduce the risk of cancer is to avoid the use of tobacco. Also, avoiding excessive drinking and sun exposure can help guard against cancer and help ensure better health.

Improvements in diet and fitness can help prevent many serious health problems. A diet rich in fruits and vegetables and regular physical activity help protect us from illness and can add years to our lives. Research suggests that we can decrease the number of cancer deaths in America by one-third simply by changing our diets and getting more exercise.

Preventative health screening is vital to early detection and treatment of cancer. Regular screening can save lives and enhances the well-being of our Nation. Screening can detect many forms of cancer at earlier, less dangerous stages, allowing patients to seek treatment and defeat the cancer before it spreads. I urge all Americans to talk to their doctors about when to start preventative screening and how often to schedule appointments.

Our Nation's investment in cancer prevention and research is making a difference, and recent medical discoveries offer hope to many Americans. The National Cancer Institute (NCI) is currently sponsoring more than 60 clinical trials on cancer prevention and screening. One major clinical trial for men and women at risk for lung cancer began this year, and is investigating the most effective method of detecting lung cancer in order to reduce deaths from this devastating disease.

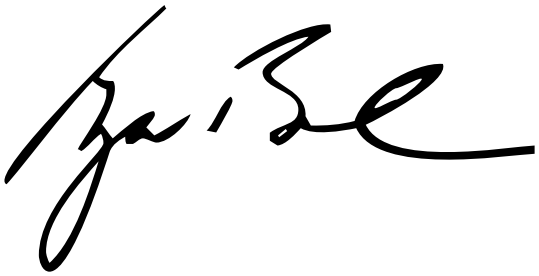
As part of my HealthierUS Initiative and my Administration's ongoing commitment to helping the American people live healthier lives, I encourage all Americans to eat right, get more exercise, and take advantage of preventative screening. To learn more about ways to prevent cancer, you can talk to your doctor or contact the NCI's Cancer Information Service at 1–800–4–CANCER or visit its Internet address at http://www.cancer.gov. Through healthy lifestyles, a better understanding of this disease, and new technology, I believe we will achieve a victory over cancer.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 103) as amended, requesting the President to issue an annual proclamation declaring April as ''Cancer Control Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim April 2003 as Cancer Control Month. I

encourage concerned citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that will increase awareness of measures all Americans can take to prevent and control cancer.

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



[FR Doc. 03–07532
Filed 3–26–03; 8:45 am]
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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.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Chapters XVIII and XXXV

Policy Statement for Direct Final Rulemaking

AGENCY: Rural Housing Service, USDA.

ACTION: Policy statement.

SUMMARY: The Rural Housing Service (RHS) is implementing a new rulemaking procedure to expedite making noncontroversial changes to its regulations. Rules that RHS determines to be noncontroversial and unlikely to result in adverse comments will be published as ''direct final'' rules. ''Adverse comments'' are those comments that suggest a rule should not be adopted or that a change should be made to the rule. Each direct final rule will advise the public that no adverse comments are anticipated and, that unless written adverse comments or written notice of intent to submit adverse comments are received within 60 days from the date the direct final rule is published in the **Federal Register**, the rule will be effective 75 days from the date the direct final rule is published in the **Federal Register**.

DATES: Effective March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Riggs, Community Programs, Direct Loan and Grant Processing Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787. Telephone: 202–720–1490, FAX: 202–690–0471, E-mail: *Dan.Riggs@USDA.gov.*

SUPPLEMENTARY INFORMATION: RHS is committed to improving the efficiency of its regulatory process. In pursuit of this goal, we plan to employ the rulemaking procedure known as direct final rulemaking to promulgate some RHS rules.

The Direct Final Rule Process

Rules that RHS determines to be noncontroversial and unlikely to result in adverse comments will be published in the **Federal Register** as direct final rules. Each direct final rule will advise the public that no adverse comments are anticipated and, that unless any adverse comments are received within 60 days, the direct final rule will be effective 75 days from the date the direct final rule is published in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that a change should be made to the rule. A comment expressing support for the rule, as published, will not be considered adverse. Further, a comment suggesting that requirements in the rule should, or should not, be employed by RHS in other programs or situations outside the scope of the direct final rule will not be considered adverse.

If RHS receives written adverse comments or written notice of intent to submit adverse comments within 60 days of the publication of a direct final rule, a document withdrawing the direct final rule prior to its effective date will be published in the **Federal Register** stating that adverse comments were received.

In accordance with rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the direct final rulemaking procedure gives the public general notice of RHS's intent to adopt a new rule and gives interested persons an opportunity to participate in the rulemaking process through submission of comments for consideration by RHS. The major feature of the direct final rulemaking process is that if RHS receives no written adverse comments and no written notice of intent to submit adverse comments within the comment period specified, the RHS will publish a document in the **Federal Register** stating that no adverse comments were received regarding the direct final rule and confirming that the direct final rule is effective on the date specified in the direct final rule.

Determining When To Use Direct Final Rulemaking

Not all RHS rules are good candidates for the direct final rulemaking. RHS intends to use the direct final rulemaking procedure only for rules that we consider to be noncontroversial and unlikely to generate adverse comments. The decision whether to use the direct final rulemaking process for a particular action will be based on RHS experience with similar actions.

Dated: March 19, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–7238 Filed 3–26–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–55–AD; Amendment 39–13096; AD 2003–06–08]

RIN 2120–AA64

Airworthiness Directives; Dornier-Werke G.m.b.H. Model Do 27 Q–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Dornier-Werke G.m.b.H. (Dornier) Model Do 27 Q–6 airplanes. This AD requires you to inspect the aileron and flap control cables for proper clearance from the fuel lines in the fuselage and make necessary adjustments; and inspect the fuel lines for damage and correct routing. This AD also requires you to replace all damaged fuel lines and reroute incorrectly routed fuel lines. After all other corrective action is taken, this AD also requires you to install protective sleeves on the fuel lines. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct damaged fuel lines and prevent the potential for further damage occurring to the fuel lines in the fuselage. Damage to the fuel lines could result in fuel leaking into the fuselage, which could cause a fire or explosion.

DATES: This AD becomes effective on May 16, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 16, 2003.

ADDRESSES: You may get the service information referenced in this AD from Fairchild Dornier GmbH, PO Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (011) 49 81 53–30 1; facsimile: (011) 49 81 53–30 29 01. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–55–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4143; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Dornier Model Do 27 Q–6 airplanes. The LBA reports that, during an annual maintenance inspection, a damaged fuel line was found in the area between the firewall and the instrument panel in the fuselage.

Further inspection revealed that the damaged fuel line was incorrectly routed and not properly secured. Incorrect installation of the fuel line allowed the aileron control cable to chafe the fuel line, which caused the fuel line to leak.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected, corrected, and prevented, could result in fuel leaking into the fuselage. This could cause a fire or explosion.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Dornier Model Do 27 Q–6 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 6, 2003 (68 FR 516). The NPRM proposed to require you to inspect the aileron and flap control cables in the fuselage for proper clearance from the fuel lines and make any necessary adjustments; and inspect the fuel lines for damage and correct routing. The NPRM also proposed to require you to replace all damaged fuel lines and reroute incorrectly routed fuel lines. After all other corrective action is taken, the NPRM also proposed to require you to install protective sleeves on the fuel lines.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

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

What Is the Difference Between This AD, the LBA AD, and the Service Information?

The LBA AD and the service information requires (on German-registered airplanes) inspection and, if necessary, adjustments and/or replacement within the next 10 hours time-in-service (TIS) after the effective date of the AD. We require that you inspect and, if necessary, adjust and/or replace within the next 55 hours TIS after the effective date of this AD. We do not have justification to require this action within the next 10 hours TIS.

We use compliance times such as 10 hours TIS when we have identified an urgent safety of flight situation. We believe that 55 hours TIS will give the owners or operators of the affected airplanes enough time to have the actions accomplished without compromising the safety of the airplanes.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 2 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	Not applicable	$60	$60 × 2 = $120.

We estimate the following costs to reroute any fuel line that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such rerouting:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 = $120	No parts required	$120

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacements:

Labor cost	Parts cost	Total cost per airplane
6 workhours × $60 = $360	$140	$360 + $140 = $500.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–06–08 Dornier-Werke G.m.b.H.: Amendment 39–13096; Docket No. 2002–CE–55–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model Do 27 Q–6 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damaged fuel lines and prevent the potential for further damage occurring to the fuel lines in the fuselage. Damage to the fuel lines could result in fuel leaking into the fuselage, which could cause a fire or explosion.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the following: (i) The aileron and flap control cable for proper clearance from the fuel lines in the fuselage; and (ii) The fuel lines between the firewall and instrument panel for damage and correct routing	Within the next 55 hours time-in-service (TIS) after May 16, 2003 (the effective date of this AD).	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.
(2) Make adjustments and/or replacements if: (i) Improper clearance is detected between the aileron and control cable and the fuel lines; (ii) Any fuel line is found damaged; or (iii) Any fuel line is incorrectly routed.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD and if any of the conditions specified in paragraph (d)(2) of this AD are met.	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.
(3) Install a protective sleeve around the fuel lines	Prior to further flight after the inspection required in paragraph (d)(1) of this AD and when all corrective actions have been accomplished.	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Dornier GmbH, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (011) 49 81 53–30 1; facsimile: (011) 49 81 53–30 29 01. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in German AD 2002–240, dated July 26, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on May 16, 2003.

Issued in Kansas City, Missouri, on March 19, 2003.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7186 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–49–AD; Amendment 39–13095; AD 2003–06–07]

RIN 2120–AA64

Airworthiness Directives; Socata—Groupe Aerospatiale Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2002–05–04, which applies to certain Socata—Groupe Aerospatiale (Socata) Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST airplanes. AD 2002–05–04 requires you to repetitively inspect any engine mount assembly that is not part number 892–51–0–035–0 (or FAA-approved equivalent part number) for cracks; repair cracks that do not exceed a certain length; and replace the engine mount when the cracks exceed a certain length and cracks are found on an engine mount that already has been repaired twice. This AD is the result of the French airworthiness authority's determination that airplanes equipped with an engine mount assembly part number 892–51–0–035–0 also display the unsafe condition. This AD retains the repetitive inspection and repair requirements of AD 2002–05–04, changes the applicability section, removes the terminating action, and requires replacement of all part number 892–51–0–035–0 engine mount assemblies. The actions specified by this AD are intended to prevent failure of the engine mount assembly. Such failure could result in loss of control of the airplane.

DATES: This AD becomes effective on May 16, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 16, 2003.

ADDRESSES: You may get the service information referenced in this AD from Socata Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4141. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE–49-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

Fatigue cracks found on the engine mount assemblies of certain Socata Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST airplanes caused us to issue AD 2002–05–04, Amendment 39–12672 (67 FR 10831, March 11, 2002). This AD requires the following on affected airplane models and serial numbers that are certificated in any category and do not have a part number 892–51–0–035–0 engine mount assembly (or FAA-approved equivalent part number) installed:

- Repetitively inspecting any engine mount assembly that is not part number 892–51–0–035–0 (or FAA-approved equivalent part number) for cracks;
- Repairing cracks that do not exceed a certain length;
- Replacing the engine mount when the cracks exceed a certain length and cracks are found on an engine mount that already has two repairs; and
- Terminating repetitive inspections after installing a part number 892–51–0–035–0 engine mount assembly, (or FAA-approved equivalent part number).

AD 2002–05–04 superseded AD 77–15–06, Amendment 39–2975, which required accomplishing the following:

- Inspecting the engine mount assembly for cracks at repetitive intervals;
- Repairing any cracks found; and
- Modifying the brackets on airplanes with right angle engine mounts.

AD 2002–05–04 incorporated new manufacturer service information to address the unsafe condition, added additional airplane models to the applicability; and changed the initial compliance time for all airplanes.

Accomplishment of these actions is required in accordance with Socata Service Bulletin SB 156–71, dated May 2001.

What Has Happened Since AD 2002–05–04 to Initiate This Action?

The Direction Génénrale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA of the need to change AD 2002–05–04. The DGAC reports that affected airplanes equipped with an engine mount assembly part number 892–51–0–035–0 are also affected by fatigue cracking and should be included in the applicability section of AD 2002–05–04. Installing part number 892–51–0–035–0 is no longer considered a terminating action for the repetitive inspections and should be removed from all affected airplanes.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected and corrected, could cause the engine mount assembly to fail. Such failure could result in loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 24, 2002 (67 FR 78394). The NPRM proposed to supersede AD 2002–05–04 with a new AD that would:

- Retain the repetitive inspection and repair requirements of AD 2002–05–04;
- Remove the terminating action;
- Change the applicability section; and
- Require replacement of all part number 892–51–0–035–0 engine mount assemblies with an FAA-approved equivalent part number.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as

proposed except for minor editorial corrections. We have determined that these minor corrections:

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

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 81 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	No parts required	$60	$60 × 81 = $4,860.

We estimate the following costs to accomplish any necessary repairs that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $60 = $180	No parts required	$180.

We estimate the following costs to accomplish the replacement. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
20 workhours × $60 = $1,200	Approximately $3,360	$1,200 + 3,360 = $4,560.

What Is the Difference Between the Cost Impact of This AD and the Cost Impact of AD 2002–05–04?

The differences between this AD and AD 2002–05–04 are the correction to the applicability section, removal of the terminating action, and the addition of replacing all part number 892–51–0–035–0 engine mount assemblies. We have determined that this AD action does increase the cost impact over that required by AD 2002–05–04.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–05–04, Amendment 39–12672 (67 FR 10831, March 11, 2002), and by adding a new AD to read as follows:

2003–06–07 Socata—Groupe Aerospatiale: Amendment 39–13095; Docket No. 2002-CE–49–AD; Supersedes AD 2002–05–04, Amendment 39–12672.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
MS 892A–150	All serial numbers.
MS 892E–150	All serial numbers.
MS 893A	All serial numbers.
MS 893E	All serial numbers.
MS 894A	1005 through 2204 equipped with kit OPT8098 9037.
MS 894E	1005 through 2204 equipped with kit OPT8098 9037.
Rallye 150T	All serial numbers.
Rallye 150ST	All serial numbers.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the engine mount assembly. Such a condition could cause the engine mount assembly to fail, which could result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace any part number 892–51–0–035–0 engine mount assembly with an FAA-approved assembly that is not part number 892–51–0–035–0.	Within the next 50 hours time-in-service (TIS) after May 16, 2003 (the effective date of this AD).	In accordance with the applicable maintenance manual.
(2) Inspect the engine mount assembly for cracks.	*Initially inspect at whichever of the following occurs later:* after accumulating 50 hours TIS after engine mount assembly installation; within the next 20 hours TIS after May 16, 2003 (the effective date of this AD); or at the next inspection required by AD 2002–05–04. *Repetitively inspect thereafter at intervals not to exceed 50 hours TIS.*	In accordance with the Accomplishment Instructions section of Socata Service Bulletin SB 156–71, dated May 2001.
(3) If any crack is found during any inspection required by paragraph (d)(2) of this AD that is less than 0.24 inches (6 mm) in length, repair the engine mount assembly. If two repairs on the engine mount have already been performed, repair in accordance with paragraph (d)(4) of this AD.	Prior to further flight after the inspection in which the crack is found.	In accordance with the Accomplishment Instructions section of Socata Service Bulletin SB 156–71, dated May 2001.
(4) If any crack is found during any inspection required by this AD that is 0.24 inches (6 mm) or longer in length, or if any crack is found and two repairs on the engine mount have already been performed: (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and (ii) Incorporate this repair scheme.	Prior to further flight after the inspection in which the crack is found.	In accordance with the repair scheme obtained from Socata Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(5) Do not install on any airplane engine mount assembly part number 892–51–0–035–0.	As of May 16, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

(2) Alternative methods of compliance approved in accordance with AD 2002–05–04, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Socata Service Bulletin SB 156–71, dated May 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Socata Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4141. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French AD 2001–400(A), dated September 19, 2001; and French AD 1978–205(A) R1, dated September 19, 2001.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2002–05–04, Amendment 39–12672.

(j) *When does this amendment become effective?* This amendment becomes effective on May 16, 2003.

Issued in Kansas City, Missouri, on March 19, 2003.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7185 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–378–AD; Amendment 39–13091; AD 2003–06–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; and A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series

airplanes, that currently requires repetitive inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair if necessary. This amendment retains those requirements but shortens the initial compliance time and the repetitive inspection intervals. This amendment also expands the applicability to include additional airplanes. This amendment is prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in propagation of the cracking to the rear fitting and reduced structural integrity of fuselage frame 47.

DATES: Effective May 1, 2003.

The incorporation by reference of Airbus Service Bulletins A300–53–6029, Revision 05, including Appendix 01, and A300–53–0246, Revision 03, including Appendix 03, both dated April 11, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of May 1, 2003.

The incorporation by reference of Airbus Service Bulletin A300–53–6029, Revision 02, dated November 7, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 16, 1996 (61 FR 47808, September 11, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Jacques Leborgne, Airbus Industrie Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–18–18, amendment 39–9744 (61 FR 47808, September 11, 1996), which is applicable to all Airbus Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, was published in the **Federal Register** on June 11, 2002 (67 FR 39900). That action proposed to retain the requirements of the existing AD but shorten the initial compliance time and repetitive inspection intervals. That action also proposed to expand the applicability to include additional airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

The commenters generally support the proposed AD, with the following recommended changes.

Request To Revise Compliance Time of Paragraph (b)(1)

Several commenters request that the compliance time of paragraph (b)(1) (applicable to Model A300–600 series airplanes) of the proposed AD be revised. The commenters state that the proposed wording would effect a compliance time more restrictive than that mandated in the corresponding French airworthiness directive. The commenters add that such a compliance time would penalize airlines for inspections done in compliance with the new proposed requirements that were accomplished before the effective date of the AD by requiring reinspection in 60 days.

Paragraph (b)(1) of the proposed AD is incorrect. The FAA had intended to match the compliance time of AD 96–18–18 with that mandated by the parallel French airworthiness directive 2001–355(B), dated August 8, 2001. Therefore, the compliance time in paragraph (b)(1) of this final rule has been revised to 6,100 flight cycles, with a grace period of 750 flight cycles/1,900 flight hours (whichever occurs first). This change does not result in a more restrictive inspection schedule than that of the proposed AD, and consequently does not impose an additional burden on any operator.

Request To Allow Flight With Cracks

Several commenters request that paragraphs (c) and (d) of the proposed AD be revised to allow temporary continued flight with cracks under certain conditions found during inspection. The commenters state that such a provision would provide the FAA with data to monitor airplanes with cracks and still allow a level of safety equivalent to that of the proposed AD. One commenter describes an inspection schedule based on crack length, agreed to by the FAA and the manufacturer.

The FAA partially agrees, but does not concur with the request to allow flight with known cracking in a major frame in a primary structure. The FAA finds it necessary to evaluate each crack finding on a case-by-case basis, and to require repair procedures or repetitive inspections based on that evaluation. The FAA may consider allowing flight with known cracks as an alternative method of compliance (AMOC), based on the configuration of the cracks and the operator's ability to safely monitor the cracks by inspection until a repair can be implemented. Given the expertise required to adequately monitor cracking conditions in a manner that ensures the safety of the public, the FAA would consider such a provision only as an AMOC. No change to the final rule is necessary regarding this issue. However, after operators' inspection findings have been validated, the FAA may consider issuing an AMOC with general applicability to all affected airplanes, provided Airbus can specify a comprehensive crack-monitoring program that reduces the need for direct FAA engineering involvement in individual crack-monitoring programs.

Request To Extend Compliance Time of Paragraph (a)(2)(ii)

Two commenters request that paragraph (a)(2)(ii) of the proposed AD be revised to reflect a compliance time of ''750 flight cycles or 1,500 flight hours, whichever occurs first.'' According to the commenters, the proposed 60-day grace period would result in economic hardship to operators. The commenters request the same grace period as that for Model A300 B2 and B4 series airplanes.

The FAA agrees. The grace period, inadvertently written in paragraph (a)(2)(ii) in the proposed AD as 60 days, has been revised in this final rule to 750 flight cycles/1,900 flight hours (whichever occurs first).

Request To Coordinate Compliance Times of Related ADs

Two commenters request that the proposed AD be revised to consider the effects of existing ADs that involve work in the same area. The commenters refer to three related ADs: AD 95–24–04, amendment 39–9436 (60 FR 58213, November 27, 1995); AD 97–16–06, amendment 39–10097 (62 FR 41257, August 1, 1997), as corrected (62 FR 44888, August 25, 1997); and AD 2002–11–04, amendment 39–12765 (67 FR 38193, June 3, 2002). The commenters propose a harmonized inspection threshold to take advantage of access,

down time, and maintenance costs associated with the referenced ADs.

The FAA recognizes the potential value of a harmonized approach to address multiple inspections of the same general area based on other ADs, and will take the commenters' suggestion under advisement for future rulemaking actions. However, in this case the identified unsafe condition is an immediate concern properly addressed in a unique AD. Coordinating a comprehensive review of related ADs would further delay issuance of this AD, which, in any event, is not the proper forum to address such a review. No change to the final rule is necessary regarding this issue.

Request To Consider Repair Interference

Two commenters state that the proposed AD does not address the effect of any impingement of repairs (in case of a crack finding) on the inspection areas of various ADs in this area and/or interference between repairs. The FAA infers that the commenters are requesting that the proposed AD be revised to account for the potential effects of repairs that may have been done in the inspection area of this AD.

The details of the effect of other repairs relative to this AD are unknown, so the FAA cannot address the comment other than to state that this subject is discussed in Note 1 of the AD. Note 1 explains the implications and consequences of previous repairs in the subject area relative to compliance with the requirements of this AD. The FAA suggests that, for any deviations due to repairs in the affected area, each operator combine its compliance proposals into a single request for approval of an AMOC to reduce the number of requests for AMOCs this AD may generate. No change to the final rule is necessary regarding this issue.

Request To Allow New Repairs Based on Prior Approved Repairs

Two commenters request that the proposed AD be revised to ''take credit for corrective actions (repairs/rework, etc.) in the subject area, approved by either [the FAA] or the DGAC'' to ''minimize the AMOC process and aircraft return to service.'' The FAA infers that the commenters request approval for repair of newly discovered cracks based on previously approved repairs.

The FAA does not agree. Because of the nature of the cracking and the complexity of the area subject to the cracking, the FAA finds that a repair method that is appropriate for one crack configuration may not adequately address all possible crack configurations. The manufacturer has not issued a service bulletin that provides instructions for repair procedures. If such service information is developed and released, the FAA may issue further rulemaking to allow or require crack repair in accordance with that service bulletin. Until then, however, repairs must be approved through the AMOC process, as provided in paragraph (f)(1) of this AD. No change to the final rule is necessary regarding this issue.

Request To Add Service Information

Two commenters request that the proposed AD be revised to incorporate Airbus All Operators Telex (AOT) A300–53–6135, Revision 01, dated February 2002. The commenters state that the AOT provides information such as new reporting procedures, crack length clarification, and nondestructive test methods.

The FAA finds that the AOT would not add any significant meaningful information regarding the requirements of this AD. This AD has discussed reporting procedures and crack length clarification at some length. This AD generally prohibits continued flight with a known crack (unless certain conditions are met, as determined and approved by the FAA or the DGAC). As a result, the AOT provisions are not applicable or necessary. No change to the final rule is necessary regarding this issue.

Request To Cite Latest Service Bulletin Version

Two commenters request that the proposed AD be revised to cite the latest revision of Airbus Service Bulletin A300–53–6029 (which was cited in AD 96–18–18, at Revision 02, and in the proposed AD, at Revision 05, as the appropriate source of inspection information for Model A300–600 series airplanes). The commenters report that Revisions 06 and 07 (which have not been issued) of the service bulletin will include repair procedures. The commenters suggest that reference in the AD to a service bulletin repair will expedite affected airplanes' return to service and reduce the number of requests for AMOCs. One of the commenters requests that the proposed AD be revised to authorize repairs as terminating action for the repetitive inspections.

The FAA does not agree. As stated previously, the service bulletins do not contain repair instructions. Requiring accomplishment of any action in accordance with an as-yet unpublished service bulletin violates Office of the Federal Register regulations regarding approval of materials that are incorporated by reference. However, affected operators may request approval to use a later revision of the referenced service bulletin (if issued) as an AMOC, under the provisions of paragraph (f)(1) of the AD. If repair instructions are included in a revised service bulletin, the FAA may then consider issuing further rulemaking or an AMOC with general applicability to all affected airplanes. Further, terminating action will not be routinely granted as a part of each AMOC because of the complexity of the procedures required for inspection, measurement, and repair in the subject area. No change to the final rule is necessary regarding this issue.

Request To Clarify Paragraph (c) Requirements

One commenter requests clarification of the requirements of paragraph (c) of the proposed AD. The commenter finds the phrase ''reinspect the airplane'' nonspecific and potentially misleading, and recommends that the AD clearly identify the area of the airplane that is to be reinspected and the type of reinspection required if discrepancies are found.

The FAA agrees that clarification of the reinspection language would be helpful. Paragraphs (c) and (d) have been revised in this final rule to indicate that, as an option to repair, the FAA may approve reinspection—in accordance with the applicable service bulletin—within specific intervals.

Request To Include Repetitive Inspections in Reporting Requirement

One commenter requests that reports be required following each repetitive inspection specified in paragraph (b) of the proposed AD. The added data from the additional reports would increase the flow of valuable data to Airbus for better and more detailed understanding of the structural behavior and actual crack propagation.

It was the FAA's intent in paragraph (e) of the proposed AD to require a report following each repetitive inspection, as indicated by the phrase, ''after each inspection required by paragraphs (a) and (d) of this AD.'' Paragraph (b) of this AD merely sets forth the conditions and time interval for repeating the inspections of paragraph (a) of this AD. However, for clarification, paragraph (e) has been revised in this final rule to require a report following any inspection required specifically by paragraphs (a), (b), and (d) of this AD.

Request To Revise Reporting Requirement Compliance Time

One commenter requests that the proposed compliance time for submitting reports be extended. The commenter states that Airbus will be contacted for repair information immediately if cracks are found, and finds no advantage of requiring a report within 10 days if no cracks are found. The commenter suggests that a reporting compliance time of 30 days after any inspection would allow operators to process interval paper work and provide reports in the most organized and qualified manner.

The FAA concurs with the request and has revised paragraph (e) in this final rule to extend the reporting compliance time to 30 days. This compliance time represents an appropriate interval in which reports can be submitted in a timely manner within the fleet and still maintain an adequate level of safety.

Additional Change to Proposed AD

Because the language in Note 2 of the proposed AD is regulatory in nature, that note has been included in paragraph (a) of this final rule.

Interim Action

This is considered to be interim action. The manufacturer has advised that it is currently developing repair procedures that will address the identified unsafe condition and terminate the repetitive inspections. Once these procedures are developed, approved, and made available, the FAA may consider additional rulemaking.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

Approximately 127 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 96–18–18, and retained in this AD, takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $240 per airplane, per inspection cycle.

The new actions will take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $38,100, or $300 per airplane, per inspection cycle.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–9744 (61 FR 47808, September 11, 1996), and by adding a new airworthiness directive (AD), amendment 39–13091, to read as follows:

2003–06–04 Airbus: Amendment 39–13091. Docket 2001–NM–378–AD. Supersedes AD 96–18–18, Amendment 39–9744.

Applicability: All Model A300 B2 and B4 series airplanes; and all Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the upper radius of the forward fitting of fuselage frame 47, which could result in propagation of the cracking to the rear fitting and reduced structural integrity of frame 47, accomplish the following:

Model A300–600: Inspection

(a) For Model A300–600 series airplanes: At the earlier of the times specified by paragraphs (a)(1) and (a)(2) of this AD, perform an eddy current inspection to detect cracking of the upper radius of the left and right forward fitting of frame 47, in accordance with Airbus Service Bulletin A300–53–6029, Revision 02, dated November 7, 1994; or Revision 05, dated April 11, 2001. After the effective date of this AD, only Revision 05 of the service bulletin may be used. Accomplishment of an inspection before the effective date of this AD in accordance with Airbus Service Bulletin A300–53–6029, Revision 03, dated October 7, 1997, or Revision 04, dated October 25, 1999, is acceptable for compliance with the initial inspection requirements of paragraph (a) of this AD.

(1) Before the accumulation of 17,300 total flight cycles, or within one year after October 16, 1996 (the effective date of AD 96–18–18, amendment 39–9744), whichever occurs later.

(2) At the later of the times specified by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Before the accumulation of 10,000 total flight cycles or 26,000 total flight hours, whichever occurs first.

(ii) Within 750 flight cycles or 1,900 flight hours, whichever occurs first after the effective date of this AD.

Model A300–600: Follow-On Inspections

(b) For Model A300–600 series airplanes on which no cracking is found during any inspection required by paragraph (a) of this AD:

(1) If the initial inspection was accomplished before the effective date of this AD, repeat the inspection at the later of the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Thereafter, repeat the inspection at least every 6,100 flight cycles or 15,600 flight hours, whichever occurs first.

(i) Reinspect within 6,100 flight cycles after the initial inspection.

(ii) Reinspect within 750 flight cycles or 1,900 flight hours, whichever occurs first after the effective date of this AD.

(2) If the initial inspection was not accomplished before the effective date of this AD, repeat the inspection thereafter at least every 6,100 flight cycles or 15,600 flight hours, whichever occurs first.

Model A300–600: Corrective Action

(c) For Model A300–600 series airplanes on which any cracking is found during any inspection required by this AD: Before further flight, contact the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated representative); for instructions regarding repair or for an applicable reinspection interval in accordance with Airbus Service Bulletin A300–52–6029, Revision 05, dated April 11, 2001. Repair and/or reinspection accomplished before the effective date of this AD in accordance with a method approved by the Manager, International Branch, ANM–116, is acceptable for compliance with the requirements of paragraph (c) of this AD.

Model A300 B2 and B4: Inspection and Follow-On Actions

(d) For Model A300 B2 and B4 series airplanes: At the applicable time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, perform repetitive eddy current inspections to detect cracking of the upper radius of the forward fitting of frame 47, left and right sides, per Airbus Service Bulletin A300–53–0246, Revision 03, dated April 11, 2001. If any cracking is found: Before further flight, contact the Manager, International Branch, ANM–116, or the DGAC (or its delegated representative), for instructions regarding repair, or for an applicable reinspection interval in accordance with the service bulletin. This requirement terminates the corresponding inspection requirement of the A300 Supplemental Structural Inspection Document (SSID) for Model A300 B2 and B4 series airplanes. That SSID is mandated by AD 96–13–11, amendment 39–9679.

(1) For Model A300 B2 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(1)(i) and (d)(1)(ii) of this AD. Repeat the inspection thereafter at least every 10,400 flight cycles or 13,300 flight hours, whichever occurs first.

(i) Before the accumulation of 16,500 total flight cycles or 21,000 total flight hours, whichever occurs first.

(ii) Within 1,000 flight cycles or 1,300 flight hours after the effective date of this AD, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(2)(i) and (d)(2)(ii) of this AD. Repeat the inspection thereafter at least every 8,500 flight cycles or 16,400 flight hours, whichever occurs first.

(i) Before the accumulation of 10,300 total flight cycles or 19,800 total flight hours, whichever occurs first.

(ii) Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Perform the initial inspection at the later of the times specified by paragraphs (d)(3)(i) and (d)(3)(ii) of this AD. Repeat the inspection thereafter at least every 7,000 flight cycles or 13,600 flight hours, whichever occurs first.

(i) Before the accumulation of 11,000 total flight cycles or 21,200 total flight hours, whichever occurs first.

(ii) Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

Reporting Requirement

(e) At the applicable time specified in paragraph (e)(1) or (e)(2) of this AD: Submit a report of all results of each inspection required by paragraphs (a), (b), and (d) of this AD to Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, Attention Jacques Leborgne, fax 33–5–61–93–36–14. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection.

(2) For airplanes on which the inspection has been accomplished before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 96–18–18, amendment 39–9744, and AD 96–13–11, amendment 39–9679, are approved as alternative methods of compliance with the requirements of paragraphs (c) and (d) of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as otherwise required by this AD, the actions must be done in accordance with Airbus Service Bulletin A300–53–0246, Revision 03, including Appendix 01, dated April 11, 2001; Airbus Service Bulletin A300–53–6029, Revision 05, including Appendix 01, dated April 11, 2001; and Airbus Service Bulletin A300–53–6029, Revision 02, dated November 7, 1994.

(1) The incorporation by reference of Airbus Service Bulletin A300–53–6029, Revision 05, including Appendix 01, dated April 11, 2001; and Airbus Service Bulletin A300–53–0246, Revision 03, including Appendix 01, dated April 11, 2001; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A300–53–6029, Revision 02, dated November 7, 1994, was approved previously by the Director of the Federal Register, as of October 16, 1996 (61 FR 47808, September 11, 1996).

(3) Copies of these service bulletins may be obtained from Jacques Leborgne, Airbus Industrie Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax (+33) 5 61 93 36 14. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–355(B), dated August 8, 2001.

Effective Date

(i) This amendment becomes effective on May 1, 2003.

Issued in Renton, Washington, on March 18, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–6995 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[A.G. Order No. 2666–2003]

Organization; Drug Enforcement Administration

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the delegation to the Drug Enforcement Administration (DEA) of the Attorney General's authority under the Comprehensive Drug Abuse and Prevention Act of 1970, as amended. The amendment would make clear that the delegation of the Attorney General's authority to the DEA to assign law enforcement duties to itself and to state and local law enforcement officers extends only to matters relating to, arising from, or supplementing investigations of matters concerning drugs.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Robert T. Richardson, Deputy Chief Counsel, Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20530, (202) 307–7322.

SUPPLEMENTARY INFORMATION: Under 21 U.S.C. 878(a)(5), the Attorney General may designate any officer or employee of DEA or any state or local law enforcement officer to ''perform such other law enforcement duties as the Attorney General may designate.'' The Attorney General has delegated this authority to DEA. The amendment would make clear that this delegation of authority extends only to matters relating to drug investigations.

Administrative Procedure Act

This rule relates to a matter of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department.

Executive Order 12866

This rule is limited to agency organization, management and personnel as described by Executive Order 12866 section (3)(d)(3) and, therefore, is not a ''regulation'' or ''rule'' as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

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

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. Moreover, this action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' for purposes of the reporting requirement of 5 U.S.C. 801.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (government agencies), Whistleblowing.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 21 U.S.C. 878, 5 U.S.C. 301, and 28 U.S.C. 509 and 510, Part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. In § 0.100 revise the first sentence of paragraph (b) to read as follows:

§ 0.100 General functions.

* * * * *

(b) Except where the Attorney General has delegated authority to another Department of Justice official to exercise such functions, and except where functions under 21 U.S.C. 878(a)(5) do not relate to, arise from, or supplement investigations of matters concerning drugs, functions vested in the Attorney General by the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. * * *

* * * * *

Dated: March 20, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–7355 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–003]

RIN 1625–AA00

Safety Zone; Oceanside Harbor, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard establishes a temporary safety zone within the navigable waters of the Pacific Ocean in Oceanside Harbor, California for the California Half Ironman Triathlon. This temporary safety zone is necessary to provide for the safety of the participants (swimmers) and spectators of the race, to protect the participating vessels, and to protect other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5:30 a.m. (p.s.t.) to 10 a.m. (p.s.t.) on April 5, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (COTP San Diego 03–012) and are available for inspection or copying at Marine Safety Office San Diego; 2716 N. Harbor Drive, San Diego, CA 92101–

1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the complex planning for this event many details were not finalized in time to publish a notice of proposed rulemaking. Publishing a NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, it would be contrary to the public interest since action is needed to ensure the protection of the public during the California Half Ironman Triathlon.

Background and Purpose

The California Half Ironman Triathlon is an up and coming event located in Oceanside, California. Parts of this event are located on the waters defined as Oceanside Harbor, including the entrance channel. This event includes participant swimmers and staff members of the race.

In order to provide a safe environment for the California Half Ironman Triathlon, the COTP is placing the waters of the harbor and the entrance channel under a safety zone. This zone will provide for the safety of all participants, staff, spectators and other users of the waterways.

Discussion of Rule

Ironman North America is sponsoring the California Half Ironman Triathlon in Oceanside, CA. The water portion of the triathlon will occur in the navigable waters of Oceanside Harbor, including the channel entrance.

In order to provide for the safety of the swimmers, the Triathlon Support Staff, the spectators and other users of the waterways, the COTP will be issuing a safety zone for Oceanside Harbor and the entrance channel.

Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative

Regulatory Evaluation

This proposed 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 Homeland Security.

Due to the temporary safety zone's short duration of four and one half (4½) hours for just one day, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of size.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Austin Murai, Marine Safety Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to

health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation because we are proposing to establish a safety zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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. From 5:30 a.m. on April 5, 2003 to 10 a.m. on April 5, 2003, add a new § 165.T11–039 to read as follows:

§ 165.T11–039 Safety Zone; Oceanside Harbor, CA

(a) *Location.* The area described as follows is a safety zone: the waters of Oceanside Harbor, CA, including the entrance channel.

(b) *Effective dates.* This safety zone will be enforced from 5:30 a.m. (PST) to 10 a.m. (PST) on April 5, 2003. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander, who will be designated by the COTP. The Patrol Commander may be contacted by VHF–FM Channel 16.

Dated: March 17, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–7298 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–15–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1204, 1206, 1213, 1229, and 1234

Removal of Regulations for the Former ACTION Agency

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service is removing regulations related to programs of its predecessor agency, the ACTION Agency as being obsolete.

DATES: The removal of these regulations is effective as of March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Hudson, (202) 606–5000, ext. 265.

SUPPLEMENTARY INFORMATION: The National and Community Service Trust Act of 1993, Public Law 103–82, 107 Stat. 785, which amended the National and Community Service Act of 1990, created the Corporation for National and Community Service. This law authorized programs to provide Federal financial assistance to organizations that conducts national service programs, and authorized the transfer of all functions and personnel of the ACTION Agency to the Corporation. Since then, the Corporation has published its own regulations implementing national service programs as authorized under the 1993 amendments to the 1990 Act. Therefore, the Corporation removes these regulations.

List of Regulations

§ 1204 Official Seal.

§ 1206 Grants and contracts-suspension and termination and denial of application for refunding.

§ 1213 ACTION Cooperative Volunteer Program.

§ 1229 Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for a drug-free workplace (grants).

§ 1234 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

PARTS 1204, 1206, 1213, 1229 AND 1234—[REMOVED]

For the reasons stated in the preamble, the Corporation for National and Community Service, under the authority of 42 U.S.C. 12501 *et. seq,* hereby amends 45 CFR Chapter XII by removing parts 1204, 1206, 1213, 1229, and 1234.

Dated: March 21, 2003.

Frank R. Trinity,

General Counsel.

[FR Doc. 03–7335 Filed 3–26–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 110602C]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2003 Harvest Specifications for Groundfish; Correction

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

ACTION: Final rule; Correction.

SUMMARY: This document corrects a typographical error in the docket number of the final rule published in the **Federal Register** on March 3, 2003. This rule implements the final specifications for the groundfish fishery of the Bering Sea and Aleutian Islands management area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 25, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Need for Correction

An incorrect docket number (No.) was published under the Docket No. heading of the final rule, FR Doc. 03–4815, on March 3, 2003 (68 FR 9907). It is corrected as follows:

On page 9907, column 2, line 5 from the top of the document, the text, ''Docket No. 021212307–3037–3037–02;'' is corrected to read ''Docket No. 021212307–3037–02''.

Dated: March 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–7366 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No.010918229–3033–02;I. D.022301A]

RIN 0648–AP15

American Lobster Fishery

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

ACTION: Final rule.

SUMMARY: NOAA Fisheries amends regulations to modify the management measures applicable to the American lobster fishery. This action responds to the following recommendations made by the Atlantic States Marine Fisheries Commission (Commission):To control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore Lobster Conservation Management Area (LCMA) 3 (Area 3) and in the nearshore LCMAs of the Exclusive Economic Zone (EEZ) from New York through North Carolina (Areas 4 and 5); to implement a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit (permit holders) fishing in New Hampshire state waters; and to clarify lobster management area boundaries in Massachusetts waters. NOAA Fisheries includes in this final rule a mechanism for Federal consideration of future Commission requests to implement conservation equivalent measures and a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not previously clearly specified in the regulatory text, and this announcement is intended to make the regulations easier to understand.

DATES: This rule is effective April 28, 2003.

ADDRESSES: Copies of a Final Supplemental Environmental Impact Statement/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA) can be obtained from Harold Mears, Director, State, Federal and Constituent Programs Office, NOAA Fisheries, One Blackburn Drive, Gloucester, MA 01930. Comments regarding the collection-of-information requirements should be sent to Harold Mears at the above address, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN:NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Robert Ross, NOAA Fisheries, Northeast Region, 978–281–9234.

SUPPLEMENTARY INFORMATION:

Statutory Authority

These final regulations modify Federal lobster conservation management measures in the EEZ under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. 5101 *et seq.*, which states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U. S. C. 1801 *et seq.*) and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles (nm) offshore. These regulations must be (1) compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Commission and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

Purpose and Need for Management

American lobster experience very high fishing mortality rates throughout their range, from Canada to Cape Hatteras. In 2000, the Commission issued a peer reviewed American lobster stock assessment report that concluded that the resource is overfished. The review concluded that fishing rates are unacceptably high and that a precautionary approach in management of the resource is warranted to sustain future viability of the lobster fishery. The report recommended that reductions in fishing mortality could be achieved through reductions in fishing effort. The 2001 Annual State and Federal Trawl Survey Update to the 2000 lobster stock assessment indicated that resource conditions have not improved since the stock assessment in 2000. For pre-recruit lobsters, which are those lobsters within one-half inch (1.2 cm) of the current Federal legal minimum carapace size of 3–1/4 inches (8.26 cm), the mean number per tow generally declined throughout all stock areas for both sexes. Although harvest and population abundance are near record levels due to high recent

recruitment and favorable environmental conditions, revenue from the 2001 lobster harvest decreased 21.1 percent as compared to 1999. Concerns over the condition of the resource continued into 2003, with reports of a dramatic decline in abundance in Area 2 surrounding Block Island Sound and the state waters of Rhode Island in 2002. A significant decline would have serious implications for the American lobster fishery, which is the most valuable fishery in the northeastern United States. In 2001, approximately 74 million pounds (33,439 metric tons (mt)) of American lobster were landed with an ex-vessel value of approximately 255 million dollars. Additional background information on the status of the stocks was presented in the FSEIS/RIR/FRFA prepared by NOAA Fisheries for this final rule and is not repeated here (see **ADDRESSES**).

The Commission ISFMP Recommendations for Effort Control in Areas 3, 4, and 5

The Commission approved Addendum I on August 3, 1999. The Addendum is principally an effort control measure that determines trap limits based upon historical participation (as opposed to fixed trap limits) in Lobster Management Area 3 (offshore EEZ), and Areas 4 and 5 (inshore EEZ areas south of New York).

Based upon its approval of selected management measures proposed by the Area 3, 4, and 5 LCMTs, the Commission recommended to NOAA Fisheries that access to, and levels of effort in, the lobster trap fishery in EEZ Offshore Area 3 and Nearshore EEZ waters of Areas 4 and 5 be based on historical participation. The Commission recommendations for qualification based on historical participation addressed qualification criteria, allocation of fishing effort, and limitations on vessel upgrades. Qualification criteria are different among the areas and include demonstration of active involvement in the fishery during a specified qualification period through provision of certain documents. The Commission plan for Area 3 proposes that potential participants must meet or exceed both a landing and a fishery intensity threshold in order to qualify and specifically defines that threshold. The Commission plans for Areas 4 and 5 however, although similar, only generally prescribe that qualification and trap limits be based on ''historical levels'' without providing further definition.

The Commission ISFMP Recommendations for New Hampshire Conservation Equivalency

In October 1998, the Commission approved a proposal from the State of New Hampshire for conservation equivalent lobster trap limits that vary from the 800 lobster trap limit in Area 1 (see subsequent text for details on the state program). In keeping with ISFMP procedures, this conservation equivalent proposal was submitted by the State of New Hampshire to the Board with supporting documentation to support the state's contention that the state lobster fishing effort control program would, in fact, be equivalent to the fixed trap limits for LCMA 1. The state proposal and supporting documentation was submitted to the Commission's Lobster Technical Committee (''TC''), composed of lobster scientists from several states and NOAA Fisheries, and following a review of the conservation equivalency proposal and supporting documentation, the TC concurred with the State of New Hampshire that the state's program would be equivalent to the LCMA 1 fixed trap limit of 800 traps. Following the TC review, and the Commission approval, the Commission recommended that NOAA Fisheries implement compatible measures for impacted Federal lobster permit holders.

The State of New Hampshire's lobster management program provides for a two-tier lobster license system:State fishermen who provide documentation of landing more than 12,000 lb (5,443 kg) of lobster in at least 2 years, from 1994 to 1998, receive a full commercial lobster license issued by the State of New Hampshire; those who cannot provide this documentation are issued a limited commercial lobster license. Those fishermen who qualify for a full license may fish up to 1,200 lobster traps in state waters, and those in the limited category may fish a maximum of 600 lobster traps in state waters. Following approval of the New Hampshire proposal under the ISFMP, the Commission recommended that NOAA Fisheries modify Federal regulations to maintain the biological and socio-economic basis of New Hampshire's lobster management program. The Commission requested that NOAA Fisheries modify Federal regulations to allow Federal permit holders who elect to fish in Area 1 and also possess a New Hampshire full commercial lobster license to fish 400 lobster traps in New Hampshire state waters in addition to the 800 lobster traps they may fish in state and Federal waters of Area 1 under current Federal regulations. However, these fishermen would not be allowed to fish more than 800 lobster traps in the Federal waters of Area 1.

The Commission ISFMP Recommendations for Revisions to Area Boundaries

In Addendum I to Amendment 3 of the American Lobster ISFMP, the Commission revised the boundary lines for three of the LCMAs adjacent to Massachusetts, including Area 1, Area 2, and the Outer Cape Area, to bring the area boundaries more in line with traditional fishing practices in those areas and to correct an oversight in the specification of an Area 1 boundary line in Amendment 3 to the ISFMP. Following approval of Addendum I, the Commission recommended that NOAA Fisheries modify Federal regulations to maintain compatible boundary lines in Federal regulations. A copy of charts showing the affected American lobster EEZ management areas is available from NOAA Fisheries (see **ADDRESSES**).

Discussion of the selected management actions includes reference to other recommendations made by the Commission, but not extensively analyzed for this action. These include upgrade limitations for vessels participating in the LCMA 3 trap fishery, an increase in the minimum gauge size in Federal waters, and ''closed areas'' which would prohibit harvest of lobsters taken by trap gear in selected portions of LCMA 4. See subheading ''Commission recommendations considered but rejected'' in this Summary Information section of this final rule for additional information on recommendations considered but rejected. The selected management actions also include a discussion of concerns raised by NOAA Fisheries in two areas relative to the ability of Federal permit holders to compile and provide documentation which will be required to certify historical participation on the basis of the qualification criteria, and the ability of NOAA Fisheries to accommodate recommendations from the Commission for Federal rulemaking responding to conservation-equivalent management measures specific to state jurisdictional waters. See subheading ''Historic participation implementation analysis'' in this Summary Information section of this final rule for additional discussion of documentation requirements for measures specified in this final rule.

Federal Rulemaking for Compatible Measures to the ISFMP

The current Federal lobster management program implemented

with regulations in the Final Rule on December 6, 1999 (64 FR 68228), uses a fishing effort limitation strategy, among other measures, to control lobster fishing mortality. Fishing effort is currently limited by restricting the access of new vessels to the fishery and by limiting the number and size of traps that may be fished by each vessel. The Commission's Addendum I recommendations to NOAA Fisheries were the first attempt in the lobster ISFMP to begin controlling effort through trap limits based on historic participation. To support the Commission, and as a result of the Commission's recommending compatible measures in Federal waters, NOAA Fisheries published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** on September 1, 1999 (64 FR 47756), to seek public comment on whether there is a need under the Atlantic Coastal Act to restrict access of Federal permit holders in the lobster EEZ fishery on the basis of historical participation. The ANPR also notified the public that NOAA Fisheries established September 1, 1999, the publication date of the ANPR, as a potential control date, or cut-off date, to be used to determine eligibility for future access to lobster management areas, and to discourage shifts into new areas by lobster trap vessels subject to Federal lobster regulations.

NOAA Fisheries subsequently published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the **Federal Register** on December 10, 1999 (64 FR 69227). NOAA Fisheries later published a notice of availability for a Draft Supplemental Environmental Impact Statement (DSEIS) on November 24, 2000 (65 FR 70567). The DSEIS responded to recommendations made by the Commission, and considered the biological, economic, and social impacts of several alternative actions for waters under Federal jurisdiction. The preferred alternatives in the DSEIS included:implementation of a historical participation management regime to control lobster fishing effort and preserve the socio-economic character of the associated lobster fisheries in Lobster Management Areas 3, 4 and 5; modification of trap limit restrictions for Federal Lobster permit holders who also hold a New Hampshire state lobster license, to be consistent with New Hampshire regulations, which were determined by the Commission to be conservation equivalent to the ISFMP; and modifications to the coordinates of lobster management areas in Massachusetts state waters, for clarity, and to be consistent with past fishing practices. In November and December 2000, NOAA Fisheries held public meetings in Maine, Rhode Island, New York, and New Jersey, to receive comments on the biological, economic and social impacts addressed in the DSEIS. A total of 153 individuals attended the public meetings, which were held in November and December 2000, and 225 written comments were received by January 9, 2001, the closing date for public comment on the DSEIS.

NOAA Fisheries published its Proposed Rule in the **Federal Register** on January 3, 2002 (67 FR 282). The Proposed Rule addressed management measures identified in the DSEIS, and included a technical amendment to the regulations to clarify that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). NOAA Fisheries received 190 comments on the American lobster proposed rule during the comment period which ran from January 3–February 28, 2002. The comment period on the proposed rule was extended from February 19, 2002, to February 28, 2002, to ensure all interested parties adequate time for review of the document, and, in part, to allow the Commission opportunity to discuss during the Commission American Lobster Board Meeting held February 20, 2002, in Washington, D. C. All of the public comments were carefully considered and a summary of comments and NOAA Fisheries responses are provided later in this document. On November 8, 2002, NOAA Fisheriespublished a notice of availability for a Final Supplemental Environmental Impact Statement (67 FR 68128). The deadline for acceptance of public comment in response to the biological, economic, and social impacts addressed in the FSEIS was December 9, 2002. NOAA Fisheries received 82 comments on the FSEIS.

Alternatives Evaluated

The DSEIS and FSEIS presented several alternatives for each of the major measures addressed by this regulatory action, within the parameters of the Atlantic Coastal Act and Magnuson-Stevens Act requirements. Four of these (Alternatives 1A - 1D) address alternatives relating to implementation of historical participation as a means to control lobster fishing effort in LCMAs 3, 4, and 5. The preamble and classification section of this final rule summarize the impacts and the cost effectiveness of the selected management actions on small entities and the economy. The FSEIS for this action thoroughly discusses and evaluates the effectiveness of each of the four historic participation alternatives to achieve the ISFMP and Atlantic Coastal Act objectives (see **ADDRESSES**).

Effort Control Alternatives in Areas 3, 4, and 5

Final Measures Selected

NOAA Fisheries will implement measures aligned with alternatives identified in theFSEIS for this action. Note that most measures will apply to Federal permit holders who fish only in specific management areas. The following is a summary of the major actions, each action will be discussed in further detail later in this document.

1. NOAA Fisheries will implement measures to control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore Area 3 and in the nearshore Areas 4 and 5, but will also establish a maximum trap limit of 1,440 traps for vessels qualifying to fish with traps in LCMA 4 and 5 as outlined in the DSEIS selected Alternative 1D. Although not recommended by the Commission, NOAA Fisheries will implement the trap limit to preclude excessive trap fishing effort to the lobster resource and comment received during this rulemaking. NOAA Fisheries believes the removal of existing trap limits in Areas 4 and 5 (800 lobster traps per vessel under current Federal regulations), without implementation of an alternative trap limit, would likely result in excessive lobster fishing mortality. Implementation of a maximum trap limit in Areas 4 and 5 of 1,440 lobster traps per vessel, in combination with the proposed qualification criteria for participation in the Areas 4 and 5 trap fishery, may preclude excessive trap fishing effort and corresponding levels of lobster fishing mortality. A maximum trap limit in Areas 4 and 5 may also alleviate marine mammal and endangered species interactions with lobster trap gear.

There were three other significant alternative solutions considered for this action in addition to the selected alternative 1D. With non-selected alternative 1A, there would be a maximum trap limit and a sliding scale trap reduction schedule associated with each vessel qualifying to fish with traps in LCMA 3, but this non-selected alternative would not establish a maximum trap limit of 1,440 traps for vessels qualifying to fish with traps in LCMA 4 and 5. Under the No Action non-selected alternative 1B, American

lobster would continue to be managed in Federal waters under the current fixed trap limit provisions of existing regulations of the Atlantic Coastal Act (50 CFR part 697). Under existing regulations (50 CFR 697.4(a)(7)), qualified vessels may elect to fish with traps in any or all LCMAs, and trap allocations are based on this election. If a permit holder elects to fish in any Nearshore LCMA, or any Nearshore LCMA and LCMA 3, the vessel is restricted to a maximum of 800 traps. If a vessel elects to fish only in LCMA 3, or in LCMA 3 and the LCMA 2/3 overlap, the vessel is restricted to a maximum of 1,800 traps. Non-selected alternative 1C, similar in part to the DSEIS alternatives 1A, and 1D, would also require evidence of a history ofactive trap fishing for each elected area (LCMA 3, 4, and/or 5) during the same qualification period, and also includes the Area 3 requirement to demonstrate that at least 25,000 lb (11,340 kg) of lobster were harvested throughout the range of the resource during the qualifying year, however under non-selected alternative 1C, there would be fixedtrap limits of 800 and 1800, the same as those described in the no-action/status quo non-selected alternative 1B.

2. NOAA Fisheries will implement a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit (permit holders) fishing in New Hampshire State waters. This regulatory action will modify Federal regulations to allow Federal permit holders who elect to fish in Area 1 and also possess a New Hampshire full commercial lobster license to fish 400 additional lobster traps in New Hampshire state waters in addition to the 800 lobster traps they may fish in state and Federal waters of Area 1 under current Federal regulations. However, these fishermen would not be allowed to fish more than 800 lobster traps in the Federal waters of Area 1.

Two alternatives to address LCMA 1 trap limits for Federal lobster permit holders fishing in New Hampshire waters were presented for this action in the SEIS. Under the Atlantic Coastal Act, The selected DSEIS alternative 2A, implement measures to allow Federal permit holders who fish for lobster in LCMA1 and who also possess a New Hampshire full commercial lobster fishing license to fish a maximum of 400 additional traps only in the state waters of New Hampshire as specified in New Hampshire state regulations to complement the ISFMP; or continue the no action/status quo non-selected DSEIS alternative 2B that, under current Federal regulations, restrict Federal permit holders who elect to fish in LCMA 1, or any other Nearshore LCMA and LCMA 3, to a maximum of 800 traps, regardless of whether they fish in state or Federal waters. The selected DSEIS alternative 2A, will allow Federal permit holders who fish for lobster in LCMA1 and who also possess a New Hampshire full commercial lobster fishing license to fish a maximum of 400 additional traps only in the state waters of New Hampshire as specified in New Hampshire state regulations.

3. NOAA Fisheries will clarify lobster management area boundaries in Massachusetts waters. With this action, NOAA Fisheries will implement compatible boundary lines for Area 1, Area 2, and the Outer Cape Area that are compatible to the Commission's American lobster ISFMP.

Due to the unique nature of the alternatives relating to the regulatory actions to address LCMA boundary clarifications, only two alternatives were presented for this action in the SEIS:Implement measures to complement the ISFMP, the selected DSEIS alternative 3A and revise the boundary lines for three of the LCMAs adjacent to Massachusetts, including Area 1, Area 2, and the Outer Cape Area,; or continue the no action/status quo alternative, the non-selected DSEIS alternative 3B and maintain the existing Federal boundary lines for all LCMAs including the three LCMAs adjacent to Massachusetts:LCMA 1, LCMA 2, and the Outer Cape LCMA. NOAA Fisheries selected the DSEIS alternative 3A in keeping with the intention of the Atlantic Coastal Act to implement complementary regulations to maintain consistency with the Commission's American lobster ISFMP and to avoid confusion if the Federal and Commission area boundaries and their associated lobster management measures differ.

4. NOAA Fisheries includes a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not previously clearly specified in the regulatory text, and this technical amendment is intended to make the regulations easier to understand.

Area 3, 4, and 5 Fishing Effort Control Program

The Lobster Management Areas are defined at 50 CFR 697.18. A copy of a map showing the American lobster EEZ management areas is available upon request from the Director of the State, Federal and Constituent Programs Office (see **ADDRESSES**).

Area 3—Qualification Criteria

In order to qualify to fish for lobster with traps in Area 3, Federal lobster permit holders will need to meet or exceed both a landing and fishery intensity threshold. With this action, NOAA Fisheries will limit the number of traps fished in Area 3 based on proof of historical participation in the Area 3 fishery and the number of traps fished by a vessel during a qualifying period from March 25, 1991, through September 1, 1999. Qualification criteria for Area 3 are specified in § 697.4(a)(7)(vi) of this rule. Extensive discussion regarding selection of the Area 3 qualification criteria, qualification period, and the landing and fishery intensity threshold, was presented in the FSEIS prepared by NOAA Fisheries for this rule and is not repeated here (see **ADDRESSES**).

Area 3—Trap Allocation Criteria

A maximum allocation of 2,656 lobster traps with the associated sliding scale reductions over a 4–year period was recommended by the Commission to NOAA Fisheries as a result of Addendum II to Amendment 3 of the ISFMP. The selection of 2,656 traps and the corresponding matrix of trap allocations as identified in Table 1 specified in § 697.19(b)(2) of this final rule were developed by the Area 3 LCMT. Discussion of the matrix of initial maximum trap allocations was provided in the FSEIS/RIR/FRFA prepared by NOAA Fisheries for this final rule and is not repeated here (see **ADDRESSES**).

Areas 4/5 Fishing Effort Control Program with a Maximum Trap Limit

In order to qualify to fish for lobster with traps in Area 4 or Area 5, Federal lobster permit holders will need to meet or exceed a fishery participation threshold. NOAA Fisheries will limit the number of traps fished in Area 4 and/or Area 5 based on proof of historical participation in the Area 4 and Area 5 fishery and the numbers of traps fished by a vessel during a qualifying period from March 25, 1991, through September 1, 1999. This particular threshold for Area 4 and 5 is identical to the Area 3 qualification threshold specified in § 697.4(a)(7)(vi) of this final rule.

Although establishment of criteria based on a specific minimum number of traps fished by a vessel during the qualifying period was not specifically

recommended by the Commission, the criteria certainly fall within the general recommendation that individuals must prove historical participation. In leaving the details to the Federal Government, the Commission gave NOAA Fisheries the ability to achieve some standardization in its management regime, not only an important practical consideration, but also a relevant consideration under the National Standards, particularly National Standards 3 and 8. Note that this same deliberative process resulted in NOAA Fisheries failing to include a landing requirement in Area 4 or Area 5 as it did in Area 3. NOAA Fisheries received commentary that 25,000 lb (11,340 kg) landed might not, in all circumstances, be a reasonable indicator of historical participation, particularly the further south one fished in the area. Accordingly, NOAA Fisheries did not use that criterion in this area.

Commission recommendations for the Areas 4 and 5 fisheries, unlike those for the Area 3 fishery, do not contain either trap limits or trap reduction schedules. Although not recommended by the Commission, NOAA Fisheries is imposing a trap limit not to exceed 1,440 lobster traps per vessel to preclude excessive trap fishing effort on the lobster resource, and in response to public comment on this action.

Area 3, 4 and/or 5—Qualification and Trap Allotment Process

After an analysis of landings, vessel trip report records, and permit histories, NOAA Fisheries may notify permit holders by letter of information NOAA Fisheries has regarding one or more of the historic participation criteria specified in this final rule. That is, if NOAA Fisheries has its own clear and convincing documentation relating to an element of a vessel's historical participation, the agency may in its discretion relieve the potential applicant of the need to document that element in its initial notice. However, NOAA Fisheries will not automatically issue any pre-qualification permits; any person or entity wishing to receive a historical participation allocation to fish with traps in Areas 3, 4, and/or 5, must submit a signed application and furnish the appropriate documentation necessary to demonstrate eligibility. Potential qualifiers must provide credible documentation as proof of each of the qualifying elements. At the same time, the potential qualifiers must also credibly document the number of traps fished at any one time in Areas 3, 4, and/or 5 during the qualifying year. The documentation and eligibility criteria for Areas 3, 4, and 5 are specified in § 697.4(a)(7)(vi through viii) of this final rule. Discussion concerning selection of appropriate documentation and eligibility criteria was provided in the FSEIS/RIR/FRFA prepared by NOAA Fisheries for this final rule and is not repeated here (see **ADDRESSES**).

NOAA Fisheries anticipates that the submitted documentation will vary in form, content and legibility. However, this documentation must be dated, created on or about the date of the activity described in the document, and must be clearly attributable to the qualifying vessel. A clear relationship may include a vessel name, state or Federal permit number, Coast Guard documentation number, or the name of the owner of the vessel at the time being used as the qualification period. NOAA Fisheries will require that each potential qualifier explain his or her proof in a cover letter to be included along with the submitted documents. Illegible documents will not be considered by NOAA Fisheries. Further, submission of falsified information would subject the applicant both to general sanction, including revocation of his or her federal lobster permit as well as to prosecution under the applicable law.

Area 3/4/5—Qualifying for More Than One Lobster Management Area

Any Federal lobster permit holder applying for access to more than one of the 3 areas (Areas 3, 4, or 5) must use the same qualifying year for all areas in order to avoid a combined allocation greater than the number of traps that the permit holder ever fished with any one vessel at any one time during any one year. In addition, the current requirement that Federal permit holders who elect to fish in multiple areas must abide at all times by the most restrictive regulations, including trap allocations, in any one elected area regardless of the area being fished, will remain in effect. The Commission Lobster Management Board, in consultation with the states and LCMTs, is evaluating alternative options to the most restrictive regulations concerning trap allocations for vessels fishing in multiple Areas. However, no recommendation has been made at this time, and there is no clear consensus on a preferable alternative to the current measures in place. NOAA Fisheries may evaluate this issue further in future rulemaking at such time as the Commission reaches a consensus and provides a recommendation to NOAA Fisheries concerning a waiver of the most restrictive trap allocation.

Areas 3, 4, and/or 5 Appeals.

If NOAA Fisheries denies an Area(s) 3, 4, and/or 5 permit after the potential qualifier undergoes the application process specified in this final rule, that person may appeal the denial to the NOAA Fisheries Regional Administrator. There will only be two grounds for appeal. The first is that NOAA Fisheries erred in concluding that the vessel did not meet the stated criteria for the Area in question. This basis for appeal would provide a mechanism for correcting an improper finding based upon NOAA Fisheries clerical error. The second basis of appeal is that of documentary hardship. In order to appeal on this basis, the appellant must have first applied in the manner set forth in the application for historic participation specified in this final rule and been denied by the NOAA Fisheries Regional Administrator because of an inability to document the qualifying criteria.

An appeal based on documentary hardship must establish two elements:(1) The appellant must document the nature of the hardship; and (2) the appellant must establish the necessary qualification and trap allocation elements by affidavit.

First, as to documenting the nature of the hardship, it is not enough to simply indicate that the applicant no longer possesses the necessary records. The hardship must have been caused by factors beyond the applicant's control. Such a hardship would need to be corroborated by independent documents, such as by insurance claims forms or police and fire reports. Failure to create the document in the first instance, or simple loss of the document, or the intentional destruction or discarding of the document in the past by the appellant would not constitute grounds for a hardship under this action.

Second, after claiming and documenting hardship beyond his or her control, the appellant would then need to submit to NOAA Fisheries affidavits from current Federal permit holders so that three affidavits corroborate each of the qualification criteria specified for Area 3 in § 697.4(a)(7)(vi), for Area 4 in § 697.4(a)(7)(vii), and/or for Area 5 as indicated in § 697.4(a)(7)(viii). The Federal permit holder need not necessarily be a lobster permit holder, although he or she may be. Each affidavit must clearly specify in separate and specific paragraphs:(1) The name, address,Federal permit number and vessel of the person signing the affidavit; (2)that the person signing the affidavit can attest to by personal first-handknowledge that the qualifying vessel set, allowed to soak, hauled back and re-set at least 200 lobster traps

during the 2–month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying the nature of that knowledge; (3)for Area 3 only, that the person signing the affidavit can attest to by personal first-hand knowledge that the qualifying vessel landed at least 25,000 pounds oflobster during the qualifying year, identifying that year and further identifying the nature of that knowledge; (4) that the person signing the affidavit can attest by personal first-hand knowledge to the total number of traps that the applicant claims his or her vessel fished in the area in question during the qualifying year and further identifying the nature of that knowledge; (5) that the person signing the affidavit also fished in the area being claimed by the applicant during the months in the qualifying year chosen by the applicant; and (6) be signed under the penaltiesof perjury. Further, at least one affidavit must also corroborate the basis for the hardship claimed by the appellant, for example, by a representative of the insurance agency, police, or fire department if the hardship was the result of a flood or fire. The person signing this last affidavit need not be Federalpermit holder, although he or she may be if the individual has personal knowledge of the hardship claimed by the applicant. Hence the potential for four (4) affidavits:if none of the three Federal permit holders can also document the hardship, then the appellant could submit a fourth affidavit from a non-permit holder to do so. Additional affidavits beyond that outlined herein are not necessary and will grant the appellant no advantage. In other words, if three (or four, depending on the circumstances) affidavits establish the required elements, then additional affidavits are superfluous and will be given no extra weight. All affidavits must be signed under the penalties of perjury. As with submissions under the initial qualification process, any person submitting false information, including the permit holders submitting the supporting affidavits, will be subject to general sanction, including revocation of his or her Federal permit and further prosecution under applicable law, including the Magnuson-Stevens Act and the Atlantic Coastal Act.

Historic Participation Implementation Analysis

The stated qualification process for Areas 3, 4, and/or 5 specified by measures in this final rule was the product of considerable deliberation. NOAA Fisheries' challenge was to create a limited access rule in Areas 3, 4, and 5 within the parameters of the Commission's Addendum I historical participation model and consistent with the legal requirements set forth in the Atlantic Coastal Act and other laws. Simply put, NOAA Fisheries' charge was to design a practical process that was flexible enough to qualify permit holders who met the relevant criteria and yet strict enough to keep out those who did not.

Any potential qualification process in the lobster fishery would be complicated by the lack of documentary uniformity in the industry. NOAA Fisheries, in the DSEIS stage of this rulemaking process, noted with concern the lack of uniform mandatory reporting in the industry. The proposed qualification scheme is similar but slightly more rigid in its initial review than that which was identified in the DSEIS for this action. Specifically, the proposed scheme requires specific document types as proof, whereas the DSEIS left the proof open-ended by merely stating that certain types of documents ''may be'' used and leaving it up to the ''discretion'' of the applicant to choose the most appropriate type. NOAA Fisheries made this change because it believed that the less specific DSEIS language provided insufficient guidance and definition to both the applicant and the NOAA Fisheries' reviewer.

NOAA Fisheries did, however, consider that some potential qualifiers may be denied access in this more rigid process because they, through no fault of their own, no longer had the documents specifically required under the proposed scheme. To ameliorate the harshness of such an eventuality, NOAA Fisheries considered an appeal on the basis of documentary hardship. The documentary hardship appeal attempts to soften for some the rigidity of the proposed action's strict documentation scheme, while still maintaining standards that would prevent trap fishing access to those who have not historically fished in Areas 3, 4, and/or 5. An appeal based upon documentary hardship for reasons beyond the applicant's control adds flexibility to the process without undermining the rule's effectiveness. The appellate parameters may have harsh impacts for some—e.g., for applicants lacking documents due to inadvertence, carelessness or excusable neglect—but inclusion of individuals who would qualify but for reasons beyond their control appears to be a just, logical, and reasonable place to draw such a line. On balance, NOAA Fisheries considers the proposed documentation and qualification scheme to be both practical and just, and believes that it otherwise supports the Commission's lobster management regime, is compatible with Addendum I and is consistent with the applicable laws. Additional discussion on the proposed documentation and qualification scheme was provided in the FSEIS/RIR/FRFA prepared by NOAA Fisheries for this final rule (see **ADDRESSES**).

Area 1 Trap Limits for NH Lobster License Holders

With this action, NOAA Fisheries will waive the requirement that Federal lobster permit holders must abide by the stricter of either Federal or state lobster management measures with respect to the number of lobster traps for Federal lobster permit holders who elect to fish in Area 1 and who fish 1,200 traps under a valid New Hampshire full commercial lobster license for Area 1. Specifically, NOAA Fisheries will not make any change in the number of traps allowed to be fished in the Federal waters of Area 1. However, a New Hampshire full commercial lobster licensee fishing aboard a federally permitted vessel will be allowed to fish an additional 400 lobster traps in New Hampshire state waters.

Procedures for Consideration of Conservation Equivalency Measures

The ISFMP includes a provision which allows states to request approval, from the Commission, of management measures different from selected measures which otherwise would be required to satisfy state compliance with the plan. The New Hampshire proposal for conservation equivalent trap limits is a case in point. In October 1998, the Commission approved such a proposal from the State of New Hampshire and, as a result, the Commission has requested NOAA Fisheries to modify Federal lobster regulations. While NOAA Fisheries acknowledges the importance of the conservation equivalency, and the flexibility this provision allows to address unique socio-economic situations in state jurisdictions, complications arise when this results in a divergence between state and Federal regulations affecting operations of fishermen who possess both a state and Federal lobster permit. As in the present case, this will necessitate consideration of complementary regulations in the EEZ through lengthy Federal rulemaking and public comment procedures. Consequently, continued approval of conservation equivalent proposals under the ISFMP which necessitate complementary Federal rulemaking, if

left unchecked, could inadvertently increase the complexity of Federal regulatory involvement and undermine the management of a resource which is harvested predominantly in waters under state jurisdiction.

To address this concern, regulatory action will clarify a procedure by which NOAA Fisheries will consider such recommended conservation equivalent modifications to Federal lobster regulations as they may pertain to the activities of Federal lobster permit holders from the affected state(s). Specifically, NOAA Fisheries will only consider future Commission conservation equivalency recommendations that are formally submitted to the agency in writing by the Commission and that contain supporting information deemed necessary to address federal rulemaking requirements. NOAA Fisheries believes that receiving the supporting information and analyses along with a recommendation for Federal implementation of conservation equivalent measures is necessary to enable NOAA Fisheries to respond to recommendations for Federal rulemaking in a more timely and efficient manner. Procedures to address future conservation equivalency recommendations have not changed from procedures identified in the proposed rule (67 FR 287) completed for this action, and are specified in § 697.25(b) of this final rule.

Lobster Management Area boundary clarification

In Addendum I to Amendment 3 to the American Lobster ISFMP, the Commission revised the boundary lines for three of the LCMAs adjacent to Massachusetts, including Area 1, Area 2, and the Outer Cape Area, to bring the area boundaries more in line with traditional fishing practices in those areas and to correct an oversight in the specification of an Area 1 boundary line in Amendment 3 to the ISFMP. There have been no changes in the boundary descriptions from the proposed rule (67 FR 287) completed for this action. Updated boundary coordinates are specified in § 697.18 of this rule.

Summary of Public Comments Received in Response to the American Lobster Proposed Rule Published on January 3, 2002

The Proposed Rule was published in the **Federal Register** on January 3, 2002, and comments were initially solicited until February 19, 2002. Upon request of the Atlantic States Marine Fisheries Commission (Commission) to allow the Commission's Lobster Board to discuss the rule at their previously scheduled meeting on February 17 and allow ample time to submit written comments, NOAA Fisheries extended the comment period until February 28, 2002. Comments were solicited on potential changes to the Federal lobster regulations as described in the Proposed Rule including the proposed implementation of a program to control fishing effort as determined by historical participation in Lobster Conservation Management Areas (LCMAs/Areas) 3, 4 and 5; a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit fishing in New Hampshire state waters; and clarification of lobster management area boundaries in Massachusetts waters. The Proposed Rule also included a technical amendment to the Federal regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area, including state waters.

A total of 190 comments were received by NOAA Fisheries in response to the Proposed Rule. Twelve of these comments were submitted by six state fisheries agencies, four fishermen's associations, one state senator, and one state governor. The remainder of the comments were received from members of the general public.

Of the 190 total comments, 125 favored either the entire Proposed Rule or, specifically,historical participation as a means of limiting future access to fish with traps in LCMAs 3, 4, or 5. Thirty-one commenters expressed general support for the Proposed Rule with 26 generally opposed to it. Seventeen individuals wrote in general opposition to historical participation as a means of limiting future access to fish with traps in LCMAs 3, 4, or 5, and 35 comments were received in opposition to the historical qualification criteria as presented in the Proposed Rule. Of the total comments, those that specifically related, either pro or con, to a particular lobster conservation management area are as follows. Relative to LCMA 3, 91 comments were received in support of the historical participation recommendations of the Area 3 LCMT and seven were received in opposition to historical participation in LCMA 3. Three respondents support historical participation as a means to limit access to fish with traps for either LCMA 4 or LCMA 5 or both. No comments were received in opposition to historical participation in LCMA 4 and 5. Twenty comments were received in support of the New Hampshire conservation equivalent trap allocations while 13 respondents commented in opposition to this measure. One individual commented in opposition to the proposed area boundary changes.

All comments were carefully considered. Specific questions, concerns, opposition to elements of the Proposed Rule, and comments on measures not presented in the Proposed Rule such as gauge increases, maximum size requirements and v-notching, are more thoroughly addressed in this section.

Historical Participation Comments (HP)

HP *Comment 1:* Ninety-one individuals wrote in support of a historical participation program in Area 3 and 78 additional comments were received in support of the Area 3 trap reduction schedule presented in the Proposed Rule. Three respondents support historical participation for either Area 4 or Area 5 or both.

Response: NOAA Fisheries intends to implement a historical participation effort control program in LCMAs 3, 4 and 5 compatible with that recommended by the Commission and developed by the LCMTs and consistent with the National Standards set forth in the Magnuson-Stevens Act (MSA), with some variation. NOAA Fisheries believes that this management program is a fair and equitable means of implementing the necessary management measures in consideration ofLCMT and Commission recommendations.

HP *Comment 2:* Seven comments were received in opposition to historical participation in LCMA 3.

Response: See response to Comment 1.

HP *Comment 3:* Three supporters of historical participation recommend that historical participation be implemented but that flat trap allocations be maintained.

Response: Historical participation with fixed trap limits was analyzed as non-selected alternative 1C of the FSEIS (see Section 3 of the FSEIS for more detail). This non-selected alternative would impose a greater economic impact, compared to the selected action, on those Federal permit holders who have historically derived a higher income from increased lobster harvest from fishing a number of traps in excess of the fixed trap limits. Also, this non-selected action would impact twice as many Federal permit holders by requiring them to fish a reduced number of traps, than would the proposed action. Historical trap allocations under the proposed action can be effectively enforced through a trap tagging

program, similar to what is currently in place coastwide. The non-selected alternative 1C would impose a lower administrative burden since documentation in support of historical trap levels would not need to be submitted or analyzed. On balance, the proposed action is more compatible with the recommendations of the Commission for Federal management.

HP *Comment 4:* One Commenter suggests that the current Federal trap limits be maintained without historical participation.

Response: This scenario was analyzed and rejected in the FSEIS as non-selected DSEIS alternative 1B. (No Action/Status Quo). By not implementing historical participation in Areas 3, 4 and 5, NOAA Fisheries would not be compliant with the mandate to implement measures compatible with the Commission's ISFMP as mandated in the Atlantic Coastal Fisheries Cooperative Management Act (ACA). Further, the process of analyzing the specific options used the best available data and it is NOAA Fisheries' best estimate that trap reductions are likely under the selected action and that an appropriate reduction in fishing effort will be realized when these measures are implemented. Fixed trap limits without historical participation will not cap trap fishing effort and reduce effort shifts to other management areas and will compromise the ability of the ISFMP to rebuild American lobster stocks and end overfishing of the lobster resource.

HP *Comment 5:* Eight respondents are opposed to the qualification period for determining eligibility under historical participation that would require a vessel to have participated in the lobster trap fishery in Areas 3, 4 or 5 during the period from March 25, 1991, to September 1, 1999.

Response: NOAA Fisheries believes this qualification period is fair and will result in the qualification of a set a vessels that reflects the historical nature of this fishery. The first date, March 25, 1991, was recommended by the Commission and was originally established as a control date by the New England Fishery Management Council to determine eligibility for future access to the Federal lobster fishery. The second date, September 1, 1999, is the date of publication of an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** that informed the public that NOAA Fisheries was considering that date as a potential cut-off date for determining eligibility for future access to LCMAs 3, 4 and 5. Accordingly, NOAA Fisheries believes that all had notice of the potential for limited access, that the period is broad enough to include those whose personal circumstances required unavoidable temporary absence (e.g. illness, etc.), and that it will result in the accurate qualification of permit holders based upon historical participation. If the commenters are suggesting that those who fished in these areas prior to 1991 but abandoned the fishery thereafter, NOAA Fisheries disagrees that these permit holders should qualify based on the historical participation model recommended by the Commission. If, however, these commenters are only referring to those who fished both prior to 1991 as well as currently, then NOAA Fisheries believes that these individuals will, in fact, qualify because they likely fished at least one season during the nine years in between. Certainly, NOAA Fisheries received no comments suggesting that long absences were typical, or that they even occurred at all for those who historically fished in these areas.

HP *Comment 6:* One individual commented that he would support historical participation in Area 3 if the 2,656 maximum trap allocation was reduced to 1,800–traps. Offshore lobstermen have been making a living at the 1,800 trap level since the year 2000 and a return to higher trap allocations will increase the gap between large and small operations and create discontent within the fleet.

Response: If this Commenter is suggesting that historical participation be implemented in Area 3 with a fixed trap limit of 1,800 traps for all qualified vessels, then this concept is the same as the non-selected alternative 1C analyzed in the FSEIS -historical participation with fixed trap limits (see section 3 of the FSEIS for more detail and note the response to HP Comment 3). This non-selected alternative would impose a greater economic impact, compared to the selected action, on those Federal permit holders who have historically derived a higher income from increased lobster harvest from fishing a number of traps in excess of the current fixed trap limits. Also, this non-selected action would impact twice as many Federal permit holders by requiring them to fish a reduced number of traps than would the selected action. On balance, the selected action is more compatible with the recommendations of the Commission for Federal management.

However, the commenter may be suggesting that the maximum trap allocation associated with historical participation in Area 3 in the NOAA Fisheries selected alternative be substituted with an 1,800–trap maximum subject to annual reductions under the Commission's Area 3 trap reduction schedule. In this case, the commenter's scenario is likely even more restrictive than non-selected alternative 1C in the FSEIS, since it would subject qualifying vessels to even lower maximum trap allocations.

HP *Comment 7:* One trawl fisherman, although an advocate of historical participation in the lobster fishery, believes that otter trawl fishermen with a history of catching lobster should also be included in this program and that all gear types be subject to the same possession and access limits.

Response: The LCMTs for Areas 3, 4 and 5 did not develop, and the Commission did not recommend to NOAA Fisheries that non-trap gear be included in the historical participation program. The NOAA Fisheries selected alternative implemented in this final rule is aimed at reducing trap fishing effort in the lobster trap fishery and will not affect Federal lobster vessels that fish with non-trap gear. Under the selected action, non-trap gear lobster vessels will not be required to qualify for access to LCMAs 3, 4 and 5 and will not be excluded from fishing with non-trap gear for lobster in these areas, or any other portion of the EEZ. NOAA Fisheries previously included in the Federal regulations a landing limit of 100 lobster per day/500 lobster per trip of 5 days or more to address lobster fishing effort in the non-trap sector, consistent with the ISFMP.

HP *Comment 8:* Discrimination against certain gear types is not reasonable, as determined by a recent court decision on monkfish concerning differential trip limits. Therefore, allowing a lower possession limit for non-trap lobster vessels violates this principal established by the court. As such, those who fished non-trap gear during the qualification period and had Federal lobster permits should retain their right to fish traps if they so choose.

Response: This final rule is designed to address trap reductions and no specific recommendations were provided by the Commission concerning Federal action with respect to the lobster non-trap gear sector. See previous response.

HP *Comment 9:* Two individuals suggest that NOAA Fisheries allow those who have always had a Federal lobster permit but do not qualify to fish with traps under historical participation (i.e., trawl gear fishermen) to have a limited level of participation initially and then have full participation in Area 3 once the resource is rebuilt.

Response: Allowing a baseline number of traps for non-trap gear vessels or for non-qualifying trap vessels

would compromise the intent of the Addendum I to Amendment 3 of the ISFMP to reduce trap fishing effort in order to decrease lobster fishing mortality. See previous response.

HP *Comment 10:* One state agency that supports historical participation opposes the transfer of historic trap allocations for Areas 4 and 5 because it may make it more difficult to implement trap reductions through regulations in the future if these permits and associated allocations are transferred (sold). The transfer of history-based trap limits may also create discrepancies between state and Federal regulations if a permit holder who qualifies under the NOAA Fisheries for historical participation program in Area 4, for example, does not qualify under the State's plan which used a 1991–1998 qualification period, which differs from the NOAA Fisheries qualification period.

Response: The comment refers to the concept of individual transferrable quotas (ITQs), a highly controversial management tool and the subject of ongoing Congressional, agency and Commission deliberations. The concept of ITQs was not proposed by the Commission as part of this action and public comment has not yet been proposed by the Commission on this issue. NOAA Fisheries would consider ITQs in future rulemaking if recommended by the Commission at a later time.

HP *Comment 11:* One state recommends that NOAA Fisheries allow all vessels that qualify for access under the historical participation program receive a baseline number of traps and then also be eligible for their historical allocation. If the Federal permit is subsequently transferred, the associated trap allocation reverts to the baseline level. The most restrictive of state or Federal regulations can't be enforced because NOAA Fisheries issues 880 tags to everyone regardless of their state historical allocation. Then, a long-term framework such as a total allowable trap allocation program for each management area should be considered. That total allocation could be distributed equitably as active fishermen divest from the fishery.

Response: NOAA Fisheries acknowledges the concerns raised by this state and is confident that such issues can be resolved through more effective state and Federal coordination, including revisiting the trap tag memorandums of understanding that NOAA Fisheries has with the fisheries agencies of the major lobster harvesting states.

The State's concept of a baseline allocation for all lobster permit holders, while interesting, could compromise the long-term effectiveness of historical participation effort reduction measures by not restricting access to only those fishermen who have historically fished in specific management areas. The Commission has created a task force to research and provide recommendations to the Lobster Board concerning the ''most restrictive'' rule. NOAA Fisheries intends to remain involved in future discussions concerning this and other novel management measures such as total trap allocations and trap transferability as the Commission moves forward in addressing these issues for consideration in the ISFMP. NOAA Fisheries did not extensively analyze the State's proposal because it was largely conceptual and is outside the recommended management regime adopted under Addendum I to Amendment 3 to the ISFMP, the focus of this rulemaking and associated analyses, and is believed to be incompatible with the recommendations made by the Commission.

HP *Comment 12:* One state agency opposed the qualification period for Areas 4 and 5. Since there was no prior notification to the industry prior to the September 1, 1999, control date that a vessel may be restricted from access to certain areas if there was no documented history of fishing in that specific area. Federal lobster permit holders were advised by the New England Fishery Management Council in 1991, that they should purchase a vessel with a documented catch and effort history, could be limited to that history in the future if necessary, and that they could fish anywhere in Federal waters but would be held to the more restrictive of state or Federal regulations.

Response: NOAA Fisheries believes that the qualification period for eligibility under this Final Rule is appropriate and consistent to the Commission's recommendations, to the extent practicable. Even under the State's scenario, a permit holder that followed the Council's recommendation to purchase a vessel with history in a specific area, and if those areas included either one or more of Areas 3, 4 or 5, that vessel would likely qualify for participation under this Final Rule if it actively fished (consistent with the qualification criteria established in this action) in those areas after 1991 and prior to September 1, 1999.

HP *Comment 13:* A state agency commented that with the September 1, 1999, control date vessels with Federal permits that were purchased from an area other than Areas 4 or 5, but are now fishing in those areas may not qualify for access under this final rule. Therefore, NOAA Fisheries should modify the Federal management program to allow any individual who purchased a vessel prior to 1999 and relocated that vessel to a state abutting Area 4 or 5 to qualify for access to those areas based on its fishing and effort history of its previous area. This should not be done for Area 3 since this is a coastwide along the range of the resource and a vessel with an Area 3 fishing history which is relocated to another state at the opposite end of the range and the history would be aptly transferrable to the new state.

Response: NOAA Fisheries believes that the state's suggestion is counter to the intent of the historical participation management regime. The Respondent is stating that vessels that were purchased with a Federal permit with Area 1 history, for example, and began fishing for lobster with traps in Area 4 or 5 after September 1, 1999, be considered eligible for future access in Areas 4 or 5 because they historically fished in Area 1. The historical participation program for lobster in Areas 3, 4 and 5 was crafted by the lobster fishing industry in these areas in response to the need to end overfishing and rebuild stocks of American lobster consistent with the ISFMP and in keeping with the advice of the most current stock assessment. While directed at capping fishing effort to reduce fishing mortality, historical participation is also intended to prevent effort shift into other management areas and allow the historical participants of the fishery in these respective areas to resume fishing their historical trap allocations.

HP *Comment 14:* A commenter referenced information in an industry newspaper regarding NOAA Fisheries' proposed rule. The article indicated that, based on information available to NOAA Fisheries as of June 18, 2001, NOAA Fisheries expected between 53 and 117 vessels to qualify for Area 3, that 769 vessels elected Area 3 as at least one of the areas they desired to fish in, and that 112 vessels selected only Area 3. The commenter interpreted this to mean that only those that designated exclusively Area 3 would qualify since the 112 estimated to qualifyfalls within the expected range of qualifiers (53 - 117), and those electing Area 3 in combination with other areas would not qualify.

Response: The data indicating that 769 vessels had selected Area 3 as at least one of the fishing areas, and the estimate of 112 vessels that elected only Area 3, are derived from actual Federal

fishing permit data from the 2001 Federal fishing year, indicating the area designations of Federal lobster permit holders who indicated traps as a gear type. Prior to that fishing year, Federal lobster permit holders were not required to designate the areas they fished in and, therefore, limited data was available on the actual areas that Federally permitted lobster vessels fished in. Consequently, the newly available area designation information proved useful to NOAA Fisheries in determining a basis for analyzing the potential number of qualifying and non-qualifying vessels based on recent activity and the most current data available. Conversely, the estimate of an expected range of 53 to 117 qualifying vessels was initially used in developing the Draft Supplemental Environmental Impact Statement (DSEIS) in 2000. At that time no Federal permit data was available regarding specific lobster management areas fished on a vessel-specific basis since Federal lobster permit holders were not required to designate lobster management areas. Therefore, this data, provided by the Area 3 LCMT, served as the best available data at that time to determine how many vessels might qualify. The two data sets are, therefore, not mutually exclusive; that is, they support one another in that the LCMT data represent actual fishing activity and the permit data represent both actual and potential fishing activity. Further, NOAA Fisheries will not be basing qualification in Area 3 on the permit area designations as this requirement was established after the September 1, 1999, control date. A vessel that historically fished in LCMA 3 and in, for example, Area 1, will be considered for eligibility under the same criteria as a vessel that historically fished in Area 3 exclusively.

HP *Comment 15:* A small boat operator in Area 3 feels the trap limit is biased in favor of large operators who have historically reaped the greatest amount of the resource.

Response: The proposed action is intended neither to punish nor reward past actions, but is a measure directed to ending overfishing henceforth. Additionally, it does not necessarily correlate that those with larger operations (i.e., bigger boats, more traps) harvest a proportionately larger total of the stock than those who fish less traps because of a number of variables relating to gear efficiencies, tending time, area fished, etc. See FSEIS Section V.1. for more detail. To the extent that a vessel historically fished at high trap levels (e.g., more than 3,000 traps) that vessel, may experience greater cut backs than those vessels fishing less traps, albeit at proportional levels. Finally, allowing eligible vessels to fish their historical trap allocations, up to a maximum level, is compatible with the Commission's recommendations for Federal action in the EEZ.

HP *Comment 16:* One individual opposed historical participation because it will force lobster fishermen to downsize their operations.

Response: NOAA Fisheries acknowledges that some fishermen may have to downsize given that this action is an effort reduction measure recommended by the LCMTs and the Commission. However, if a fisher is allocated less traps than currently allowed, then such a reduction will be both proportional and consistent with that vessel's historical effort. Further, downsizing should not be likely unless that fisher increased effort after the control date. See previous response.

HP *Comment 17:* One supporter of historical participation recommends that qualified permits and the associated trap allocations be published in the **Federal Register** to allow any qualified stakeholder to challenge anyone on the list.

Response: NOAA Fisheries considered but rejected the Commission's recommendation to publish a notice that would specify individual trap allocations for each Federal permit holder that qualifies to fish LCMAs 3, 4 and 5 under the historical participation program because this raises privacy issues, would serve no constructive purpose and may give way to a ''witch trial'' atmosphere. Further, the respondent's comment, if different from that recommended by the Commission in this regard, offers neither protocol for challenging the eligibility of a permit holder nor supporting reasons for incorporating such a measure into the qualification process.

HP *Comment 18:* One commenter believes that all those who qualify for LCMA 3 be subject to the trap reduction schedule, not just those that have allocations above 1,200 traps.

Response: NOAA Fisheries will use the LCMA 3 trap reduction schedule, initially adopted into the ISFMP by the Commission in Addendum I to Amendment 3 and further modified in Addendum II. That schedule did not include provisions for reducing allocations at or below the 1,200–trap mark. This is due to the diminishing utility of returns from such subsequent trap reductions that are not expected to assist in effectively reducing trap fishing effort given the additional economic impacts to qualified fishermen. Further, this measure wasn't recommended by the Commission for Federal action and, therefore, implementation through this final rule would result in inconsistencies with the Commission's approved trap reduction measures.

HP *Comment 19:* One commenter recommended that only logbooks be used as the basis for qualifying permit holders and that no one be admitted based solely on an affidavit to substantiate history.

Response: Due to the varying degree to which certain types of documents were historically used throughout the fishery, the proposed action gives the potential qualifier flexibility in document submission. The use of Federal Vessel Trip Report (VTR) documents to support historical fishing effort (number of traps fished and location) in the lobster fishery will be possible for the majority of the Federal lobster permit holders (e.g., those holding other Federal species permits that, unlike lobster permits, require mandatory reporting). A review by NOAA Fisheries indicates that of 3,153 Federal lobster permit holders in 1997, 1,984 (approximately 62percent) held Federal permits for other fisheries requiring mandatory reporting. The utility of these reports for documenting lobster fishing effort would be further restricted to those permit holders who accurately noted, on the reports, the number of individual lobster traps fished on an area-by-area basis. Similarly, an informal review of the utility of official state reports for determination of lobster trapping effort concludes that such documents may be relevant only to Connecticut and Massachusetts residents (approximately 34 percent of Federal lobster permit holders). Therefore, allowing more than just logbooks to be submitted will provide more flexibility for Federal permit holders given the inconsistencies in logbook reporting requirements, will avoid bias on those who held only a Federal lobster permit during the eligibility period, and will result in a more accurate qualification process.

HP *Comment 20:* Seventy-eight comments were received in support of the accelerated trap reduction schedule for LCMA 3.

Response: NOAA Fisheries incorporated the revised Area 3 trap allocations and the accelerated 4–year sliding scale trap reduction schedule into the final rule to be compatible with the trap reduction schedule as updated in Addendum II to Amendment 3 of the ISFMP. The updated schedule reduces the maximum trap allocation in Year 1 from 2,920 to 2,656 traps and accelerates the sliding scale trap

reduction schedule from five years to four years.

HP *Comment 21:* One supporter of historical participation states that historical trap allocations are needed because uniform trap limits will create latent effort and compromise the conservation benefits of historical participation.

Response: NOAA Fisheries believes that historical participation in Areas 3, 4 and 5 is the best means for controlling trap fishing effort in these management areas since it is expected to, at least, cap and potentially reduce levels of trap fishing in Areas 4 and 5 and reduce trap fishing levels in Area 3. Effort reductions as a consequence of this action are expected to result in decreased lobster fishing mortality, contributing to the fulfillment of the goals of the ISFMP to end overfishing and rebuild American lobster stocks. Further, this management regime is compatible with the recommendations of the Commission in Addendum I to Amendment 3.

HP *Comment 22:* One comment was received expressing concern that the State of New Jersey's rules weren't coordinated with Addendum I and that some who qualified under the State of New Jersey's historical participation eligibility program will be allowed different numbers of traps under the Federal plan which will cause confusion.

Response: NOAA Fisheries will continue to cooperate with state agencies to the extent practicable and legal to determine the eligibility of Federal permit holders to fish in Areas 3, 4 and or 5. However, NOAA Fisheries' determination of eligibility for each applicant will be based on the specific qualifying criteria and documentation as identified in Section III.(2). of the FSEIS, and codified, by way of this final rule, in the Federal regulations at 50 CFR 697.4(a)(7)(vi), (vii) and (viii). These requirements are compatible with those proposed by the LCMTs and recommended for EEZ implementation by the Commission, of which the State of New Jersey is an active participant and voting member.

HP *Comment 23:* One proponent of historical participation in Area 4 recommends a trap cap at 2,400 traps rather than the proposed 1,440 traps.

Response: NOAA Fisheries established a 1,440 maximum trap limit as a safeguard against trap proliferation. NOAA Fisheries believes the removal of existing 800 traps per vessel limit in Areas 4 and 5 without implementation of an alternative maximum trap limit, could result in excessive lobster fishing mortality and limit the ability of historical participation to reduce trap fishing effort. A maximum trap limit in Areas 4 and 5 of 1,440 lobster traps per vessel was selected utilizing data provided by the State of New Jersey that indicated the majority of participants fished less than 1,440 traps (32 of 46 Federal permit holders who responded to New Jersey's lobster industry survey). Additionally, the 1,440–trap limit corresponds proportionately to the relationship between the existing fixed trap limits (800 traps in Areas 4 and 5, and 1,800 traps in Area 3) and the LCMA 3–maximum trap limit proposed by the Area 3 LCMT in Addendum I.

HP *Comment 24:* One person stated that New Jersey fishermen need more traps in general because there are less lobsters spread over a larger area and recommends a 1,500–trap allocation.

Response: The 1,500–trap allocation recommended by this respondent is generally consistent with the maximum trap limit of 1,440 traps per qualified vessel in Areas 4 or 5 implemented with this final rule. NOAA Fisheries believes that establishing a maximum trap cap will prevent a potential escalation of future trap fishing effort and associated lobster fishing mortality in Areas 4 and 5, while allowing qualified vessels to fish their historical trap allocations as evidenced in data provided by the State of New Jersey lobster industry survey. See previous response.

HP *Comment 25:* Two individuals recommend that NOAA Fisheries limit every vessel to 800 traps in Area 4 and 1,200 traps in Area 3.

Response: The scenario suggested by these individuals runs counter to the management recommendations of the Commission and the LCMTs and could result in more traps being fished than would be expected under the selected alternative, if these commenters are suggesting that historical participation not be implemented under this scenario. Further, if these commenters are suggesting that historical participation not be implemented in these management areas, then the potential for effort shift into other lobster management areas could occur. Additionally, it is likely that not all vessels are fishing up to the current allowable fixed trap limits and, while the selected management action would cap effort at historical levels, this suggested action (similar to status quo) could allow vessels fishing below the current fixed trap limits to expand their trap fishing effort.

HP *Comment 26:* One fisherman recommends a 600–trap limit be imposed in the Federal waters off the Maine coast.

Response: Assuming the commenter is referring to Area 1, NOAA Fisheries disagrees. This topic is outside the scope of this rulemaking and Addendum I and inconsistent with the recommendations for lobster management in Area 1 provided by the Area 1 LCMT, the Commission, and the ISFMP.

HP *Comment 27:* One LCMA 2 lobsterman opposes historical participation and recommends that every lobsterman be allocated 500 traps.

Response: The Commission has yet to adopt a historical participation program for LCMA 2 and has not made any recommendations to the Secretary of Commerce that such action be taken in the EEZ portions of LCMA 2. Therefore, this measure was not considered in this rulemaking action and associated analyses.

HP *Comment 28:* A Federal lobster permit holder who has never fished for lobster believes that historical participation is unfair and that all Federal lobster permit holders should have unlimited access to the lobster resource in Federal waters.

Response: This final rule is the result of extensive public comment and is based upon the Commission's ISFMP for American Lobster which also underwent extensive public comment. All have had the opportunity to engage in and influence deliberations on this matter. Ultimately, the LCMTs, comprised of industry representatives, and the Commission, made up of a number of politically accountable members, chose a management plan that would reflect the historical make-up of the fishery. This final rule is based on that decision and conforms with the applicable law. The intent of the historical participation component of this final rule is to implement a system that caps fishing effort at historical levels, likely reduces effort from current levels, and reflects the traditional fishing practices of the offshore fishing fleet. This selected action considers the recommendations of the industry's LCMTs and the Commission aimed at decreasing fishing effort and increasing egg production in accordance with the ISFMP. This selected action intends to limit participation in LCMAs 3, 4 and 5 to those permits with a demonstrated lobster trap fishing history, consistent with the eligibility criteria in this final rule and that recommended by the Commission in Addendum I to Amendment 3 of the ISFMP.

HP *Comment 29:* Three individuals request that NOAA Fisheries execute the plan as fairly as possible so that no single type of business operation benefits over another. Trap allocations

for qualifiers into Area 3 should be of a smaller range to avoid a disadvantage to smaller operations that will have to work harder to be competitive against those with larger allocations.

Response: NOAA Fisheries intends to execute the historical participation program fairly and to not give any single type of business an unfair competitive advantage over another. Regarding the commenter's point concerning Area 3 trap allocations, NOAA Fisheries points out that number of traps fished, not necessarily vessel size, is the factor that will determine the initial trap allocation of a qualified vessel. The historical participation program will not discriminate against small vessels. It will allow any vessel with demonstrated participation during the qualification period to fish its historical allocation of traps up to 1,440 in LCMAs 4 and 5, and up to 2,656 (with subsequent reductions) in LCMA 3, in order to most accurately represent the historical aspects of the trap fishery. See previous response. Further, NOAA Fisheries notes that it does not necessarily follow that smaller operators have to work harder to compete against larger operations that may have higher business overhead and other expenses.

HP *Comment 30:* A 25–year lobster diver with a state and Federal lobster permit believes that history in the fishery should be based on participation in general, not just on numbers of traps fished. This fisherman is concerned that as age forces him to move from diving, his opportunityto fish with trap gear may be lost since he has no trap fishing history.

Response: The selected action is intended to cap effort in the lobster trap fishery in LCMAs 3, 4 and 5 in order to rebuild growth-overfished stocks of American lobster, while reflecting the historical make-up of the trap fishery as such occurs. Non-trap fishermen, such as those in the otter trawl and dive fisheries, have been, alternatively, regulated by possession limits and will continue to have access to any or all LCMAs. Further, present information suggests that there is a market for vessels and their accompanying Federal lobster permits. Therefore, non-qualifiers into the trap fishery in Area 3, 4 and 5 still have the option to purchase a permit that has previously qualified to fish trap gear in these areas.

HP *Comment 31:* One individual commented that consideration should be given to permit holders who could not fish during the qualification period due to illness.

Response: Comments received by NOAA Fisheries do not indicate that long absences in the trap fishery, particularly for 8 or more years, were typical. Regardless, the intent of the historical participation management program is to decrease fishing mortality by capping and reducing trap fishing effort, while allowing those permits that currently, and have historically, fished for lobster with trap gear in these areas to continue to do so. NOAA Fisheries believes its qualification period to be quite fair and will result in qualification based upon historical participation in the area fisheries. The first date of the qualification period, March 25, 1991, was recommended by the Commission and was originally established as a control date by the New England Fishery Management Council to determine eligibility for future access to the Federal lobster fishery. The second date, September 1, 1999, is the date of publication of an ANPR in the **Federal Register** that informed the pubic that NOAA Fisheries was considering that date as a potential cut-off date for determining eligibility for future access to LCMAs 3, 4 and 5. Accordingly, NOAA Fisheries believes that all had notice of the potential for limited access, that the period is broad enough to include those whose personal circumstances required unavoidable temporary absence (i.e., illness, etc.), and that it will result in the accurate qualification of permit holders based upon historical participation.

HP *Comment 32:*One individual and a state agency commented that the 25,000 lb (11,340 kg) landing requirement for Area 3 is too high.

Response: The 25,000 lb (11,340 kg) landing requirement is intended to be used as an eligibility requirement for LCMA 3 only, and was specifically recommended as an appropriate measure of economic reliance on lobstering by the industry experts on the Commission's Area 3 LCMT. In opposition, NOAA Fisheries notes that the commenters did not indicate why they disagree with these experts. Under the NOAA Fisheries proposed action, these landings may have occurred from anywhere within the range of the lobster resource, not just LCMA 3. NOAA Fisheries has not included a landing requirement for determining eligibility in LCMAs 4 and 5. Available information indicates that LCMA 4 and 5 fishermen generally participate in a directed trap fishery for lobster on a seasonal basis and rely on other fisheries throughout the year in addition to lobster. For example, only a relatively small percentage of the lobster resource has been historically harvested from LCMAs 4 and 5, which is consistent with seasonal fishing activity. Accordingly, a 25,000 lb (11,340 kg) landing threshold may unnecessarily restrict and not accurately reflect the historical nature of the fishery in those areas. Such is not the case, generally, for historical participants of the Area 3 offshore fishery who tend to fish directly for lobster on a more full-time basis throughout the year.

HP *Comment 33:* An Area 6 Federal permit holder opposes historical participation because it will prevent him from being able to shift into Federal waters especially now after Long Island Sound lobster die-off has substantially reduced lobster abundance in that area. Other gear types can move freely, and lobster trappers should be able to do the same.

Response: NOAA Fisheries sympathizes with all those affected by the Long Island Sound lobster die-off and notes that it helped administer Federal funds to assist those affected who sought assistance. However, NOAA Fisheries intends to adhere to the control dates and qualification periods as proposed in the FSEIS to decrease fishing mortality by reducing fishing effort in LCMAs 3, 4 and 5. To do otherwise as the commenters suggest would create an unmanageable exemption incompatible with the lobster ISFMP that could significantly undermine the effectiveness of the proposed action. These control dates provided notice and are, in fact, more liberal than those dates originally proposed by the Commission.

HP *Comment 34:* One commenter states that several fishermen who fished for lobster in Long Island Sound purchased Federal lobster permits in 1999 after the die-off, now will not be able to fish in LCMAs 3, 4 and 5 because they won't meet the eligibility criteria.

Response: NOAA Fisheries believes that the selected action set forth in this final rule is fair, legal and appropriate. Further, depending on when, and the extent to which these individuals began fishing in Areas 3, 4 or 5 in 1999, there still remains the potential to qualify based upon historical participation depending on the individual circumstances. See previous response.

HP *Comment 35:* One state agency (New Jersey) recommends an extension of the NMFS September 1, 1999, control date and disagrees with the proof of fishing 200 lobster traps over a 2–consecutive month period as an eligibility criterion for historical participation and recommends documentation by annual landings instead.

Response: As to the control date, see response to HP Comment 31. With regard to the 200 lobster traps fished over a 2–consecutive month period

criterion, the LCMTs recommended, and the Commission adopted this criterion as part of Addendum I. NOAA Fisheries is required to implement regulations that are compatible with the Commission's ISFMP. Third, the State of New Jersey offers no evidence to suggest that landings would be a more accurate indicator of trap fishing effort, which is the focus of New Jersey's criterion. See responses to HP Comments 12, 13 and 31.

HP *Comment 36:* A state recommends that NOAA Fisheries replace the 1,440–maximum trap allocation in Areas 4 and 5 with 3,250–maximum trap allocation since many vessels that historically fished in those areas had fished more than 1,440 lobster traps.

Response: See responses to HP Comments 23 and 24.

HP *Comment 37:* Historical participation will negatively affect value of vessels and permits for those who don't qualify and will benefit only the few fishermen that have access to the resource in certain areas.

Response: This comment is hypothetical and engages in characterizations, although NOAA Fisheries acknowledges that any limited access program could, in certain instances, negatively affect the value of non-qualifying permits and positively affect the value of qualifying permits. However, the commenter is implying an element of unfairness, which NOAA Fisheries disagrees with (see HP Comments 28 and 29).

HP *Comment 38:* One commenter stated that current fixed trap limits are working and only more effective enforcement of the trap limits is needed.

Response: Fixed trap limits in the EEZ portions of Areas 3, 4 and 5 were implemented as an interim measure by NOAA Fisheries to cap effort in these areas until the concept of historical participation could be adequately analyzed and to allow for public comments on the issue. The latest stock assessment information indicates that the lobster resource is overfished and the measures adopted in the ISFMP, including historical participation in Areas 3, 4 and 5, were adopted to end overfishing and rebuild the lobster resource. Further, the Commission has adopted a trap tagging requirement to enforce trap limits coastwide. NOAA Fisheries has implemented this measure and will carry this forward as a means of enforcing historical trap allocations, with effective results expected. NOAA Enforcement has consistently cooperated with state marine enforcement agencies to enforce the trap limits with commendable results and will continue to do so.

HP *Comment 39:* Two individuals commented that NOAA Fisheries should cooperate more with state agencies in an effort to better enforce trap limits.

Response: As stated in the previous response, NOAA Fisheries intends to continue to cooperate with state and other Federal agencies in enforcing trap limits. NOAA Fisheries has proactively pursued such a relationship by initiating and continuing communications with state agencies and the Commission regarding the implementation and enforcement of trap limits through the coastwide trap tag program. This action has resulted in the development of memorandums of understanding between NOAA Fisheries and several of the lobster producing states to facilitate the issuance and enforcement of trap tags and to promote the exchange of the resulting data between agencies. However, NOAA Fisheries believes that this issue extends beyond the mere state/Federal relationship. The states must also cooperate with each other and with the Commission to ensure that both the stated directives and unstated intents of Amendment 3 and Addenda I-III are carried out.

HP *Comment 40:* The owner of a Federal lobster permit with Area 3 history may not qualify because although history was retained, he does not have the records to document it since he did not own the vessel at that time and previous owner will not authorize NOAA Fisheries to release any related documentation. This permit holder recommends that NOAA Fisheries use data from previous permit holders to qualify vessels while keeping that information confidential, allow affidavits from fishermen and dealers, implement less restrictive documentation requirements for vessels purchased at state or Federal auctions between 1991 to 1999, consider a hardship clause in consideration of years fished, capital investments, and economic impact on the community, use port agent data or sworn statements from Port Agents regarding permit activity during the qualification period.

Response: NOAA Fisheries acknowledges that, due to a lack of mandatory reporting for all Federal lobster vessels and in consideration of confidentiality, some permit holders who should qualify may have difficulty obtaining the necessary documentation. As a preliminary matter, NOAA Fisheries urges permit holders in this situation to work with the permit's previous owners to get the necessary documentation. NOAA Fisheries, however, is developing a moratorium rights qualification system to track the history of a permit that submitted Federal VTR data. That information may be disseminated to the current permit holder without breaching confidentiality and may be used by the current permit holder to substantiate the permit's eligibility. As a result of this final rule, the Federal lobster regulations at 50 CFR 697.4(a)(7)(vi)(vii) and (viii) identify the explicit types of documentation for Areas 3, 4 and 5, respectively, that are acceptable to demonstrate the permit's lobster trap fishing history, and consider the recommendations of the industry and recognize the inconsistent reporting requirements amongst Federally permitted vessels. With respect to consideration of hardship, NOAA Fisheries has addressed this in the Final Rule by implementing a documentary hardship provision as a basis for appeal. This would apply in such cases where a permit holder applies for access to Areas 3, 4 or 5 and is denied because insufficient documentation in support of the qualification criteria is provided. If the necessary documentation no longer exists due to no fault of the permit holder, he/she may submit affidavits from Federal permit holders attesting to the permit's fishing activity and the nature of the loss of the documentation as specified in 50 CFR 697.4(a)(7)(x).

HP *Comment 41:*Two commenters suggest that NOAA Fisheries assure that those who bought a vessel with history but the associated documentation is not available be able to get the vessel's full historical allocation.

Response: NOAA Fisheries devised a qualification program that would consider the potential difficulties that some permit holders may have in locating and compiling existing documents. First, the final rule incorporates flexibility as to the type of documentation allowable, thus increasing the likelihood that an applicant will have one category of document if not another. Second, the final rule establishes a long qualification period (1991–1999), thereby increasing the opportunity that a qualified applicant will have documents for at least one of the years. Third, the application submission and extension timeline is purposefully broad to provide applicants ample time to compile and submit documentation during the application period if they do not have ready access to the necessary information. Additionally, frequent and timely notification has been provided to permit holders and the public since September 1, 1999, that NOAA Fisheries was considering a historical

participation program that would require submission of documentation and given such notice, NOAA Fisheries anticipates that most applicants have already been gathering their application information.

NOAA Fisheries also has been reviewing its own data and has incorporated into this final rule the ability of an applicant to request and use NOAA Fisheries data in the application to the extent that the data can establish a qualification criterion. Further, to the extent that an applicant is seeking qualification based upon vessel history from the activity of a former holder of that permit, NOAA Fisheries may be able to review such confidential data without its release -- NOAA Fisheries cannot release economic information to unrelated entiitles, without consent, due to confidentiality mandates -- in an effort to qualify the vessel if the data clearly establishes a criterion.

If the documentation no longer exists, then NOAA Fisheries believes that the historical participation qualification process established in this final rule aptly addresses this as well. This final rule establishes an appeals measure whereby a Federal lobster permit holder who once possessed the necessary documentation to support historical participation but no longer is in possession of that documentation due to no fault of the permit holder, can appeal under and ultimately qualify under a documentary hardship provision (see previous response and 50 CFR 697.4(a)(7)(x) of the Federal regulations as set forth by this final rule).

HP *Comment 42:* A permit holder whose permit has history in Area 3 bought the vessel after the fishing activity in that area had occurred and had only a lobster permit. Therefore, no Federal vessel trip reports exist. Coast Guard boarding reports and IRS records are only retained for 3 years and are, therefore, no longer available. Catch reports from dealers do not have vessel specific landings and small vessels like his had their landings grouped together. Therefore, NMFS should not be able to take away the right to fish in an area because of unavailable documentation originating from as far back as 10 years ago.

Response: This final rule does not require an applicant to have saved 10 years of documentation to qualify, although in order to provide flexibility, NOAA Fisheries allows that applicant to use 10–year old data if such establishes the necessary criteria. The ability to use 10–year old data should, therefore, be considered a benefit to applicants, not a burden. See Response to HP Comment 41. NOAA Fisheries gave formal notice of the need to retain documents in publishing its control date in the **Federal Register** in September, 1999. Certainly, informal notification was available in advance of that date as the qualification criteria were created in the Commission's earlier public process in developing Addendum I. In any event, if the commenter kept 3 years of Coast Guard boarding reports and IRS records as indicated in the comment, then, as of the control date when participants were formally notified to retain records, the commenter would have already had documentation for 1996, 1997, and 1998 and would reasonably be expected to have saved those documents plus whatever documentation was ultimately created in 1999. Under this final rule, the commenter could potentially use documentation for any one of those years to qualify.

HP *Comment 43:* The years 1999 and 2000 should not be used as qualifying years because the lobsters were on the decline and fishermen were fishing less gear than normal. Trap fishing activity for the years 1994 - 1998 is more indicative of traditional numbers of traps fished by the lobster fleet in LCMA 2.

Response: NOAA Fisheries intends to use the portion of 1999 up to September 1, for qualification purposes. The remainder of the 1999 calendar year and the calendar year 2000, in its entirety, will not be considered valid periods for demonstrating historical participation in LCMAs 3, 4 and 5. The calendar years 1994 through 1998 fall within the qualification period implemented by this final rule, but, the commenter is reminded that historical participation does not pertain, specifically, to LCMA 2 in this action. However, lobster landings in LCMA 2 may be used to establish the 25,000 lb (11,340 kg) of lobster landed during the qualifying year if the vessel is attempting to qualify for access to LCMA 3.

HP *Comment 44:* Eleven individuals recommend that for appeals, NOAA Fisheries require the applicant to provide an affidavit signed by five previously qualified Federal lobster permit holders to document the validity of the applicant's claim for either the location for his traditional fishing grounds and/or the numbers of traps he claims to historically fish.

Response: NOAA Fisheries recognizes that some potential qualifiers may be denied access to the lobster fishery in Areas 3, 4 or 5 due to the rigid, but necessary, qualification scheme because they, due to no fault of their own, no longer possess the documentation necessary to support their eligibility. Accordingly, NOAA Fisheries sought to craft an appeal process that is just and allows flexibility in the process without diminishing the effectiveness of the final rule. Consequently, NOAA Fisheries incorporated a documentary hardship appeal option into this rulemaking, whereby the appellant must provide affidavits from three Federal permit holders and one affidavit from an individual, although not necessarily a Federal permit holder, who can attest to the nature of the loss of the documents (See Section III.(2).(C) of the FSEIS and 50 CFR 697.4(a)(7)(x) of the Federal regulations as set forth by this final rule). The documentary hardship appeals process is intended to soften the qualification requirements without compromising the ability of the historical participation program to effectively allow only historical participants into the Area 3, 4 and 5 lobster trap fishery. NOAA Fisheries is sensitive to the potential use of fraud as a means to exploit the proposed qualification system. In choosing affidavits from three Federal permit holders, NOAA Fisheries sought a balance. Requiring just one or two affidavits would be insufficient while requiring five affidavits as the commenter suggests, may be too difficult to achieve for an appellant from a remote port. NOAA Fisheries also broadened the supporting affidavit requirement by allowing affidavits from Federal permit holders who are not necessarily Federal lobster permit holders, but further defined the requirements by requiring proof and corroboration of the hardship through one of the affidavits, and potential revocation of the appellant's Federal permit in the event of fraud. NOAA Fisheries believes that this is a reasonable just and appellate process.

HP *Comment 45:* One individual is opposed to requiring an appealing applicant to provide affidavits from five qualified permit holders in order to substantiate participation.

Response: See previous response.

Closed Area Comments (CA)

CA *Comment 1:* An individual wrote that offshore lobstermen have depleted the large lobsters and the inshore New Jersey lobster boats no longer catch 5–15 lb (2.3–6.8 kg) lobsters. Therefore, offshore closed areas should be established in the Canyons and a maximum size limit implemented on lobsters of 5 lb (2.3 kg) or more.

Response: NOAA Fisheries' analysis of closed areas in the FSEIS focused on the LCMA 4 closed areas adopted in Addendum I. The Commission did not recommend that NOAA Fisheries

implement closed areas in other LCMAs that contain deep water canyon environments, such as in LCMAs 3 and 5. Therefore, closed areas were not further analyzed as a potential management option outside the scope of the Commission's recommendations in Addendum I and are not incorporated as an element in this Final Rule. Addendum III to Amendment 3 of the ISFMP does contain provisions for a maximum size requirement in LCMAs 4 and 5 if deemed necessary. NOAA Fisheries will analyze these measures under a separate rulemaking action.

New Hampshire Conservation Equivalency Comments (NH)

NH *Comment 1:* Twenty comments were received in support of the New Hampshire conservation equivalent trap allocations and thirteen respondents commented in opposition to this measure.

Response: The best available information supports the Commission's finding that New Hampshire's proposal is a conservation equivalent to current management measures. In fact, available information suggests that it will actually reduce effort. As such, this action satisfies NOAA Fisheries' legal obligations insofar as it is consistent with the National Standards and is supportive of the Commission's ISFMP that allows conservation equivalency. Accordingly, the NOAA Fisheries' final action will allow a New Hampshire full commercial license holder fishing aboard a federally permitted lobster vessel to fish an additional 400 lobster traps in New Hampshire state waters. This action will not result in more traps fished in the Federal waters of LCMA 1.

NH *Comment 2:* Three individuals stated that the New Hampshire two-tiered trap limit that would allow full commercial lobster license holders in New Hampshire to fish up to 1,200 traps in New Hampshire state waters violates National Standard 4 of the Magnuson-Stevens Fishery Conservation and Management Act.

Response: As a preliminary matter, New Hampshire full commercial license holders can fish 1,200 traps irrespective of Federal action because the ASMFC's Lobster Board has already approved New Hampshire's conservation equivalency request and the state has already implemented the program. In any event, National Standard 4 is not triggered because this final rule involves no Federal allocative measures. That is, this final rule does not create New Hampshire's equivalency program, but merely waives the most restrictive Federal regulatory language in order to prevent the potential for trap proliferation that would result if NOAA Fisheries took no action. In other words, this final rule simply reflects the Federal Government's conservation response to a formal conservation equivalency recommendation made by the ASMFC pursuant to the Atlantic Coastal Act. Put another way, this final rule does not endorse or advance the program's measures so much as it deals with them.

The current 800–trap limitation existing in the EEZ in Area 1 remains unchanged and would not allow any additional lobster traps in Federal waters. In fact, analysis of available information suggests an actual decrease in traps fished in Area 1, both in the EEZ and in New Hampshire State waters. As such, the state measure is self-contained and reflects an internal repositioning of traps within New Hampshire borders that is not expected to have any extraterritorial impacts or to impact citizens of other states. In other words, to the extent, if at all, that the increase to 1,200 traps benefits some New Hampshire permit holders (see FSEIS Section V.1. for discussion on economic effects of trap limitations), then that benefit is not excessive and is internally counterbalanced by the New Hampshire permit holders whose trap limits will decrease to 600 traps. Accordingly, the measure does not differentiate among citizens in different states (which could also seek conservation equivalency from the Lobster Board) or advantage the citizens of one state over another. Overall, conservation benefits are expected in furtherance of National Standard 1 with no corresponding degradation of the standards set forth in National Standard 4.

NH *Comment 3:* One commenter opposed the New Hampshire conservation equivalent trap measures because it will benefit only 22 Federal permit holders from New Hampshire and questions its effectiveness in contributing toward rebuilding lobster stocks.

Response: The New Hampshire two-tiered trap allocation program was determined to be conservation equivalent to the fixed trap limits in LCMA 1 by the Commission's Lobster Board. NOAA Fisheries' analysis concurs with this finding. In fact, analysis suggests that the measure will not simply be equivalent, but will actually benefit the resource by decreasing the overall number of traps in the water. As such, those not participating in this program also gain potential relative benefit. The most recent information provided by New Hampshire Fish and Game Department supports this premise:Recent data indicates that this measure is accountable for a reduction in the number of traps fished by New Hampshire fishermen to date, compared to what would currently be allowed under the fixed trap limits in area 1, despite the absence of a cap on limited licenses. Specifically, according to updated information provided by New Hampshire Department of Fish and Game for the period between 2000 and 2002, the number of limited licenses increased by approximately 11 percent, or 30 licenses. However, since these licenses are capped at only 600 traps, it resulted in 1,800 additional traps into the fishery, rather than 2,400 that would otherwise have been allowed if the limited license category was allowed the standard 800 traps. In any event, NOAA Fisheries recognizes that any state can utilize the adaptive management provisions of the ISFMP to present a conservation equivalent alternative to the approved management scenario, as applicable.

NH *Comment 4:* A Maine lobsterman stated that he had to reduce his traps by 400 three years ago when the state of Maine implemented a trap limit and now would not want to see a New Hampshire fisherman be able to fish that extra 400 traps under New Hampshire's conservation equivalent trap allocation program.

Response: The Federal trap limit in Area 1 remains at 800 traps regardless of whether an individual resides in the State of Maine or the State of New Hampshire. Individual states may, however, choose to implement more restrictive measures or conservationally equivalent measures, which is the scenario currently described by the commenter. The New Hampshire measure is a state measure approved by the Commission's Lobster Board of which the State of Maine is a member. In any event, NOAA Fisheries' best information suggests that the measure will result in an overall reduction of traps being fished by New Hampshire lobster fishers. Accordingly, while a very few New Hampshire permit holders may choose to fish 400 extra traps, an overall reduction in traps in the area should result that would benefit Maine lobster fishers. Certainly, if NOAA Fisheries did not approve the measure, New Hampshire's conservation equivalency program would nonetheless exist. That is, the Lobster Board already approved New Hampshire's conservation equivalent measure and the State of New Hampshire already promulgated regulations consistent therewith before issuance of this final rule. As such,

disallowance of the measure in this final rule could result in trap proliferation if New Hampshire full license holders retained their 1,200–trap state permit and sold their Federal permit to another.

NH *Comment 5:* A state commented that with the uncertainty surrounding the impact of the proposed New Hampshire trap limit conservation equivalency on the resource, the negative socio-economic impact on Maine and Massachusetts fishermen should become the deciding factor. Allowing this measure to go forward will undermine support for the Area 1 plan and may lead to additional requests for exemptions that may reverse progress to date.

Response: NOAA Fisheries acknowledges the right of New Hampshire or any other state to utilize the process for alternative state management regimes outlined in the law and Amendment 3 of the ISFMP to address specific socio-economic or industry-related situations. Importantly, New Hampshire's conservation equivalency proposal is a self-contained measure that is not expected to create extra-territorial responsibilities for her sister states or the Federal Government, nor is it expected to have any extra-territorial impacts. Overall, if there is an impact as a result of the measure, it should be positive for Maine and Massachusetts fishers since overall trap usage should decrease. However, NOAA Fisheries does note that continued creation and approval of conservation equivalent measures by the Commission could, depending on the measure, unintentionally increase the complexity of the present management system, burdening all parties, including sister states, industry and the Federal Government, and thereby greatly decreasing the efficiency and effectiveness of the overall ISFMP.

NH *Comment 6:* Allowing the New Hampshire conservation equivalency plan would be waiving the most restrictive rule in the ISFMP that requires lobstermen to fish the most restrictive of trap limits regardless of whether they fish in state or Federal waters.

Response: The Commission has created a task force to research and provide recommendations to the Lobster Board concerning the ''most restrictive'' rule. NOAA Fisheries intends to remain involved in future discussions concerning this and other novel management measures such as total trap allocations and trap transferability as the Commission moves forward in addressing these issues for consideration in the ISFMP. In the meantime, NOAA Fisheries acknowledges the right of New Hampshire to implement an alternative trap allocation system in state waters only, as approved by the Commission's Lobster Management Board, and consistent with the adaptive management measures set forth in the ISFMP.

NH *Comment 7:* The New Hampshire plan has greatly limited the number of traps fished by New Hampshire lobstermen. If it hadn't been implemented there would be about 20,000 traps fished by New Hampshire lobstermen compared to the approximately 10,000 that are currently estimated to be fished.

Response: Recent data from the New Hampshire Fish and Game Department indicate the state's plan reduces the potential number of traps fished in New Hampshire waters. See response to NH Comment 4.

Area Boundary Changes (AB)

AB *Comment 1:* One individual wrote in opposition to the proposed revisions to the Area 1, Area 2, and Outer Cape Area boundary lines as recommended by the Commission.

Response: NOAA Fisheries will implement compatible boundary lines for Area 1. Area 2 and the Outer Cape Area to maintain consistency with the ISFMP and to avoid confusion if the Federal and Commission area boundaries and their associated lobster management measures differ.

Gauge Size Comments (GS)

GS *Comment 1:* Nine individuals support some manner of a gauge increase.

Response: NOAA Fisheries will analyze minimum gauge size increases along with other measures adopted by the Commission in Addenda II and III to Amendment 3 of the ISFMP in a future Federal rulemaking package. The impacts of a gauge increase in Federal waters will require a thorough examination of the biological and socio-economic impacts of such a measure, including the interstate and U. S.-Canada trade implications.

GS *Comment 2:* Three individuals support a maximum carapace size requirement.

Response: The Federal lobster regulations currently do not allow a vessel fishing in or permitted to fish in LCMA 1 to possess lobster larger than 5 inch (13 cm) carapace length. Potential implementation of maximum gauge sizes as they pertain to those measures adopted in Addenda II and III to Amendment 3 of the ISFMP will be addressed by NOAA Fisheries in a separate rulemaking action.

GS *Comment 3:* One individual is opposed to a gauge increase in Area 1.

Response: Currently, the ISFMP does not include a requirement for gauge increases in LCMA 1 so this issue is not addressed in this Final Rule.

Vessel Upgrade Comments (VU)

VU *Comment 1:* One person suggested that NOAA Fisheries allow a 10–20 percent increase in vessel length and horsepower.

Response: NOAA Fisheries does not intend to limit lobster vessel size or horsepower requirements since these parameters are not indicative of fishing effort, as are numbers of traps.

General Comments (GC)

GC *Comment 1:* One commenter suggests a closed lobster season beginning December 1 rather than January 1. Another commenter suggests closed seasons from December 1 through March 1.

Response: Closed seasons were not included in the Commission's recommendations for Federal action in the EEZ in Addendum I and, therefore, were not analyzed as part of this rulemaking action. An annual closed season from January 1 through March 31 was adopted by the Commission in Addendum III to Amendment 3 of the ISFMP for the Outer Cape Management Area only. The Commission has recommended that NOAA Fisheries implement compatible measures into the Federal regulations, however, this will be addressed in future rulemaking.

GC *Comment 2:* Two individuals believe the rule violates the Magnuson-Stevens Act.

Response: NOAA Fisheries notes that the commenters make no specific reference as to how the proposed rule violates the MSA. Federal American lobster management is authorized under the Atlantic Coastal Act which requires that NOAA Fisheries, acting on behalf of the Secretary of Commerce, implement management measures that are compatible with the Commission's ISFMP and consistent with the National Standards set forth in the MSA. The manner in which this final rule addresses all 10 of the National Standards is detailed in the Classification section of this final rule and in section V.(5) of the FSEIS, Relationship to Other Applicable Law.

GC *Comment 3:* One commenter recommends that NOAA Fisheries implement a buy back program to allow industry members a way out of the business.

Response: Under section 312(a) and (b) of the MSA, the Secretary of Commerce may make funds available to

assist the fishing industry, such as a buy back program. This may only occur if the Secretary, at his or her discretion, or at the request of the Governor of an affected state, declares that a commercial fishery failure has occurred as the result of a fishery resource disaster. This was done in 1999 to alleviate impacts to commercial lobster fishermen in Connecticut and New York due to the Long Island Sound lobster fishery disaster (see responses to HP Comments 33 and 34). Although all three stocks of American lobster are overfished, it is not evident that a commercial fishery failure is occurring in the lobster fishery in Areas 3, 4 or 5, which are the subject of this final rule. The Secretary of Commerce may consider such an option if warranted under the requirements of Section 312(a) of the MSA. Regardless, current Federal lobster permits remain transferrable if the permitted vessel is soldto another individual or entity. Therefore, there is nothing that would prohibit, under current Federal regulations, a permit holder from selling his or her vessel and Federal lobster permit and gear to a willing buyer.

GC *Comment 4:* One opponent of historical participation states that the LCMTs don't represent the entire body of lobstermen.

Response: The LCMTs were established under Amendment 3 of the ISFMP, each acting in an advisory role to the Commission's Lobster Management Board. Their participation in the lobster management process is intended to ensure that the industry has a voice in how the resource is managed and allows the diverse nature of individual fishing operations, economic considerations and the unique issues of the specific areas to be addressed in the lobster management program. As mandated by the ISFMP, each LCMT must be comprised of a specific number of members from the associated states that represent the fleet in that particular management area. NOAA Fisheries is obliged under the Atlantic Coastal Act to implement regulations that are compatible with Commission recommendations as they relate to the ISFMP and includes acknowledging the LCMT's as a legitimate advisory body of the Commission. NOAA Fisheries suggests that any member of the lobster industry interested in becoming involved in the LCMT process contact their state fisheries agency or the Commission's American Lobster ISFMP Coordinator to inform them of that interest.

GC *Comment 5:*One individual commented that there is no scientific data to suggest that the lobster stock is depleted .

Response: The latest lobster stock assessment conducted in March 2000 indicates that all three stocks of American lobster are growth overfished and overfished according to the overfishing definition in the ISFMP. A subsequent peer review of that assessment by an external stock assessment peer review panel supported the conclusions of the 2000 stock assessment and determined that additional regulatory measures are necessary. The review panel also concluded that, although the resource is not recruitment overfished, recruitment overfishing is occurring, which could result in recruitment failure. The panel further noted that shifts in fishing effort from nearshore areas to offshore areas has occurred. Allowing such effort shifts t continue could negatively impact lobster egg production. Refer to FSEIS Section I.1, Science, and Section IV.3.(B)., Stock Assessment. The measures in the Commission's ISFMP, including historical participation for Areas 3, 4 and 5, have been determined to be effective in ending overfishing and rebuilding the lobster resource. Further, more recent anecdotal information and reports from state agencies indicate that lobster catches in southern New England are on the decline and the presence of shell disease is increasing. A massive die-off in Long Island Sound in 1999, although not proven to be directly related to overfishing, has substantially reduced lobster abundance, especially in western Long Island Sound.

Marine Mammal Comment (MM)

MM *Comment 1:* One individual cannot understand why NOAA Fisheries would allow a significant number of vessels to double their trap allocations compared to current allocations, given the increasing concern for protecting right whales.

Response: The selected action is anticipated to at least cap, and potentially reduce, levels of trap fishing in Areas 4 and 5 and reduce trap fishing levels in Area 3. Therefore, this should diminish the effects of trap gear on right whales. Further, the Atlantic Large Whale Take Reduction Plan is a major component of NOAA Fisheries' activities to cetaceans listed under the Endangered Species Act using a multi-faceted approach that includes fishing gear modifications and time-area closures, supplemented by gear research to reduce the risk of entanglement of whales in fixed fishing gear.

V-notching Comments (V-notch)

V-notch *Comment 1:* Six comments were received in favor of v-notching.

Response: Current Federal lobster regulations at 50 CFR 697. 7 prohibiting the retention, landing or possession of any v-notched female American lobster. Based on recommendations by the Commission in Addenda II and III to Amendment 3 of the ISFMP, NOAA Fisheries is in the process of analyzing the mandatory v-notching requirement for Areas 1 and 3, and the zero-tolerance v-notch definition for Area 3, adopted in the ISFMP. These measures will be addressed in a separate rulemaking action.

V-notch *Comment 2:* NOAA Fisheries should rectify the discrepancy between the Maine V-notch regulation and the Federal v-notch regulation. The Federal regulation is too broad and encompassing and only applies to lobsters that have recently been notched.

Response: NOAAFisheries believes that the current Federal definition of v-notch is sufficient and is enforceable since it provides specifics on what is recognized as a v-notch. This definition is consistent with that adopted by the Commission in the ISFMP. NOAA Fisheries may look more closely at this issue in future rulemaking actions when Commission recommended measures such as zero-tolerance v-notching and mandatory v-notch requirements are analyzed.

Changes from the Proposed Rule

Changes were made to several sections of the proposed rule to clarify the qualification and appeals process for determination of historical participation in Areas 3, 4, and 5; to respond to public comments; and to increase the period, from 30 to 45 days, during which appeals may be made subsequent to any associated notice of denial of permits for trap fishing in these lobster management areas. Changes were made as follows:

In § 697.2, definitions are added for ''Conservation equivalency'' and ''Qualifying year.''

In § 697.4, paragraph (a)(7)(ii) is revised to describe how qualification for historical participation will impact annual permit renewal procedures for fishing with traps in Lobster Conservation Management Areas 3, 4, and 5.

In § 697.4, paragraphs (a)(7)(vi), (a)(7)(vii), and (a)(7)(viii) were revised to clarify and restrict the type and nature of documentation that is required to meet qualification and trap allocation criteria for participation in the Area 3,

Area 4, and Area 5 lobster trap fishery; to extend the timeframe during which applicants can submit associated applications to qualify for trap allocations; to re-align qualification criteria and documentary proof under two major sub-headings; to require the submission of an affidavit (previously proposed to apply only to the certification of the number of traps fished in Area 3, Area 4, and/or Area 5 during the qualifying year) that attests that the applicant meets the qualification and trap allocation criteria for participation in the Area 3, Area 4, and/or Area 5 trap fishery, and that the supporting information being provided is truthful, accurate, and was created contemporaneously in the qualifying year; and to allow the submission of tax returns and sales receipts to the extent that such documents support the requested trap allocation(s) - to help demonstrate the number of traps fished in each lobster management area during the qualifying year.

In § 697.4, a new provision at (a)(7)(vi)(C)(5), (a)(7)(vii)(C)(4) and (a)(7)(viii)(C)(4), was added to require a signed cover letter along with the needed documentation which potential qualifiers must provide for explaining the nature of proof being submitted for qualification in the lobster trap fishery in Area 3, Area 4, and/or Area 5.

In § 697.4, paragraph (a)(7)(x) was deleted, and associated provisions for notification by NMFS were moved to paragraphs (a)(7)(vi)(C)(8), (a)(7)(vii)(C)(7), and (a)(7)(viii)(C)(7).

In § 697.4, paragraph (a)(7)(xi) is redesignated as (a)(7)(x) and revised to modify procedures for appeal of denial of an American lobster limited access request for use of trap gear in Area 3, Area 4 and/or Area 5, to allow only two grounds for appeal and to change the period of appeal from 30 days to 45 days from the date of the notice of denial.

In § 697.19, paragraphs (a) and (b) were revised to change the implementation date for limited access changes in the Area 3, Area 4, and Area 5 lobster trap fishery from May 1, 2002 to August 2, 2003.

In § 697.19, paragraph (b)(2) was revised to change the implementation period for the referenced Area 3 trap reduction schedule from fishing years 2002–2003 to fishing years 2003–2006.

In § 697.19, the cross reference to lobster trap allocations approved by the Regional Administrator for qualifiers in Area 3 in paragraph (b)(2) was changed from 697.4(a)(7)(vii), incorrectly referenced in the proposed rule, to § 697.4 (a)(7)(vi) and the sliding maximum trap limits identified in Table 1.

In § 697.19, paragraphs (e) through (g) were redesignated as paragraphs (f) through (h), respectively, and a new paragraph (e) was added to explain that the Regional Administrator may issue temporary interim permits prior to completion of NMFS review of qualification applications for the Area 3, Area 4, and/or Area 5 lobster trap fishery, and how this may affect allowable levels of trap fishing effort prior and subsequent to the NMFS review.

In § 697.25, the definition for ''Conservation equivalency'' is moved to § 697.2, and requires that, for consideration by the Regional Administrator of associated recommendations by ASMFC for American lobster, specific supporting information be provided.

Classification

The Assistant Administrator for NOAA Fisheries determined that the measures specified in this final rule are necessary for the conservation and management of the American lobster fishery and that these measures are consistent with the Atlantic Coastal Act, the Magnuson-Stevens Act, and other applicable laws.

The selected management actions in this final rule have been determined to be significant for the purposes of Executive Order 12866.

National Environmental Policy Act

NMFS prepared a Draft Supplemental Environmental Impact Statement, Regulatory Impact Review, and an Initial Regulatory Flexibility Analysis(DSEIS/RIR/IRFA) for this action; a notice of availability was published in the **Federal Register** on November 24, 2000 (65 FR 70567). Public comments on the DSEIS/RIR/IRFA were addressed, and NMFS prepared a Final Supplemental Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA) following publication of a proposed rule on lobster management in Federal waters in the **Federal Register** on January 3, 2002 (67 FR 282). A notice of availability for the FSEIS/RIR was published in the **Federal Register** on November 8, 2002 (67 FR 68128). NOAA Fisheries determined that implementation of this action is environmentally preferable to the status quo. The FSEIS/RIR/FRFA demonstrates that, notwithstanding potential, yet unknown, changes in fishing practices and behavior, this action contains management measures able to mitigate, to the extent possible, overfishing and begin to rebuild stocks of American lobster; protect marine mammals and sea turtles; and provide economic and social benefits to the lobster industry in the long term.

The Final Regulatory Flexibility Analysis (FRFA), prepared in compliance with the Regulatory Flexibility Act, describes the economic impacts of the management measures on small entities. A summary of the FRFA follows. Reasons why the action is considered, as well as the objectivesfor this final rule, are described in the FRFA and the preamble to this final rule and are not repeated here. All participants in the lobster fishery are considered to be small entities. A description of and an estimate of the number of small entities to which this final rule will apply is discussed below.

Public Comments

One hundred and ninety comments were received on the measures contained in the proposed rule. Because all entities affected by this final rule are small entities, all of the comments and responses are considered to pertain to small entities. While none of the comments specifically referred to the IRFA, there are eight comments that discuss economic impacts on small entities in the Comments and Responses portion of this final rule (see commentsnumbered - HP Comment 6, HP Comment 18, HP Comment 32–34, HP Comment 37, NH Comment 2, and NH Comment 5).

In this section, the economic impacts of the selected regulatory action and the non-selected alternatives potential economic effects are examined from the perspective of the individual firm or business. For purposes of this section, a small entity is defined as being any vessel with gross sales not exceeding $3.5 million annually, consistent with that of the size standards of the Small Business Administration. Under this definition, all entities that are permitted to fish and that participate in the American lobster fishery are small. The economic impacts associated with the selected management actions and the non-selected alternatives are described in the FSEIS, and are incorporated herein by reference. The selected regulatory action and the non-selected alternatives would affect only those entities that hold a Federal lobster permit.

Number of Small Entities

Based on permit application records analyzed at the time the environmental impacts of this action were completed, a total of 2,901 vessels held Federal lobster permits. Of these vessels, 18 held only charter or head boat non-trap

commercial permits, 6 held both charter/head boat and non-trap commercial permits, and 2065 vessels held Federal commercial lobster trap permits. Due to a lack of mandatory data collection in the lobster fishery, activity data to discern between vessels that merely hold a permit and vessels that have participated or are currently participating in the fishery cannot be determined with any degree of reliability. All Federal lobster permit holders must be considered as potential industry participants; therefore, a regulatory flexibility analysis was conducted. The regulatory flexibility analysis provides information on the expected economic impacts of the selected regulatory action and the non-selected alternatives on affected small entities, i.e. Federal permit holders engaged in the lobster fishery to the extent possible.

Economic Effects on Historic Participation Qualifiers

Based on data provided by the LCMA 3 participants, at least 64 vessels are expected to qualify for historic participation in LCMA 3. No such data is available for LCMA 4 and 5 nor does the information on the proportion of vessels fishing in each trap category provided by the Area 3 LCMT mean that the number of eventual qualifiers for historic participation will be limited to 64. Due to the lack of any mandatory data collection for Federal lobster permit holders, the actual number of qualifiers will not be known with certainty until after plan implementation. However, using available permit and activity data and adopting some simple decision rules an estimate of the potential number of qualifiers may be figured.

LCMA 3 and LCMA 4 and 5 qualifiers were estimated by matching permit application data to identify all vessels that have a current lobster permit against combined dealer and logbook to estimate qualification based on poundage and trap history requirements (Table 1). In the latter case, trap history was approximated by assuming some minimum poundage that may be expected to be produced from at least 200 traps on a given trip. If, for example, average catch per trap were 2 lb (0.9 kg) and if 200 traps were hauled on a given trip then at least 400 lb (181 kg) would be produced. Any vessel with at least one trip in excess of 400 lb (181 kg) of lobster in two consecutive calendar months in the appropriate LCMA was deemed to meet the trap history requirement for that calendar year.

An upper bound and lower bound estimate of historic participation qualifiers was estimated by using a sensitivity analysis on the catch per trip assumption and by adopting two different delineations for trips taken in the required LCMA. In the latter case, statistical area was used to delineate trips that took place in LCMA 3 and LCMA 4 and 5. Since statistical areas overlap the LCMA boundaries a lower bound estimate of participants was developed by dropping all statistical areas that had any overlap with either LCMA 3 or LCMA 4 and 5 boundaries. An upper bound estimate was developed by including statistical area overlaps. This procedure was necessary due to a lack of more precise latitude and longitude data in dealer data.

TABLE 1.—SUMMARY OF NUMBER OF QUALIFYING VESSELS FOR HISTORIC PARTICIPATION

	Catch-per-trap = 4		Catch-per-trap = 3		Catch-per-trap = 2		Catch-per-trap = 1	
	Upper	Lower	Upper	Lower	Upper	Lower	Upper	Lower
LCMA 3	99	53	106	55	111	55	117	58
LCMA 4 and 5	47	47	50	50	54	54	60	60

The analysis using available data suggests that the number of qualifiers could be as many as 117 vessels for the LCMA 3 fishery and 60 vessels for LCMA 4 and 5. Of the qualified vessels for LCMA 3, the majority had home ports in either Rhode Island or Massachusetts. For LCMA 4 and 5, the majority of qualified vessels were from home ports in the states of New York and New Jersey. These data are consistent with known patterns of participation in both LCMA 3 and LCMA 4 and 5 (Table 1). Nevertheless, given problems with data collection for the lobster fishery these qualification estimates are likely to under-estimate the number of vessels that will qualify for historic participation.

TABLE 2.—SUMMARY OF HOME PORT OF HISTORIC PARTICIPATION QUALIFIERS BY LCMA

Home Port State	LCMA 3		LCMA 4 and 5	
	Lower Bound	Upper Bound	Lower Bound	Upper Bound
DE	1	1	1	1
MA	52	58	2	3
MD	0	0	0	1
NH	1	1	0	0
NJ	7	7	24	31
NY	1	7	14	16
RI	35	41	3	3
VA	0	0	0	1
OTHER	2	2	3	4
Total	99	117	47	60

The effect of limiting access to historic participants will have several economic effects. Limiting access will protect qualifiers from effort expansion in the impacted offshore and nearshore LCMA's of Areas 3 ,4, and 5. The

selected management action will result in a closed system, restricting future participation in these areas to a known universe of qualified vessels that fished in these areas prior to the access control date of September 1, 1999. A closed universe of participants will effectively cap effort in Areas 4 and 5 at historic levels and, in Area 3, is intended to result in an estimated 20 percent reduction in gear after a 4–year trap reduction period compared to 1991–1993 estimated fishing. However, due to the ability of fishermen to compensate for a reduction in traps by increased fishing intensity, i.e.; more frequent trips and more frequent trap hauls per trip, landings and revenue are likely to be unaffected. A reduction in participants will also reduce the likelihood of gear conflicts and reduce associated loss of gear, while allowing the remaining trap gear to fish more efficiently since it will be possible to set gear in the more productive lobster grounds. A halt in effort expansion will effectively prevent a shift in effort by non-qualifiers from non-trap to trap gear in the impacted areas, and prevent a geographic shift by non-qualifiers from other areas that may be attracted to participate in the impacted areas for a variety of reasons, including potential financial incentives, localized overcrowding, or a resource decline such as that experienced in Long Island Sound.

A major economic effect of trap allocations based on historical participation will be to preserve the competitive position of fishing businesses in the offshore fishery. Vessels that have historically fished a greater volume of gear will be able to more effectively set gear to hold productive ground or claim seasonally productive lobster territory rather than always setting gear to maximize catch levels. It will also, to some unknown extent, increase the relative share of landings in these LCMAs for those who are able to meet the qualification criteria. However, increased trap usage may correlate into increased costs for qualifiers since increasing the numbers of traps fished brings with it increases in cost in purchasing and maintaining those extra traps, additional costs for bait, as well as the added time and fuel expenses necessary to tend the extra gear.

It is difficult to provide a more concrete statement of benefits associated with implementation of limited access in LCMA 3, 4, and 5, to historic participants for reasons described in this analysis. However, the lobster resource in these LCMAs is overfished and available data evaluated for this action indicates the number of traps will decrease. Notwithstanding data limitations, quantifiable impacts are discussed in greater detail in this regulatory flexibility analysis if possible. Additional benefits are described in the FSEIS (see **ADDRESSES**).

Assuming that the data provided by the Area 3 LCMT on the proportion of vessels fishing in each trap category is representative of the majority of vessels that currently fish and that may eventually qualify for historic participation, the economic effect of the selected regulatory action may be viewed in contrast to the trap caps under the non-selected status quo alternative and that of non-selected Alternative 1C.

Under the fixed trap cap identified in the non-selected status quo alternative and that of non-selected Alternative 1C, nearly half of the 64 vessels reporting trap numbers would be forced to reduce their traps by at least 100 traps and 16 vessels would have to reduce their traps fished by at least 500 traps. By contrast, under the fixed trap cap alternatives, 27 vessels would be able to increase trap numbers by at least 200 traps and 10 vessels would be able to increase trap numbers by at least 600 traps. Under the non-selected status quo and Alternative 1C, the potential for increased trap usage by 27 vessels and possible decreased trap usage by 30 vessels does not necessarily correlate to increased or decreased vessel profits for these respective vessels. That is, increasing the numbers of traps fished brings with it increases in cost in purchasing and maintaining those extra traps, additional costs for bait, as well as the added time and fuel expenses necessary to tend the extra gear. Similarly, decreases in traps usage will result in savings in time and costs. In fact, some have observed that decreases in traps do not result in decreases in harvest. (Acheson, 1997). Reasons for such include increased trap efficiencies—e.g. the same number of lobsters are caught, but concentrated in fewer traps and increased time and ability to more frequently tend the traps existing. Where a lack of data resolution prevents a quantifiable analysis of the potential economic benefits, qualitative benefits are provided. Certainly, based upon available data, many vessels fish below their current cap limit, presumably in order to maximize the economic efficiencies of their own circumstances. NOAA Fisheries anticipates this practice to continue, further ameliorating the expected financial impacts and disparity of the proposed action. In any event, trap allocations based on historical participation is not designed to create new financial positioning so much as it will preserve the historical competitive position and structure of the offshore fishery.

Among the regulatory alternatives considered in this action, the non-selected Alternative 1C would compromise the historic competitive balance of the offshore fishery by allowing vessels that currently fish below the existing fixed trap limits to increase effort and would permit some room for growth among the small entities (in terms of numbers of traps fished). Vessels currently fishing below the current cap may be able to use surplus gear above their current effort level and below the current trap cap to more effectively set gear to hold productive ground or claim seasonally productive lobster territory rather than always setting gear to maximize catch levels. It will also increase the relative share of landings in these LCMAs for vessels fishing below the current cap at the expense of reducing industry share for entities that have historically fished above the trap cap. Vessels that have historically fished above the current trap cap may find increased competition for seasonally productive lobster territory. On balance, however, both the selected regulatory action and the non-selected Alternative 1C would have the same general economic effect among qualifiers. Given the similarities, ultimately the selected actions are intended to implement Federal regulations that are compatible with the Commission's lobster ISFMP.

Economic Effects on Historic Participation Non-qualifiers

Given the relatively small number of historic participation qualifiers there will be a large number of vessels that will not qualify. Note, however, that the number of vessels that have participated in the offshore fishery has historically been low so the selected regulatory action will primarily affect vessels that may currently be actively pursuing entry into the offshore fishery (i.e.; Permit holders who have a vessel under construction or agreement, for example), vessels that began trap fishing effort after the qualification period ended, and other vessels that have participated in the offshore fishery but may not qualify due to one or more of the qualification criteria. However, as explained in detail in the FSEIS/RIR/FRFA (see **ADDRESSES**), NOAA Fisheries believes that potentially displaced fishers, having been given ample notice, are expected to have already diversified prior to the time the measures in this final rule take effect.

Under current Federal regulations, Federal lobster permit holders may elect to fish in any LCMA, but must abide by the most restrictive measures in effect for any LCMA elected. Based on an upper bound estimate of 60 qualifiers in LCMA 4 and 5, there is a total of 2,189 vessels that may not qualify to fish for lobster with traps under the selected regulatory action. This number, however, is potentially misleading because it represents all Federal permit holders across the range of the fishery, from Maine to North Carolina. As such, the number includes permit holders who have never fished in Areas 3, 4 or 5 and who have no intention of ever doing so, but who could potentially put Areas 3, 4 or 5 on their permit because current regulations do not prohibit such. Accordingly, the figure represents a theoretical upper boundary useful for analysis, but not intended to suggest the actual suspected impact set.

More realistic, however, is that of the 2,000 plus potential qualifiers, only 185 vessels designated at least area 4 or area 5 (or both) on their permit application records analyzed at the time the environmental impacts of this actions were completed. These vessels represent the set of permit holders that are most likely to be potentially impacted by historic participation in LCMA 4 and 5 (Table 3). Similarly, of the total theoretical upper boundary set of non-qualifiers for LCMA 3, 566 permit holders elected area 3 on the permit application. This set of 566 can be further reduced because many permit holders declare into an area even if they have no intention of fishing in that area. Reasons for this include maintaining fishing flexibility and the idea that in declaring an area one is preserving his or her right to fish there in the future if access to that area is limited. Certainly commenters have suggested that the number of vessels that actually fish in Area 3 is quite limited. Consistent with the findings for qualifying vessels, the majority of LCMA 4 and 5 non-qualifiers would be from home ports in New York and New Jersey. However, vessels from home ports in Maine would comprise the majority of LCMA 3 non-qualifiers and are believed to be predominantly Area 1 fishers.

To examine the restrictiveness of the qualification criteria, the alternative levels of qualification were developed to determine how many vessels might qualify under less restrictive requirements. Specifically, qualification for LCMA 3 historic participation for alternative poundage qualification levels of 10,000, 15,000 and 20,000 lb (4,536, 6,804, and 9,072 kg) was estimated. The various levels of assumed catch per trap were also retained. Note that since qualification for LCMA 4 and 5 historic participation has no poundage requirement, the number of qualifiers would only be affected by the ability to demonstrate historic levels of trap fishing. The sensitivity for LCMA 4 and 5 qualifiers to the assumed level of catch per trap was reported in Table 1.

The lower bound estimates for the LCMA 3 historic participation program were similarly insensitive to the poundage qualification criteria and were not particularly sensitive to the assumption of average catch per trap. By contrast, the upper bound estimates for LCMA 3 were sensitive to the poundage qualification criterion and this sensitivity increased as the assumed average catch per trap was reduced. Nevertheless, lowering the poundage criterion would result in, at most, a 37 vessel increase in LCMA 3 qualifiers.

TABLE 3.—SUMMARY OF HOME PORT STATE FOR HISTORIC PARTICIPATION NON-QUALIFIERS FOR PERMIT APPLICATIONS SELECTING LCMA 3 OR LCMA 4 AND 5

Home Port State	LCMA 4 and 5 Non-Qualifiers	LCMA 3 Non-Qualifiers
CT	2	0
DE	6	4
MA	29	161
MD	4	4
ME	11	269
NC	1	0
NH	2	18
NJ	49	43
NY	49	21
RI	27	38
OTHER	5	8
Total	185	566

TABLE 4.—SENSITIVITY ANALYSIS OF QUALIFIERS BY POUNDAGE CRITERION

Poundage Requirement(number)	CPU = 4 Pounds (number)	CPU = 3 Pounds (number)	CPU = 2 Pounds (number)	CPU = 1 Pounds (number)
Upper Bound Estimate for Area 3				
25000 lbs	99	106	111	117
20000 lbs	105	114	124	131
15000 lbs	110	121	133	144
10000 lbs	111	127	140	154
Lower Bound Estimate for Area 3				
25000 lbs	53	55	55	58
20000 lbs	55	57	57	59
15000 lbs	57	59	59	62
10000 lbs	57	60	60	64

The results reported in the Table 3 - Sensitivity Analysis of Qualifiers by Poundage Criterion are based upon limited data. Vessel history that may not be fully represented in NOAA Fisheries data may increase the number of qualifiers. Nevertheless, vessels that will not qualify for either LCMA 3 or LCMA 4 and 5 historic participation, will not be able to expand their businesses into these areas. The economic effects will be more severe for those vessels that are currently fishing some portion of their traps but will not qualify for historic participation because they could not meet one or more of the qualification criteria. These vessels will either have to:sell their Federal permit and fish their allowable number of traps in state waters, assuming they qualify under their individual state program; move their trap fishing effort to other management areas not requiring historic participation; or, use their vessel and gear in some alternative fishery. Thus, non-qualifying vessels will likely be able to offset some of their losses by fishing other areas or in other fisheries, but associated operations may not be as profitable as before.

A less obvious economic effect is that the value of the non-qualifier's Federal lobster permit might be eroded while

that of qualifying vessels could increase in certain hypothetical situations. Thus, while there may be no distinct operational effect the equity position of the business could be affected. The normal cost associated with baiting and hauling traps may not change but if the value of the lobster permit is capitalized into the value of the vessel, then the value of the owners' business could similarly be reduced. Since owner equity is an important component of obtaining favorable loan conditions non-qualifiers may be put at some competitive disadvantage when seeking business loans. If nothing else, the resale value of the business could be affected in certain circumstances.

Impacts of Historic Participation Alternatives on Small Entities

On balance, the non-selected Alternatives 1A and 1C would not have significant differential impacts on non-qualifiers. Thus, under alternative 1A and 1C, non-qualifiers that are participants in the offshore fishery would still be forced to seek alternative fishing locations. These vessels would suffer some loss in profitability since alternative areas would likely already have been heavily fished. Non-qualifiers might also suffer a decline in the value of their business affecting resale and possibly putting them at a competitive disadvantage when seeking business loans.

Non-selected Alternative lA would have approximately the same impact as that of the selected regulatory action except that vessels in LCMA 4 and 5 might be less negatively affected relative to the selected regulatory action. The possible negative effect of the selected action is due to the imposition of a cap on initial trap allocations. Such a cap would require some portion of qualifying vessels to reduce the number of traps fished proportionally more than vessels that will qualify for initial allocations at or below the cap.

Non-selected Alternative 1C might have mixed effects on qualifying vessels in LCMA 3 and LCMA 4 and 5. Vessels that are operating above the cap would have to reduce traps while vessels below the cap would be able to increase their traps. On balance, approximately the same number of vessels would be forced to reduce as would be able to increase their traps. At an industry level, this non-selected alternative might result in an equalization of competitiveness but would do so by negatively impacting relatively larger businesses.

Rationale for Selecting this Regulatory Action

Based on information available at this time, NOAA Fisheries concludes that the selected regulatory action is the best among the considered alternatives. The reader is referred to the preamble of this final rule and Section III of the FSEIS completed for this action (see **ADDRESSES**) for a detailed description of the selected regulatory action and its rationale and environmental consequences.

Impacts of New Hampshire Conservation Equivalency on Small Entities

Selected Action—New Hampshire Conservation Equivalency

Under New Hampshire conservation equivalency measures contained in this final rule, Federal permit holders with New Hampshire full licenses may be able to increase their relative share of landings compared to New Hampshire limited license holders and other non-New Hampshire LCMA 1 Federal participants because full license holders will be allowed to fish up to 400 more traps in New Hampshire state waters than is allowed under the current trap cap. Gross revenues for New Hampshire full license holders fishing above the current 800 maximum trap limit in the state waters of New Hampshire may be increased. To the extent that revenue increases are offset by equipment expenses (i.e. the procurement, tending, and maintenance of more gear), profits may remain unchanged. New Hampshire full license holders may also be able to more efficiently ''hold ground'' or claim seasonally productive lobster territory. However, gear conflicts may increase and offset the benefits of increased landings. Limited license holders fishing below the current maximum trap limit may experience reduced landings, and, since prices are expected to remain unchanged, gross revenues may decrease. However, reduced equipment expenses and the ability to increase efficiencies through an increase in the number of trips and more frequent trips may offset revenue losses and profits may remain unchanged. However, the State of New Hampshire has already implemented this conservation equivalency program notwithstanding the coordinated Federal measures contained in this rule. Accordingly, the financial impacts associated with fishing 1,200 traps would be encountered regardless of Federal action (see NH Comment 4).

Non-Selected No Action/Status Quo Alternative 2B—New Hampshire

Under the non-selected status quo alternative, Federal permit holders with New Hampshire full license would be restricted to the current 800–maximum trap limit. This non-selected alternative might result in a variety of responses on the part of impacted Federal permit holders. If NOAA Fisheries did not implement the selected action to allow fishers who qualify to use 1,200 traps in New Hampshire state waters, the impacted fisher could relinquish his Federal permit, sell the vessel and associated Federal permit, or continue to fish for lobster with traps under the existing Area 1 trap limit (800 traps) in both state and Federal waters. Relinquishment of the Federal permit would result in less gear being fished in Federal waters although the 1,200 traps would still be fished, but entirely in state waters, potentially greatly increasing line density in state waters. However, given the economic value of a vessel with an associated Federal limited access lobster permit, it is unlikely that a fisher would simply relinquish the Federal permit. Sale of the vessel and associated Federal limited access lobster permit to a fisher who did not possess a New Hampshire lobster permit would not be expected to result in a reduction in trap gear. It is likely that a sale would result in increased effort under the assumption that the seller would continue to fish the 1,200 traps entirely in state waters, thereby potentially greatly increasing fishing effort, traps, and trap line density in state waters, while the buyer of the vessel and Federal lobster permit could fish up to the maximum trap limit in Federal waters for the area(s) elected. If the impacted fisher were to elect to continue to fish for lobster with traps under the existing Area 1 trap limit (800 traps) in both state and Federal waters, vessels unable to increase efficiencies and make adjustments to fishing practices to compensate for trap reductions might experience a reduction in profits. Not taking action to establish a 600–trap ceiling for Federal limited license holders, a more conservative limit than the 800–trap limit required by the ISFMP, might result in an increase in lobster landings for license holders actually fishing above the 600–trap limit. However, an absence of information on the actual number of traps actively fished by New Hampshire lobstermen makes it impossible to quantify the impact on landings.

Impacts of Compatible Management Area Boundaries

Selected Action 3A

The selected action will implement compatible boundary lines for Area 1, Area 2, and the Outer Cape Area to maintain consistency with the Commission's lobster ISFMP. Impacted vessels will benefit from compatible boundary lines, by the elimination of potential regulatory differences between state and Federal area specific regulations, and the elimination of differential enforcement as interpreted by state and Federal agencies.

Non-selected No Action Status Quo Alternative 3B—Boundaries

This non-selected alternative would result in incompatible boundary lines for Area 1, Area 2, and the Outer Cape Area. Incompatible boundaries could result in differential enforcement of area specific management measures as interpreted by state and Federal agencies as well as confusion on the part of impacted Federal permit holders.

Reporting and Recordkeeping Requirements

Small entities applying under the historic participation application process for LCMAs 3, 4, or 5, would be required to comply with the new collection-of-information requirements described in the Classification section of this final rule under the Paperwork Reduction Act section. No professional skills are necessary to comply with any of the reporting requirements associated with this action.

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following collection-of-information requirements are being restated and have already been approved by the Office of Management and Budget (OMB) as shown:vessel permit applications approved under OMB control number 0648–0202 with the response times per application of 30 minutes for a new application, and 15 minutes for renewal applications; the Area 5 Waiver program approved under OMB control number 0648–0202 with the response times per application of 15 minutes to initiate a permit category change and select the LCMA 5 Trap Waiver Permit category, 2 minutes per response to return a suspended limited access lobster trap permit, and 15 minutes per response to initiate cancellation of a LCMA 5–Trap Waiver Permit and re-activate a suspended limited access lobster trap permit; and a lobster trap tag requirement approved under OMB control number 0648 0351 with a response time of 1 minute per tag.

This final rule contains new collection-of-information requirements subject to the PRA. The collection of this information has been approved by OMB under OMB control number 0648–0450. These requirements include the compilation of information by Federal permit holders pertaining to historical fishing operations in the lobster fishery, and the submission of one or more affidavits to NOAA Fisheries, certifying the information provided to qualify based on the area specific qualification criteria number in LCMAs 3, 4, and 5. The public reporting burden for each collection of information per response is indicated in the following list of new requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The new requirements are as follows: (1) Provision of a cover letter intended to describe the types of documentation included in the application and the relevance of the documentation to the application process with a response time per application of 15 minutes; (2) Provision of documentation of possession of a current valid Federal lobster permit with a response time per application of 5 minutes; (3) Provision of documentation to demonstrate at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 during a 2–consecutive calendar month period in any calendar year during the qualification periodfrom March 25, 1991, through September 1, 1999 with a response time per application of 15 minutes; (4) (For Area 3 only) Provision of documents pertaining to the sale of lobsters indicating the landing of at least 25,000 lb (11,340 kg) of lobster from any location during the year used as the qualifying year from March 25, 1991, to September 1, 1999 with a response time per application of 10 minutes;(5) Provision of documentation for proof of historical participation in two rather than one lobster management area with a response time per application of an additional 17 minutes if different consecutive two-month periods of trap fishing are used; (6) Provision of documentation for proof of historical participation in three rather than one lobster management area with a response time per application of an additional 34 minutes if three different consecutive 2–month periods are used; (7) Completion of lobster trap fishing area eligibility application form with a response time per application of 2 minutes for each area selected; (8) Provision of affidavit stating total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 at any one time during the qualifying year with a response time per application of 15 minutes; (9) Provision of a written appeal request to the Regional Administrator by non-qualifying permit holders with a response time per application of 15 minutes; and10. Provision of affidavits in support of documentary hardship written appeal request to the Regional Administrator by non-qualifying permit holders with a response time per application of 3.25 hours if three affidavits are required and 4.25 hours per application if four affidavits are required.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to the Director, State, Federal and Constituent Programs Office, NOAA Fisheries, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA)

Section 7(a)(2) of the Endangered Species Act (ESA) (16 U. S. C.1531 *et seq.*) requires that each Federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. When the action of a Federal agency may affect species listed as threatened or endangered, that agency is required to consult with either the National Marine Fisheries Service (NOAA Fisheries) or the U. S. Fish and Wildlife Service (FWS), depending upon the species that may be affected. In instances where NOAA Fisheries or FWS are themselves proposing an action that may affect listed species, the agency must conduct intra-service consultation. Management measures described in this final rule resulted in the initiation of an informal

and a formal intra-service section 7 consultation with NOAA Fisheries' Northeast Region Protected Resources Division.

Informal consultation on the actions described in this final rule concluded on March 1, 2001, that parts of the action, as proposed, were likely to adversely affect ESA-listed right whales, humpback whales, fin whales, sei whales, sperm whales, leatherback sea turtles and loggerhead sea turtles as a result of displacement of lobster trap gear from LCMAs 3, 4, and 5 to nearshore lobster management areas where these species are known to occur.

Formal intra-service ESA section 7 consultation on NOAA Fisheries' implementation of new management measures described in this final rule was initiated on July 11, 2001. The most recent section 7 consultation for this action is based on information developed byNOAA Fisheries' State, Federal and Constituents Programs Office, and other sources of information.

The formal section 7 consultation concluded on October 31, 2002, that the selected management measures described in this final rule are not likely to jeopardize the continued existence of right whales, humpback whales, fin whales, sei whales, or sperm whales, loggerhead or leatherback sea turtles. Critical habitat for right whales has been designated within the action area, but the action is not likely to affect that critical habitat. Therefore, the management measures described in this final rule are not likely to destroy or adversely modify designated critical habitat.

The management measures described in this final rule are expected to result in a reduction of effort as a result of limiting participation in LCMAs 3, 4 and 5 and requiring trap reductions over a 4–year period for LCMA 3. Protected species known to become entangled in lobster trap gear, namely right, humpback, and fin whales as well as leatherback sea turtles, are expected to benefit from trap gear reductions in LCMAs 3, 4, and 5. Historic participation in LCMAs 3, 4, and 5 may also result in a shift in effort to nearshore areas. However, additional entanglements of ESA-listed cetaceans and sea turtles are not expected given that the overall effort in the fishery will decrease and there are management measures in place to reduce the number and severity of large whale entanglements in lobster gear. Some of these management measures are expected to be of benefit to sea turtles as well, such as by reducing the amount of line in the water. Sperm whales, and sei whales are not expected to occur in sufficient numbers in affected nearshore areas such that an increase in lobster gear in these areas will result in the addition of adverse affects to these species.

The management measures described in this final rule for conservation equivalency for New Hampshire, while likely reducing the combined overall number of traps fished by state and Federal permit holders combined, could potentially result in the addition of lobster trap gear fished solely by these few Federal permit holders in New Hampshire state waters. The Biological Opinion for this action has identified that the activity for implementation of conservation equivalency for federal lobster fishers who also possess a full-time commercial New Hampshire lobster license will directly affect leatherback sea turtles as a result of entanglement in lobster trap gear set in New Hampshire waters. NOAA Fisheries has determined that this level of anticipated take is not likely to jeopardize the continued existence of leatherback sea turtles. Reasonable and Prudent Measures and Terms and Conditions are provided with the opinion to minimize the take of sea turtles in the lobster trap fishery.

For additional discussion on the most recent ESA section 7 consultation for this action, a complete administrative record of this consultation is on file at the NOAA Fisheries, Northeast Regional Office, Office of Protected Resources, One Blackburn Drive, Gloucester, Massachusetts, 01930 [Consultation No. F/NER/2001/01263].

List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 19, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 16 U. S. C. 5101 *et seq.*

■ 2. In § 697.2, definitions for ''Conservation equivalency'' and ''Qualifying year'' are added in alphabetical order to read as follows:

§ 697.2 Definitions.

* * * * *

Conservation equivalency means a measure adopted by a state that differs from the specific requirements of an interstate fishery management plan, but achieves the same level of conservation for the resource under management.

* * * * *

Qualifying year means any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time periods in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991, and September 2, 1999, through December 31, 1999), and refers to the specific year selected by the applicant for the purposes of qualifying for access to the lobster trap fishery in Areas 3, 4 and/or 5 under the requirements set forth in 697.4(a)(7)(vi-x).

* * * * *

■ 3. In § 697.4, paragraph (a)(7)(ii) is revised and paragraphs (a)(7)(vi) through (x), and (f)(1)(v) are added to read as follows:

§ 697.4 Vessel permits and trap tags.

(a) * * *

(7) * * *

(ii) Each owner of a fishing vessel that fishes with traps capable of catching American lobster must declare to NMFS in his/her annual application for permit renewal which management areas, as described in § 697.18, the vessel will fish in for lobster with trap gear during that fishing season. The ability to declare into Lobster Conservation Management Areas 3, 4 and/or 5, however, will be first contingent upon a one time initial qualification as set forth in paragraphs (a)(7)(vi) through (a)(7)(viii).

* * * * *

(vi) *Participation requirements for EEZ Offshore Management Area 3 (Area 3).* To fish for lobster with traps in Area 3, a Federal lobster permit holder must initially qualify into the area. To qualify, the permit holder seeking initial qualification must satisfy the following requirements in an application to the Regional Administrator:

(A) *Qualification criteria.* To initially qualify into Area 3, the applicant must establish with documenting proof the following:

(*1*) That the applicant possesses a current Federal lobster permit;

(*2*) That at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 by the qualifying vessel during a period of two consecutive calendar months in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period in calendar years 1991

and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991 and September 2, 1999 through December 31, 1999);

(*3*) That at least 25,000 lb (11,340 kg) of lobster were landed by the qualifying vessel from any location during the qualifying year selected in paragraph (9)(7)(vi)(A)(*2*).

(B) *Trap allocation criteria.* A qualified applicant must also establish with documentary proof the number of lobster traps fished by the qualifying vessel in Area 3 during the qualifying year. To the extent that the documentation so establishes, the Regional Administrator will then allocate a maximum number of lobster traps with which to fish in Area 3 as it relates to the sliding scale set forth in § 697.19.

(C) *Documentary proof.* To satisfy the Area 3 Initial Qualification and Trap Allocation Criteria set forth in paragraphs (9)(7)(vi)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(*1*) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the current permit holder in its data base, which would at a minimum include:the applicant's name and address, vessel name and permit number;

(*2*) As proof of 200 trap/two consecutive month criterion, the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation: copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30), Federal Port Agent Vessel Interview forms (NOAA Form 88–30), Federal Sea Sampling Observer Reports or a Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88–176); personal vessel logbooks; state permit applications; and/or official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*3*) As proof that 25,000 lb (11,340 kg) of lobster were landed the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation:copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30), Federal Port Agent Vessel Interview forms (NOAA Form 88–30) or Federal Sea Sampling Observer Reports; personal vessel logbooks; official state reporting documentation showing the pounds of lobster landed, including, but not limited to, state report cards, state vessel interview forms, state sea sampling observer reports, and catch reports; and/or sales receipts or landing slips. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*4*) As proof of the number of traps fished during the qualifying year, NOAA Fisheries will accept to the extent that the document(s) clearly and credibly establishes this criterion one or more of the following types of documentation:copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30); Federal Port Agent Vessel Interview Forms (NOAA Form 88–30); Federal Sea Sampling Observer Reports; Federal Fishing Vessel and Gear Damage Compensation Fund Reports (NOAA Form 88–176); personal vessel logbooks; tax returns and sales receipts; state permit applications; and/or official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. Documentation may represent the number of traps fished during any point in the qualifying year and does not necessarily need to represent the 2–consecutive month period used in paragraph (a)(7)(vi)(C)(*2*) of this section. These documents must have been created on or about the time of the activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*5*) All applicants must further provide a signed cover letter that identifies the documents provided and which qualifying and trap allocation criteria the documents are being used to establish;

(*6*) All applicants must further provide an affidavit attesting under the penalties of perjury that each aspect of each of the qualification and trap allocation criteria has been met and the submitted supporting documentation is truthful, accurate and created contemporaneously with the dates identified on the documents. Specifically, each affidavit must attest in separate and specific paragraphs:

(*i*) The name, address, lobster permit number and vessel of the applicant;

(*ii*) That at least 200 lobster traps were set, allowed to soak, hauled back and re-set during the 2–month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying which documents are being offered as proof of such;

(*iii*) That at least 25,000 lb (11,340 kg) of lobster were landed during the qualifying year by the vessel, identifying that year and further identifying which documents are being offered as proof of such;

(*iv*) The total number of traps set in the qualifying area during the qualifying year, identifying that area and year, and further identifying which documents are being offered as proof of such; and

(*v*) That the submitted documents in support of these claims are truthful, accurate and created during the qualifying year.

(*7*) All documents and submissions must be legible. Illegible documents or submissions will not be considered;

(*8*) The Regional Administrator may, at his or her discretion, waive documentary obligations for certain elements of the qualification criteria for an applicant if NMFS itself has clear and credible evidence that would satisfy that qualification criteria for the applicant;

(*9*) At the discretion of the Regional Administrator, all submitted documentation must be accompanied by a completed NMFS Lobster Historical Participation Application Form.

(*10*) Applicants must retain copies of all the application materials and documentation submitted to NMFS while the application is pending.

(D) *Application period.* The time period for submitting a historical qualification and trap allocation application begins on the date 30 days after publication of this final rule (application period start date) and ends December 31, 2003.

(*1*) *Earlier submissions.* Applicants who submit their applications to the Regional Administrator by July 31, 2003 (or in less than 60 days after the application period start date, whichever is later) will be eligible to receive a temporary interim permit that would allow the vessel to continue fishing with

traps in Area 3 at existing levels during the 2003 fishing season while NMFS processes the application. After processing and reaching a decision on this earlier submitted application, the Regional Administrator may then issue a revised permit that will indicate the vessel's Area 3 eligibility and trap allocation. This revised permit will supersede the temporary interim permit and be effective immediately.

(*2*) *Later submissions.* Applicants who submit their applications to the Regional Administrator after July 31, 2003 (or more than 60 days after the application period start date, whichever is later), will not be eligible to receive a temporary interim permit that would allow continued fishing in Area 3 while NMFS processes the application. Even though they may be deemed qualified, applicants submitting applications in this later time period will not be eligible to fish in Area 3 until the 2004 fishing season.

(vii) *Participation requirements for EEZ Nearshore Management Area 4 (Area 4).* To fish for lobster with traps in Area 4, a Federal lobster permit holder must initially qualify into the area. To qualify, the permit holder seeking initial qualification must satisfy the following requirements in an application to the Regional Administrator:

(A) *Qualification criteria.* To initially qualify into Area 4, the applicant must establish with documenting proof the following:

(*1*) That the applicant possesses a current Federal lobster permit;

(*2*) That at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 4 by the qualifying vessel during a period of two consecutive calendar months in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991 and September 2, 1999 through December 31, 1999).

(B) *Trap allocation criteria.* A qualified applicant must also establish with documentary proof the number of lobster traps fished by the qualifying vessel in Area 4 during the qualifying year. To the extent that the documentation so establishes, the Regional Administrator will then allocate a maximum number of lobster traps with which to fish in Area 4, not to exceed 1,440 traps.

(C) *Documentary proof.* To satisfy the Area 4 Initial Qualification and Trap Allocation Criteria set forth in paragraphs (A) and (B) of this section, the applicants will be limited to the following documentary proof:

(*1*) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the current permit holder in its data base, which would at a minimum include: the applicant's name and address, vessel name and permit number;

(*2*) As proof of 200 trap/two consecutive month criterion, the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation:Copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30), Federal Port Agent Vessel Interview forms (NOAA Form 88–30), Federal Sea Sampling Observer Reports or a Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88–176); personal vessel logbooks; state permit applications; and/or official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*3*) As proof of the number of traps fished during the qualifying year, NOAA Fisheries will accept to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation:Copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30); Federal Port Agent Vessel Interview Forms (NOAA Form 88–30); Federal Sea Sampling Observer Reports; Federal Fishing Vessel and Gear Damage Compensation Fund Reports (NOAA Form 88–176); personal vessel logbooks; tax returns and sales receipts; state permit applications; and/or official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. Documentation may represent the number of traps fished during any point in the qualifying year and does not necessarily need to represent the 2–consecutive month period used in paragraph (a)(7)(vii)(C)(2) of this section. These documents must have been created on or about the time of the activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*4*) All applicants must further provide a signed cover letter that identifies the documents provided and which qualifying and trap allocation criteria the documents are being used to establish;

(*5*) All applicants must further provide an affidavit attesting under the penalties of perjury that each aspect of each of the qualification and trap allocation criteria has been met and the submitted supporting documentation is truthful, accurate and created contemporaneously with the dates identified on the documents. Specifically, each affidavit must attest in separate and specific paragraphs:

(*i*) The name, address, lobster permit number and vessel of the applicant;

(*ii*) That at least 200 lobster traps were set, allowed to soak, hauled back and re-set during the two month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying which documents are being offered as proof of such;

(*iii*) The total number of traps set in the qualifying area during the qualifying year, identifying that area and year, and further identifying which documents are being offered as proof of such; and

(*iv*) That the submitted documents in support of these claims are truthful, accurate and created during the qualifying year.

(*6*) All documents and submissions must be legible. Illegible documents or submissions will not be considered;

(*7*) The Regional Administrator may, at his or her discretion, waive documentary obligations for certain elements of the qualification criteria for an applicant if NMFS itself has clear and credible evidence that would satisfy that qualification criteria for the applicant;

(*8*) At the discretion of the Regional Administrator, all submitted documentation must be accompanied by a completed NMFS Lobster Historical Participation Application Form.

(*9*) Applicants must retain copies of all the application materials and documentation submitted to NMFS while the application is pending.

(D) *Application period.* The time period for submitting a historical qualification and trap allocation application begins on the date 30 days

after publication of this final rule (application period start date) and ends December 31, 2003.

(*1*) *Earlier submissions.* Applicants who submit their applications to the Regional Administrator by July 31, 2003 (or in less than 60 days after the application period start date, whichever is later) will be eligible to receive a temporary interim permit that would allow the vessel to continue fishing in Area 4 at existing levels during the 2003 fishing season while NMFS processes the application. After processing and reaching a decision on this earlier submitted application, the Regional Administrator may then issue a revised permit that will indicate the vessel's Area 4 eligibility and trap allocation. This revised permit will supercede the temporary interim permit and be effective immediately.

(*2*) *Later submissions.* Applicants who submit their applications to the Regional Administrator after July 31, 2003 (or more than 60 days after the application period start date, whichever is later), will not be eligible to receive a temporary interim permit that would allow continued fishing in Area 4 while NMFS processes the application. Even though they may be deemed qualified, applicants submitting applications in this later time period will not be eligible to fish in Area 4 until the 2004 fishing season.

(viii) Participation requirements for EEZ Nearshore Management Area 5 (Area 5). To fish for lobster with traps in Area 5, a Federal lobster permit holder must initially qualify into the area. To qualify, the permit holder seeking initial qualification must satisfy the following requirements in an application to the Regional Administrator:

(A) *Qualification criteria.* To initially qualify into Area 5, the applicant must establish the following:

(*1*) That the applicant possesses a current Federal lobster permit;

(*2*) That at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 by the qualifying vessel during a two consecutive calendar month period in any calendar year during the period from March 25, 1991, through September 1, 1999, excluding the time period in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991 through March 24, 1991 and September 2, 1999 through December 31, 1999).

(B) *Trap allocation criteria.* A qualified applicant must also establish with documentary proof the number of lobster traps fished by the qualifying vessel in Area 5 during the qualifying year. To the extent that the documentation so establishes, the Regional Administrator will then allocate a maximum number of lobster traps with which to fish in Area 5, not to exceed 1,440 traps.

(C) *Documentary proof.* To satisfy the Area 5 Initial Qualification and Trap Allocation Criteria set forth in paragraphs (9)(7)(viii)(A) and (B) of this section, the applicants will be limited to the following documentary proof:

(*1*) As proof of a valid Federal lobster permit, the applicant must provide a copy of the vessel's current Federal lobster permit. The potential qualifier may, in lieu of providing a copy, provide NMFS with such data that would allow NMFS to identify the current permit holder in its data base, which would at a minimum include: the applicant's name and address, vessel name and permit number.

(*2*) As proof of 200–trap/2–consecutive month criterion, the applicant must provide - to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation:copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30), Federal Port Agent Vessel Interview forms (NOAA Form 88–30), Federal Sea Sampling Observer Reports or a Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88–176); personal vessel logbooks; state permit applications; and/or official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. These documents must have been created on or about the time of activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years.

(*3*) As proof of the number of traps fished during the qualifying year, NOAA Fisheries will accept to the extent that the document(s) clearly and credibly establishes this criterion - one or more of the following types of documentation:copies of Federal Fishing Vessel Trip Reports (NOAA Form 88–30); Federal Port Agent Vessel Interview Forms (NOAA Form 88–30); Federal Sea Sampling Observer Reports; Federal Fishing Vessel and Gear Damage Compensation Fund Reports (NOAA Form 88–176); personal vessel logbooks; tax returns and sales receipts; state permit applications; and/or official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, state vessel interview forms, license application forms, state sea sampling observer reports, and catch reports. Documentation may represent the number of traps fished during any point in the qualifying year and does not necessarily need to represent the 2–consecutive month period used in paragraph (a)(7)(viii)(C)(2) of this section. These documents must have been created on or about the time of the activity stated in the document. NMFS will not accept recent vessel log book entries or other recently created documents identified in this part as proof of fishing activity that occurred in prior years;

(*4*) All applicants must further provide a signed cover letter that identifies the documents provided and which qualifying and trap allocation criteria the documents are being used to establish;

(*5*) All applicants must further provide an affidavit attesting under the penalties of perjury that each aspect of each of the qualification and trap allocation criteria has been met and the submitted supporting documentation is truthful, accurate and created contemporaneously with the dates identified on the documents. Specifically, each affidavit must attest in separate and specific paragraphs:

(*i*) The name, address, lobster permit number and vessel of the applicant;

(*ii*) That at least 200 lobster traps were set, allowed to soak, hauled back and re-set during the two month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying which documents are being offered as proof of such;

(*iii*) The total number of traps set in the qualifying area during the qualifying year, identifying that area and year, and further identifying which documents are being offered as proof of such; and

(*iv*) That the submitted documents in support of these claims are truthful, accurate and created during the qualifying year.

(*6*) All documents and submissions must be legible. Illegible documents or submissions will not be considered;

(*7*) The Regional Administrator may, at his or her discretion, waive documentary obligations for certain elements of the qualification criteria for an applicant if NMFS itself has clear and credible evidence that would satisfy that qualification criteria for the applicant;

(*8*) At the discretion of the Regional Administrator, all submitted documentation must be accompanied by

a completed NMFS Lobster Historical Participation Application Form.

(*9*) Applicants must retain copies of all the application materials and documentation submitted to NMFS while the application is pending.

(D) *Application period.* The time period for submitting a historical qualification and trap allocation application begins on the date 30 days after publication of this Final Rule (application period start date) and ends December 31, 2003.

(*1*) *Earlier submissions.* Applicants who submit their applications to the Regional Administrator by July 31, 2003 (or in less than 60 days after the application period start date, whichever is later) will be eligible to receive a temporary interim permit that would allow the vessel to continue fishing in Area 5 at existing levels during the 2003 fishing season while NMFS processes the application. After processing and reaching a decision on this earlier submitted application, the Regional Administrator may then issue a revised permit that will indicate the vessel's Area 5 eligibility and trap allocation. This revised permit will supercede the temporary interim permit and be effective immediately.

(*2*) *Later submissions.* Applicants who submit their applications to the Regional Administrator after July 31, 2003 (or more than 60 days after the application period start date, whichever is later), will not be eligible to receive a temporary interim permit that would allow continued fishing in Area 5 while NMFS processes the application. Even though they may be deemed qualified, applicants submitting applications in this later time period will not be eligible to fish in Area 5 until the 2004 fishing season.

(ix) *Qualifying year for vessels seeking to fish for lobster with traps in more than one area of Areas 3, 4, and 5.* Any Federal lobster permit holder applying for a lobster trap allocation in more than one area amongst Areas 3, 4 and 5 must use the same qualifying year for all areas.

(x) *Appeal of denial of permit.* Any applicant having first applied for initial qualification pursuant to § 6 paragraphs (a)(7)(vi), (a)(7)(vii) and/or (a)(7)(viii) of this section, but having been denied a limited access American lobster permit for Areas 3, 4, and/or 5, may appeal to the Regional Administrator within 45 days of the date indicated on the notice of denial. Any such appeal must be in writing.

(A) *Grounds for appeal.* There shall be two grounds for appeal:

(*1*) *Clerical error.* It shall be grounds for appeal that the Regional Administrator erred clerically in concluding that the vessel did not meet the criteria in paragraphs (a)(7)(vi), (a)(7)(vii), and/or (a)(7)(viii) of this section. Errors arising from oversight or omission such as ministerial, mathematical or typographical mistakes would form the basis of such an appeal. Alleged errors in substance or judgment do not form a sufficient basis of appeal under this paragraph. The appeal must set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

(*2*) *Documentary hardship.* It shall be grounds for appeal that an otherwise qualified applicant is unable to produce qualification evidence due to documentary hardship. The hardship must have been caused by factors beyond the applicant's control, such as documents lost in a flood or fire. Failure to create the documents in the first instance, or simple loss of the document, or the intentional destruction or discarding of the document in the past by the appellant, or lacking the appropriate qualification documents due to inadvertence, carelessness or excusable neglect, do not constitute grounds for hardship under this paragraph. Appeals based on documentary hardship must establish the following:

(*i*) *Nature of the hardship.* The appellant must identify the hardship and submit to the Regional Administrator a document corroborating the hardship, such as by insurance claims forms or police and fire reports; and

(*ii*) *Affidavits.* The appellant must submit affidavits from current Federal permit holders so that three affidavits corroborate each of the qualification criteria for Area 3 as indicated in paragraph (a)(7)(vi) of this section, Area 4 as indicated in paragraph (a)(7)(vii) of this section, and/or for Area 5 as indicated in paragraph (a)(7)(viii) of this section. Each affidavit must clearly specify in separate and specific paragraphs:The name, address, Federal permit number and vessel name of the affiant; that the affiant can attest to by personal first-hand knowledge that the qualifying vessel set, allowed to soak, hauled back and re-set at least 200 lobster traps during the 2–month period in the qualifying year in the area being selected by the applicant, identifying those months and that year and further identifying the nature of that knowledge; for Area 3 only, that the affiant can attest to by personal first-hand knowledge that the qualifying vessel landed at least 25,000 lb (11,340 kg) oflobster during the qualifying year, identifying that year and further identifying the nature of that knowledge; that the affiant can attest to by personal first-hand knowledge to the total number of traps that the applicant claims his or her vessel fished in the area in question during the qualifying year and further identifying the nature of that knowledge; that the affiant also fished in the area being claimed by theapplicant during the months in the qualifying year chosen by the applicant; and be signed under the penaltiesof perjury. The requirement that each qualification criteria must be independently affirmed by three Federal permit holders does not restrict the appellant to using the same three affiants for each qualification criterion, although the appellant is encouraged to do so. The term personal first-hand knowledge in this paragraph means information directly gained by the affiant and would not include information gained from word of mouth or hearsay.

(B) *Appellate timing and review.* All appeals must be in writing and must be submitted to the Regional Administrator postmarked no later than 45 days after the date on NMFS' Notice of Denial of Initial Qualification application. Failure to register an appeal within 45 days of the date of the Notice of Denial will preclude any further appeal. The appellant may notify the Regional Administrator of his or her intent to appeal within the 45 days and request a time extension to procure the necessary affidavits and documentation. Time extensions shall be limited to 30 days and shall be calculated as extending 30 days beyond the initial 45–day period that begins on the original date on the Notice of Denial. Appeals submitted beyond the deadlines stated herein will not be accepted. Upon receipt of a complete written appeal with supporting documentation in the time frame allowable, the Regional Administrator will then appoint an appeals officer who will review the appellate documentation. After completing a review of the appeal, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Regional Administrator, who shall make the final agency decision whether to qualify the applicant.

(C) *Status of vessels pending appeal.* The Regional Administrator may authorize a vessel to fish in Areas 3, 4 or 5 during an appeal. The Regional Administrator may do so by issuing a letter authorizing the appellant to fish up to 800 traps in Areas 4 or 5, or up to 1,800 traps in Area 3 during the pendency of the appeal. The Regional

Administrator's letter must be present onboard the vessel while it is engaged in such fishing in order for the vessel to be authorized. If the appeal is ultimately denied, the Regional Administrator's letter authorizing fishing during the appeal will become invalid 5 days after receipt of the notice of appellate denial or 15 days after the date on the notice of appellate denial, whichever occurs first.

* * * * *

(f) * * *

(1) * * *(v) The application is for initial qualification for access to Area 3, 4 or 5 pursuant to the historical participation process in paragraphs(a)(7)(vi)(D), (a)(vii)(D), and (a)(viii)(D) of this section.

* * * * *

■ 4. In § 697.18, paragraphs (a), (b), and (h) are revised to read as follows:

§ 697.18 Lobster management areas.

* * * * *

(a) *EEZ Nearshore Management Area 1.* EEZ Nearshore Management Area 1 is defined by the area, including state and Federal waters that are nearshore in the Gulf of Maine, bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point of Cape Cod:

Point	Latitude	Longitude
A	43°58′N.	67°22′W.
B	43°41′N.	68°00′N.
C	43°12′N.	69°00′W.
D	42°49′N.	69°40′W.
E	42°15.5′N.	70°40′W.
F	42°10′N.	69°56′W.
G	42°05.5′N.	70°14′W.
G1	42°04.25′N.	70°17.22′W.
G2	42°02.84′N.	70°16.1′W.
G3	42°03.35′N.	70°14.2′W.

(1) From point ''G3'' along the coastline of Massachusetts, including the southwestern end of the Cape Cod Canal, continuing along the coastlines of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to Point A.

(2) [Reserved]

(b) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
H	41°40′N.	70°05′W.
I	41°15′N.	70°05′N.
J	41°21.5′N.	69°16.5′W.
K	41°10′N.	69°06.5′W.
L	40°55′N.	68°54′W.
M	40°27.5′N.	71°14′W.
N	40°45.5′N.	71°34′W.
O	41°07′N.	71°43′W.
P	41°06.5′N.	71°47′W.
Q	41°11.5′N.	71°47.25′W.
R	41°18.5′N.	71°54.5′W

(1) From point ''R'' along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point ''H'' along the Rhode Island and Massachusetts coast, including the northeastern end of the Cape Cod Canal.

(2) [Reserved]

* * * * *

(h) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
F	42°10′N.	69°56′W.
G	42°05.5′N.	70°14′W.
G1	42°04.25′N.	70°17.22′W.
G2	42°02.84′N.	70°16.1′W.
G4	41°52.′N.	70°07.49′W.
G5	41°54.46′N.	70°03.99′W.

(1) From Point ''G5'' along the outer Cape Cod coast to Point ''H'':

Point	Latitude	Longitude
H	41°40′N.	70°05′W.
H1	41°18′N.	70°05′W.

(2) From Point ''H1'' along the eastern coast of Nantucket Island to Point ''I'':

Point	Latitude	Longitude
I	41°15′N.	70°00′W.
J	41°21.5′N.	69°16′W.

(3) From Point ''J'' back to Point ''F''.

* * * * *

■ 5. Section 697.19 is revised to read as follows:

§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.

(a) *Trap limits for vessels fishing or authorized to fish in any Nearshore Management Area.* (1) Through August 31, 2003, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying one or more EEZ Nearshore Management Area(s), whether or not in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 800 lobster traps.

(2) Beginning September 1, 2003, vessels fishing in or issued a valid limited access American lobster permit specifying one or more of EEZ Nearshore Management Areas 1, 2, or the Outer Cape Management Area, regardless of whether it is in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area(s) more than 800 lobster traps, except as noted in paragraph (d) of this section.

(3) Beginning September 1, 2003, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 4 may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(vii), which will not exceed 1,440 lobster traps, except as noted in paragraphs (c) and (e) of this section.

(4) Beginning September 1, 2003, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 5 may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(viii), which will not exceed 1,440 lobster traps, except as noted in paragraphs (c) and (e) of this section unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26.

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area.* (1) Through August 31, 2003, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than 1,800 lobster traps.

(2) Beginning September 1, 2003, for fishing years 2003, 2004, 2005, 2006, and beyond until changed, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more the number of lobster

traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(vi) and the sliding maximum trap limits identified in Table 1 to part 697, except as noted in paragraphs (c) and (e) of this section.

(c) *Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ Management Area.* A vessel owner who elects to fish in more than one EEZ Management Area may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any one elected management area.

(d) *Conservation equivalent trap limits in New Hampshire state waters.* Notwithstanding any other provision, any vessel with a Federal lobster permit and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, to the extent authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1.

(e) *Potential Modifications to Area 3, Area 4, and/or Area 5 Trap Limits in Fishing Year 2003.* The Regional Administrator may issue temporary interim Federal American lobster trap fishing permits pursuant to § 697.4 for Areas 3, 4 and/or 5 prior to completion of NMFS' review of the Area 3, Area 4 and/or Area 5 qualification applications, if the applicant has designated one or more of those areas on their 2003 Federal lobster permit. These temporary permits will become effective on September 1, 2003, for those applicants who have applied in the manner set forth in § 697.4(a)(7)(vi)(D)(*1*), (a)(7)(vii)(D)(*1*), and/or (a)(7)(viii)(D)(*1*). Any vessel issued a temporary trap fishing permit for Area 3 may fish up to 1,800 lobster traps, except as noted in paragraph (c) of this section. Any vessel issued a temporary trap fishing permit for Area 4 and/or 5 shall not fish more than 800 traps. The temporary interim permit will remain valid during fishing year 2003 until such time the Regional Administrator has reviewed and either approved or denied the temporary permitee's historical participation application. If approved, the Regional Administrator may issue a revised permit and/or management area designation certificate, depending on whether the applicant designated that area on his or her 2003 Federal permit at the beginning of the year. Any traps being fished, deployed, or possessed by the qualified Federal permit holder in excess of the number of traps as described in paragraphs (a)(3), (a)(4), and (b)(2) of this section must be removed from the water within 14 days after receipt of the revised permit, or 30 days after the date it is sent, whichever comes first. Revised Federal lobster permits must be retained aboard the fishing vessel at all times.

(f) *Trap tag requirements for vessels fishing with lobster traps.* Any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member. Any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in any portion of any management area that do not have a valid, federally recognized lobster trap tag permanently attached to the trap bridge or central cross-member.

(g) *Maximum lobster trap tags authorized for direct purchase.* In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) and (b) of this section plus an additional 10 percent to cover trap loss.

(h) *EEZ Management area 5 trap waiver exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

■ 6. In § 697.25, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively and new paragraph (b) is added to read as follows:

§ 697.25 Adjustment to management measures.

* * * * *

(b) *Conservation equivalency measures.* The Regional Administrator may consider future recommendations for modifications to Federal regulations based on conservation equivalency for American lobster that are formally submitted to him/her in writing by the ASMFC. These recommendations must, for consideration by the Regional Administrator, contain the following supporting information:

(1) A description of how Federal regulations should be modified;

(2) An explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations;

(3) An explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and

(4) A detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering the recommendation and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

* * * * *

BILLING CODE 3510–22–S

Table 1 to Part 697 - Area 3 Trap Reduction Schedule

Number of Traps* Approved by the Regional Administrator	Trap Allocation by Fishing Year			
	2003	2004	2005	2006 and beyond
1200- 1299	1200	1200	1200	1200
1300-1399	1200	1200	1200	1200
1400-1499	1290	1251	1213	1200
1500-1599	1388	1337	1297	1276
1600-1699	1467	1423	1380	1352
1700-1799	1548	1498	1452	1417
1800-1899	1628	1573	1523	1482
1900-1999	1705	1644	1589	1549
2000-2099	1782	1715	1654	1616
2100-2199	1856	1782	1715	1674
2200-2299	1930	1849	1776	1732
2300-2399	2003	1905	1836	1789
2400-2499	2076	1981	1896	1845
2500-2599	2197	2034	1952	1897
2600-2699	2218	2107	2008	1949
2700-2799	2288	2169	2063	2000
2800-2899	2357	2230	2117	2050
2900-2999	2425	2291	2171	2100
3000-3099	2493	2351	2225	2150
3100-3199	2575	2422	2288	2209
≥3200	2656	2493	2351	2267
* Trap allocations below 1,200 will not be subject to further reductions.				

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BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 68, No. 59
Thursday, March 27, 2003

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

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zones; Annual Fireworks Events in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing permanent safety zones on the waters located in their Area of Responsibility during fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard on or before May 27, 2003.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office/Group Portland, 6767 N. Basin Ave., Portland, Oregon 97217. U.S. Coast Guard Marine Safety Office/Group Portland maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Portland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski, Operations Department, at (503) 240–9370.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–03–008), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

The Coast Guard proposes establishing permanent safety zones to allow for safe fireworks displays. These events may result in a number of vessels congregating near fireworks launching barges. Safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays.

Discussion of Proposed Rule

This rule, for safety concerns, would control vessel movements in regulated areas surrounding fireworks launching barges. Entry into these zones would be prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Coast Guard personnel would enforce these safety zones. The Captain of the Port may be assisted by other federal and local agencies.

Regulatory Evaluation

This proposed 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 this rule under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

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

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'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605–(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the designated areas at the corresponding times as drafted in this proposed rule. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for particular dates, all in the evening when vessel traffic is low. Traffic will be allowed to pass through the zones with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605–(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

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

Assistance for Small Entities

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under Executive Order 13132 and have determined that this final 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. In particular, the Act addresses actions that may result in the expenditure by a state, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for regulations establishing safety zones. A ''Categorical Exclusion Determination'' is available in the docket 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.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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. Section 165.1315 is added to read as follows:

§ 165.1315 Safety Zones; Annual fireworks events in the Captain of the Port Portland Zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Cinco de Mayo Fireworks Display, Portland, OR.*

(i) *Location.* Waters on the Willamette River bounded by the Morrison Bridge to the north, Hawthorne Bridge to the south, and the shoreline to the east and west.

(ii) *Expected date.* One day in early May.

(2) *Portland Rose Festival Fireworks Display, Portland, OR.*

(i) *Location.* Waters on the Willamette River bounded by the Morrison Bridge to the north, Hawthorne Bridge to the south, and the shoreline to the east and west.

(ii) *Expected date.* One day in late May or early June.

(3) *Tri-City Chamber of Commerce Fireworks Display, Columbia Park, Kennewick, WA.*

(i) *Location.* Waters on the Columbia River bounded by shoreline to the north and south, Interstate 395 bridge to the east, and 1000 feet of water to the west of the launching barge which is centered at 46–13.380′ N, 119–08.520′ W.

(ii) *Expected date.* Every July 4th.

(4) *Cedco Inc. Fireworks Display, North Bend, OR.*

(i) *Location.* Waters on the Coos River bounded by shoreline to the east and west and 1000 feet of water to the north and south of the launching barge which is centered at 43–23.450′ N, 124–12.500′ W.

(ii) *Expected date.* One day in early July.

(5) *Astoria 4th of July Fireworks, Astoria, OR.*

(i) *Location.* All waters of the Columbia River at Astoria, Oregon enclosed by the following points: North from the Oregon shoreline at 123–50.015′ W to 46–11.505′ N, thence east to 123–49.150′ W, thence south to the Oregon shoreline and finally westerly along the Oregon shoreline to the point of origin.

(ii) *Expected date.* One day in early July.

(6) *Oregon Food Bank Blues Festival Fireworks, Portland, OR.*

(i) *Location.* Waters on the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and shoreline to the east and west.

(ii) *Expected date.* One day in early July.

(7) *Oregon Symphony Concert Fireworks Display, Portland, OR.*

(i) *Location.* All waters of the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and shoreline to the east and west.

(ii) *Expected date.* One day in late August.

(8) *Fort Vancouver Celebrate America Fireworks Display, Vancouver, WA.*

(i) *Location.* All waters of the Columbia River bounded by 1000 feet of water to the north, shoreline to the south, Interstate Five Bridge to the west and 1000 feet of water to the east of the fireworks launching barge which is centered at 45–36.500′ N, 122–40.220′ W.

(ii) *Expected date.* One day in late October.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

Dated: March 13, 2003.

Paul D. Jewell,

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

[FR Doc. 03–7300 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–011]

RIN 2115–AA97

Security Zone; Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The purpose of this supplemental notice of proposed rulemaking (SNPRM) is to amend the Collection of Information (COI) section of the Notice of Proposed Rulemaking (NPRM) preamble for ''Security Zone; Port Valdez and Valdez Narrows, Valdez, AK'' (NPRM), 67 FR 65074 (Oct. 23, 2002). The original notice proposed new COI requirements that must be included. The original NPRM is re-printed in its entirety for the convenience of the public. The Coast Guard proposes establishing a security zone encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a security zone in the Valdez Narrows, Port Valdez, Alaska. The security zones are necessary to protect the Alyeska Marine Terminal and Vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: Comments on the COI section of this SNPRM and related material must reach the Coast Guard on or before May 27, 2003.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office, P.O. Box 486, Valdez, Alaska 99686. Marine Safety Office Valdez, AK, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Valdez, AK between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, at (907) 835–7222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and material related to the new COI section only. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Prince William Sound 02–011), indicate that you would like to comment on the new COI section, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. During the comment period for the NPRM which expired on December 23, 2002 we received no comments. Comments for this SNPRM should address the revised COI section addressed by this SNPRM.

Public Meeting

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

Background and Purpose

This rulemaking amends the COI section of the NPRM preamble for ''Security Zone; Port Valdez and Valdez Narrows, Valdez, AK'' (NPRM), 67 FR 65074 (Oct. 23, 2002). The comment period for 67 FR 65074 (Oct. 23, 2002) has run and the original NPRM is re-printed in its entirety for the convenience of the public and is identical to that in the original NPRM. The preamble is also identical to that found in 67 FR 65074 (Oct. 23, 2002) with the exception of the new COI Section. Accordingly, comment on this SNPRM will be limited to the supplemental information contained in the COI section of the preamble. The Coast Guard is taking this action for the immediate protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001. The port of Valdez is a vital national commercial port, supporting the transfer and transport of a significant percentage of oil used in the United States. As such, it is crucial that actions be taken to protect the flow of commerce from possible terrorist or subversive acts designed to damage maritime facilities and vessels transiting to and from the Port of Valdez. The proposed rule would replace existing regulations in 33 CFR 165.1701 and the temporary rule issued in July, which will expire December 31, 2002, that created temporary § 165.T17–010, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska.'' The proposed rule would work to safely control the flow of commercial traffic and protect vital maritime facilities by creating security zones and check-in procedures designed to identify threats for response by appropriate law enforcement resources.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these security zone regulations are—

§ 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

§ 165.T17–004—Security zone; Port Valdez, and

§ 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

On June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace those security zones that expired June 1,

2002. That rule issued in June, which expired July 30, 2002, created temporary § 165.T17–009, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska''.

On July 26, 2002, we published a temporary final rule (67 FR 49582–84) that established security zones to replace temporary § 165.T17–009 that expired July 30, 2002. That rule issued in July, which expired December 31, 2002, creating temporary § 165.T17–010, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska''. This proposed rule removed the temporary security zones in § 165.T17–010 and added permanent security zones in a new 33 CFR 165.1701.

On October 23, 2002, we published a NPRM (67 FR 65074) designed to permanently add the permanent security zones in a new 33 CFR § 165.1701. This supplemental rule would remove the temporary security zones in § 165.T17–010 and add permanent security zones in a new 33 CFR 165.1701.

During the comment period for the NPRM which expired on December 23, 2002 we received no comments.

Discussion of Proposed Rule

This proposed rule would establish three security zones in new 33 CFR 165.1701(a) and move the current safety zone in existing 33 CFR 165.1701 to new 33 CFR 165.1701(b). This proposed rule also would establish procedures for vessel entry into the security zones for management of the natural resources administered by the Alaska Department of Natural Resources.

The Trans-Alaska Pipeline (TAPS) Valdez Marine Terminal security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tanker Moving security zone encompasses the waters within 200 yards of a TAPS Tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows security zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point. This zone is enforced only when a TAPS Tanker is in the zone. The TAPS safety zone encompasses all waters within 200 yards of on shore and off shore facilities of the TAPS Terminal and is a safety buffer between potentially hazardous terminal operating areas and areas to which vessels may be permitted entry by the Captain of the Port, Prince William Sound, during State of Alaska managed fisheries openings and/or closings.

The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones and the NPRM in order to mitigate the impact on commercial and recreational users. The limited size of the terminal security zone is designed to minimize impact on mariners while ensuring public safety by preventing interference with terminal operations. The Tank Vessel moving vessel security zone and the Valdez Narrows security zone will be enforced only while vessels are transiting the area and are designed to provide a safe operating distance while minimizing threats to tanker operations.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the limited size of the zones and the limited duration of the Tank Vessel moving security and Valdez Narrows security zone. Additionally, vessels will not be precluded from transiting and operating in these areas as The Captain of The Port will consider requests for entry on a case-by-case basis and requests for entry will be approved as appropriate. Those desiring to transit the area of the security zone must contact the Captain of the Port under the provisions of proposed 33 CFR 165.1701(d).

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the following entities, some of which might be small entities: The owners and operators of commercial fishing vessels and native subsistence fishermen. Some of the areas that these entities might desire to use for fishing may fall within the security zones. However, The Captain of The Port will consider requests for entry into the security zone on a case-by-case basis and requests for entry will be approved as appropriate; therefore, it is likely that very few, if any, small entities will be impacted by this rule.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7222.

Collection of Information

This proposed rule contains information collection requirements that have not been approved by Office of Management and Budget (OMB). This proposed rule would modify an existing collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Ports and Waterways Safety.

OMB Control Number: 2115–0540.

Summary of the Collection of Information: The Captain of the Port, Prince William Sound Alaska requires information on vessel owners and operators, and their vessels, desiring to enter into the security zone around the Trans Alaska Pipeline (TAPS) Alyeska Valdez Marine Terminal.

Need for Information: To ensure port and vessel safety and security and to ensure the State of Alaska natural resource agencies are able to manage State of Alaska regulated fisheries.

Proposed Use of Information: This information is required to control vessel traffic, develop contingency plans, and enforce regulations.

Description of the Respondents: The respondents are owners, operators, or persons in charge of non TAPS vessels operating in the vicinity of the Trans Alaska Pipeline (TAPS) Alyeska Valdez Marine Terminal.

Number of Respondents: The existing OMB-approved collection number of respondents is 1,339. This proposed rule would increase the number of respondents by 20 to a total of 1,359.

Frequency of Response: The existing OMB-approved collection annual number of responses is 1,339. This rule will increase the number of responses by 20 to a total of 1,359.

Burden of Response: The existing OMB-approved collection burden of response is 2 and ¼ hours. This proposed rule would not change the burden of response because it will take less time for the responders to complete this response. Their vessels and crew are smaller.

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 2,929 hours. This proposed rule would increase the total annual burden by 20 hours to a total of 2,949 hours.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. The existing OMB-approved collection is valid until September 30, 2003.

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation since implementation of this action will not result in any inconsistencies with any Federal, State, or Local laws or administrative determinations relating to the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

For the reasons set forth in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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.

§ 165.T17–013 [Removed]

2. Remove § 165.T17–013

3. Revise § 165.1701 to read as follows:

§ 165.1701 Port Valdez and Valdez Narrows, Valdez, Alaska—security and safety zones.

(a) *Security Zone Locations.* The following areas are security zones:

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04′57″ N, 146°26′20″ W; thence northerly to 61°06′30″ N, 146°26′20″ W; thence east to 61°06′30″ N, 146°21′15″ W; thence south to 61°05′07″ N, 146°21′15″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85(b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters within 200 yards of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′6.0″ N, 146°37′20.0″ W; thence south west to 61°04′00.0″ N, 146°39′52.0″; W; thence southerly to 61°02′33.5″ N, 146°41′28.0″ W; thence north west to 61°02′40.5″ N, 146°41′47.5″ W; thence north east to 61°04′06.0″ N, 146°40′14.5″ W; thence north east to 61°05′23.0″ N, 146°37′40.0″ W; thence south east back to the starting point at 61°05′16.0″ N, 146°37′20.0″ W.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05′23.0″ N, 146°37′22.5″ W; thence south westerly to 61°04′03.2″ N, 146°40′03.2″ W; thence southerly to 61°03′00″ N, 146°41′12″ W.

(ii) This security zone encompasses all waters approximately 200 yards either side of the Valdez Narrows Optimum Track line.

(b) *The following location is a safety zone:* all waters within 200 yards of the shore and offshore facilities of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(c) *Regulations.* (1) Entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Prince William Sound via the request process set out in paragraph (d) of this section.

(2) For the purposes of this section, paragraphs (a), (e), and (f) of §165.33 do not apply to the following vessels or individuals legally on board those vessels:

(i) Public vessels of the United States; and

(ii) Vessels engaged in the movement of oil from the TAPS terminal or fuel to the TAPS terminal and that have reported their movements to the Vessel Traffic Service or vessels that are performing work at the TAPS Terminal including, but not limited to tugs, oil spill response vessels, boom boats, security and safety vessels.

(3) *Enforcement of Valdez Narrows security zone.* Section 165.33(a) will not be enforced in the Valdez Narrows security zone, described in paragraph (a)(3) of this section, except when a tank vessel greater than 20,000 DWT is in the Valdez Narrows security zone. Vessels must stay clear of the Valdez Narrows security zone when a transiting tank vessel approaches the Valdez Narrows VTS Special Area from the vicinity of Entrance Island to the north and Tongue Point to the south of Valdez Narrows. The Valdez Narrows VTS Special Area is depicted as the purple dashed lines on National Oceanic and Atmospheric Administration chart 16707 and is described in § 161.60(b) of this subchapter.

(4) Vessels other than those described in paragraph (c)(2) of this section desiring access to the security and safety zones set out in paragraphs (a) and (b) of this section shall secure permission from the Captain of the Port under the procedures listed in paragraph (d).

(d) *Permits.* (1) The Captain of the Port may allow access to the security and safety zones in order to encourage utilization of natural resources, promote tourism and provide for other reasonable use consistent with the needs of security and safety within Port Valdez and Prince William Sound. Vessels desiring access must obtain a permit from the Captain of the Port in the following manner:

(2) Applicants must submit an application via written request to the Captain of the Port at least 48 hours prior to the desired time of entry into a security or safety zone. Applications submitted less than 48 hours prior to the desired time of entry may be accepted by the Captain of the Port on a case by case basis. The written request must:

(i) Demonstrate good cause for entry into a security or safety zone.

(ii) Describe the vessel(s) entering (including name, visible identifying numbers, markings, etc.) and times/dates of entry.

(iii) Provide certification that all crew members and other persons on board are U.S. citizens or provide names and identifying information on all non-U.S. citizens (passport, etc.) and certification that all other crew and other persons on board are U.S. citizens.

(iv) Provide a name and contact information for the applicant or the applicant's designated point of contact.

(v) If the application is submitted less than 48 hours prior to the desired entry into a security or safety zone it must provide the reason the applicant was unable to meet the 48 hour deadline. The Captain of the Port may consider circumstances beyond the applicant's control as acceptable for relief from the 48 hour deadline. ''Beyond the applicant's control'' may include, but is not limited to, short notice fishing openers, gear retrieval for short notice fishing closures or other actions by state or federal wildlife or natural resources management agencies. If an application does not meet the 48 hour deadline and is not accepted, the Captain of the Port shall provide the reason(s) why the application is denied in a written response to the applicant.

(vi) Applications may be delivered in person or by mail to Captain of the Port, U.S. Coast Guard Marine Safety Office, P.O. Box 486, 105 Clifton Drive, Valdez, Alaska, 99686–0486.

(3) Upon approval the Captain of the Port shall issue a letter permitting access to a security zone specifying time(s)/date(s) of entry, check-in, check-out and emergency vacate procedures. This letter shall be carried aboard the vessel and presented upon request to any on-scene patrol personnel of the Coast Guard.

(4) The Captain of the Port may require a permit to monitor certain radio frequencies, display special visual signals such as flags or markers, enter and depart at specific locations and undergo a vessel examination prior to entry into any security or safety zone.

(5) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign, by siren, radio, flashing light, or other means, or by on-scene Coast Guard patrol personnel, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other

applicable laws. Coast Guard Auxiliary and local or state agencies and may have on board their vessels Coast Guard patrol personnel.

(e) *Authority.* In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

Dated: March 5, 2003.

Mark A. Swanson,

Commander, U.S. Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 03–7299 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 96–146; DA 03–807]

The Consumer & Governmental Affairs Bureau Seeks Comments To Refresh Record on Rules Governing Interstate Pay-per-Call and Other Information Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On July 11, 1996, the Commission released a document which amended the Commission's rules governing interstate pay-per-call and other information services to conform with the requirements of the Telecommunications Act of 1996 (1996 Act). Through amendments to section 228, the 1996 Act addressed abusive practices that threatened public confidence in toll-free numbers and left telephone subscribers vulnerable to unexpected charges for calls and information services. The rule amendments were designed to comply with this statutory mandate. 47 CFR 64.1501 *et seq.* The Order and Notice of Proposed Rulemaking proposed new rules to correct abuses involving presubscribed information services and the use of 800 numbers and other toll free numbers to charge subscribers for information services. This document seeks comment to refresh the record regarding issues outlined in the Order and Notice of Proposed Rulemaking issued in 1996.

DATES: Comments are due on or before May 12, 2003 and reply comments are due on or before May 27, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. *See* Supplementary Information for filing instructions.

FOR FURTHER INFORMATION CONTACT: Calvin Osborne, Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released March 17, 2003. On July 11, 1996, the Commission released an Order and Notice of Proposed Rulemaking, 61 FR 39107, July 26, 1996, which, among other things, amended the Commission's rules governing interstate pay-per-call and other information services to conform with the requirements of the Telecommunications Act of 1996 (1996 Act). Through amendments to section 228, the 1996 Act addressed abusive practices that threatened public confidence in toll-free numbers and left telephone subscribers vulnerable to unexpected charges for calls and information services. The rule amendments were designed to comply with this statutory mandate. 47 CFR 64.1501 *et seq.* The Order and Notice of Proposed Rulemaking proposed new rules to correct abuses involving presubscribed information services and the use of 800 numbers and other toll free numbers to charge subscribers for information services. In the Notice of Proposed Rulemaking, the Commission proposed limited modifications to the Commission's rules which contain our presubscription definition, toll-free number limitations, and billing requirements. Order and Notice of Proposed Rulemaking, 11 FCC Rcd at 14752–56, paras. 42–48. We also sought comment on whether additional regulations were necessary to protect consumers from certain practices by common carriers involved in transmitting interstate information services that could be interpreted as not being just and reasonable under section 201(b) of the Communications Act. We now seek comment to refresh the record regarding the issues outlined in the Notice of Proposed Rulemaking. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before May 12, 2003, and reply to comments on or before May 27, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties who choose to file comments by paper must file an original and four copies with the Commission's Secretary, Marlene H. Dortch, Office of the Secretary. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *http://www.fcc.gov/e-file/ecfs.html.*

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–7319 Filed 3–26–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 59

Thursday, March 27, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet on April 9, 2003, in Redding, Calif. The purpose of the meeting will be to discuss committee structure and process.

DATES: The meeting will be held on April 9, 2003, from 8 a.m. to noon.

ADDRESSES: The meeting will be held in the Shasta County Office of Education conference room, 1644 Magnolia Ave., Redding, CA.

FOR FURTHER INFORMATION CONTACT: Sharon Heywood, Designated Federal Official, USDA Shasta-Trinity National Forest, (530) 242–2200. E-mail *sheywood@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Discussion is limited to Forest Service staff and committee members. However, time will be provided for public input, giving individuals the opportunity to address the committee.

Dated: March 17, 2003.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 03–7303 Filed 3–26–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Modoc County RAC Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of Modoc County RAC meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, April 21 and Monday May 12, 2003, in Alturas, California for each business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting April 21, begins at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of March 10 Minutes, consideration of new projects for funding in 2004, hear a status report on 2002 and 2003 projects, and discuss community outreach for projects for fiscal year 2004 that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, provide economic benefits and restore and improve health and water quality that meet the intent of Public Law 106–393. Time will also be set aside for public comments at the beginning of the meeting.

The business meeting May 12, begins at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of April 21, 2003 Minutes, reports from subcommittees, and consideration of projects for recommendation to the County Board of Supervisors. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Susan M. Wheatley,

Acting Forest Supervisor.

[FR Doc. 03–7318 Filed 3–26–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD FEBRUARY 22, 2003–MARCH 19, 2003

Firm name	Address	Date petition accepted	Product
SORB Technology, Inc	3631 SW 54th Street, Oklahoma City, OK 73119.	02/25/03	Medical parts and accessories for hemodialysis *i.e.,* cartridges, blood tubing sets and dialysates.
Turnkey Technologies, Inc	4650–A East Second Street, Benicia, CA 94510.	02/26/03	Part of measuring apparatus for checking voltage, current and resistance.
City Machine Tool & Die Co., Inc	1302 E. Washington Street, Muncie, IN 47307.	02/26/03	Fixtures for metalworking machine tools.
R. C. Tooling, Inc	1370A Pullman Drive, El Paso, TX 79936.	02/27/03	Tool and die fabrication molds.
Controls Components, Ltd	19722 E. Admiral Place, Catoosa, OK 74015.	03/03/03	Metal fabrication and parts of valves.
Hill Manufacturing, Inc	809 South 12th Street, Broker Arrow, OK 74012.	03/03/03	Oil and Gas field machinery and parts.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD FEBRUARY 22, 2003–MARCH 19, 2003—Continued

Firm name	Address	Date petition accepted	Product
Fiorini Ranch	15472 West Lombardy Avenue, Turlock, CA 95380.	03/03/03	Grapes, peaches and almonds.
Sunset Mold, LLC	727 Commercie Drive, Venice, FL 34292.	03/04/03	Injection molds for Drive rubber and plastic.
Security Locknut, Inc	9650 West Foster Avenue, Chicago, IL 60656.	03/06/03	Locking lugnut fasteners.
OMSAC, Inc dba Newstripe, Inc	1700 Jasper Street, Aurora, CO 80011.	03/07/03	Marking and stripping equipment (dispensers & sprayers), stencils, industrial compactors and parts and accessories and field maintenance equipment.
Paramount Machine Co., Inc	10824 Edison Court, Rancho Cucamonga, CA 91730.	03/07/03	Hydraulic parts for aircraft—landing gear, actuator flaps, and rear stabilizers.
Pentz Design Pattern & Foundry, Inc	14823 Main Street NE., Duvall, WA 98019.	03/08/03	Castings and molds for various industries—electronics, telecommunications, and automotive.
Ivan Kosbruk	7811 Kiana Circle, Anchorage, AK 99507.	03/13/03	Salmon.
W. G. Strohwig Tool & Die Company	3285 Industrial Road, Richfield, WI 53076.	03/19/03	Injection molds for plastics.
Woodbine Alaska Fish Co	P.O. Box 757, Rio Vista, CA 94571	03/19/03	Salmon.
Denman & Davis	1 Broad Street, Clifton, NJ 07015	03/19/03	Stainless steel and hot rolled carbon steel plates used in the dry cleaning and food industry.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.)

Dated: March 20, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–7317 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–813]

Canned Pineapple Fruit from Thailand: Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Marin Weaver at (202) 482–2336 or Monica Gallardo at (202) 482–3147, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, 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 to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 27, 2002, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on canned pineapple fruit from Thailand, covering the period July 1, 2001, through June 30, 2002 (67 FR 55000). On September 25, 2002, the Department published a correction to the initiation (67 FR 60210). The preliminary results are currently due no later than April 2, 2003.

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 for the reasons stated in our memorandum from Charles Riggle, Program Manager, Office 5, to Gary Taverman, Acting Deputy Assistant Secretary for AD/CVD Enforcement II, 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 June 6, 2003. We intend to issue the final results no

later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 20, 2003.

Gary Taverman,

Acting Deputy Assistant Secretary for for AD/CVD Enforcement II.

[FR Doc. 03–7358 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–827]

Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Aantidumping Duty Changed Circumstances Review and Determination to Revoke Order in Part.

SUMMARY: On February 13, 2003, the Department of Commerce (the Department) published a notice of initiation and preliminary results of an antidumping duty changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC). *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 68 FR 7344,7345 (February 13, 2003) (*Initiation and Preliminary Results*). We are now revoking this order, in part, with respect to pencils meeting the specifications described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to these particular pencils. The Department will instruct the U.S. Customs Service (Customs) to liquidate, without regard to antidumping duties, all unliquidated entries of pencils meeting the specifications described below. Further, the Department will instruct Customs to refund with interest any estimated antidumping duties collected with respect to unliquidated entries of pencils meeting the specifications described below entered, or withdrawn from warehouse, for consumption after November 30, 2000.[1] In addition, the Department will order the suspension of liquidation ended for the merchandise covered by this partial revocation, effective on the date of publication of this notice.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Mire or Howard Smith, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4711 and 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2002, The Smencil Company (Smencil Co.) filed a request with the Department to revoke the antidumping duty order on certain cased pencils from the PRC with respect to the patented, scent-infused pencils produced in the PRC that it imports. *See* Smencil Co.'s letter to the Secretary, dated December 10, 2002 (*Smencil Co. Request Letter*).

Specifically, Smencil Co. requested that the Department revoke the antidumping duty order with respect to imports meeting the following description: scent-infused pencils manufactured in the PRC under U.S. patent number 6,217,242,[2] (Patent) that are made from rolled sheets of paper, namely rolled sheets of recycled newspaper, and infused with various scents so as to create scented pencils named Smencils. See Smencil Co. Request Letter at 1–2.

Smencil Co. attached to its request a letter dated December 10, 2002, from the petitioners in the pencils antidumping duty proceeding[3] stating that they are not interested in having the order on pencils from PRC apply to pencils manufactured in the PRC under U.S. patent number 6,217,242 that are made from rolled sheets of recycled newspaper that are infused with various scents, thereby creating products with odors distinct from those that may emanate from pencils made without the scent infusion. The petitioners indicated that the exclusion of the above-described pencils from the order should be narrowly drawn and not encompass pencils manufactured from recycled paper products without the scent infusion or with odors infused by means not covered by the Patent.

Subsequent to Smencil Co.'s request, the petitioners reconfirmed their position stated in their December 10, 2002, letter, as well as informed the Department that they account for more than 90 percent of the production of the domestic like product. See Memorandum to The File from Holly A. Kuga, Senior Office Director, ''Telephone Discussion with Counsel for Petitioners,'' dated January 31, 2003, which is on file in Import Administration's Central Records Unit, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room B-099, Washington, DC 20230.

As noted above, on February 13, 2003, we published the *Initiation and Preliminary Results* and gave interested parties an opportunity to comment. We received no comments from interested parties.

New Scope Based on this Changed Circumstances Review

The products covered by this antidumping duty order are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning

[1] We inadvertently identified the date as December 1, 2001, in the *Initiation and Preliminary Results*.

[2] Patent number 6,217,242 (April 17, 2001) describes the invention as a ''scented writing implement (comprising) . . . a fragrant pencil and a method for making same.'' (*See Smencil Co. Request Letter* at Appendix 2.) The patent is owned by Evaco, Ltd., doing business as The Smencil Company (*See Smencil Co. Request Letter* at 1).

[3] The petitioners are the Pencil Section of the Writing Instrument Manufacturers Association (WIMA), a trade association comprised of domestic pencil producers, and Sanford Corporation, Dixon-Ticonderoga Corporation, Tennessee Pencil Company, Musgrave Pencil Company, Moon Products, Inc., and Aakron Rule, Inc.

pencils meeting the specifications described above constitutes changed circumstances sufficient to warrant partial revocation of this order. Also, no party commented on the *Initiation and Preliminary Results*. Therefore, the Department is partially revoking the order on pencils from the PRC with regard to the pencils meeting the specifications described above, in accordance with sections 751(b), 751(d)(1), and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.222(g)(1)(2002).

In accordance with 19 CFR 351.222(g)(4), the Department will order the suspension of liquidation ended for pencils meeting the specifications described above, effective on the date of publication of this notice. The Department will further instruct Customs to refund with interest any estimated antidumping duties collected with respect to unliquidated entries of pencils meeting the specifications described above entered, or withdrawn from warehouse, for consumption after November 30, 2000, (*i.e.*, any entries after the last day of the period covering the last completed administrative review), in accordance with section 778 of the Act. In addition, the Department will instruct Customs to liquidate, without regard to antidumping duties, all unliquidated entries of pencils meeting the specifications described above.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b), 751(d)(1), and 782(h)(2) of the Act and sections 351.216(e) and 351.222(g) of the Department's regulations.

Dated: March 20, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7359 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China (Hammers/Sledges)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning at (202) 482–3936 or (202) 482–5253, respectively, AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: On February 13, 2003, the Department of Commerce (the Department) published the amended final results of administrative reviews of the antidumping duty orders on heavy forged hand tools from the People's Republic of China. The period of review is February 1, 2000, through January 31, 2001 (POR). The respondent Shandong Machinery Import & Export Corporation (SMC) submitted comments alleging a ministerial error. After reviewing the allegation, we have determined that the amended final did include a ministerial error, and have amended our calculations accordingly. The final weighted-average margin for SMC is *de minimis*.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2002, the Department published the final results of review for the tenth review of the orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). *See Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part,* 67 FR 57789 (September 12, 2002) *(Final Results).* On September 16, 2002, the petitioner Ames True Temper, and the respondents, SMC, Tianjin Machinery Import & Export Corporation (TMC), Liaoning Machinery Import & Export Corporation (LMC), and Shandong Huarong General Group Corporation (Huarong), timely filed allegations that the Department made several ministerial errors in its final results. On September 23, 2002, the petitioner and respondents filed rebuttal comments. On September 30, 2002, the respondents (*i.e.*, TMC, LMC, Huarong, and SMC) filed a summons and complaint with the U.S. Court of International Trade, which covered ''heavy forged hand tools.'' On October 8, 2002, the respondents amended their complaint to underscore that they had filed ministerial error allegations pertaining to all four classes or kinds of merchandise. The respondents filed a second amended complaint on November 8, 2002, whereby SMC and LMC were removed as party-plaintiffs. The second amended complaint also removed TMC's claims with respect to bars/wedges. On February 13, 2003, we published the *Notice of Amended Final Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China,* 68 FR 7347 (February 13, 2003) (Amended Final), addressing the clerical error allegations pertaining to TMC's and LMC's sales of bars and wedges, and SMC's sales of hammers and sledges. On February 27, 2003, SMC filed a clerical error allegation pertaining to the *Amended Final* for its sales of hammers and sledges.

Scope of Review

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following

Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the orders is dispositive.

Allegation of Ministerial Errors

In its February 27, 2003, submission, SMC alleged that the Department's calculation of its dumping margin under the order on hammers/sledges contained a ministerial error. Specifically, SMC alleged that the Department used a total weight in pounds instead of kilograms when it amended SMC's marine insurance and ocean freight. *See* Memorandum from Bernard T. Carreau, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, ''Tenth Antidumping Duty Review of Heavy Forged Hand Tools from the People's Republic of China—Amended Final Determination,'' dated February 6, 2003, at Comments 10 and 11.

A ministerial error is defined under 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' According to 19 CFR 351.224(e), ''the Secretary will analyze any comments received and, if appropriate . . . correct any significant ministerial error by amending the final determination or the final results of review * * *''

After reviewing SMC's allegation, we have determined, in accordance with 19 CFR 351.224(e), that the *Amended Final* did include a ministerial error regarding our calculation of the net U.S. price of SMC's hammer sales. Specifically, in calculating the marine insurance and ocean freight charges, the Department, consistent with our intended methodology, multiplied the surrogate values for these expenses, in dollars per kilogram, by the weight of a hammer in order to convert the surrogate value into a dollars per hammer value. This per-unit cost must be subtracted from the gross unit price to calculate the U.S. price per unit. However, the Department incorrectly used the weight of each hammer being sold in pounds rather than in kilograms. To correct the error, the Department calculated the weight in kilograms per hammer sold and used this weight in our calculation of the marine insurance and ocean freight charges.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the *Amended Final* to reflect the correction of the ministerial error made in the calculation of net U.S. price for SMC. SMC's revised weighted-average dumping margin is listed in the ''Amended Final Results'' section, below.

Amended Final Results

We are amending the amended final results of the antidumping duty reviews of HFHTs from the PRC (hammers/sledges) to reflect the correction of the above-cited ministerial error. The revised weighted-average dumping margin is as follows:

Manufacturer/exporter	Time period	Margin (percent)
Shandong Machinery Import & Export Corporation: Hammers/Sledges	2/1/00–1/31/01	0.05 (*de minimis*)

[1]*De minimis.*

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates. Where the importer-specific assessment rate is above *de minimis*, we will instruct the Customs Service to assess antidumping duties on that importer's entries of subject merchandise. Since the entered value of the merchandise was not reported to us, we have divided, where applicable, the total dumping margins (calculated as the difference between NV and EP) for each importer by the total number of units sold to the importer. We will direct Customs to assess the resulting unit dollar amount against each unit of subject merchandise entered by the importer during the POR. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these amended final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of amended final results of administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent, and therefore, *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies with a separate rate not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates; (4) for all non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. The current PRC-wide cash deposit rates are 18.72 percent for Axes/Adzes, 47.88 percent for Bars/Wedges, 27.71 percent for Hammers/Sledges and 98.77 percent for Picks/Mattocks. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

Notification

This notice also serves as a final 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 doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written

notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: March 21, 2003.

Joseph A. Spetrini,

Assistant Secretary for Import Administration.

[FR Doc. 03–7361 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Extension of Preliminary Results of 2001/2002 Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey at (202) 482–4793, Office of AD/CVD Enforcement VI, Group II, 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 to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On August 27, 2002, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy, covering the period July 1, 2001, to June 30, 2002 (67 FR 55002). The preliminary results are currently due no later than April 2, 2003.

Extension of Preliminary Results of Reviews

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limits. Therefore, we are extending the time limits for completion of the preliminary results until no later than July 31, 2003. *See* Extension of Time Limits for the Preliminary Results Memorandum from Melissa Skinner, Director of Office VI, to Gary S. Taverman, Acting Deputy Assistant Secretary, dated March 20, 2003, which is on file in the Central Records Unit, B–099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of these reviews.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 20, 2003.

Gary S. Taverman,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 03–7362 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Notice of Preliminary Results of Changed Circumstances Review and Preliminary Intent Not To Revoke the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Gregory E. Kalbaugh at (202) 482–0629 or (202) 482–3693, respectively, 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.

SUMMARY: On January 10, 2003, in response to a request by Moreflex, Inc., a U.S. importer of subject merchandise and an interested party in this proceeding, the Department of Commerce initiated a changed circumstances review to consider revocation of the antidumping duty order on sebacic acid from the People's Republic of China.

We preliminarily determine that there is no reasonable basis to believe that changed circumstances sufficient to warrant revocation exist because interested parties have expressed interest in maintaining the antidumping duty order, and there are no grounds for assuming that revocation of the order is supported by ''substantially all'' of the domestic producers of the like product. Consequently, we preliminarily do not intend to revoke the order on sebacic acid from the People's Republic of China. Interested parties are invited to comment on these preliminary results.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1994, the Department published in the **Federal Register** the antidumping duty order on sebacic acid from the People's Republic of China (PRC). *See Antidumping Duty Order: Sebacic Acid From the People's Republic of China,* 59 FR 35909 (July 14, 1994). On November 26, 2002, Morflex, Inc. (Morflex), a U.S. importer of subject merchandise and an interested party in this proceeding, requested that the Department revoke the antidumping duty order on sebacic acid from the PRC through a changed circumstances review. According to Morflex, Arizona Chemical Corporation (ACC), a domestic producer of sebacic acid, intended to cease production of sebacic acid in the United States at the end of November 2002. ACC asserts that it is the successor-in-interest to the original petitioner in this proceeding, Union Camp Corporation. In addition, on September 25, 2002, prior to Morflex's request, ACC notified the Department that it intended to cease production of sebacic acid no later than December 31, 2002.

Based on the information submitted by Morflex and ACC, the Department determined that there was sufficient evidence of changed circumstances to warrant a review under section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.222(g) and 351.216, and consequently, we initiated a changed circumstances review on January 10, 2003. *See Sebacic Acid from the People's Republic of China: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order,* 68 FR 2315–01 (January 16, 2003) (*Initiation Notice*). In the *Initiation Notice,* we stated that the Department would consider whether there is interest in

continuing the order on the part of the U.S. industry, and we invited comments from interested parties. We also stated that the Department would publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), prior to the issuance of the final results.

Since the Department's notice of initiation of this review, the following events have occurred. On January 13, 2003, the Department issued questionnaires to ACC and an additional U.S. producer of sebacic acid, CasChem Inc. (CasChem), seeking to determine whether producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order.

On January 26, 2003, we received a submission from SST Materials, Inc., doing business as Genesis Chemicals, Inc. (Genesis), a domestic manufacturer and distributor of sebacic acid, which indicated that Genesis opposes revocation of the antidumping duty order. On January 28, 2003, the Department issued a follow-up questionnaire to Genesis.

On January 31, 2003, ACC submitted a response to the Department's questionnaire, in which it indicated that its production of sebacic acid ceased on December 19, 2002. However, ACC noted that it opposes the revocation of the antidumping duty order since it has facilities, employees, and resources in place for the purpose of selling its remaining inventory of sebacic acid.

On February 5, 2003, the Department received comments opposing the revocation of the antidumping duty order from both Genesis and ICC Chemical Corporation (ICC), a U.S. importer of sebacic acid from the PRC.

On February 11, 2003, we received additional information from Genesis in which Genesis indicated that it began domestic production of sebacic acid late in 2002, and currently accounts for all new domestic sebacic acid production. CasChem did not respond to the Department's questionnaire.[1]

Scope of the Review

The products covered by this review are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis

Pursuant to section 751(d) of the Act, the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order, in whole or in part, based on changed circumstances if ''(p)roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * have expressed a lack of interest in the order, in whole or in part * * *'' In this context, the Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product (*see Oil Country Tubular Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 14213, 14214 (March 24, 1999)).

In order to determine whether ''substantially all'' of the domestic producers supported revocation of the order with respect to the merchandise in question, we solicited comments from all known domestic producers of sebacic acid. *See Initiation Notice.* As noted above, we received objections from ACC and Genesis.[2] We note that because ACC and CasChem no longer produce sebacic acid, they are no longer considered ''interested parties'' pursuant to section 771(9)(C) of the Act. Nonetheless, Moreflex's submission contains no evidence indicating that at least 85 percent of the domestic industry of the like product has no interest in the continuance of the order with respect to the merchandise in question. Given that Genesis objects to the revocation of the antidumping duty order, and has indicated that it comprises the universe of domestic sebacic acid producers, we have preliminarily determined that there are no grounds for concluding that at least 85 percent of the domestic industry has expressed a lack of interest in maintaining the order.

Notice of Intent Not To Revoke the Antidumping Duty Order

Under the definition of ''substantially all,'' as indicated above, there are no grounds for assuming that revocation of the order is supported by ''substantially all'' of the domestic producers of the like product. As a result, we preliminarily determine that changed circumstances sufficient to warrant revocation of the antidumping duty order on sebacic acid from the PRC do not exist. The current requirements for the cash deposit of estimated antidumping duties on the subject merchandise will remain in effect until the publication of the final results of this review. Parties wishing to comment on these results must submit briefs to the Department within 30 days after the publication of this notice in the **Federal Register**. Parties will have five days subsequent to this due date to submit rebuttal briefs. Parties who submit comments or rebuttal briefs in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument (no longer than five pages, including footnotes). Any requests for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. In accordance with 19 CFR 351.216(e), the Department will issue its final results of review within 270 days after the date on which the changed circumstances review was initiated (*i.e.*, no later than October 7, 2003).

This notice is published in accordance with sections 751(b)(1) and (d) and 777(i) of the Act, and with 19 CFR 351.221(c)(3).

[1] ACC, ICC, and Genesis each placed on the record an article from the trade journal ''Chemical Market Reporter,'' dated January 20, 2003, which indicated that: (1) ACC and CasChem had been the only domestic producers of sebacic acid but both ceased domestic production of sebacic acid in December 2002; (2) Genesis began producing sebacic acid in December 2002; and (3) Genesis, as of January 2003, was the sole domestic producer of sebacic acid.

[2] While we did receive objections from ICC, pursuant to 782(h)(2) of the Act, only objections from producers of domestic like product are considered when the Department makes a determination of whether there is interest in maintaining the order.

Dated: March 20, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7363 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2003.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: In accordance with 19 CFR 351.216(b) (2002), Monterra Lumber Mills Limited (Monterra), a Canadian producer of softwood lumber products and an interested party in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada, as described below. In response to this request, the Department of Commerce (the Department) is initiating a changed circumstances review of the antidumping order on certain softwood lumber from Canada.

FOR FURTHER INFORMATION CONTACT: Keith Nickerson or Constance Handley, at (202) 482–3813 or (202) 482–0631, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: As a result of the antidumping duty order issued following the completion of the less-than-fair-value investigation of certain softwood lumber products from Canada, imports of softwood lumber from Monterra, a subsidiary of respondent company Weyerhauser Company Limited (Weyerhauser), became subject to a cash deposit rate of 12.39 percent (*see* Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Certain Softwood Lumber Products from Canada 67 FR 36068 (May 22, 2002)). On February 4, 2003, Monterra notified the Department that effective December 23, 2002, Weyerhauser sold its interest in Monterra to 1554545 Ontario, Inc., a wholly owned subsidiary of Tercamm Corp., a privately owned Canadian investment company. As a result, Monterra is requesting that, effective December 23, 2002, it be subject to the ''All Others'' cash deposit rate of 8.43 percent, rather than Weyerhauser's 12.39 percent rate.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate **Federal Register** notices.

Softwood lumber products excluded from the scope:

- Trusses and truss kits, properly classified under HTSUS 4418.90
- I-joist beams
- Assembled box spring frames
- Pallets and pallet kits, properly classified under HTSUS 4415.20
- Garage doors.
- Edge-glued wood, properly classified under HTSUS item 4421.90.98.40
- Properly classified complete door frames.
- Properly classified complete window frames.
- Properly classified furniture.

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.
- *Box-spring frame kits:* if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.
- *Radius-cut box-spring-frame components,* not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to Customs' satisfaction that the lumber is of U.S. origin.[1]

[1] As clarified in the Memorandum from Dave Layton, Case Analyst, through Charles Riggle, Program Manager, and Gary Taverman, Office Director, to Bernard Carreau, Deputy Assistant Secretary, concerning the Certain Softweed Lumber from Canada Scope re: Final Scope Ruling in Response to Request by the Coalition for Fair

Continued

• *Softwood lumber products contained in single family home packages or kits,*[2] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

1. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

2. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

3. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

4. The whole package must be imported under a single consolidated entry when permitted by the U.S. customs service, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

5. The following documentation must be included with the entry documents:

• A copy of the appropriate home design, plan, or blueprint matching the entry;

• A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

• A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

• In the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that Customs may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Monterra contends that, because it is no longer owned by Weyerhauser, it should be subject to the ''All Others'' cash deposit rate. In accordance with 19 CFR 351.216 (c), due to the change in ownership, the Department finds good cause to initiate a changed circumstances review despite the final determination being in existence for fewer than 24 months. Therefore, we are initiating a changed circumstances administrative review pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(c) to determine whether entries naming Monterra as manufacturer and exporter should receive the ''All Others'' cash deposit rate of 8.43 percent.

With regard to Monterra's request to have the cash deposit rate of 8.43 percent made effective as of December 23, 2002, because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive. If Monterra believes that the deposits paid exceed the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of the publication of the order of those entries to determine the proper assessment rate and receive a refund of any excess deposits. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews, 64 FR 66880 (November 30, 1999).

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is in accordance with section 751(b)(1) of the Act.

Dated: March 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–7360 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–P

Lumber Imports Executive Committee regarding U.S.-origin Lumber Undergoing Additional Processing, dated January 22, 2003.

[2] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–814]

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Werner, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2667.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from France. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 44172 (July 1, 2002). On July 31, 2002, Ugine S.A., a French producer of

subject merchandise, and petitioners[1] requested the Department conduct an administrative review. On August 27, 2002, the Department published a notice of initiation of an administrative review of the antidumping duty order on subject merchandise, for the period July 1, 2001, through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). The preliminary results of this administrative review are currently due no later than April 2, 2003.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales, and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Therefore, we are extending the due date for the preliminary results by 120 days, until no later than July 31, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: March 20, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–7357 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] The petitioners in this case are Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022003E]

Endangered Species; File No. 1353

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Steve W. Ross, Ph.D., North Carolina National Estuarine Research Reserve, MCS 5600 Marvin Moss Lane, Wilmington, North Carolina 28409, has been issued a permit to take shortnose sturgeon, Acipenser brevirosturm, for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Gene Nitta, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 30, 2001, notice was published in the **Federal Register** (66 FR 59780) that a request for a scientific research permit to take shortnose sturgeon had been submitted by Dr. Steve W. Ross. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Due to habitat loss and overfishing, the North Carolina population of shortnose sturgeon are in danger of extinction. This research will sample and track the shortnose sturgeon in North Carolina river systems. Thirty fish annually will be collected by gillnetting, trawling, and electroshocking. The fish will then be measured, tagged with a Peterson tag, and released. A subset of these fish will also receive an internal ultrasonic transmitter.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 21, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–7367 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031903F]

Vessel Monitoring Systems; List of Approved Mobile Transmitting Units and Communications Service Providers

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

ACTION: Notice of vessel monitoring systems; approval; correction.

SUMMARY: This document provides a correction to the fax number indicated in a notice published March 11, 2003, regarding vessel monitoring systems (VMS) approved for pelagic longline vessels in the Atlantic Highly Migratory Species fisheries.

DATES: Effective March 27, 2003.

FOR FURTHER INFORMATION CONTACT: For current listing of approved units contact Mark Oswell, Outreach Specialist, phone 301–427–2300, fax 301–427–2055. For questions regarding VMS installation, activation checklists, and status of evaluations, contact Jonathan Pinkerton, National VMS Program Manager, phone 301–427–2300, fax 301–427–2055. For questions regarding the checklist, contact Fred Kyle, Special Agent, NMFS Office for Law Enforcement, Southeast Division, phone 727–570–5344.

The public may acquire this notice, installation checklist, and relevant updates via the ''fax-back'' service, or at the OLE website *http://www.nmfs.noaa.gov/ole/vms.html*. Telephone requests can be made by calling 301–427–2300.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** issue of March 11, 2003, on page 11534, in the second column, in the **ADDRESSES** section, in the second paragraph, ''fax 727–570–5375'' is corrected to read ''fax 727–570–5575.''

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

Dated: March 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–7365 Filed 3–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary is proposing to alter an existing system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The alteration adds a new use for the locator directories, *i.e.*, to notify former and current students of various events that may be of professional interest.

DATES: The changes will be effective on April 28, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on March 11, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME:

Defense Acquisition University Student Files (November 20, 2001, 66 FR 58127).

CHANGE:

* * * * *

PURPOSE(S):

After 'purposes of administration;'' add 'locator directories may also be used to notify current and former students of various events that may be of professional interest;'

* * * * *

DSMC 02

SYSTEM NAME:

Defense Acquisition University Student Files.

SYSTEM LOCATION:

Office of the Registrar, Defense Acquisition University, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current, former, and nominated students of the Defense Acquisition University (DAU).

CATEGORIES OF RECORDS IN THE SYSTEM:

Data includes name, dependent data, Social Security Number, career brief application form, security clearance, college transcripts, correspondence, DAU grades, instructor and advisor evaluations, education reports, official orders, current address, and individual's photograph and other personal and experience historical data on past and present students.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 5000.57, Defense Acquisition University; and E.O. 9397 (SSN).

PURPOSE(S):

This data is used by college officials to provide for the administration of and a record of academic performance of current, former, and nominated students; to verify attendance and grades; to select instructors; to make decisions to admit students to programs and to release students from programs; to serve as a basis for studies to determine improved criteria for selecting students; to develop statistics relating to duty assignments and qualifications. This data is used by the Registrar in preparing locator directories of current and former students which are disseminated to students, former students and other appropriate individuals and agencies for purposes of administration; locator directories may also be used to notify current and former students of various events that may be of professional interest; by college officials in preparing student biographical booklets, student rosters, and press releases of student graduations and to evaluate quality content of various courses. This data may be transferred to any agency of the Department of Defense having an official requirement for the information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and computerized databases.

RETRIEVABILITY:

Filed records are sequenced alphabetically by last name, by class, and course. Locator cards are filed alphabetically in two categories, active students (by course) and former students. Computer databases are accessed by name and Social Security Number.

SAFEGUARDS:

Records are maintained in locked cabinets, in an area accessible only to authorized personnel. Building is locked during non-business hours. Only individuals designated as having a need for access to files by the system manager are authorized access to information in the files. Computer records are protected by individual passwords and the system is a security-accredited web based network.

RETENTION AND DISPOSAL:

Records are Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Defense Acquisition University, ATTN: 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Defense Acquisition University, ATTN: HQ–AS–REG, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

Written requests for information should contain full name, Social Security Number, current address and telephone number, and course and class of individual, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Registrar, Defense Acquisition University, ATTN: HQ–AS–REG, 9820 Belvoir Road, Ft. Belvoir, VA 22060–5565.

Written requests for information should contain full name, Social Security Number, current address and telephone number, and course and class of individual, and must be signed.

For personal visits, the individual must provide acceptable identification, such as an ID card or driver's license.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, supervisors, employers, instructors, advisors, examinations, and official military records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–7104 Filed 3–26–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 28, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AETC M

SYSTEM NAME:

Air University Academic Records (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Graduates and students currently or previously enrolled in Air Force Institute of Technology (AFIT), Air University (AU) schools or Air Force Institute of Advanced Distributed Learning (formerly, ECI).''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2201, Air Force Training Program; Air Force Instruction 36–2301, Professional Military Education; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Replace ''microform and on computer at Extension Course Institute'' with ''in file folders, microform, and on computer at Maxwell Air Force Base.''

RETENTION AND DISPOSAL:

Replace ''ECI'' with ''Maxwell''.

* * * * *

F036 AETC M

SYSTEM NAME:

Air University Academic Records.

SYSTEM LOCATION:

Air University, Maxwell Air Force Base, AL 36112–6337.

Air Force Institute of Technology/RR, Wright-Patterson Air Force Base, OH 45433–7765.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Graduates and students currently or previously enrolled in Air Force Institute of Technology (AFIT), Air University (AU) schools or Air Force Institute of Advanced Distributed Learning (formerly, ECI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Education records which include transcripts; test scores; completion/noncompletion status; training reports; rating of distinguished, outstanding or excellent graduate as appropriate; and other documents associated with academic records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2201, Air Force Training Program; Air Force Instruction 36–2301, Professional Military Education; and E.O. 9397 (SSN).

PURPOSE(S):

Individuals seeking academic or certification credit for courses completed may request applicable Registrar to send a record of courses completed to school or activity desired.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Maintained in file folders at Air Force Institute of Technology, and in file folders, microform, and on computer at Maxwell Air Force Base.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Records are stored in vaults and locked cabinets or rooms and are controlled by personnel screening.

RETENTION AND DISPOSAL:

Retained for 30 years or until no longer required at Maxwell, and master transcripts of resident schools are kept 50 years at AFIT.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Air Force Institute of Technology, Wright-Patterson Air Force Base, OH 45433–7765; and Air University Registrar, Maxwell Air Force Base, AL 36112–6337.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Registrar, Air Force Institute of Technology, Wright-Patterson Air Force Base, OH 45433–7765; Air University Registrar, Maxwell Air Force Base, AL 36112–6337.

Include full name, Social Security Number and class designation. Individuals may visit Office of the Registrar. Identification is required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Registrar, Air Force Institute of Technology, Wright-Patterson Air Force Base, OH 45433–7765; Air University Registrar, Maxwell AFB AL 36112–6337.

Include full name, Social Security Number and class designation. Individuals may visit Office of the Registrar. Identification is required.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, source documents such as reports, testing agencies, student, and on-the-job training officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AETC V

SYSTEM NAME:

Potential Faculty Rating System (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force and Air Force Instruction 36–2301, Professional Military Education.'

STORAGE:

Delete entry and replace with 'Maintained on computers and computer output products.'

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and are secured using password control. The system is protected by the base firewall and database access security.'

RETENTION AND DISPOSAL:

Delete from entry 'tearing into pieces, shredding, pulping, macerating, or burning' and add 'deleting from database.'

* * * * *

F036 AETC V

SYSTEM NAME:

Potential Faculty Rating System.

SYSTEM LOCATION:

Squadron Officer School, 125 Chennault Circle, Maxwell Air Force Base, AL 36112–6430.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Squadron Officer School students being considered for faculty duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual rating of students.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Air Force Instruction 36–2301, Professional Military Education.

PURPOSE(S):

Used to evaluate individuals for potential assignment as faculty members.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Maintained on computers and computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and are secured using password control. The system is protected by the base firewall and database access security.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by deleting from database.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Student Operations, Squadron Officer School, 125 Chennault Circle, Maxwell Air Force Base, AL 36112–6430.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director of Student Operations, Squadron Officer School, 125 Chennault Circle, Maxwell Air Force Base, AL 36112–6430.

Requests should include the individual's name and Social Security Number. Individuals may visit office of the system manager and present Military ID Card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Director of Student Operations, Squadron Officer School, 125 Chennault Circle, Maxwell Air Force Base, AL 36112–6430.

Requests should include the individual's name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–7102 Filed 3–26–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete and amend systems of records.

SUMMARY: The Department of the Air Force is deleting three systems of records notices from its existing inventory of record systems and amending one notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: These proposed actions will be effective without further notice on April 28, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

F036 AFAA B

SYSTEM NAME:

Air Force Audit Agency Office Training File (June 11, 1997, 62 FR 31793).

Reason: These records are covered under the Inspector General, DoD Privacy Act system of records notice CIG 20, entitled 'Defense Audit Management Information System (DAMIS)' published on November 29, 2002, 67 FR 71151. Therefore, this system of records notice is being deleted.

F036 AFAA C

SYSTEM NAME:

Employee Training and Career Development File (July 19, 1999, 64 FR 38657).

Reason: These records are covered under the Inspector General, DoD Privacy Act system of records notice CIG 20, entitled 'Defense Audit Management Information System (DAMIS)' published on November 29, 2002, 67 FR 71151. Therefore, this system of records notice is being deleted.

F065 AFAA A

SYSTEM NAME:

Air Force Audit Agency Management Information System—Report File (June 11, 1997, 62 FR 31793).

Reason: These records are covered under the Inspector General, DoD Privacy Act system of records notice CIG 20, entitled 'Defense Audit Management Information System (DAMIS)' published on November 29, 2002, 67 FR 71151. Therefore, this system of records notice is being deleted.

Amendment

F090 AF IG B

SYSTEM NAME:

Inspector General Records (January 11, 2002, 67 FR 1444).

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Delete from entry 'on matters related to the Department of the Air Force'.

PURPOSE(S):

Delete from entry 'involving matters concerning the Department of the Air Force and in some instances the Department of Defense'.

* * * * *

STORAGE:

Delete 'Automated Complaints Tracking System (ACTS) database' and add 'electronic media'.

* * * * *

SAFEGUARDS:

Delete 'the ACTS database' and add 'electronic media'.

* * * * *

F090 AF IG B

SYSTEM NAME:

Inspector General Records.

SYSTEM LOCATION:

Office of the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140. Records are also located at the headquarters of major commands, headquarters of combatant commands for which Air Force is Executive Agent, and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All those who have registered a complaint, allegation or query with the Inspector General or Base Inspector. All individuals who are or have been subjects of reviews, inquiries, or investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by, 10 U.S.C. 8020, Inspector General, and E.O. 9397 (SSN).

PURPOSE(S):

Used to insure just, thorough, and timely resolution and response to

complaints, allegations or queries, and a means of improving morale, welfare, and efficiency of organizations, units, and personnel by providing an outlet for redress. Used by the Inspector General and Base Inspectors in the resolution of complaints and allegations and responding to queries. Used in connection with the recommendation/selection/removal or retirement of officers eligible for promotion to or serving in, general officer ranks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on electronic media.

RETRIEVABILITY:

Retrieved by Complainant's name, subject of investigation's name and case number.

SAFEGUARDS:

Records are accessed by custodian of the system of records and by person(s) responsible for maintaining the system of records in the performance of their official duties. These personnel are properly screened and cleared for need-to-know. Records are stored in a locked room protected by cipher lock. Information maintained on electronic media is protected by computer system software and password.

RETENTION AND DISPOSAL:

Retained in office files for two years after year in which case is closed. For senior official case files, retained in office files until two years after the year in which case is closed, or two years after the senior official retires, whichever is later. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140 or IG offices at installations.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), 1140 Air Force Pentagon, Washington, DC 20330–1140 or IG offices at installations.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants, inspectors, members of Congress, witnesses, and subjects of investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 03–7106 Filed 3–26–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending four systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the ''Routine Use'' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: This proposed action will be effective without further notice on April 28, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The

proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–57a DASG

SYSTEM NAME:

Armed Forces Repository of Specimen Samples for the Identification of Remains (March 2, 1998, 63 FR 10205).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

A0040–57a DASG

SYSTEM NAME:

Armed Forces Repository of Specimen Samples for the Identification of Remains.

SYSTEM LOCATION:

Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, 16050 Industrial Drive, Gaithersburg, MD 20877–1414.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (Active and reserve).

Civilian family members of Department of Defense military personnel (Active and reserve) who voluntarily provide specimens for DNA typing for purpose of identifying the human remains of family members.

DoD civilian and contractor personnel deploying with the armed forces.

Other individuals may also be included in this system when the Armed Forces Institute of Pathology (AFIP) is requested by Federal, state, local and foreign authorities to identify human remains.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specimen collections from which a DNA typing can be obtained (oral swabs, blood and blood stains, bone, and tissue), and the DNA typing results. Accession number, specimen locator information, collection date, place of collection, individual's name, Social Security Number, right index fingerprint, signature, branch of service, sex, race and ethnic origin, address, place and date of birth, and relevant kindred information, past and present.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 131; 10 U.S.C. 3013, Secretary of Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; E.O. 9397 (SSN); Deputy Secretary of Defense memorandum dated December 16, 1991; and Assistant Secretary of Defense (Health Affairs) memoranda dated January 5, 1993, March 9, 1994, April 2, 1996, and October 11, 1996.

PURPOSE(S):

Information in this system of records will be used for the identification of human remains. The data collected and stored will not be analyzed until needed for the identification of human remains.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, local and foreign authorities when the Armed Forces Institute of Pathology (AFIP) is requested to identify human remains.

TO A PROPER AUTHORITY, AS COMPELLED BY OTHER APPLICABLE LAW, IN A CASE IN WHICH ALL OF THE FOLLOWING CONDITIONS ARE PRESENT:

(1) The responsible DoD official has received a proper judicial order or judicial authorization;

(2) The specimen sample is needed for the investigation or prosecution of a crime punishable by one year or more of confinement;

(3) No reasonable alternative means for obtaining a specimen for DNA profile analysis is available; and

(4) The use is approved by the Assistant Secretary of Defense for Heath Affairs.

The DoD 'Blanket Routine Uses' do not apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually and electronically.

RETRIEVABILITY:

By individual's surname, sponsor's Social Security Number, date of birth, and specimen reference or AFIP accession number.

SAFEGUARDS:

Access to the Armed Forces Institute of Pathology is controlled. Computerized records are maintained in controlled areas accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. All personnel whose duties require access to, or processing and maintenance of personnel information are trained in the proper safeguarding and use of the information. Any DNA typing information obtained will be handled as confidential medical information.

RETENTION AND DISPOSAL:

Records are maintained 50 years and then destroyed by shredding or incineration.

Statistical data used for research and educational projects are destroyed after end of project.

Military personnel, their civilian family members, or others may request early destruction of their individual remains identification specimen samples following the conclusion of the donor's complete military service or other applicable relationship to DoD. For this purpose, complete military service is not limited to active duty service; it includes all service as a member of the Selected Reserves, Individual Ready Reserve, Standby Reserve or Retired Reserve.

In the case of DoD civilians and contractor personnel, early destruction is allowed when the donor is no longer deployed by DoD in a geographic area which requires the maintenance of such

samples. Upon receipt of such requests, the samples will be destroyed within 180 days, and notification of the destruction sent to the donor.

Requests for early destruction may be sent to the Repository Administrator, Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, Washington, DC 20306–6000.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Administrator, Repository and Research Services, ATTN: Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306–6000.

Requesting individual must submit full name, Social Security Number and date of birth of military member and branch of military service, if applicable, or accession/reference number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves or deceased family members contained in this system should address written inquiries to the Administrator, Repository and Research Services, ATTN: Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306–6000.

Requesting individual must submit full name, Social Security Number and date of birth of military member and branch of military service, if applicable, or accession/reference number assigned by the Armed Forces Institute of Pathology, if known.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, family member, diagnostic test, other available administrative or medical records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–66a DASG

SYSTEM NAME:

Medical Staff Credentials File (August 7, 1997, 62 FR 24532).

CHANGES:

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Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add a new paragraph to the end of the entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0040–66a DASG

SYSTEM NAME:

Medical Staff Credentials File.

SYSTEM LOCATION:

Medical treatment facilities at Army commands, installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals performing clinical practice in medical treatment facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting delineation of clinical privileges and clinical performance and medical malpractice case files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; Army Regulation 40–66, Medical Record Administration and Health Care Documentation; and E.O. 9397 (SSN).

PURPOSE(S):

To determine and assess capability of practitioner's clinical practice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In specific instances, clinical privileged information from this system of records may be provided to civilian and military medical facilities, Federation of State Medical Boards of the United States, State Licensure Authorities and other appropriate professional regulating bodies for use in assuring high quality health care.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

PAPER RECORDS IN FILE FOLDERS.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to the medical treatment facility commander and credentials committee members.

RETENTION AND DISPOSAL:

Records are retained in medical treatment facility of individual's last assignment. Records of military members are transferred to individual's Military Personnel Records Jacket upon separation or retirement. Records on civilian personnel are destroyed 5 years after employment terminates.

Medical malpractice case files are destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the medical treatment where practitioner provided clinical service. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the medical treatment where practitioner provided clinical service. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Interviewer, individual's application, medical audit results, other administrative or investigative records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–400 DASG

SYSTEM NAME:

Entrance Medical Examination Files (March 29, 2000, 65 FR 16568).

CHANGES:

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Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add a new paragraph to the end of the entry ''Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

A0040–400 DASG

SYSTEM NAME:

Entrance Medical Examination Files.

SYSTEM LOCATION:

Army medical examining facilities; military entrance processing stations (For enlistees); Department of Defense Medical Review Board, U.S. Academy, CO 80840–2200 (except for reservists). Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who enroll in the Reserve Officers Training Corps (nonscholarship) program, enlist or are appointed in the active or reserve units of the Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entrance medical examination and resulting documentation such as SF 88, Report of Medical Examination, and SF 93, Report of Medical History, together with relevant and supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55; Army Regulation 601–270, Military Entrance Processing Station; and E.O. 9397 (SSN).

PURPOSE(S):

To determine medical acceptance of applicant for military service and thereafter to properly assign and use individual. Management data are derived from and used by Health Services Command to evaluate effectiveness of procurement medical standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; selected management data are stored on word processing or magnetic discs and tapes.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Original SF 88 and SF 93 become permanent documents in individual's Health Record: 1 copy of these forms and supporting documentation is retained by the military entrance processing station examining facility for 2 years; 1 copy is forwarded to the Department of Defense Medical Review Board where it is retained until no longer needed then destroyed. Medical records on qualified applicants are retained for 2 years then destroyed. Records of individuals rejected for military service will be maintained until all requirements of Pub. L. 104–201 are met and until a records disposition is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the medical examining facility where physical examination was given. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should provide their full name, Social Security Number, home address, approximate date of the examination, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commander of the medical examining facility where physical examination was given. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should provide their full name, Social Security Number, home address, approximate date of the examination, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; the physician and other medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–407 DASG

SYSTEM NAME:

Army Community Health Nursing Records—Family Records (August 7, 1997, 62 FR 42533).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry 'Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

A0040–407 DASG

SYSTEM NAME:

Army Community Health Nursing Records—Family Records.

SYSTEM LOCATION:

Army Medical Centers and hospitals. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals eligible for Army military medical care.

CATEGORIES OF RECORDS IN THE SYSTEM:

Family Record Form (DA Form 3762) Case Referral Form (DA Form 3763); Medical diagnosis, observations, socioeconomic plans and goals for nursing care, summarization of consultations, and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55; Army Regulation 40–407, Nursing Records and Reports; and E.O. 9397 (SSN).

PURPOSE(S):

To identify family members who receive Army community health nursing care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders retained in the Army Community Health Nursing Office; copy of DA Forms 3762 and 3763 is filed in individual's outpatient medical record.

RETRIEVABILITY:

By surname of eligible military member or sponsor.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefore. Facilities are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Patient Administrator of the Army medical treatment facility which provided the health nursing care. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should furnish the full name, Social Security Number, name and Social Security Number of sponsor, if applicable, relationship to military member, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Patient Administrator of the Army medical treatment facility which provided the health nursing care. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should furnish the full name, Social Security Number, name and Social Security Number of sponsor, if applicable, relationship to military member, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, family members, other persons having information relevant to health of family members; educational institutions; civilian health, welfare, and recreational agencies; civilian law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–7103 Filed 3–26–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending eight systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18-R, DoD Health Information Privacy Regulation. Language being added under the ''Routine Use'' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

DATES: This proposed action will be effective without further notice on April 28, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Act Office, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137 DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040 DASG

SYSTEM NAME:

Medical Facility Administration Records (August 7, 1997, 62 FR 42524).

CHANGES:

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CATEGORY OF RECORDS IN THE SYSTEM:

Add to entry ''sponsor's and patient's Social Security Number'',

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

STORAGE:

Delete entry and replace with ''Paper in file folders and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By individual''s surname/Social Security Number and sponsor's Social Security Number.''

* * * * *

RETENTION AND DISPOSAL:

Change ''20 years'' to ''5 years.''

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A0040 DASG

SYSTEM NAME:

Medical Facility Administration Records.

SYSTEM LOCATION:

Medical centers, hospitals, and health clinics. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are authorized to use services of an Army medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system generally relates to administration at a medical facility, as opposed to an individual's health/care. Typically, records comprise scheduling of appointments, medical history data used to locate medical records, patience's name, Social Security Number, birth, death, sponsor's Social Security Number, accountability of patients (*e.g.*, bad charts; transfer, leave requests, *etc.*); receipts for patients' personal property, prescriptions for medications, eyeglasses, hearing aids, prosthetic devices, diet/special nourishment plans, blood donor records, charges, receipts and accounting, documents of payments for medical/dental services; register number assigned; and similar records/ reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 40–2, Army Medical Facilities General Admission; and E.O. 9397 (SSN).

PURPOSE(S):

To locate medical records and personnel, schedule appointments; provide research and statistical data.

To enhance efficient management practices and effective patient administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Birth records are disclosed to states' Bureau of Vital Statistics and overseas birth records are disclosed to the Department of State to provide the official certificates of birth. Birth records may also be used for statistical purposes.

Death records are disclosed to federal, state and private sector authorities to provide the official certificates of death. Death records may also be used for statistical purposes.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information.

The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname/Social Security Number and sponsor's Social Security Number.

SAFEGUARDS:

Records are maintained within secured buildings in areas accessible only to persons having official need-to-know, and who are properly trained and screened. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Nominal index files, including register numbers assigned, are destroyed after 5 years. Records of transient value (*e.g.*, issuance of spectacles/prosthetics, diet/food plan, etc.) are destroyed within 3 months of patient's release. Other records have varying periods of retention: Record of birth/death 2 years; patient accountability (admission/discharge) 5 years; blood donor 5 years or when no longer needed for medical/legal reasons whichever is longer; record of patient's personal property 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Patient Administrator at the medical facility where service/care was provided. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Patient Administrator at the medical facility where service/care was provided. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices. For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; medical facility records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–1 DASG

SYSTEM NAME:

Professional Consultant Control Files (November 20, 2001, 66 FR 58128).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

RETRIEVABILITY:

Add to entry ''Social Security Number.''

* * * * *

A0040 1 DASG

SYSTEM NAME:

Professional Consultant Control Files.

SYSTEM LOCATION:

Office of the Surgeon General, Headquarters, Department of the Army; U.S. Army Medical Command; U.S. Army Medical Command, Europe; U.S. Army Medical Command, Korea. Official mailing addresses are published as an appendix to the Army's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has been appointed as a professional consultant in the professional medical services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, address, curriculum vitae, appointment, duties, experience, compensation of appointed consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55, Medical and Dental Care; Army Regulation 40–1, Composition, Mission, and Function of The Army Medical Department; and E.O. 9397 (SSN).

PURPOSE(S):

To evaluate and appoint select individuals as professional consultants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized

individuals having official need therefore in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are destroyed 1 year after termination of consultant's appointment.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–3a DASG

SYSTEM NAME:

Medical Review Files (August 7, 1997, 62 FR 42525).

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; and Army Regulation 40–3, Medical, Dental, and Veterinary Care.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0040–3a DASG

SYSTEM NAME:

Medical Review Files.

SYSTEM LOCATION:

The Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and registrants who are being considered for Army service and whose medical fitness is questionable; Army members being considered for continuance in service, promotion, special assignment, or separation whose medical fitness is questioned either by the medical evaluating authority or by the individual.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain documents relating to medical fitness of individuals for appointment, enlistment, retention in service, promotion, special assignment, or separation. Included are reports of medical examination and evaluation, psychological evaluation reports, and similar or related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; and Army Regulation 40–3, Medical, Dental, and Veterinary Care.

PURPOSE(S):

To evaluate medical fitness of marginally qualified personnel for Army program with strict regard to established medical standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to designated personnel having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Destroyed after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, place and date of medical examination, additional details that will facilitate locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

For verification purposes, the individual should provide the full name, place and date of medical examination, additional details that will facilitate locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From clinical records, health records, medical boards, civilian physicians, consultation reports, other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–3b DASG

SYSTEM NAME:

Medical Evaluation Files (August 7, 1997, 62 FR 42526).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry ''individual's name and Social Security Number.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; 10 U.S.C. Chapter 61, Retirement or Separation for Physical Disability; and Army Regulation 40–3, Medical, Dental, and Veterinary Care; and E.O. 9397 (SSN).''

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph to the end of the entry.

''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

RETRIEVABILITY:

Add to entry ''Social Security Number.''

* * * * *

A0040–3b DASG

SYSTEM NAME:

Medical Evaluation Files.

SYSTEM LOCATION:

U.S. Army Physical Evaluation Board, Walter Reed Army Medical Center, 6900 Georgia Avenue, NW, Washington, DC 20307–5001;

Fort Sam Houston Physical Evaluation Board, 1200 Stanley Road, Fort Sam Houston, Texas 78234–5010;

Fort Lewis Physical Evaluation Board, Madigan Army Medical Center, Tacoma, Washington 98431–5303;

U.S. Army Physical Disability Agency, Water Reed Army Medical Enter, 6900 George Avenue, Washington, DC 20307–5001; and any other Army Medical Department medical facilities convening a medical board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army members whose medical fitness for continued service has been questioned either by the member or his/her commander.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information concerning the member, *i.e.,* individual's name and Social Security Number; certain codes of specific types of injuries for research study purposes; Department of Veterans Affairs Schedule for Rating Disability Diagnostic Codes; documents reflecting determination by an Army board of medical fitness for continued Army active service; board proceedings and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 55, Medical and Dental Care; 10 U.S.C. Chapter 61, Retirement or Separation for Physical Disability; and Army Regulation 40–3, Medical, Dental, and Veterinary Care; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used by Medical Boards to determine medical fitness for continued Army active service. They are used by the Physical Evaluation Board to review board findings when required and to determine if the individual should be discharged, temporarily or permanently retired for disability, or retained for active service. The U.S. Physical Disability Agency reviews determinations and dispositions, and responds to inquiries.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened and trained. Operation of data processing equipment and magnetic tapes are limited strictly to authorized personnel. Computer has key lock and key is controlled. Magnetic diskettes are stored and controlled to ensure they do not result in unauthorized disclosure of personal information.

RETENTION AND DISPOSAL:

Records of Medical Boards are retained for 5 years and then destroyed. Records of the U.S. Army Physical Evaluation Boards are retained for 2 years or until discontinued, whichever occurs first. Records at the U.S. Army Physical Disability Agency are retained for 5 years and then destroyed. Destruction of all records is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Patient Administration Division, Office of the Surgeon General,

U.S. Army Medical Command, 2050 Worth Road, Fort Sam Houston, TX 78234–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, the individual should provide the full name, Social Security Number, details which will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, the individual should provide the full name, Social Security Number, details which will assist in locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; medical records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–3c DASG

SYSTEM NAME:

Medical Regulating Files (August 27, 1999, 64 FR 46887).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

A0040–3c DASG

SYSTEM NAME:

Medical Regulating Files.

SYSTEM LOCATION:

Primary location: The Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

Segments exist at Army medical treatment facilities, evacuation units and medical regulating offices. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any patient requiring transfer to another medical treatment facility who is reported to the Global Patient Movement Requirements Center by U.S. Government medical treatment facilities for designation of the receiving medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information reported by the transferring medical treatment facility and includes, but is not limited to, patient identity, service affiliation and grade or status, sex, medical diagnosis, medical condition, special procedures or requirements needed, medical specialties required, administrative considerations, personal considerations, the patient's home town and/or duty station and other information having an impact on the transfer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and Army Regulation 40–3, Medical, Dental, and Veterinary Care.

PURPOSE(S):

To properly determine the appropriate medical treatment facility to which the reported patient will be transferred; to notify the reporting U.S. Government medical treatment facility of the transfer destination; to notify the receiving medical treatment facility of the transfer; to notify evacuation units, medical regulating offices and other government offices for official reasons; to evaluate the effectiveness of reported information; to establish further the specific needs of the reported patient; for statistical purposes; and when required by law and official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The Army's 'Blanket Routine Uses' do not apply to these types records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized personnel who are properly screened and trained.

RETENTION AND DISPOSAL:

Destroyed 1 year following the end of the calendar year in which the patient was reported to the Global Patient Movement Requirements Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, Attn:

MCHO–CL–P, Room G104, 2050 Worth Road, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCHO–CL–P, Room G104, 2050 Worth Road, Fort Sam Houston, TX 78234–6013 or to the Patient Administrator at the medical treatment facility where service was provided.

Individual should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCHO–CL–P, Room G104, 2050 Worth Road, Fort Sam Houston, TX 78234–6013 or to the Patient Administrator at the medical treatment facility where service was provided.

Individual should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From transferring and receiving treatment facilities, medical regulating offices, evacuation offices, and other U.S. Government offices, agencies and commands relevant to the patient transfer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records (March 29, 2002, 67 FR 15185).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

A0040–5 DASG

SYSTEM NAME:

Occupational Health Records (March 29, 2002, 67 FR 15185).

SYSTEM LOCATION:

U.S. Army Medical Command, 1216 Stanley Road, Suite 25m Fort Sam Houston, TX 78234–5053.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty army, their family members, U.S. Army Reserve, National Guard on active duty or in drill status, U.S. Military Academy and Reserve Officer Training Corps cadets, when engaged in directed training, foreign national military assigned to Army components, Department of the Army civilian and non-appropriated fund personnel employed by the Army for whom specific occupational health examinations have been conducted and/or requested.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date and place of birth, marital status, dates of medical surveillance tests and their results; documents reflecting the training, experience and certification to work within hazardous environments; including personnel monitoring results and work are monitoring readings. Exposures to chemicals, radiation, physical environment, non-human primates, and similar and related documents; personnel protective equipment and medical programs required to limit exposure to environmental safety and health hazards are also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 7902, Safety Programs; 29 U.S.C. 668, Programs of Federal Agencies; 29 CFR 1910, Occupational Safety and Health Standards; Army Regulation 40–5, Preventive Medicine; E.O. 12223, Occupational Safety Health Programs for Federal Employees; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a permanent record of work places, training, exposures, medial surveillance, and any medical care provided for eligible individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to appropriate Government agencies whose responsibility falls within the occupational health statutes identified under ''Authority'' above.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, printouts, magnetic tapes and electronic storage media.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate an official need to know. Information in automated media are further protected from unauthorized access in locked rooms. All individuals afforded access are given periodic orientations concerning sensitivity of personal information and requirement to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are maintained by employing office until employee is separated at which time records are filed with the individual personnel record for 30

years. GB agent records maintain for 40 years then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

Individual must provide full name, Social Security Number, current address, telephone number, details of last location of record or employment, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013, or to the Patient Administrator at the appropriate medical treatment facility.

Individual must provide full name, Social Security Number, current address, telephone number, details of last location of record or employment, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial determination are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Army Medical records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–11 DASG

SYSTEM NAME:

Radiation Exposure Records (January 30, 2002, 67 FR 4412).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry.

''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

STORAGE:

Delete entry and replace with ''Papers in file folders; film packets; and electronic storage media.''

* * * * *

RETENTION AND DISPOSAL:

Replace second paragraph with ''Radiation incident cases are destroyed after 75 years.''

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A0040–11 DASG

SYSTEM NAME:

Radiation Exposure Records.

CHANGES:

* * * * *

SYSTEM LOCATION:

Army installations, activities, laboratories, *etc.,* which use or store radiation producing devices or radioactive materials or equipment. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices. An automated segment exists at Redstone Arsenal, AL 35898–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty Army, Reserve Army National Guard, and persons employed by the Army, to include contractors, who are occupationally exposed to radiation or radioactive materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain individual's name, Social Security Number, date of birth, film badge number, coded cross-reference to place of assignment at time of exposure, dates of exposure and radiation dose, cumulative exposure, type of measuring device, and coded cross-reference to qualifying data regarding exposure readings. Documents reflecting individual's training, external and internal exposure to ionizing radiation, reports of investigation, reports of radiological exposures, and relevant management reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 29 U.S.C. Chapter 15, Occupational Safety and Health; Army Regulation 11–9, The Army Radiation Safety Program; Army Regulation 40–5, Preventive Medicine; Army Regulation 40–13, Medical Support—Nuclear Chemical Accidents and Incidents; Department of the Army Pamphlet 40–18, Personnel Dosimetry Guidance and Dose Recording Procedures for Personnel Occupationally Exposed to Ionizing Radiation; 10 CFR part 19, Nuclear Regulatory Commission and E.O. 9397 (SSN).

PURPOSE(S):

To monitor, evaluate, and control the risks of individual exposure to ionizing radiation or radioactive materials by comparison of test for short and long term exposure. Conduct investigations of occupational health hazards and relevant management studies and ensure efficiency in maintenance of prescribed safety standards. As well as ensure individual qualifications and education in handling radioactive materials are maintained.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the National Cancer Institute for epidemiological studies to assess the effects of occupational radiation exposure.

To the Center for Disease Control for epidemiological studies to assess the effects of occupational radiation exposure.

To the National Council on Radiation Protection and Measurement to research and evaluated radiation exposure levels for use in the development of guidance and recommendations on radiation protections and measurements.

To the Department of Veteran's Affairs to verify occupational radiation exposure for evaluating veterans benefit claims.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most

such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers in file folders; film packets; and electronic storage media.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals having official need therefore in the performance of assigned duties. In addition, access to automated records is controlled by Card Key System, which requires positive identification and authorization.

RETENTION AND DISPOSAL:

Professional consultant control files destroy 1 year after termination. Clinical and pathological lab reports destroy when no longer needed for conducting business. Personnel dosimetry files destroy after 75 years. Personnel bioassays maintained by safety officers destroy after individual leaves the organizations or is no longer occupationally exposed; all other personnel bioassays are destroyed after 75 years. Ionizing radiation authorized personnel user listings destroy 5 years after transfer or separation of individual. Radiation incident cases are destroyed after 75 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Aviation Missile Command Ionizing Radiation Dosimetry Branch, Building 5417, Redstone Arsenal, AL 35898–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Commander, U.S. Army Aviation Missile Command Ionizing Radiation Dosimetry Branch, Building 5417, Redstone Arsenal, AL 35898–5000.

Individual must furnish full name, Social Security Number, dates and locations at which exposed to radiation or radioactive materials, *etc.,* and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Commander, U.S. Army Aviation Missile Command Ionizing Radiation Dosimetry Branch, Building 5417, Redstone Arsenal, AL 35898–5000.

Individual must furnish full name, Social Security Number, dates and locations at which exposed to radiation or radioactive materials, *etc.,* and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, dosimetry film, Army and/or DoD records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–31a DASG

SYSTEM NAME:

Pathology Consultation Record Files (August 7, 1997 62 FR 42530).

Changes:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals treated worldwide in military, Federal, or civilian medical service facilities whose cases were reviewed on a consultative, educational, or research basis by Armed Forces Institute of Pathology's staff.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Documents, digital images, microscopic glass slides, paraffin-embedded tissue blocks, formalin-fixed tissue, frozen fresh tissue, x-ray, photographs, and any other material sent in with the case or generated by the Armed Forces Institute of Pathology in reviewing the case or using the case in research of education activities.''

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph to the end of the entry.

''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

STORAGE:

Delete entry and replace with ''Paper and photographs in file folders, X-rays, electronic storage media, tissue blocks in appropriate storage containers; and microscopic slides in cardboard file folders.''

SAFEGUARDS:

Delete entry and replace with ''Records are stored in secured rooms protected by cipher locks accessible to personnel having a need-to-know in the performance of their official duties. Access to computerized information is controlled by password and is restricted to personnel having a need-to-know, who are also properly screened and trained in access procedures.''

* * * * *

A0040–31a DASG

SYSTEM NAME:

Pathology Consultation Record Files.

SYSTEM LOCATION:

Armed Forces Institute of Pathology, 6825 16th Street, NW., Washington, DC 20306–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals treated worldwide in military, Federal, or civilian medical service facilities whose cases were reviewed on a consultative, educational, or research basis by Armed Forces Institute of Pathology's staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents, digital images, microscopic glass slides, paraffin-embedded tissue blocks, formalin-fixed tissue, frozen fresh tissue, X-ray, photographs, and any other material sent in with the case or generated by the Armed Forces Institute of Pathology in reviewing the case or using the case in research of education activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55 Medical and Dental Care; and Army Regulation 40–31, Armed Forces Institute of Pathology and Armed Forces Histopathology Centers; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure complete medical data are available to pathologist providing consultative diagnosis to requesting physician in order to improve quality of care provided to individuals; to provide a data base for education of medical

personnel; to provide a data base for medical research and statistical purposes and when required by law or for official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Individual records may be released to referring physician, to physicians treating the individual, to qualified medical researchers and students, and to other Federal agencies and law enforcement personnel when requested for official purposes involving criminal prosecution, civil court action or regulatory orders.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and photographs in file folders, X-rays, electronic storage media, tissue blocks in appropriate storage containers; and microscopic slides in cardboard file folders.

RETRIEVABILITY:

By last name or terminal digit number (Social Security Number) or accession number assigned when case is received for consultation.

SAFEGUARDS:

Records are stored in secured rooms protected by cipher locks accessible to personnel having a need-to-know in the performance of their official duties. Access to computerized information is controlled by password and is restricted to personnel having a need-to-know, who are also properly screened and trained in access procedures.

RETENTION AND DISPOSAL:

Retained as long as case material has value for medical research or education. Individual cases are reviewed periodically and materials no longer of value to the Institute are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Automated Management Services, Armed Forces Institute of Pathology, 6825 16th Street, NW., Washington, DC 20306–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Administrator, Department of Epidemiology, Repository, and Research Services, Armed Forces Institute of Pathology, 6825 16th Street, NW., Washington, DC 20306–6000.

Requesting individual must submit full name, name, Social Security Number or service number of military sponsor and branch of military service, if applicable, or accession number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Administrator, Department of Epidemiology, Repository, and Research Services, Armed Forces Institute of Pathology, 6825 16th Street, NW., Washington, DC 20306–6000.

Requesting individual must submit full name, name, Social Security Number or service number of military sponsor and branch of military service, if applicable, or accession number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Interview, diagnostic test, other available administrative or medical records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–7105 Filed 3–26–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; American BioHealth Group, LLC

AGENCY: Department of the Navy, DOD

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to American BioHealth Group, LLC, a revocable, nonassignable, exclusive license in the United States to practice, with right to sublicense, the Government-owned invention described in U.S. Patent Application Serial No. 09/766, 625, entitled ''Prevention or Reversal of Sensorial Hearing Loss Through Biological Mechanisms,'' filed January 23, 2001.

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave, Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave, Silver Spring, MD 20910–7500, telephone (301) 319–7428, fax (301) 319–7432, or E-Mail: *schlagelc@nmrc.navy.mil.*

Dated: March 14, 2003.

R. E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–7351 Filed 3–26–03; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, 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 April 15, 2003. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 27, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, 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 *Lauren_Wittenberg@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: March 21, 2003.

John D. Tressler,

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

Office of Safe and Drug Free Schools

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Grants to States for Training Incarcerated Youth Offenders—Eligible Population Date Request Form (KA).

Abstract: States must submit an annual count of ''eligible students'' in order for Department of Education staff to run a formula and make annual awards under already approved three year operating plans. The data requested from the State is necessary to run the allocation formula.

Additional Information: Fiscal Year 2003 dollars are needed by the State agencies in order to purchase educational services for the coming fall. States would normally be asked to provide their May 1 census figures by June 1, 2003. Emergency approval of this collection is requested because a delay would result in serious disruption of ongoing instructional programs in State correctional education agencies. This disruption would result in significant waste of investments to date in these program services.

Frequency: Other: three year plan.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 500.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2245. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact AXT at () -. 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. 03–7308 Filed 3–26–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before March 26, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting 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 *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 21, 2003.

John D. Tressler,

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

Federal Student Aid

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Electronic Debit Payment Option for Student Loans (JS).

Frequency: Other: One time.

Affected Public: Businesses or other for-profit, Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 2714.

Burden Hours: 2714.

Abstract: The need for an Electronic Debit Account Program will give the borrower another option in which to repay federally funded student loans via automatic debit deductions from their checking accounts.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 1118. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivan.reese@ed.gov. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to SCHUBART at (202) 708–9266. 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. 03–7309 Filed 3–26–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–290–001]

ANR Pipeline Company; Notice of Tariff Filing

March 20, 2003.

Take notice that, on March 17, 2003, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective April 1, 2003:

Substitute Nineteenth Revised Sheet No. 19

ANR states that this filing corrects a clerical error in the February 28, 2003 filing to redetermine the Transporter's Use Percentage. The revised tariff sheet reflects a reduction in the storage percentage from that filed on February 28, 2003.

Any person desiring to protest said 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 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7329 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–47–000]

Choctaw County Trust; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

March 20, 2003.

Take notice that on March 14, 2003, Choctaw County Trust filed its application for a determination that it will be an exempt wholesale generator within the meaning of Section 32(a)(1) of Public Utility Holding Company Act (Application).

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: April 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7323 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–306–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

March 20, 2003.

Take notice that on March 17, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 306; First Revised Sheet No. 307; and First Revised Sheet No. 308, to become effective April 17, 2003.

Gulf South is making this filing to combine Second Substitute Second Revised Sheet No. 306 and Third Revised Sheet No. 306 previously

approved by the Commission in Dockets RP02–151–005 and RP03–10–000, respectively.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

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 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7330 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–467–003]

Midwestern Gas Transmission Company; Notice of Compliance Tariff Filing

March 20, 2003.

Take notice that on March 18, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Substitute Original Sheet No. 246A
Substitute Original Sheet No. 246B
Substitute Original Sheet No. 266B

Midwestern states that the purpose of this filing is to replace certain tariff sheets in Midwestern's February 18, 2003 compliance filing (February 18 Filing) that was filed in compliance with the Commission's Order dated December 19, 2003 in this proceeding (101 FERC ¶ 61,310 (2002). In addition, Midwestern proposes other clarifications and corrections to tariff provisions of the February 18 filing, in accordance with the directives contained in the December 19 Order in this proceeding.

Midwestern states that copies of this filing have been sent to all parties of record in this proceeding.

Any person desiring to protest said 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 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7327 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–123–000]

Southern Gas Company; Notice of Technical Conference

March 20, 2003.

In the Commission's order issued on December 30, 2002,[1] the Commission directed that a technical conference be held to address issues raised by Southern's tariff filing, which proposed to reduce its Storage Cost Reconciliation Mechanism (SCRM).

Take notice that the technical conference will be held on Thursday, April 3, 2003, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7328 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Southern Gas Company, 101 FERC ¶ 61,397 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–307–000]

Transwestern Pipeline Company; Notice of Tariff Filing

March 20, 2003.

Take notice that on March 18, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective April 14, 2003:

Fourth Revised Sheet No. 18
Eighth Revised Sheet No. 19
Twelfth Revised Sheet No. 20
Fifth Revised Sheet No. 84
Fifth Revised Sheet No. 95
Eighth Revised Sheet No. 95A
Eighth Revised Sheet No. 95B
Ninth Revised Sheet No. 95B.01
Ninth Revised Sheet No. 95F
Eighth Revised Sheet No. 95H
Fourth Revised Sheet No 95I
Fifth Revised Sheet No. 95J
Seventh Revised Sheet No. 95K
Ninth Revised Sheet No. 95L

Transwestern states that the instant filing is to reflect changes to the ROFR and Capacity Release provisions of its tariff in order to make those provisions consistent with current Commission policies and orders in other recent Transwestern proceedings.

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 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7331 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2161–006 Wisconsin and 2192–008 and 2110–003 Wisconsin]

Rhinelander Paper Company and Consolidated Water Power; Notice of Availability of Final Multiple Project Environmental Assessment

March 20, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the applications for license for the Rhinelander, Stevens Point, and Biron projects, located on the Wisconsin River, in Oneida, Portage, and Wood Counties, Wisconsin, and has prepared a Final Multiple Project Environmental Assessment (FEA) for these projects. There are no federal lands occupied by the project works or located within the project boundaries.

The FEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the projects, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Spencer at 202–502–6093.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7325 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 20, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 7725–005.

c. *Date filed:* September 27, 2002.

d. *Applicant:* Barton Village Inc.

e. *Name of Project:* Barton Village Hydroelectric Project.

f. *Location:* One the Clyde River in the Town of Charleston, Vermont. No federal lands are affected.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Denis H. Poirier, Village Supervisor, Barton Village, Inc. 17 Village Square, P.O. Box 519, Barton Vermont 05822.

i. *FERC Contact:* Frank Winchell at (202)502–6104 or *frank.winchell@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''FERRIS'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. *The existing Barton Village Hydroelectric Project consists of:* (1) A 77-foot-long, 24-foot-high masonry and concrete gravity dam; (2) 1.5-foot-high flashboards extending 57 feet across a concrete spillway; (3) a 187-acre impoundment at elevation 1,140.9 feet mean sea level (msl); (4) a 665-foot-long, 7-foot-diameter steel penstock; (5) two 105-foot-long, 5.8-foot-diameter steel penstocks leading to: (6) a powerhouse with two units having a total installed capacity of 1.4 MW; (7) two tailraces; and (8) other appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the

heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7326 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. JR02–1–000]

Arch Ford; Notice of Availability of Draft Navigation Study

March 20, 2003.

Pursuant to section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it is located on a navigable water of the United States; occupies lands of the United States; utilizes surplus water or water power from a government dam; or is located on a body of water over which Congress has Commerce Clause jurisdiction; project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce. The Division of Hydropower Administration and Compliance has reviewed North Fork Nooksack River, location of the unlicensed Nooksack Falls Project, near the town of Glacier, in Whatcom County, Washington, and prepared a draft ''Navigation Status Report: North Fork Nooksack River, Washington'' (August 2002). This project, owned by Arch Ford, will also utilize federal lands within Mt. Baker-Snoqualmie National Forest.

Copies of the draft navigation report are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number JR02–1, excluding the last three digits in the docket number field, to access the document. For assistance, call toll-free 1–866–208–3676. For TTY, call (202) 502–8659

Any comments (original and eight copies) should be filed within 30 days from the date of this notice and should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the docket number (JR02–1–000) on any comments. For further information, please contact Henry Ecton at (202) 502–8768.

Magalie R. Salas,

Secretary.

[FR Doc. 03–7324 Filed 3–26–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0010; FRL–7473–8]

Agency Information Collection Activities; Submission of EPA ICR No. 1842.04 (OMB No. 2040–0188) to OMB for Review and Approval; Comment Request

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: Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 28, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0768; fax number: (202) 564–6431; e-mail address: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 6, 2002, (67 FR 72668), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0010, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW–Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not

be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit (OMB Control Number 2040–0188, EPA ICR Number 1842.04). This is a request to renew an existing approved collection that is scheduled to expire on March 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: This ICR calculates the burden and costs associated with the preparation of the Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit, and the Storm Water Pollution Prevention Plan (SWPPP). EPA uses the data contained in the NOIs to track facilities covered by the storm water general permit and assess permit compliance. EPA has developed a format for construction NOIs. The standardized one-page form is called: Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity Under a NPDES General Permit. The construction NOI only requires the respondent to note whether or not a SWPPP has been prepared. The following information is requested:

—Name, address, phone number of the facility
—Status of the owner/operator (whether federal, state, public, or private)
—Name and location of the project (City, State, ZIP, Latitude, Longitude, County)
—Whether the facility is located on Indian Country Lands
—Whether a Storm Water Pollution Prevention Plan (SWPPP) has been prepared
—Optional: location for viewing SWPPP and telephone number for scheduling viewing times: Address, City, State, ZIP
—The name of the receiving water
—Estimated construction start date and completion date
—The estimated area to be disturbed (to nearest acre)
—An estimate of the likelihood of a discharge
—Whether any protected species or critical habitat in the project area
—Which section of the permit through which permit eligibility with regard to protection of endangered species is satisfied

Responses are required to obtain coverage under the NPDES General Permit for storm water discharges associated with construction activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38.3 hours per response by large construction NPDES permittees in NPDES-authorized states and territories and 40.5 hours per response for construction activities in states and territories where EPA is the permitting authority. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/operators of large construction activities.

Estimated Number of Respondents: 201,259.

Frequency of Response: Once initially, prior to commencement of construction.

Estimated Total Annual Hour Burden: 7,729,696 hours.

Estimated Total Annual Cost: $264,919,148, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 3,166,793 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase in the applicant respondent and NPDES-authorized state burden is due to a technical correction to the methodology used to estimate the number of construction sites covered by a permit. The methodology used in this ICR to estimate of the number of construction sites is consistent with the methodology used to estimate the number of small construction sites, consistent with the *NPDES Storm Water Program Phase II ICR,* OMB Control No. 2040–0211, EPA ICR No. 1820.03.

Dated: March 18, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–7368 Filed 3–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0001; FRL–7473–9]

Agency Information Collection Activities; Submission of EPA ICR No. 1500.05 (OMB No. 2040–0138) to OMB for Review and Approval; Comment Request

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: National Estuary Program. The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 28, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Gregory Colianni, Oceans and Coastal Protection Division, Office of Wetlands, Oceans, and Watersheds, mailcode 4504T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (202) 566–1249; fax number: (202) 566–1336; e-mail address: *colianni.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 29, 2002, (67 FR 65978), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0001, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW–Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go *http://www.epa.gov/edocket.*

Title: National Estuary Program, (OMB Control Number 2040–0138, EPA ICR Number 1500.05). This is a request to renew an existing approved collection that is scheduled to expire on April 30, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Annual Workplans: The NEP involves collecting information from the State or local agency or nongovernmental organizations that receive funds under section 320 of the Clean Water Act. The regulation requiring this information is found at 40 CFR part 35. Prospective grant recipients seek funding to develop or oversee and coordinate implementation of CCMPs for estuaries of national significance. In order to receive funds, grantees must submit an annual workplan to EPA. The workplan consists of two parts: (a) Progress on projects funded previously; and (b) new projects proposed with dollar amounts and completion dates. The workplan is reviewed by EPA and also serves as the scope of work for the grant agreement. EPA also uses these workplans to track performance of each of the 28 estuary programs currently in the NEP.

Implementation Reviews

EPA provides funding to NEPs to support long-term implementation of CCMPs if such programs pass an implementation review process. Implementation reviews are used to determine progress each NEP is making in implementing its CCMP and achieving environmental results. In addition to evaluating progress, the results are used to identify areas of weakness each NEP should address for long-term success in protecting and restoring their estuaries. EPA will also compile successful tools and approaches as well as lessons learned from all implementation reviews to transfer to the NEPs and other watershed programs. For this ICR cycle, implementation reviews will be required for 9 programs in FY2004 and 19 programs in FY2005. No implementation reviews will be required in FY2003.

Government Performance Results Act (GPRA)

EPA requests that each of the 28 NEP receiving section 320 funds reports information that can be used in the GPRA reporting process. This reporting is done on an annual basis and is used to show environmental results that are being achieved within the overall NEP Program. This information is ultimately submitted to Congress along with GPRA information from other EPA programs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 100 hours per response for annual workplans, 250 hours per response for implementation reviews, and 35 hours per response for GPRA reporting. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: state or local governments or nongovernmental organizations.

Estimated Number of Respondents: 28.

Frequency of Response: annual workplans, triennial implementation reviews, annual GPRA reports.

Estimated Total Annual Hour Burden: 6,113 hours.

Estimated Total Annual Cost: $366,800, includes $0 annualized capital or O&M costs.

Changes in the Estimates: An action notice from OMB increased the original burden request for the previous ICR by 40,800 hours.

This cycle will reduce the estimated burden by 40,654 to 6,113 annual respondent hours. These estimated hours are based on the experience of the NEP participants to date.

Dated: March 17, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–7369 Filed 3–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0014, FRL–7473–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Surveys to Determine the Effectiveness of No-Discharge Zones for Vessel Sewage and Marine Sanitation Devices

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Surveys to Determine the Effectiveness of No-Discharge Zones for Vessel Sewage and Marine Sanitation Devices, EPA ICR No. 2107.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 27, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: James Woodley, Oceans and Coastal Protection Division, Office of Water, Environmental Protection Agency, 4504T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number:

(202) 566–1287; fax number: (202) 566–1546; email address: *woodley.james@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0014, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, EPA West, 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov.edocket.*

Affected entities: Entities potentially affected by this action are boat owners and operators, marina owners and operators, State and local governments, marine sanitation device (MSD) manufacturers, U.S. Coast Guard accepted independent laboratories, and other Federal Agencies.

Title: Surveys to Determine the Effectiveness of No-Discharge Zones for Vessel Sewage and Marine Sanitation Devices; EPA ICR Number 2107.01.

Abstract: This ICR requests approval to collect information from boat owners and operators, marina owners and operators, and State and local government officials regarding the effectiveness of no-discharge zones. It also requests approval to collect information regarding the effectiveness of marine sanitation devices (MSDs) in removing harmful pollutants from the waste stream of the device. This information would be gathered from MSD manufacturers and U.S. Coast Guard accepted independent laboratories. Section 312 of the Clean Water Act mandates the use of MSDs on all vessels with installed toilets. There are three types of MSDs. Type I and Type II MSDs provide treatment of sewage that is to be discharged and rely on a variety of different technologies for treatment prior to discharge including maceration, chlorination, heating, filtering, and biological processes. Type III MSDs are holding tanks that provide minimal sewage treatment and can be installed on vessels of any size. Installed toilets on vessels of 65 ft. or less in length may be equipped with any of the three types of MSDs. Type I MSDs, which are only applicable to vessels up to 65 ft. in length, are required to produce an effluent with a fecal coliform bacteria count less than or equal to 1000 bacteria per 100 ml of seawater with no visible floating solids. For vessels greater than 65 ft., all installed toilets must be equipped with either Type II or Type III MSDs. The Type II MSDs are required to produce effluent with a fecal coliform count less than or equal to 200 bacteria per 100 ml of seawater and suspended solids less than or equal to 150 mg/l. Type III MSDs are holding tanks that are designed to prevent overboard discharge of any sewage. Also under section 312 of the Clean Water Act, with EPA's approval, States may designate a portion or all of their waters as no-discharge zones making all vessel sewage discharges illegal. States may designate their waters as no-discharge zones for vessel sewage to achieve any of the following objectives: (1) To protect aquatic habitats; (2) to protect special aquatic habitats or species such as coral reefs and shellfish beds; and (3) to safeguard human health by protecting drinking water intake zones. Under section 312(f)(3), States designate no-discharge zones for aquatic habitats by demonstrating to EPA that safe and adequate pumpout and dump facilities are available. Currently about 95% of the no-discharge zones designated have been done so under this provision. At a State's request, under sections 312(f)(4)(A) and (B), no-discharge zones for special aquatic habitats and drinking water intake zones, respectively, also can be established by regulation by EPA if the State demonstrates that additional protection of the aquatic environment is required. No-discharge zones established by regulations promulgated by EPA do not require the availability of pumpout or dump facilities. Currently, about 5% of the no-discharge zones for

vessel sewage have been designated by regulations promulgated by EPA. This information collection request will focus on the effectiveness of no-discharge zones for vessel sewage designated under Clean Water Act section 312(f)(3) and the effectiveness of current MSD technologies. There would be separate surveys developed for boat owners and operators, marina owners and operators, State and local government officials, MSD manufacturers, and U.S. Coast Guard accepted independent laboratories.

The survey developed for boat owners and operators would address the boater's experience with using pumpout or dump facilities in no-discharge zones. Specifically, the survey would seek information with regards to whether the pumpout or dump facilities were working or not working when the boater attempted to use them. It would address whether the boater would use the facilities if they were available and how often the boaters actually use the facilities. Respondents would be selected from North-Atlantic States, Mid-Atlantic States, California, the Florida Keys, and the Great Lakes. Approximately, 600 respondents from the geographical regions would be selected for response. The information collection would be voluntary and would not include CBI. The survey developed for marina owners and operators would address the downtime of pumpout and dump facilities located in no-discharge zones and the use of those facilities by boaters. Respondents would be selected from North-Atlantic States, Mid-Atlantic States, California, the Florida Keys, and the Great Lakes. Approximately, 80 marina owners or operators from the geographical regions would be selected for response. The information collection would be voluntary and would not include CBI. Also, a survey would be developed for State and local government officials to determine if the designation of no-discharge zones has been effective in addressing water quality issues of the particular water body, and if boaters were in compliance. Respondents would be selected from North-Atlantic States, Mid-Atlantic States, California, the Florida Keys, and the Great Lakes. Approximately, 100 respondents from the geographical regions would be selected for response. The information collection would be voluntary and would not include CBI. The information collected from the surveys would be used to assess the overall effectiveness of no-discharge zones for vessel sewage established under Clean Water Act section 312(f)(3) to determine if modifications to the program are needed.

An additional survey would be developed to review current MSD technology. The information on MSDs that would be requested includes effluent constituents and their concentrations; bacteria eradication processes and suspended solids removal; and cost and installation. This information would be used to help determine the effectiveness of the current MSD technologies. Approximately, 30 MSD manufacturers and 8 U.S. Coast Guard accepted independent laboratories would be selected for response. Responding to the collection of information would be voluntary. The survey would provide instructions on the procedures for making CBI claims, and the respondents would also be informed of the terms and rules governing protection of CBI obtained under the Clean Water Act. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Burden Statement: EPA estimates that 35 marina owners and operators would respond to the survey. It would probably take 20 minutes to complete the survey. Also, EPA estimates that the total burden for marina owners and operators would be 12 hours and $240. EPA estimates that 350 boat owners and operators would respond to the survey, and at a maximum, it would take 20 minutes for each respondent to complete the survey. EPA estimates that the total burden for boat owners and operators would be 117 hours and $1,800. EPA estimates that 70 State and local government officials would respond to the survey, and at a maximum, it would take 2 hours for each respondent to complete the survey. EPA estimates that the total burden for State and local government officials would be 140 hours and $4,900. EPA estimates that 20 MSD manufacturers would respond to the survey, and it would take them approximately 2 hours to complete it. The total burden for MSD manufacturers would be 40 hours, and the total cost would be $800. Lastly, EPA estimates that 7 U.S. Coast Guard accepted independent laboratories would respond to the survey. These laboratories test MSDs to certify that they meet the current MSD standards located at 40 CFR 140.3. It would take each of them approximately 2 hours to complete the survey. The total burden on the U.S. Coast Guard accepted independent laboratories would be 14 hours, and the total cost would be $420. There is no start up or capital cost associated with the surveys described above. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 19, 2003.

Diane C. Regas,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 03–7372 Filed 3–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7474–1]

Proposed Consent Decree

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended,

42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree, which the United States Environmental Protection Agency (''EPA'') lodged with the United States District Court for the District of Columbia on March 21, 2003, in a lawsuit filed by the Sierra Club under section 304(a) of the Act, 42 U.S.C. 7604(a), *Sierra Club* v. *Whitman,* No. 01–01537 (consolidated with cases 01548, 01558, 01569, 01582, and 01597) (D.D.C.).

DATES: Written comments on the proposed consent decree must be received by April 28, 2003.

ADDRESSES: Written comments should be sent to Apple Chapman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy of the proposed consent decree is available from Phyllis Cochran, (202) 564–7606.

FOR FURTHER INFORMATION CONTACT: Apple Chapman at (202) 564–5666.

SUPPLEMENTARY INFORMATION: This lawsuit concerns EPA's alleged failure to meet certain deadlines in the Clean Air Act (''CAA''). The proposed partial consent decree would fully settle four of the above-listed consolidated cases and partially settle two others.

Specifically, the consent decree provides that EPA shall: (1) Promulgate emission standards under CAA section 112(d), 42 U.S.C. 7412(d), for any twelve (12) of the remaining listed categories subject to CAA section 112(e)(1)(E), 42 U.S.C. 7412(e)(1)(E), on or before August 29, 2003 and for the remaining four (4) categories on or before February 27, 2004; (2) promulgate emission standards under CAA section 112(d), 42 U.S.C. 7412(d), for hazardous waste burning industrial boilers on or before June 15, 2005; (3) pursuant to CAA section 129(a)(5), 42 U.S.C. 7429(a)(5), promulgate revisions of the new source performance standards and emission guidelines for large municipal waste combustion units by April 28, 2006; (4) promulgate specified regulations under CAA section 112(d), 42 U.S.C. 7412 (d), pursuant to CAA sections 112(c)(3), 112(k), and 112(c)(6), 42 U.S.C. 7412 (c)(3), (k) and (c)(6) for certain categories of area sources by specified deadlines; (5) promulgate emission standards for ''other categories of solid waste incineration units'' under CAA section 129(a)(1)(E), 42 U.S.C. 7419(a)(1)(E), by November 30, 2005. Lastly, the consent decree provides that the parties stipulate to a dismissal of the claims in Case No. 01–1582 which alleged EPA's failure to submit the Report to Congress under CAA section 112(s), 42 U.S.C. 7412(s).

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. The EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Clean Air Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the consent decree will be final.

Dated: March 21, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 03–7370 Filed 3–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7473–7]

Notice of Request for Initial Proposals (IP) for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation (CFDA 66.463—Water Quality Cooperative Agreements); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA Region 6 published in the **Federal Register** of March 19, 2003, a notice soliciting Initial Proposals funded from the Regional Water Quality Cooperative Agreement allocation. Inadvertently, the minus was deleted from the points listed under applicant's past performance of the evaluation criteria. Applicant's past performance should be listed as a minus 3 points (-3).

FOR FURTHER INFORMATION CONTACT: Terry Mendiola by telephone at 214–665–7144 or by e-mail at *mendiola.teresita@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA Region 6 published a notice in the **Federal Register** of March 19, 2003, (53 FR 13303) soliciting Initial Proposals for projects to be funded from the Regional Water Quality Cooperative Agreement Allocation. Inadvertently, the minus was deleted from the points listed under applicant's past performance of the evaluation criteria. The evaluation criteria states that points will be taken away for poor past performance if knowledge of applicant's past performance is available to EPA. Therefore, applicant's past performance should be listed as a minus 3 points (−3). This correction adds the minus to indicate points will be taken away. In notice FR Doc. 03–6576 published on March 19, 2003, (53 FR 13303) make the following correction. On page 13305, in the third column, add a minus to (3 points) to read (−3 points) under applicant's past performance of the EPA IP Evaluation Criteria.

Dated: March 20, 2003.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–7371 Filed 3–26–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 19, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 28, 2003. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0855.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form No: FCC Forms 499, 499-A and 499-Q.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,500 respondents; 15,500 responses.

Estimated Time Per Response: 11.5 hours.

Frequency of Response: On occasion, annual, quarterly and other reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 164,487 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission has revised this information collection to only require contributors to include historical revenues from the prior quarter and project revenues for the upcoming quarter of the FCC Form 499–Q. Accordingly, the Commission seeks to modify the recently approved FCC Form 499–Q so that contributors are no longer required to provide projected collected revenue information for the quarter in which the filing is submitted. The Commission adopted modified reporting requirements to collect information necessary to evaluate individual contributors' contributions to the universal service mechanisms, pursuant to section 254 of the Act.

OMB Control No.: 3060–0910.

Title: Third Report and Order in CC Docket No. 94–102, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 4,000 respondents; 8,000 responses.

Estimated Time Per Response: 1 hour for each report (two reports)

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 8,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission seeks three year OMB approval for this information collection. This information collection is applicable to wireless carriers to permit the use of handset-based solutions, or hybrid solutions that require changes both to handsets and wireless networks in providing caller location information as part of Enhanced 911 services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7320 Filed 3–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 19, 2003.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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. For further information contact Paul J. Laurenzano, Federal Communications Commission, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

OMB Control No.: 3060–0715.

OMB Approval and Effective Date of Rules: 02/24/2003.

Expiration Date: 02/28/2006.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form No.: N/A.

Estimated Annual Burden: 4,832 responses; 672,808 total annual hours; $229,520,000 cost burden; 139.2 hours per respondent.

Needs and Uses: The requirements implement the statutory obligations of section 222 of the Telecommunications Act of 1996. Among other things, carriers are permitted to use, disclose, or permit access to CPNI, without customer approval, under certain conditions.

Many uses of CPNI require either opt-in or opt-out customer approval, depending upon the entity using the CPNI and the purpose for which it is used.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7321 Filed 3–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–384; FCC 03–57]

Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, DC, and West Virginia

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of Verizon Maryland Inc., Verizon Washington, DC Inc., West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for authority to enter the interLATA telecommunications market in Maryland, Washington, DC, and West Virginia. The Commission grants Verizon's application based on its conclusion that Verizon has satisfied all of the statutory requirements for entry and opened its local exchange markets to full competition.

DATES: Effective March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Gail Cohen, Senior Economist, Wireline Competition Bureau, at (202) 418–0939 or via the Internet at *gcohen@fcc.gov.* The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 02–384, FCC 03–57,

adopted March 18, 2003, and released March 19, 2003. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/Wireline__Competition/in-region_applications.*

Synopsis of the Order

1. *History of the Application.* On December 19, 2002, Verizon filed an application pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the states of Maryland, and West Virginia, and the District of Columbia (Washington, DC).

2. *The State Commissions' Evaluations.* The Maryland Public Service Commission (Maryland Commission), the District of Columbia Public Service Commission (DC Commission), and the West Virginia Public Service Commission (West Virginia Commission), following an extensive review process, advised the Commission that Verizon has taken the statutorily required steps to open it local markets in each state to competition. Consequently, the state commissions recommended that the Commission approve Verizon's in-region, interLATA entry in their evaluations and comments in this proceeding.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation on January 27, 2003, recommending approval of the application, subject to the resolution of questions regarding Verizon's checklist compliance for certain pricing and directory assistance issues. Accordingly, the Department of Justice recommends approval of Verizon's application for section 271 authority in Maryland, Washington, DC, and West Virginia.

Primary Issues in Dispute

4. *Compliance with Section 271(c)(1)(A).* The Commission concludes that Verizon demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Maryland, Washington, DC, and West Virginia. The record shows that Verizon relies on interconnection agreements with AT&T, Comcast, eLEC, FiberNet, Starpower, and StratusWave in support of this showing.

5. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that Verizon has provided ''nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)'' of the Act in compliance with checklist item 2.

6. *Operating Support Systems (OSS).* Based on the record, the Commission finds that Verizon provides ''nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)'' of the Act in compliance with checklist item 2. The Commission finds that Verizon provides non-discriminatory access to its OSS—the systems, databases, and personnel necessary to support network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Verizon regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management), Verizon provides access to its OSS in a manner that enables competing carriers to perform the functions in substantially the same time and manner as Verizon does or, if no appropriate retail analogue exists within Verizon's systems, in a manner that permits competitors a meaningful opportunity to compete. In addition, regarding specific areas where the Commission identifies issues with Verizon's OSS performance in the application states, these problems are not sufficient to warrant a finding of checklist noncompliance.

7. *UNE Combinations.* Pursuant to section 271(c)(2)(B)(ii) a BOC must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already combined elements, except at the specific request of the competing carrier. The Commission concludes, based on the performance data in the record, that Verizon meets its obligation to provide access to UNE combinations in compliance with the Commission's rules.

8. *Pricing of Unbundled Network Elements.* Based on the record, we find that Verizon's UNE rates in Maryland, Washington, DC, and West Virginia are just, reasonable, and nondiscriminatory as required by section 251(c)(3), and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's UNE rates satisfy checklist item 2. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either ''basic TELRIC principles are violated or the state commission makes clear errors in the actual findings on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.''

9. The Commission finds that, while Verizon's current recurring UNE rates were not established via state rate proceedings that applied TELRIC principles, the recurring UNE rates in all three jurisdictions are TELRIC-compliant based on a benchmark comparison to Verizon's New York UNE rates. The Commission concludes that Verizon's current loop provisioning policy does not preclude us from finding that Verizon's loop rates in these states are TELRIC-compliant based on a benchmark comparison. In addition, the Commission confirms that it performs its benchmark analysis by aggregating non-loop rate elements. Thus, we conclude that Verizon's UNE rates in Maryland, Washington, DC, and West Virginia satisfy the requirements of checklist item 2.

10. *Checklist Item 12—Dialing Parity.* Based on the evidence in the record, the Commission finds that Verizon provides local dialing parity in accordance with the Commission's rules. No commenter challenges Verizon's provision of dialing parity in Maryland or Washington, DC. However, FiberNet claims that in West Virginia local dialing parity is not achieved in certain locations where an extended area service (EAS) crosses LATA and state boundaries. The Commission concludes that Verizon complies with our dialing parity rules and that our rules implementing 251(b)(3) do not require Verizon to develop interconnections arrangements for facilities-based competitive LECs with third-party carriers.

11. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission concludes that Verizon provides access and interconnection on terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the requirements of section 251(c)(2) and as specified in section 271, and applied in the Commission's prior orders. Pursuant to this checklist item, Verizon must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic, using any available method of interconnection at any available point in Verizon's network. Verizon's performance generally satisfies the applicable benchmark or

retail comparison standards for this checklist item. Verizon also demonstrates that it offers interconnection in Maryland, Washington, DC, and West Virginia to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1.

Other Items in Dispute

12. *Checklist Item 4—Unbundled Local Loops.* Verizon demonstrates that it provides unbundled local loops in accordance with the requirements of section 271 and our rules, in that it provides ''local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.'' The Commission's conclusions are based on Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, digital loops, high capacity loops, as well as our review of Verizon's processes for line sharing and line splitting.

13. *Checklist Item 7—911–E911 Access & Directory Assistance/Operator Services.* Section 271(c)(2)(B)(vii)(I), (II), and (III) require a BOC to provide nondiscriminatory access to ''911 and E911 services,'' ''directory assistance services to allow the other carrier's customers to obtain telephone numbers'' and ''operator call completion services,'' respectively. Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC ''the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to ''* * * operator services, directory assistance, and directory listing with no unreasonable dialing delays.'' Based on the evidence in the record, the Commission concludes that Verizon offers nondiscriminatory access to its 911–E911 databases, operator services (OS), and directory assistance (DA).

14. *Checklist Item 8—White Pages.* Section 271(c)(2)(B)(viii) of the Act requires a BOC to provide ''[w]hite page directory listings for customers of the other carrier's telephone exchange service.'' The Commission has previously found that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) Provides nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provides white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers. Based on the evidence in the record, the Commission concludes that Verizon satisfies checklist item 8.

15. *Checklist Item 10—Databases and Associated Signaling.* Section 271(c)(2)(B)(x) of the Act requires a BOC to provide ''nondiscriminatory access to databases and associated signaling necessary for call routing and completion.'' Based on the evidence in the record, the Commission finds that Verizon provides nondiscriminatory access to databases and signaling networks in the application states.

16. *Checklist Item 11—Local Number Portability.* Section 251(b)(2) requires all LECs ''to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Based on the evidence in the record, the Commission finds that Verizon complies with the requirements of checklist item 11.

17. *Checklist Item 13—Reciprocal Compensation.* Section 271(c)(2)(B)(xiii) of the Act requires BOCs to enter into ''[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).'' In turn, section 252(d)(2)(A) specifies the conditions necessary for a state commission to find that the terms and conditions for reciprocal compensation are just and reasonable. The Commission concludes that Verizon provides reciprocal compensation as required by checklist item 13.

18. *Checklist Item 14—Resale.* Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make ''telecommunications services * * * available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3).'' Based on the record in this proceeding, the Commission concludes as that Verizon satisfies the requirements of this checklist item. Verizon has demonstrated that it has satisfied its legal obligation to make retail telecommunications services available for resale to competitive LECs at wholesale rates.

19. *Remaining Checklist items (3, 5, 6 and 9).* In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits), item 5 (unbundled transport), item 6 (local switching unbundled from transport), and item 9 (numbering administration). Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it is in compliance with the requirements of these checklist items. It notes that no party objects to Verizon's compliance with these checklist items (other than checklist item 5, which is addressed as part of checklist item 4).

20. *Section 272 Compliance.* Based on the record, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in the application states as it does in Virginia, New Jersey, Connecticut, Maine, Pennsylvania, Rhode Island, Vermont, New York, Connecticut, and Massachusetts—where Verizon has already received section 271 authority. Based on the record before us, we conclude that Verizon has demonstrated that it will comply with the requirements of section 272.

21. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From its extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in Maryland, Washington, DC and West Virginia are open to competition. The Commission further finds that, as noted in prior section 271 orders, BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist. Verizon demonstrates that there is significant local competition in Maryland, Washington, DC and West Virginia and that Verizon's local market will remain open to competition, and that section 271 approval would enhance local and long distance competition in Maryland, Washington, DC and West Virginia.

22. *Section 271(d)(6) Enforcement Authority.* Working with each of the state commissions, the Commission intends to closely monitor Verizon's post-approval compliance to ensure that Verizon continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in each of the states.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–7332 Filed 3–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, March 25, 2003, 10 a.m. Meeting closed to the public. This meeting was cancelled

DATE AND TIME: Tuesday, April 1, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 3, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Future Meeting Dates.
Draft Advisory Opinion 2003–02: The Socialist Workers Party (''SWP'') and the SWP National Campaign Committee by counsel, Michael Krinsky and Jaykumar Menon.
Notice of Proposed Rulemaking on Title 26 and National Convention/Host Committees.
Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–7485 Filed 3–25–03; 11:49 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011786–001.
Title: Zim/Great Western Agreement.
Parties: Zim Israel Navigation Company Ltd. Great Western Steamship Company.

Synopsis: The proposed agreement modification expands the geographic scope to include Singapore, Japan, the U.S. Pacific Northwest, and the U.S. East Coast, revises Articles 5.1 through 5.4 to reflect the restructured cooperation of the parties, and extends the agreement through April 30, 2004. The modification also deletes obsolete language, corrects Great Western's address, and republishes the agreement in a second edition.

Dated: March 21, 2003.

By Order of the Federal Maritime Commission

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–7289 Filed 3–26–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 16230N.
Name: A–P–A World Transport Corp.
Address: 545 Dowd Avenue, Elizabeth, NJ 07201
Date Revoked: February 18, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16357N.
Name : Ace Shipping Corp.
Address: 155 Armstrong Road, Des Plaines, IL 60018
Date Revoked: February 20, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17010F.
Name: Alden International Inc.
Address: 809 Washington, Traverse City, MI 49686
Date Revoked: March 8, 2003.
Reason: Failed to maintain a valid bond.

License Number: 13582N.
Name: Argosy Transport, Inc.
Address: 5572 Lutford Circle, Westminster, CA 92683
Date Revoked: March 5, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4028F.
Name: BNX Shipping Inc.
Address: 2029 E. Cashdan Street, Rancho Dominguez, CA 90220
Date Revoked: February 24, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16660N.
Name: C.F.L. Freight Service, Inc.
Address: 2075 S. Atlantic Blvd., #G, Monterey Park, CA 91754
Date Revoked: February 14, 2003.
Reason: Failed to maintain a valid bond.

License Number: 14519N.
Name: Classic Cargo International, Inc.
Address: 2130–C Ace Worldwide Lane, Cudahy, WI 53110
Date Revoked: February 23, 2003.
Reason: Failed to maintain a valid bond.

License Number: 2764NF.
Name: Daniel H. Cheung dba Ace Container Line dba D. Cheung International
Address: 436 N. Canal Street, Unit 14, P.O. Box 280621, San Francisco, CA 94080
Date Revoked: January 30, 2003.
Reason: Failed to maintain valid bonds.

License Number: 14169N.
Name: Expedited Transportation Services, Inc.
Address: 2169 West Park Court, Suite O, Stone Mountain, GA 30087
Date Revoked: February 17, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17230NF.
Name: FEI Holdings dba Vision Freight Lines dba Vision Logistics Group
Address: 2813 Parkview Terrace, Fairfield, CA 94533
Date Revoked: February 11, 2003.
Reason: Failed to maintain valid bonds.

License Number: 3529F.
Name: Horizon Forwarders, Inc.
Address: One Edgewater Plaza, Suite 214, Staten Island, NY 10305
Date Revoked: January 23, 2003.
Reason: Failed to maintain a valid bond.

License Number: 3252NF.
Name: Intermar Steamship Corporation
Address: 80 Business Park Drive, Suite 104, Armonk, NY 10504
Date Revoked: February 17, 2003.
Reason: Failed to maintain valid bonds.

License Number: 11950N.
Name: Intermodal Logistics Systems, Inc.
Address: 19401 S. Main Street, Unit 302, Gardena, CA 90248
Date Revoked: February 14, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16574F.
Name: International Forwarders, Inc.
Address: 501–C Industrial Street, Lake Worth, FL 33461
Date Revoked: March 5, 2003.
Reason: Failed to maintain a valid bond.

License Number: 784F.
Name: James A. Green, Jr. & Co.

Address: 1311 Minnesota Avenue, Kansas City, KS 66102
Date Revoked: February 27, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17140N.
Name: Meridian Containers (USA) Ltd.
Address: 1345 Woodlane Road, Eastampton, NJ 08060
Date Revoked: February 28, 2003.
Reason: Failed to maintain a valid bond.

License Number: 2037N.
Name: Miller & Thompson Forwarding, Inc.
Address: 1126 So. 70th Street, Suite 215–B, Milwaukee, WI 53214
Date Revoked: February 19, 2003.
Reason: Surrendered license voluntarily.

License Number: 2651F.
Name: Pioneer International Forwarding Co., Inc.
Address: 687 Commercial Street, 2nd Floor, San Francisco, CA 94111
Date Revoked: March 1, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16450N.
Name: Seaspeed Transport LLC
Address: 6826 Somerset Blvd., #7, Paramount, CA 90723
Date Revoked: February 20, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4185N.
Name: Southern Winds International
Address: 1780 Wipple Road, Suite 206, Union City, CA 96587
Date Revoked: February 26, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17631N.
Name: Sunmar Shipping, Inc.
Address: 2615 4th Avenue, Suite 700, Seattle, WA 98121
Date Revoked: February 27, 2003.
Reason: Failed to maintain a valid bond.

License Number: 3863NF.
Name: Tera Trading Group, Inc. dba T.T.G. International Freight Forwarders
Address: 1850 NW 82nd Avenue, Miami, FL 33126
Date Revoked: February 7, 2003.
Reason: Failed to maintain valid bonds.

License Number: 2287NF.
Name: Total Cargo International, Inc.
Address: 7500 NW 25th Street, Suite #257, Miami, FL 33122
Date Revoked: March 5, 2003.
Reason: Failed to maintain valid bonds.

License Number: 8473N.
Name: Total Cargo dba Polar Bear Container Line
Address: 132 S. Cloverdale Blvd., Cloverdale, CA 95425
Date Revoked: February 26, 2003.
Reason: Failed to maintain a valid bond.

License Number: 2681F.
Name: Trans-Border Customs Services, Inc.
Address: One Trans-Border Drive, P.O. Box 800, Champlain, NY 12919
Date Revoked: July 1, 2002.
Reason: Surrendered license voluntarily.

License Number: 17768F.
Name: United Shipping Services, Inc.
Address: 2121 W. Mission Road, #307, Alhambra, CA 91803
Date Revoked: March 1, 2003.
Reason: Surrendered license voluntarily.

License Number: 2813N.
Name: Vital International Freight Services, Inc.
Address: 5200 W. Century Blvd., Suite 290, Los Angeles, CA 90045
Date Revoked: March 1, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4536F.
Name: Worldwide International, Inc.
Address: 5900 Roche Drive, Suite No. LL–20, Columbus, OH 43229
Date Revoked: November 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4410F.
Name: Zeal Cargo Corporation
Address: 8525 NW 29th Street, Miami, FL 33122
Date Revoked: February 16, 2003.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–7288 Filed 3–26–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
12367N	Maritime Express, Inc., 12613 Executive Drive, #700, Stafford, TX 77477	November 30, 2002.
3813F	Page International, Inc., 109 Minus Avenue, Suite C–7, Garden City, GA 31408	January 31, 2003.
17052N	Sec Sea & Air, Inc., 273 E. Redondo Beach Blvd., Gardena, CA 90248	November 4, 2002.
4306NF	International Transport, Services, Inc., 18747 Sheldon Road, Cleveland, OH 44130	November 3, 2002.
2037F	Miller & Thompson Forwarding, Inc., 1126 South 70th Street, Suite 215B, Milwaukee, WI 53214.	February 19, 2003.
15917N	Golden Jet-L.A., Inc., dba Golden Jet Freight Forwarders, 12333 S. Van Ness Avenue, Suite 201, Hawthorne, CA 90250.	January 29, 2003.
1636F	Packers Enterprises, Inc., dba Packers, Ltd., 100 Broad Avenue, Wilmington, CA 90744	November 23, 2002.
17768N	United Shipping Services, Inc., 2121 W. Mission Road, Suite 307, Alhambra, CA 91803	March 1, 2003.
15688N	Millennium Logistics Services, Inc., 6709 NW 84th Avenue, Miami, FL 33166	December 2, 2002.
2274F	David K. Lindemuth Co., Inc., 154 South Spruce Avenue, South San Francisco, CA 94080	February 11, 2003.
338F	Fred P. Gaskell Company, Inc., 821 W. 21st Street, Norfolk, VA 23517	February 5, 2003.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–7291 Filed 3–26–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation

Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Speedy International, LLC., 451 Victory Avenue, Suite 6, So. San Francisco, CA 94080, Officers: Hoon Kim, Operations Supervisor (Qualifying Individual), Michael Chan, Manager.

Pudong Prime International Logistics, Inc., 17595 Almahurst Road, #201, City of Industry, CA 91748, Officers: Ying Hu, Secretary (Qualifying Individual), Jian Wang, Director/President.

UIA Worldwide Logistics, Inc., 2100 Huntington Drive, Suite 7, San Marino, CA 91108, Officers: Theodore Wayne Quan, Vice President (Qualifying Individual), Jack Ling, President.

Topocean Consolidation Service (Seattle) Inc., 15215 52nd Avenue So., Suite 21, Tulwila, WA 98188, Officers: Michael C. Owens, Vice President (Qualifying Individual), Vic Cheung, President.

Seoil Agency Co. U.S.A., Inc., 2150 N. 107th Street, Suite 170, Seattle, WA 98133, Officer: Myeongjong Kim, President (Qualifying Individual).

California Freight System, Inc., 601 W. Carob Street, Compton, CA 90220, Officers: Jong Wook Lim, President/CEO (Qualifying Individual), J. H. Chang, Director.

Formerica Consolidation Service, Inc., 144–37 156 Street, 2nd Floor, Jamaica, NY 11434, Officers: Peter C. Chiu, President (Qualifying Individual), Ami Wey, Secretary.

Form Logistics Inc., 20 W. Lincoln Avenue, #302, Valley Stream, NY 11580, Officers: Cheng Hsia, Vice President (Qualifying Individual), Tung Shen Wang, President.

Dimex Consulting, Inc., 118 W. Hazel Street, Suite A, Inglewood, CA 90302, Officer: Diem T. Nguyen, Owner.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Angel's Maritime Services Inc., 6630 Hawin Drive, Suite #108, Houston, TX 77036, Officer: John Ola Coker, President (Qualifying Individual).

United Nation Transportation LLC, 3208 Chico Avenue, El Monte, CA 91733, Officer: Jeff Mangkareth Insixiengmay, President (Qualifying Individual).

ACS Cargo Systems, Inc. dba Expedite America Express, 2688 Coyle Lane, Elk Groove Village, IL 60007, Officers: Steven J. Ellis, Director (Qualifying Individual), Joseph W. Ellis, Treasurer.

Interport Services Corp., 8501 N.W. 17th Street, Miami, FL 33126, Officers: Alberto J. Marino, President (Qualifying Individual), Ivette C. Marino, Secretary.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Logical Solution Services, Inc., 14 Emory Street, Howell, NJ 07731, Officer: Victor Cruz, President (Qualifying Individual).

Global Logistics Freight, Inc., 275 North Central Avenue, Valley Stream, NY 11580, Officer: Maria DeFilippis, President (Qualifying Individual).

Fox Freight Forwarders, Inc., 3727 NW 52nd Street, Miami, FL 33142, Officer: Maria S. Hugues, President (Qualifying Individual).

Dated: March 21, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–7290 Filed 3–26–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve 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.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 27, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority to conduct the following survey:

Report title: 2004 Survey of Consumer Finances
Agency form number: FR 3059
OMB Number: 7100–0287
Frequency: One–time survey
Reporters: U.S. families
Annual reporting hours: 7,500 hours
Estimated average hours per response: Pretest and survey, 75 minutes each
Number of respondents: Pretest, 400 families; survey, 5,600 families
Small businesses are not affected.
General description of report: This information collection is voluntary. The Federal Reserve's statutory basis for collecting this information is section 2A of the Federal Reserve Act (12 U.S.C. § 225a); the Bank Merger Act (12 U.S.C. § 1828(c)); and sections 3 and 4 of the Bank Holding Company Act (12 U.S.C. §§ 1842 and 1843) and 12 U.S.C. § 353 and 461. The names and other characteristics that would permit identification of respondents are deemed confidential by the Board and are exempt from disclosure pursuant to exemption 6 in the Freedom of Information Act (5 U.S.C. § 552(b)(6)).

Abstract: For many years, the Board has sponsored consumer surveys to obtain information on the financial behavior of households. The 2004 Survey of Consumer Finance (SCF) will be the latest in a triennial series, which began in 1983, that provides comprehensive data for U.S. families on the distribution of assets and debts, along with related information and other data items necessary for analyzing behavior. These are the only surveys conducted in the United States that provide such financial data for a representative sample of households. Data for the SCF are collected by interviewers using a computer program. While some questions may be deleted and others modified, only minimal changes will be made to the questionnaire in order to preserve the time series properties of the data. The pretest will be conducted during 2003 and survey would be conducted between May and December 2004.

Board of Governors of the Federal Reserve System, March 21, 2003.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 03–7286 Filed 3–26–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Financial Investors of the South, Inc., Birmingham, Alabama; to acquire up to 15 percent of the voting shares of Consumer National Bank, Jackson, Mississippi.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. BSA Delaware, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Bevans State Bank of Menard, Menard, Texas.

Board of Governors of the Federal Reserve System, March 21, 2003.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 03–7287 Filed 3–26–03; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04003]

Health Promotion and Disease Prevention Research Centers; Notice of Availability of Funds

Application Deadline: June 16, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2) and 1706 (42 U.S.C. 241(a), 247b(k)(2) and 300 u–5) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.135.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program to fund Health Promotion and Disease Prevention Research Centers (PRCs). This program addresses the Healthy People 2010 focus areas of Access to Quality Health Services, Cancer, Diabetes, Disability and Secondary Conditions, Educational and Community-Based Programs, Health Communications, Nutrition and Overweight, and Physical Activity and Fitness.

In 1984, Congress authorized the Secretary of the Department of Health and Human Services (HHS) to create a network of academic health centers to conduct applied public health research. As the designated administrator of the PRC Program, CDC provides leadership, technical assistance, and oversight.

The purpose of the PRC Program is to support health promotion and disease prevention research that (1) focuses on the major causes of death and disability, (2) improves public health practice

within communities, and (3) cultivates effective state and local public health programs. One of the major focuses of the PRCs is to design, test, and disseminate effective prevention research strategies. The program's ''Guiding Principles and Policy Statement for Core Research Projects'' are available at: *http://www.cdc.gov/prc.*

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion: to support prevention research to develop sustainable and transferable community-based behavioral interventions.

C. Eligible Applicants

Applications may be submitted by schools of public health, schools of medicine or osteopathy with an accredited Preventive Medicine Residency that have:

1. A multidisciplinary faculty with expertise in public health, and working relationships with relevant groups in such fields as medicine, psychology, nursing, social work, education and business.
2. Graduate training programs relevant to disease prevention.
3. A core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental sciences, and health administration.
4. A demonstrated curriculum in disease prevention.
5. A capability for residency training in public health or preventive medicine.

First Round of Competition

For this round of competition, assistance will be provided only to the universities currently funded under Program Announcements 98047, 00089, and 01101. All three announcements are entitled ''Health Promotion and Disease Prevention Research Centers.'' The eligible universities are as follows: University of Washington, Yale University, Harvard University, Columbia University, The Johns Hopkins University, West Virginia University, University of North Carolina at Chapel Hill, University of South Carolina, University of Alabama at Birmingham, Morehouse School of Medicine, University of South Florida, University of Illinois at Chicago, University of Minnesota, University of Michigan, University of Texas Health Science Center at Houston, University of Oklahoma, University of New Mexico, Tulane University, Saint Louis University, University of Colorado, University of California at Berkeley, University of Arizona, University of California at Los Angeles, University of Kentucky, Boston University, University of Pittsburgh, State University of New York at Albany, and University of Iowa.

Competition is limited to these universities because they are uniquely positioned to perform, oversee, and coordinate community-based participatory research that promotes the field of prevention research, due to their established relationships with community partners. Applications receiving a quality score of 80 or above will be considered for funding. If sufficient applications do not obtain scores of 80 or greater, funding consideration will be given to applications that score 75 or above.

Note: Only one application will be accepted from each university.

Second Round of Competition

Pending the availability of funds, eligible applicants not receiving a fundable quality score during the first round of competition and all other applicants meeting the eligibility requirements listed at the beginning of the Eligible Applicants section will be considered during the second round of competition. Specific guidance with exact due dates for the second round of competition will be announced at a later date.

Additionally, beginning in FY 2005, and for each of the remaining years for this program announcement (September 30, 2005 through September 29, 2009), there will be a competitive application process. Specific guidance will be provided with exact due dates and funding levels each year.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funding

Availability of Funds

Approximately $14,000,000 will be available in FY 2004 to fund approximately 18 awards. It is expected that the average award will be approximately $750,000 to $850,000 per center. The awards are expected to begin on or about September 15, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress toward performance measures, as evidenced by required reports, and the availability of funds.

Direct Assistance

You may request Federal personnel in lieu of a portion of financial assistance. (See the Application Content section of this announcement for more information on how to request direct assistance.)

Use of Funds

The applicant should allocate funds to support evaluation activities related to the center. In addition, funds should be allocated to support communication activities, including the input and maintenance of information for the PRC Information System (See Appendix A for a description of the PRC Information System. All appendices referenced in this announcement are posted on the CDC Website with the full announcement.)

Funding Preferences

In the second round of competition, funding preference will be based on selecting applicants in order to maintain an equitable geographic distribution of centers. Funding preference will also be given to applicants that demonstrate a focus on the public health needs of rural populations.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under item 1. Recipient Activities, and CDC will be responsible for the activities under item 2. CDC Activities.

1. Recipient Activities

a. Create a logic model for the prevention research center. This logic model can be adapted from the national PRC Program conceptual framework (See Appendix B for a description) to fit the specific inputs, activities, outputs, and outcomes of the center. Write an accompanying narrative that includes a description of how the center-level components relate to the national PRC framework.

b. Evaluate the center based on the center's logic model, particularly addressing critical components related to the center's stated outcomes. Describe how the center's evaluation will contribute to CDC's national program evaluation, including the core performance indicators. (See Appendix D for a list of the indicators.)

c. Establish or maintain a center community committee. Define the role and composition of the committee, how the center will communicate with the

committee, and how it will link to the CDC PRC National Community Committee (NCC). (See Appendix C for a description of the CDC PRC NCC.)

d. Establish and maintain partnerships (*e.g.,* state and local health departments, community groups and agencies, and academic units), and include these partners, when applicable, in the center activities.

e. Identify national, regional, or local health priorities and health disparities within the defined community. Involve center partners when identifying the health priorities and health disparities, and provide evidence of such involvement.

f. Develop the center's participatory, community-based core research project and the center's five-year research agenda. Ensure the core research project and other proposed research activities are grounded in sound research methods and further the field of prevention research consistent with the purpose of this announcement. Plan the core research project in collaboration with community partners and provide evidence of such collaboration. Each center is required to conduct at least one core research project. (*See* the application content section of this announcement for additional information.)

g. Communicate and disseminate the center's research findings and research products.

h. Establish the appropriate resources for contributing information to the PRC Information System and maintaining the information.

i. Recruit, hire, and retain qualified staff. Develop an organizational chart that illustrates the center's staffing plan.

j. Acquire and maintain the technological capacity, facilities, and university support for the center (*e.g.,* software, space, equipment, etc.).

k. Provide training, technical assistance, or mentoring to health professionals, researchers, students, community members, and other partners, as appropriate.

2. CDC Activities

a. Convene semi-annual meetings of PRCs to facilitate research collaboration and information sharing.

b. Conduct onsite visits of PRCs to provide consultation and technical support and help recipients meet program objectives and cooperative agreement requirements.

c. Provide consultation and other technical assistance to help recipients use the PRC Information System for recording and disseminating research results.

d. Collect, organize, and disseminate information on PRC research pertinent to the PRC Program's Guiding Principles (*http://www.cdc.gov/prc*).

e. Provide support to the PRC National Community Committee to promote capacity-building and community participation in the PRC Program.

f. Guide an external, peer-reviewed funding mechanism to enhance centers' opportunities for prevention research consistent with their mission.

g. Organize information-sharing sessions to guide recipients in developing their center-specific logic models consistent with the national framework.

h. Serve as a scientific and professional resource for projects developed through the PRCs' national committee structure.

i. Inform recipients about the laws and regulations pertaining to human subjects research and conduct inquiries concerning allegations of scientific misconduct.

j. Evaluate and monitor recipients' progress toward meeting program objectives and goals.

F. Content

Letter of Intent

A Letter of Intent (LOI) is required for this program. The Program Announcement title and number must appear in the LOI. The LOI should be no more than three double-spaced pages, printed on one side, with one-inch margins, and 12-point font. The LOI, which will be used in planning for the external peer review panel, should include the following information: (1) The name, address, telephone number, fax number, and E-mail address of a contact person from the applicant's institution; (2) name of the Principal Investigator; (3) center name and location; (4) description of how the center meets the eligibility requirements contained in Section C of this announcement; (5) a brief description of the center's research focus (a 3–4 line description); and (6) a brief description of the center's proposed activities (maximum of one paragraph). Note: Each university may submit only one application per round of competition. Attachments, booklets, or other documents will not be accepted with the LOI.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in the application. The narrative should be no more than 120 double-spaced pages, printed on one side, with one-inch margins, and 12-point font, excluding appendices and PHS Form 398. Appendices must not exceed 50-pages and must be hard copy documents (*i.e.,* no audiovisual materials or posters). Curriculum vitae, letters of support, and memoranda of understanding should be included as appendices; however, these documents will not be counted against the 50-page limit. Instructions contained here regarding font and page length supersede those in the PHS Form 398. The narrative should consist of the following items, in the order listed:

Evaluation

An infrastructure of resources and personnel is required to support center-level evaluation. Applicants should have the capacity to (1) establish a five-year evaluation plan; (2) conduct center-level evaluation; and (3) collaborate with national partners in the planning, implementation, and evaluation of national PRC Program evaluation strategies (*See* Appendix B for a description of Developing an Evaluation Framework: Insuring National Excellence [Project DEFINE].) To assure that applicants have this capacity, applicants should, at a minimum, address the following:

1. Create a center-level logic model specifying the center's health priorities and expected outcomes. Within the logic model, define the inputs, activities, outputs, outcomes, evaluation, and contextual conditions for the center. This logic model can be adapted from the national PRC Program conceptual framework (*See* Appendix B) to fit the specific components of the individual center. In addition to the logic model, a narrative description of each component must be included. Please include the center's mission within the narrative, and limit the mission statement to one to two sentences. Further, within this narrative describe how each component of the center's model is related to the national PRC Program conceptual framework.

2. Document experiences in conducting program evaluations in the past five years. Describe how the center will continue or enhance its evaluation expertise as it relates to the center-level evaluation.

3. Create and describe a five-year plan for evaluating the critical components of the center's logic model. The plan should include evaluation goals and related questions and describe how the

plan was developed in collaboration with the centers' community committee.

4. Address how the center's evaluation will consider the following:

a. The overarching national program evaluation questions: (1) How is the center contributing to changes in public health research, practice, and policy; and (2) What types of partnerships has the center established and what effect have these relationships had on the goal of building community capacity for public health practice and disease prevention?

b. The national performance indicators. The performance indicators will be reported on annually through the PRC information system.

Collaborations/Partnerships

An infrastructure of resources and personnel is required to support collaboration with partners. Collaboration with partners and the defined community in program planning and activities can increase the success of programs and enhance community capacity. Applicants should have the capacity to (1) establish and maintain relationships with partners; (2) facilitate the establishment and maintenance of the center's community committee(s); and (3) collaborate with partners on the planning and implementation of core research. To assure that applicants have this capacity, applicants should, at a minimum, address the following:

1. Define and describe the primary community or communities that the center's activities will serve (*e.g.*, describe population size, geographic boundaries, racial and ethnic makeup, socioeconomic status, etc.).

2. Describe the plan for establishing or maintaining the center's community committee(s). (*See* the glossary for additional information regarding the center community committee.) This plan should include, at a minimum, the following: (a) The intended composition and membership of the committee and how the constituents reflect the community described in item 1 of this section; (b) the proposed mission and role for the committee in the center's planning and activities, consistent with the logic model; (c) the plan for developing or refining guidelines for the community committee over the first year of the funding period; (d) the plan for communication between the community committee and the center staff, and how this plan is linked to the center's overall communication plan; and (e) how the center's community committee members will participate in and communicate with the CDC PRC NCC. (*See* Appendix C for a description of the CDC PRC NCC.) Provide evidence of commitment and cooperation of current and potential members of the center's community committee(s) (*e.g.*, letters of support, memoranda of understanding, or examples of prior collaboration.)

3. Identify and describe other partners such as state and local health departments, community groups and agencies, and academic units. At a minimum, briefly describe: (a) Past partners, new partners, and proposed partners; (b) the proposed methods for establishing and maintaining these partnerships, including how the lessons learned from previous partnerships will be applied to the proposed methods; and (c) the partners involvement in the centers proposed activities. In this section, specifically address the partners' role in developing this proposal and partners' expectations about their roles in the planning and implementation of the center's activities. Provide evidence of commitment and cooperation of current and potential partners (*e.g.*, letters of support, memoranda of understanding, and examples of prior collaborations).

Research

An infrastructure of resources and personnel is required to support research in the center. Applicants should have the capacity to (1) establish a five-year research agenda; (2) conduct core research and other prevention research as described in the research agenda; and (3) effectively collaborate with partners in the planning, implementation, and dissemination of core research. To assure that applicants have this capacity, applicants should, at a minimum, address the following:

1. Provide evidence of having identified national, regional, or local health priorities and health disparities within the community and of having identified them in collaboration with community partners.

2. Document experience in successfully conducting, evaluating, and publishing prevention research in the past five years. In particular, describe community-based research activities and provide evidence of community involvement in those activities.

3. Describe the center's five-year research agenda, including the goals and objectives. Describe how this agenda helps fulfill the center's mission. If the research agenda is also supported by non-PRC Program funding sources, identify the other funders.

4. Provide a detailed description of the center's participatory, community-based core research project and how it will further the field of prevention research. The long-term outcome should be applicable to public health programs and policies. The core research project can address any of the three types of applied research: (1) Determinant research, which examines how risk and protective factors affect health and how this research is essential for developing effective interventions; (2) intervention research, which examines the effectiveness of strategies or programs in reducing disease and promoting health; or (3) dissemination research, which examines strategies for promoting the adoption and maintenance of effective programs.

The applicant should use the following template to describe the core research project:

a. Title of the project

b. Project Director/Lead Investigator for the project

c. Institution(s)/partners involved in the project

d. Categorization of the project as determinant, intervention, or dissemination research

e. Relationship of the project to the center's mission and health priorities

f. Relationship of the project to HHS objectives (*e.g.*, Healthy People 2010)

g. Indication of whether the project is new or ongoing. (If ongoing, describe the prior work on this project.)

h. Detailed summary of the project:

(1) Background

(2) How the project furthers the field of prevention research

(3) Goals and objectives

(4) Proposed timeframe for the project

(5) Methods and measures

(6) Setting and context

(7) Study participants and recruitment strategy

(8) Intervention (if applicable)

(9) Expected outcomes and how the center intends to communication and disseminate these outcomes

i. Evidence of community participation in planning the core project. Describe how the center will collaborate with partners on refining and developing the research methodology, recruiting of research participants, and reporting and disseminating research findings.

j. Describe how the core research project is integrated into the centers five-year research agenda.

Communication/Dissemination Activities

An infrastructure of resources and personnel is required to support communication functions. These functions will help ensure that key research, dissemination, and managerial objectives are met. Applicants should have the capacity to (1) disseminate

research by making its findings, methods, and tools available; (2) keep stakeholders (*i.e.*, researchers, practitioners, community members, and policymakers) abreast of the center's accomplishments; and (3) account for the grant funds dispersed by producing products that reflect research progress and results. To assure that applicants have this capacity, applicants should, at a minimum, address the following:

1. Define and describe how the center's communication and dissemination activities will be integrated into the center's research agenda and activities as described in the logic model narrative. Show how the community's demographic and cultural profile will be taken into consideration. Describe how work with collaborators and other partners will extend the center's reach. Describe how the center intends to affect local, state, or national policy, and other potential outcomes through communication and dissemination efforts related to the research agenda.

2. Describe the methods the center will use to communicate and disseminate its products and other information. At a minimum address the following: a. Plans for publications and distribution of materials such as scientific papers, conference reports, newsletters, educational and training materials. b. Plans for meetings, personal interactions, and sharing of information with collaborators for the development of long-term partnerships. c. Plans for electronic dissemination of products and other information through the PRC Information System and any other means (*e.g.*, Web sites).

d. Plans for media releases and statements or the pursuit of opportunities for media coverage.

3. Describe the center's infrastructure of resources and personnel that will support the identified communication and dissemination activities. At a minimum, describe the following:

a. Ability to understand community-based research in public health and the constituent communities/stakeholders.

b. Ability to translate the content of the center's activities for different audiences.

c. Ability to participate in strategic communication planning and the setting of center-wide standards.

d. Access to personnel and resources as applicable for layout and design, Web site construction, photography, proofreading, other development and production activities, and the maintenance of the PRC Information System.

Infrastructure

An infrastructure of personnel and resources is required to support center functions and processes. This infrastructure will help ensure that adequate personnel, facilities, technology, and university support exist to accomplish the research agenda/activities described in the center's logic model narrative. Applicants should have the capacity to (1) recruit, hire, and retain faculty and staff having the expertise to implement center projects and activities; (2) acquire, manage, and maintain the communications and information systems necessary to operate a PRC; and (3) acquire and maintain university support for the center. To assure that applicants have this capacity, applicants should, at a minimum, address the following:

1. Provide an organizational chart for the center showing all organizational units and functions. The chart should also reflect the activities articulated in the center's logic model.

2. Describe the center's staffing and management plan. Describe each proposed position and discuss how the position provides the scientific and technical expertise needed to carry out both research and non-research activities. Describe the minimum criteria and the required expertise for each position. Describe the qualifications of the proposed staff. Describe how the proposed staff will interact with each other and with the university's leaders to accomplish the center's goals and objectives. This discussion should highlight the center's (a) leadership staff; (b) research staff; (c) evaluation staff; (d) communication and dissemination staff; (e) training staff; (f) information management staff; and (g) fiscal administration staff.

3. Describe how your center will be integrated within the university structure. Describe the facilities in which staff will work and how these facilities enhance the center's ability to complete the proposed activities.

4. Describe the center's plan to enhance its core capacity over the five-year period, including the commitment and capability to obtain the communication, information systems, and other tools necessary to accomplish goals and objectives (*i.e.*, computer equipment, telephones, facsimile machines, scanners, scientific software, etc.).

Training/Education

An infrastructure of resources and personnel is required to support training, technical assistance, or mentoring of practitioners, researchers, students, community members, and other partners, as applicable. Applicants should have the capacity to assess, plan, implement, and evaluate training, technical assistance or mentoring activities. Applicants, at a minimum, should address the following:

1. Describe the center's assets or needs assessment (past, current, or proposed) for training, technical assistance, or mentoring. Explain collaboration with partners in the assets or needs assessment.

2. Describe the center's five-year plan for providing training, technical assistance, or mentoring. This plan should include (a) goals and objectives, (b) partner collaboration, and (c) how the plan reflects the mission of the center and the assets or needs assessment described above. Describe how any lessons learned from prior training, technical assistance, or mentoring activities during the past five years will be applied to the proposed plan. Additionally, describe training facilities and resources (*e.g.*, ability to print materials, use video and computer equipment, and develop websites).

Budget Information

Provide a line-item budget and narrative justification for all requested costs that are consistent with the goals, objectives, and proposed research activities, to include the following:

1. Line-item breakdown and justification for all personnel, *i.e.*, name, position title, annual salary, percentage of time and effort, and amount requested.

2. Line-item breakdown and justification for all contractors and consultants, to include the following:

(a) Name of contractor or consultant

(b) Period of performance

(c) Method of selection (*e.g.*, competitive or sole source)

(d) Scope of work

(e) Method of accountability

(f) Itemized budget

3. To request direct assistance assignees, include:

(a) Number of assignees

(b) Description of the position and proposed duties for each assignee

(c) Justification of inability to hire locally with financial assistance

(d) Justification for request

(e) Name of intended supervisor

(f) Opportunities for training, education, and work experiences for assignees

(g) Description of assignee's access to computer equipment for communication with CDC (*e.g.*, personal computer and location, shared computer at on-site workstation, shared computer at central office).

G. Submission and Deadline

Letter of Intent (LOI) Submission:

First Round of Competition

On or before April 10, 2003, submit a signed original and two copies of the LOI to the Grants Management Specialist identified in the Where to Obtain Additional Information section.

Application Forms

Submit the signed original and two copies of the application PHS Form 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

First Round of Competition

The application must be received by 4 p.m. Eastern Time June 16, 2003. Submit the application to: Technical Information Management-PA# 04003, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, indicating that CDC has received the application.

Deadline

Letters of Intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends an application by the U.S. Postal Service or commercial delivery service must ensure that the carrier can guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent

The Letter of Intent will be evaluated against the eligibility criteria contained in the Eligible Applicants section of this Program Announcement.

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the objectives identified in the cooperative agreement. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be individually evaluated against the following criteria by an external peer review panel:

Evaluation (20 points)

1. To what extent does the applicant appropriately construct a center-level logic model and provide a narrative description of components of the logic model?
2. To what extent does the applicant sufficiently describe and justify how each component of the center's logic model relates to or differentiates from the national PRC Program conceptual framework?
3. To what extent does the applicant describe relevant evaluation experiences and expertise as it relates to conducting an evaluation of the applicant's center?
4. To what extent does the applicant adequately lay out a five-year evaluation plan for evaluating the critical components of the center's logic model, including the goals and questions?
5. How well does the applicant illustrate how the center's evaluation plan is related to the national PRC Program evaluation activities, which include annual reporting on national performance indicators?

Collaborations/Partnerships (20 points)

1. To what extent does the applicant adequately define and describe the primary community or communities that the center's activities serve?
2. To what extent does the applicant adequately describe the center's community committee, particularly its initial mission, roles, and composition and plans for developing or refining guidelines? Does the applicant provide letters of support or other evidence from these partners of active participation in this collaboration?
3. To what extent does the applicant appropriately describe the center's community committee relationship to the center's communication plan and the CDC PRC NCC?
4. To what extent does the applicant adequately describe the past and newly established partnerships, the roles of these partners, and the methods for establishing and maintaining the partnerships?
5. To what extent does the applicant adequately describe the proposed activities with the identified partners? Does the applicant provide letters of support or other evidence from these partners?

Research (20 points)

1. To what extent does the applicant provide sound evidence of having identified the health priorities and health disparities in the community? Were these priorities identified in collaboration with the center's partners?
2. To what extent has the applicant demonstrated success in conducting, evaluating, and publishing previous prevention research in the past five years? What percentage of these activities could be described as community-based participatory research?
3. To what extent does the applicant specify the goals and objectives for the center's five-year research agenda and relate this agenda to the center's mission?
4. To what extent does the applicant adequately describe the proposed core research project or projects? In particular, how appropriate is the description for the type of project, its linkage to the center's mission and priorities identified in the logic model, its linkage to HHS objectives, and its evidence of community participation in developing and conducting the project? To what extent are the research methods proposed of sound scientific quality and do they further the field of prevention research? To what extent is the core research project integrated into the center's five-year research agenda?

Items 5 and 6 must be addressed but these items will not be scored

5. To what extent does the applicant adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This component is not scored; however, an application can be disapproved if the perceived research risks are sufficiently serious and the protection against risks is so inadequate as to make the entire application unacceptable.
6. To what extent does the applicant adequately address the CDC policy requirements for the inclusion of women, ethnic, and racial groups in the proposed research? (See Attachment 1, AR–2 for more information). This policy

includes (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) the proposed justification when representation is limited or absent; (c) a statement as to whether the design of the study is adequate to measure differences when warranted; and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Communication/Dissemination (15 points)

1. To what extent are the applicant's described communications and dissemination activities integrated into the center's goals and objectives? Has the applicant adequately addressed the diversity or special needs of the community or subgroups and described how it will work with its partners. Does the applicant anticipate these activities will have an effect on local, state, or national policy, and other potential outcomes?

2. How well does the applicant describe the proposed methods for the center's communication and dissemination activities? To what extent can these methods help accomplish the center's goals and objectives?

3. To what extent will the applicant's described infrastructure of resources and personnel adequately help support the center's communication and dissemination activities?

Infrastructure (15 points)

1. Does the applicant provide an organizational chart? How well does the chart represent the center's activities? How well does the organizational structure facilitate the center's activities?

2. To what extent does the applicant describe the positions needed to accomplish the center's goals and objectives? How well does the applicant describe the staffing plan, and to what extent does the plan describe the experience, expertise, and percentage of effort required of the center's leadership, research, evaluation, communications, training, information management, and fiscal administration staff? Has the applicant explained how it will increase its capacity over time? Is the staffing plan adequate for the center to accomplish its proposed goals and objectives?

3. How well does the applicant describe the university's commitment to the center (*e.g.*, facilities, technological resources, etc.)? Is the university commitment adequate to establish and maintain an identity for the proposed center?

Training/Education (10 points)

1. To what extent does the applicant sufficiently describe and justify the center's assets or needs assessments for training, technical assistance, or mentoring activities?

2. To what extent does the applicant adequately lay out a five-year training, technical assistance, or mentoring plan, including how the plan reflects the mission of the center and the assets or needs assessment described above?

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Applicants will send all reports to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

In addition, the applicant will be responsible for submitting information on program performance through the PRC Information System. This will include, but is not limited to the following: (1) Providing information on all projects (*i.e.*, Core projects, special interest projects, and other funded projects) and products (*i.e.*, interim reports, publications, presentations, surveys, etc.); (2) providing semi-annual updates to the information contained in the system; and (3) collaborate with the national PRC Program on the continued development and improvement of the information system.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the program announcement, as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

See Appendix E for supplemental information about Research Integrity, Human Subjects Requirements, and Institutional Review Board policy.

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Lucy Picciolo, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2683, E-mail address: *LPicciolo@cdc.gov.*

For program technical assistance, contact: Robert Hancock, Project Officer, Prevention Research Centers Office, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, Northeast, MS K45, Atlanta, GA 30341–3724, Telephone: 770–488–5395, E-mail address: *RHancock@cdc.gov.*

Dated: March 20, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7315 Filed 3–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03029]

Intervention Research Grants To Promote the Health of People With Disabilities; Amendment

A notice announcing the availability of Fiscal Year (FY) 2003 funds for a grant program supporting intervention research to promote the health of people with disabilities was published in the **Federal Register**, March 10, 2003, Volume 68, Number 46, pages 11395–

11399. The notice is amended as follows: Page 11395, Section D. Funding, delete paragraph two.

Dated: March 21, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–7316 Filed 3–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10042, CMS–10081, CMS–843, CMS–841, 842, 844–853, CMS–484, and CMS–R–13]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as 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.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Part A Provider and Durable Medical Equipment Supplier Satisfaction Study; *Form No.:* CMS–10042 (OMB# 0938–NEW); *Use:* This is a request for clearance of a survey questionnaire to conduct a standardized random sample of Part A providers' and DME suppliers' satisfaction of their experience with their Medicare contractor's performance in its administration of the Medicare-fee-for-service program. The purpose of this study is to develop a baseline measure of providers' and suppliers' satisfaction with Medicare contractors by administering a survey to 15,000 providers and suppliers, 5,000 serviced by each of the following contractors: Connecticut General Life Insurance Company (CIGNA)–D, Palmetto Government Business Administrators (PBGA)–D, and United Government Services, LLC (UGS)-Part A. The data collected will be interpreted to produce indicators of the contractor's quality of performance.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 4,500; *Total Annual Responses:* 4,500; *Total Annual Hours:* 1,125.

2. *Type of Information Request:* New Collection; *Title of Information Collection:* Data Collection for Administering the Survey for the Evaluation of the Demonstration to Maintain Independence and Employment (DMIE); *Form No.:* CMS–10081 (OMB# 0938–NEW); *Use:* The DMIE Programs, funded by CMS under Title II of the Federal Ticket to Work Legislation, provide Medicaid coverage to low-income working populations, The Survey Evaluation is designed to assess the impact of the Mississippi DMIE program on access to care, health status and quality of life, workforce participation, etc.; *Frequency:* Annually; *Affected Public:* Individuals or Households, and State, Local or Tribal Govt.; *Number of Respondents:* 928; *Total Annual Responses:* 928; *Total Annual Hours:* 253.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medicare Equipment Regional Carrier, Certificate of Medical Necessity and Supporting Documentation Requirements ; *Form No.:* CMS–843 (OMB# 0938–0875); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms contain medical information and supporting documentation necessary to make appropriate claims determinations. Suppliers and physicians will complete these forms and as needed supply additional routine supporting documentation necessary to process claims; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Federal Government, Not-for-profit institutions; *Number of Respondents:* 2,700; *Total Annual Responses:* 141,900; *Total Annual Hours:* 30,100.

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medical Equipment Regional Carrier, Certificate of Medical Necessity and Supporting Documentation Requirements; *Form No.:* CMS–841, 842, 844–853 (OMB# 0938–0679); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms and supporting documentation contain medical information necessary to make appropriate claims determinations. Suppliers and physicians will complete these forms and as needed supply additional routine supporting documentation necessary to process claims; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government; *Number of Respondents:* 137,300; *Total Annual Responses:* 6.7 million; *Total Annual Hours:* 1.53 million.

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Regulations 42 CFR 410.38 and 42 CFR 424.5; *Form No.:* 0938–0534 (CMS–484); *Use:* This form is used to determine if oxygen is reasonable and necessary pursuant to Medicare Statute; Medicare claims for home oxygen therapy must be supported by the treating physician's statement and other information including estimate length of need (# of months), diagnosis codes (ICD–9) etc.; *Frequency:* As needed; *Affected Public:* Business of other for-profit; *Number of Respondents:* 175,000; *Total Annual Responses:* 700,000; *Total Annual Hours:* 116,000.

6. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection; *Title of Information Collection:* Conditions of Coverage for Organ Procurement (OPOs) and Supporting Regulations in 42 CFR, Section 486.301-.325); *Form No.:* CMS–R–13 (0938–0688); *Use:* OPOs are required to submit accurate data to CMS concerning population and information on donors and organs on an annual basis in order to assure maximum effectiveness in the procurement and distribution of organs.; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 59; *Total Annual Responses:* 59; *Total Annual Hours:* 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS

document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 20, 2003.

Dawn Willinghan,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–7305 Filed 3–26–03; 8:45 am]

BILLING CODE 4210–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–901 and CMS–3070]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as 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.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Qualification Application: Medicare+Choice Application for HMOs, PPOs, and State Licensed PSOs; Medicare+Choice Application for Federally Waived PSOs; Medicare+Choice Application for Medicare Savings Account Entitities; Medicare+Choice Application for Private Fee-for-Service Plans.; *Form No.:* CMS–901 (OMB# 0938–0470); *Use:* Prepaid health plans must meet certain regulatory requirements to be federally qualified health maintenance organizations or to enter into a contract with CMS to provide health benefits to Medicare beneficiaries. The application is the collection form to obtain the information from a health plan that will allow CMS staff to determine compliance with the regulations.; *Frequency:* Other: One-time submission.; *Affected Public:* Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government; *Number of Respondents:* 55; *Total Annual Responses:* 55; *Total Annual Hours:* 5,500.

2. *Type of Information Collection Request:* Extension of a previously approved collection; *Title of Information Collection:* Intermediate Care Facility for the Mentally Retarded or Persons with Related Conditions ICF/MR Survey Report Form (3070G–I) and Supporting Regulations at 42CFR 431.52, 431.151, 435.1009, 440.150, 440.220, 442.1, 442.10–442.16, 442 .30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, and 498.3–498.5; *Form No.:* CMS–3070 (0938–0062); *Use:* The survey forms are needed to ensure provider compliance. In order to participate in the Medicaid program as an ICF/MR, a providers must meet Federal standards. The survey report form is used to record providers' level of compliance with the individual standard and report it to the Federal government. We are considering revising this collection to properly reflect the burden imposed by implementing regulations; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,763; *Total Annual Responses:* 6,763; *Total Annual Hours:* 21,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 20, 2003.

Dawn Willinghan,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–7306 Filed 3–26–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0063]

Medical Devices: Guidance for Industry and FDA: Fiscal Year 2003 Medical Device User Fee and Modernization Act of 2002 Small Business Qualification Worksheet and Certification; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''FY 2003 MDUFMA Small Business Qualification Worksheet and Certification.'' This guidance explains how you can certify that you qualify as a ''small business'' within the meaning of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) and provides a copy of, and instructions for, Form FDA 3602, ''FY 2003 MDUFMA Small Business Qualification Certification.'' If FDA decides that you are a small business, you will be eligible for reduced or waived small business fees for medical device applications that you submit from October 1, 2002, through September 30, 2003.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''FY 2003 MDUFMA Small Business Qualification Worksheet and Certification'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and

Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cardamone, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–0806, ext. 117.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is providing guidance on how you may qualify as a ''small business'' within the meaning of MDUFMA. MDUFMA requires FDA to collect a user fee from each person who submits certain medical device applications for FDA review. MDUFMA user fees range from $2,187 to $154,000, depending on the type of application. The fees for fiscal year (FY) 2003 are summarized in table 1 of this document. A ''small business'' is eligible for reduced or waived fees.

To qualify as a small business, your ''gross receipts or sales,'' including that of all of your affiliates, partners, and parent firms, cannot exceed $30 million. See section 738(d)(2)(A)(i) and (e)(2)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379j(d)(2)(A)(i) and (e)(2)(A)). When you submit an application that is subject to a MDUFMA user fee, you must pay the standard fee unless you have provided information to FDA that demonstrates that you are a small business.

TABLE 1.—FY 2003 MEDICAL DEVICE REVIEW USER FEES[1]

Application	Standard Fee	Small Business
Premarket application (PMA[1], PDP[1], BLA[1])	$154,000	$58,520
Premarket report (premarket application for a reprocessed single-use device)	$154,000	$58,520
First premarket application by a small business	Not applicable	Fee is waived
Panel-track supplement	$154,000	$58,520
Efficacy supplement	$154,000	$58,520
180-day supplement	$33,100	$12,582
Real-time supplement	$11,088	$4,213
510(k)	$2,187	$2,187[2]

[1]PMA means premarket approval applications, PDP means product development protocol, and BLA means biologics license application
[2]During FY 2003, all 510(k) applicants will pay the standard fee. A reduced small business fee will be available beginning FY 2004.

FDA is making this guidance effective immediately because there is a statutory requirement that requires immediate implementation and guidance is needed to help effect such implementation. As soon as Congress enacts an appropriation authorizing FDA to collect and spend MDUFMA user fees, we will begin to collect those fees. You must pay the full standard fee unless you demonstrate you are a small business (section 738(d)(2)(B) and (e)(2)(B) of the act). You will pay a fee for each application you submit on or after October 1, 2002, if that application is subject to a fee. If you do not pay a fee when MDUFMA requires you to do so, FDA will not file or review your application.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on small entities and MDUFMA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

You may obtain a copy of ''FY 2003 MDUFMA Small Business Qualification Worksheet and Certification'' via your fax machine by calling the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to enter the system. At the second voice prompt press 1 to order a document, then enter the document number (1204) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

You may also obtain a copy of the guidance through the Internet. FDA provides this guidance and additional information on MDUFMA at http://www.fda.gov/oc/mdufma. FDA periodically updates this site to provide you the most current information and guidance concerning the MDUFMA program.

IV. Paperwork Reduction Act

This draft guidance contains a collection of information that requires clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

V. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Electronic comments may be submitted at http://www.fda.gov/dockets/ecomments. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–7374 Filed 3–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Pursuant to 28 CFR 507 notice is hereby given that on March 6, 2003, a proposed Consent Decree in *United States* v. *Archer Daniels, et al.* Civil Action No. 03–CV–1593WJR was lodged with the United States District Court for the Central District of California.

In this action, under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, the United States sought injunctive relief and recovery of response costs to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Waste Disposal, Inc. Superfund Site in Santa Fe Springs, California (hereinafter referred to as the ''Site'').

The defendants in this action are as follows: Archer Daniels Midland Company; Atlantic Oil Company; Atlantic Richfield Company; Chevron USA, Inc.; Conoco, Inc.; Conopco, Inc.; Dilo, Inc.; Exxon Mobil Corporation; Ferro Corporation; FMC Technologies, Inc. (successor in interest to FMC Corporation); Global Santa Fe Corporation; Halliburton Energy Services, Inc.; McDonnell Douglas Corporation; Shell Oil Company; Texaco, Inc.; Union Pacific Railroad Company; and Union Oil Company of California (Hereinafter referred to collectively as ''the Settlors'')

Under this settlement, the Settlors, which arranged for the disposal of hazardous substances at the Site, have agreed to perform the remedy chosen by EPA to clean up the Site, and pay $1,250,000 of the past response costs of the United States, and pay all of the future response costs of the United States to be incurred at the Site.

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, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Archer Daniels, et al.,* D.J. Ref. 90–11–2–1000. At the Consent Decree includes a covenant not to sue under section 7003 of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at U.S. EPA Region IV, 75 Hawthorne Street, San Francisco, CA 94107. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $112.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $28.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 03–7294 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with CERCLA section 122(d)(2), 42 U.S.C. 9622(d)(2), and Departmental policy in 28 CFR 50.7, notice is hereby given that on March 7, 2003, two proposed Consent Decrees in *United States* v. *GPU, Inc.,* et al, consolidated Civil Action Nos. 96–338, and 97–468, were lodged with the United States District Court for the District of Delaware.

In this action, the United States sought: implementation of a unilateral administrative order issued by the U.S. Environmental Protection Agency (''EPA''), civil penalties for failure to comply with that order, and recovery of environmental response costs incurred and to be incurred by the United States, all in connection with the Dover Gas Light Superfund Site, located in Dover, Delaware (''Site''). The first Consent Decree requires General Public Utilities, Inc. (''GPU''), now known as FirstEnergy, to pay $700,000 in response costs, pay a civil penalty of $100,000, perform environmental studies near the Site, and in conjunction with co-plaintiff Chesapeake Utilities Corporation, pay EPA $1,700,000 for any groundwater remedy that may be implemented in the future. A second Consent Decree resolves claims against the State of Delaware. The State of Delaware is required to pay $1,000,000, for reimbursement of response costs incurred by EPA and Chesapeake Utilities, and to perform maintenance work at the Site.

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, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *GPU,* et al., D.J. Ref. # 90–11–2–1055. The Consent Decrees may be examined at the Office of the United States Attorney, c/o Patricia Hannigan, Assistant United States Attorney, 1201 Market Street, Wilmington, DE 19801, and at U.S. EPA Region III, c/o Patricia Miller, Senior Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decrees may be examined on the DOJ Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decrees may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.00 for the *U.S.* v. *Delaware* Consent Decree, and $40.00 for the *U.S.* v. *GPU* Consent Decree (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy of the FirstEnergy Consent Decree exclusive of exhibits and Defendants' signatures, please enclose a check in the amount of $22.25 payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–7295 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation of Settlement and Judgment

Notice is hereby given that on March 14, 2003, a proposed Stipulation of Settlement and Judgment (''Stipulation'') in *United States of America and State of Louisiana* v. *Marine Shale Processors, Inc., et al.*, Civil Action No CV–90–1240, was lodged with the United States District Court for the Western District of Louisiana.

In this action, the United States and the State of Louisiana sought civil penalties and injunctive relief for violation of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and certain laws of the State of Louisiana, and recovery of response costs under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, with respect to the Marine Shale Processors, Inc. (''MSP''), and Recycling Park, Inc. (''RPI''), facilities located in or near Amelia, Louisiana. The Stipulation provides for payment of all funds on deposit in the registry of the Court to the Secretary of the Louisiana Department of Environmental Quality (''Secretary''), for deposit by the Secretary in an escrow account, pursuant to La. R.S. 30:2031 B, and expenditure solely for closure and remediation of contamination at the MSP Facility and/or the RPI Facility. The balance of the funds in the Court Registry totaled $5,876,008.11 as of December 5, 2002. The Stipulation also orders MSP to pay the following civil penalties: (1) $3 million for violations of the Resource Conservation and Recovery Act and the Louisiana Hazardous Waste Control Law, to be apportioned 50% to the United States and 50% to the State of Louisiana; (2) $1.2 million for violations of the Clean Air Act, to be apportioned 50% to the United States and 50% to the State of Louisiana; and (3) $1,676,008.11 for violations of the Clean Water Act, to be paid in its entirety to the United States. The Stipulation also contains restrictions on the future participation of John M. Kent, Sr. (''Kent, Sr.''), in the waste handling and recycling businesses, requires MSP, RPI and Kent, Sr., to provide access to the MSP and RPI Facilities for the purposes of investigation and cleanup, and provides the United States, the State of Louisiana and Kent, Sr., releases and covenants not to sue regarding specified matters.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Stipulation and Letter. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America and State of Louisiana* v. *Marine Shale Processors, Inc., et al.*, D.J. Ref. 90–11–2–204. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Stipulation and Letter may be examined at the Office of the United States Attorney, Western District of Louisiana, 705 Jefferson Street, Lafayette, Louisiana 70501, and at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75201. During the public comment period, the Stipulation and Letter, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Stipulation and Letter may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–7292 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on March 7, 2003, a proposed Consent Decree in *United States* v. *Toyota Motor Corporation, et al.,* Civil Action No. 99–1888, was lodged with the United States District Court for the District of Columbia.

In this action the United States sought civil penalties and injunctive relief for the alleged failure by Toyota to disclose in its applications for certificates of conformity certain limitations in the operation of that part of its vehicles' on-board diagnostic system that checks for leaks in the vehicles' evaporative emission control system. The allegations concern approximately 2.2 million model year 1996 to 1998 Toyota vehicles. Under the proposed Consent Decree, Toyota will: (a) Extend the warranty on the evaporative emission control systems in the 2.2 million affected vehicles from the current two years or 24,000 miles to 14 years or 150,000 miles; (b) accelerate the timetable on which it will certify to EPA and introduce vehicles in the United States that comply with the EPA near-zero evaporative emissions standards specified in 40 CFR 86.1811–04(e); (c) pay a $500,000 civil penalty; and (d) implement a supplemental environmental project, at a cost of $20 million, that comprises the retrofit of in-service diesel fleet vehicles with emissions control equipment in order to reduce particulate and hydrocarbon emissions from such vehicles and the procurement of ultra low-sulfur diesel fuel for use in the retrofitted diesel vehicles.

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, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Toyota Motor Corporation, et al.,* D.J. Ref. 90–5–2–1–2247.

The Consent Decree may be examined at the Office of the United States Attorney, 555 4th Street, NW., Room 10–120, Washington, DC 20001, and at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per

page reproduction cost) payable to the U.S. Treasury.

Karen Dworkin,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–7293 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Gemstar-TV Guide International, Inc. & TV Guide, Inc.

Proposed Final Judgment and Competitive Impact Statement. Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. sections 16(b) through (h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Gemstar-TV Guide International, Inc.,* Civil Action No. 03 CV 000198. On February 6, 2003, the United States filed a Complaint alleging that TV Guide, Inc. and Gemstar International Group Ltd. violated section 1 of the Sherman Act (15 U.S.C. 1) and section 7a of the Clayton Act (15 U.S.C. 18a), commonly known as the Hart-Scott-Rodino (''HSR'') Act. The complaint alleges that, prior to the consummation of their merger, the Defendants entered into agreements not to compete, to fix prices and to allocate markets and customers, in violation of the Sherman Act. The complaint also alleges that the Defendants effectively merged their decision-making processes and transferred substantial control over their businesses in violation of the Clayton Act, which prohibits certain asset acquisitions until the expiration or termination of statutory waiting periods. The proposed Final Judgment, filed the same time as the Complaint, enjoins the Defendants from engaging in similar conduct and requires the Defendants to allow rescission of certain contracts entered into during the period before they consummated their merger. The proposed Final Judgment also requires the Defendants to pay a civil penalty of $5,676,000 to resolve the HSR Act violation. The civil penalty component of the proposed Final Judgment is not open to pubic comment. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., on the Internet at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 7th St., NW., Suite 300, Washington, DC 20530, (telephone: (202) 616–5935).

Constance K. Robinson,

Director of Operations.

[Civil Action No. 03 0198]

Stipulation and Order

It is hereby stipulated by and between the undersigned parties, through their respective counsel, as follows:

1. The Court has jurisdiction over the subject matter of plaintiff's Complaint alleging defendants Gemstar-TV Guide International, Inc. (''GTV'') and TV Guide, Inc. (''TV Guide'') violated section 1 of the Sherman Act (15 U.S.C. 1) and section 7A of the Clayton Act (15 U.S.C. 18(a)), and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia. The defendants authorize David T. Beddow, Esq. of O'Melveny & Meyers LLP to accept service of all process in this matter on their behalf.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. GTV and TV Guide shall abide by and comply with the provisions of the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that Plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. The parties' execution of this Stipulation and entry of the Final Judgment settles, discharges, and releases any and all claims of the plaintiff for civil penalties against:

(a) Defendant GTV, its directors, officers, employees, and agents, under § 7A of the Clayton Act, 15 U.S.C. 18(a), arising from the acquisition of TV Guide by GTV; and

(b) Defendant TV Guide, its directors, officers, employees and agents, under § 7A of the Clayton Act, 15 U.S.C. 18(a), arising from the acquisition of TV Guide by GTV.

Respectfully submitted, for Plaintiff United States of America.

Robert Faulkner (D.C. Bar No. 430163),

U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530, Tel: (202) 514–0259, Fax: (202) 307–9952.

Dated: February 6, 2003.

For Defendants Gemstar-TV Guide International, Inc. and TV Guide, Inc.

David T. Beddow (D.C. Bar No. 288514),

O'Melveny & Myers LLP, 555 Thirteenth Street, NW., Washington, DC 20004–1109, Tel: (202) 383–5362, Fax: (202) 383–5414.

Order

The Court having considered the parties' Joint Motion for Entry of Stipulation and Order, and upon consent of the parties.

It is hereby ordered that defendants shall abide by and comply with all terms and provisions of the proposed Final Judgment pending compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Parties Entitled To Notice of Entry of Order

Counsel for the United States

James R. Wade, Robert Faulkner, U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530, Tel: (202) 514–0259, Fax: (202) 307–9952.

Counsel for Gemstar-TV Guide International, Inc. and TV Guide, Inc.

David T. Beddow, Esq., O'Melveny & Myers LLP, 555 Thirteenth Street, NW., Washington, DC 20004–1109, Tel: (202) 383–5362, Fax: (202) 383–5414.

Final Judgment

Whereas, plaintiff United States of America filed its Complaint on February 6, 2003, alleging that defendants Gemstar-TV Guide International, Inc. (''GTV'') and TV Guide, Inc. (''TV Guide'') violated section 1 of the Sherman Act, 15 U.S.C. 1, and section 7A of the Clayton Act, 15 U.S.C. 18a, and plaintiff and defendants, by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by, any party regarding such issue of fact or law;

And whereas, defendants agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against defendants under section 1 of the Sherman Act (15 U.S.C. 1) and section 7A of the Clayton Act (15 U.S.C. 18a).

II. Definitions

As used in this Final Judgment:

A. ''Agreement'' and its variants means any agreement, mutual understanding or mutual plan, written or unwritten.

B. ''Competing Product'' means (i) any product, service or technology offered for sale, license or distribution by any defendant that is primarily used for the same purpose as any product, service or technology offered for sale, license or distribution by any other party to a proposed transaction with any defendant, or (ii) any product, service or technology offered for sale, license or distribution by any other party to a proposed transaction with any defendant that is primarily used for the same purpose as any product, service or technology offered for sale, license or distribution by any defendant.

C. ''Defendants'' means Gemstar-TV Guide International, Inc. and TV Guide, Inc.

D. ''Interactive Program Guide,'' or ''IPG,'' means the software and/or technology that allows television viewers to access and organize programming information on their television screens and then view a channel corresponding to a selected program.

E. ''IPG Agreement'' means any agreement to provide or license IPGs.

F. ''Negotiation And Interim Period'' means the period between the commencement of negotiations with respect to an offer to enter into an Agreement, and the date when negotiations are abandoned or when any resulting Agreement is consummated or abandoned.

G. ''Person'' means any individual, partnership, firm, corporation, association or other legal or business entity.

H. ''Pre-consummation Period'' means the period of time between the signing of an Agreement for a transaction that is reportable under section 7A of the Clayton Act and the rules, regulations and interpretations implementing section 7A, and the earlier of the expiration or termination of the waiting period under section 7A or the closing or abandonment of the reportable transaction.

III. Applicability

This Final Judgment applies to Defendants, including each of their directors, officers, managers, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited and Required Conduct

A. When any Defendant has entered into a transaction that is reportable under section 7A of the Clayton Act, and the rules, regulations and interpretations implementing section 7A, the Defendants are enjoined and restrained from entering into any Agreement with any other party to the transaction that would, during the Pre-consummation Period, combine, merge, or transfer (in whole or in part) any operational or decision-making control over the marketing or distribution of any to-be-acquired product, service or technology.

B. During the Negotiation And Interim Period of any contemplated Agreement to acquire any voting securities or assets, form a joint venture, settle litigation, or license intellectual property, with any person offering a Competing Product, Defendants are enjoined and restrained from:

1. Entering into any Agreement with that Person to fix, raise, set, stabilize or otherwise establish price or output for any Competing Product offered during the Negotiation And Interim Period;

2. Entering into any Agreement with that Person to delay or suspend during the Negotiation And Interim Period sales efforts with respect to any Competing Product;

3. Entering into any Agreement with that person to allocate any markets or customers during the Negotiation And Interim Period with respect to any Competing Product; or

4. Disclosing or seeking the disclosure of information about current or future prices for, information or projections relating to future prices of, or contract offers related to Competing Products, except as such disclosures may be permitted in subsection V. D., or to the extent that such information is publicly available at the time disclosure occurs.

C. For a period of nine (9) months following the date that this Final Judgment is filed pursuant to 15 U.S.C 16(b), each Defendant shall permit the following service providers, each of which entered into an IPG Agreement with TV Guide between June 10, 1999, and July 12, 2000, or their successors, to terminate, without penalty, said IPG Agreements:

Cameron Communications (Carlyss, LA), Millennium Telcom, LLC (Keller, TX), Sweetwater Cable TV Co., Inc. (Rock Springs, WY), Coast Communications Co. (Ocean Shores, WA), Florida Cable, Inc. (Astor, FL), Pioneer Communications (Ulysses, KA), Standard Tobacco Co. (Maysville, KY), Pine Tree Cablevision (Wayne, PA).

Such termination shall be at the sole option of these service providers, or their successors. GTV or TV Guide shall, within twenty (20) days of the date that this Final Judgment is filed pursuant to 15 U.S.C. 16(b), distribute to each such service provider, or its successor, a letter containing the notice set forth in Exhibit A.

V. Permitted Conduct

Nothing in this Final Judgment shall prohibit Defendants from:

A. agreeing that a party to a transaction shall continue to operate in

the ordinary course of business during the Pre-consummation Period:

B. agreeing that a party to a transaction forego conduct that would cause a material adverse change in the value of to-be acquired assets during the Pre-consummation Period;

C. including a nonexclusive field of use restriction, or reaching an Agreement for a royalty fee, in any intellectual property license Agreement;

D. before closing or abandoning a transaction, conducting or participating in reasonable and customary due diligence, provide however, that no disclosure covered by subsection IV(B)(4) shall be permitted unless (1) the information is reasonably related to a party's understanding of future earnings and prospects; and (2) the disclosure occurs pursuant to a non-disclosure agreement that (a) limits use of the information to conducting due diligence and (b) prohibits disclosure of any such information to any employee of the person receiving the information who is directly responsible for the marketing, pricing or sales of the Competing Product(s); or

E. disclosing confidential business information related to Competing Products, subject to a protective order, in the context of litigation or settlement discussions.

IV. Compliance

A. GTV shall maintain an antitrust compliance program which shall include designating, within thirty (30) days of entry of this order, an Antitrust Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, or a continuing basis, supervise the review of current and proposed activities to ensure compliance with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(1) distributing within forty-five (45) days of entry of this Final Judgment, a copy of this Final Judgment to each current officer and director, and each employee, agent or other person who has responsibility for or authority over mergers and acquisitions;

(2) distributing in a timely manner a copy of this Final Judgment to any officer, director, employee or agent who succeeds to a position described in Section VI(A)(1);

(3) obtaining within sixty (60) days from the entry of this Final Judgment, and annually thereafter, and retaining for the duration of this Final Judgment, a written certification from each person designated in Sections VI(A)(1) & (2) that he or she: (a) Has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment; and

(4) providing a copy of this Final Judgment to each merger partner before the initial exchange of a letter of intent, definitive agreement or other agreement of merger.

B. Within sixty (60) days of entry of this Final Judgment, GTV shall certify to Plaintiff that it has (1) designated an Antitrust Compliance Officer, specifying his or her name, business address and telephone number; and (2) distributed the Final Judgment in accordance with Section VI(A)(1).

C. For the term of this Final Judgment, on or before its anniversary date, GTV shall file with Plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections IV and VI.

D. If any GTV director or officer or the Antitrust Compliance Officer learns of any violation of this Final Judgment, GTV shall within three (3) business days take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment, and shall notify the Plaintiff of any such violation within ten (10) business days.

VII. Plaintiff's Access and Inspection

A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to GTV, be permitted: (1) Access during GTV's office hours to inspect and copy or at Plaintiff's option, to require GTV to provide copies of all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, GTV's directors, officers, employees, agents or other persons, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by GTV.

B. Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, GTV shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the Plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by GTV to Plaintiff, GTV represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and GTV marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which GTV is not a party.

VIII. Civil Penalty

Judgment is hereby entered in this matter in favor of Plaintiff, United States of America, and against defendants, GTV and TV Guide, and, pursuant to section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), and Federal Trade Commission Rule 1.98, 16 CFR § 1.98, 61 FR 54549 (Oct. 21. 1996), defendants are hereby ordered jointly and severally to pay a civil penalty in the amount of five million, six hundred and seventy-six thousand United States dollars (U.S. $5,676,000). Payment shall be made by wire transfer of funds to the United States Treasury through the Treasury Financial Communications System or by cashier's check made payable to the Treasurer of the United States and delivered to Chief, FOIA Unit, Antitrust Division. Department of Justice, Liberty Place, 325 7th Street, NW., Suite 200, Washington, DC 20530. Defendants shall pay the full amount of the civil penalties within thirty (30) days of the entry of this Final Judgment. In the event of a default in payment, a reasonable interest rate shall accrue thereon from the date of default to the date of payment. The portion of the Final Judgment requiring the payment of civil penalties for violation of section

7A of the Clayton Act is not subject to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h)).

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

X. Expiration of Final Judgment

Unless extended by this Court, this Final Judgment shall expire ten years from the date of its entry.

XI. Costs

Each party shall bear its own costs of this action.

XII. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Exhibit A

Notification of Available Option to Rescind Certain Contracts

Gemstar-TV Guide, International Inc. and TV Guide, Inc. (''TV Guide'') (collectively ''Gemstar'') have consented to the entry of the attached proposed Final Judgment to resolve a civil suit brought by the Antitrust Division of the Department of Justice. Under the proposed Final Judgment, Gemstar is required to permit your company to terminate, without penalty, the IPG agreement your company entered into with TV Guide between June 10, 1999 and July 12, 2000. Your company has the sole option to terminate its agreement with Gemstar so long as it makes its election no later than nine calendar months after February 6, 2003, which is the date that the proposed Final Judgment was filed with the Court. Please note that your option to terminate begins immediately and does not require final entry of the proposed Final Judgment.

You may exercise this option to terminate the contract by sending a letter to that effect to Gemstar at the following address:

Stephen H. Kay, Esq., General Counsel, Gemstar-TV Guide International, Inc., 135 North Los Robles Avenue, Suite 800, Pasadena, CA 91101.

Please contact Stephen H. Kay, Esq. at Gemstar 626–792–5700 if you need more information.

[Civil Action No. 03 CV 000198, Filed: March 19, 2003]

Competitive Impact Statement

The United States, pursuant to the Antitrust Process and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement to set forth the information necessary to enable the Court and the public to evaluate the proposed Final Judgment that would terminate this civil antitrust proceeding.[1]

I. Nature and Purpose of This Proceeding

On February 6, 2003, the United States filed a four-count Complaint against Gemstar-TV Guide International, Inc. (''GTV'') and its subsidiary TV Guide, Inc. (''TV Guide'') related to the conduct of GTV's predecessor Gemstar International Group, Ltd. (''Gemstar'') and TV Guide before July 2000, when Gemstar and TV Guide were competitors in the provision of interactive program guides, or ''IPGs,'' to cable, satellite and other multi-channel subscription television service providers (''service providers'').

The Complaint alleges that the Defendants entered into various agreements to fix prices and to allocate markets and customers, and that they began jointly conducting their IPG business, eliminating competition between them in violation of section 1 of the Sherman Act. 15 U.S.C. 1. Specifically, the Complaint alleges that, in June 1999, as Gemstar and TV Guide began the negotiations that would ultimately result in a merger agreement, they agreed that they would ''slow roll'' (*i.e.,* delay on-going contract negotiations with) certain customers. Upon agreeing to merge in October 1999, Gemstar and TV Guide also agreed that Gemstar would phase out its IPG marketing operations to service providers and that they would allocate specific customers between them. Additionally, Gemstar and TV Guide agreed on the prices and material terms that TV Guide would offer to service providers before consummating the proposed merger.

The Complaint also alleges that the Defendants violated section 7A of the Clayton Act, 15 U.S.C. 18a, which requires certain acquiring and acquired parties to file pre-acquisition Notification and Report Forms with the Department of Justice (''DOJ'') and the Federal Trade Commission (''FTC'') and to observe a statutorily mandated waiting period before consummating the acquisition. The fundamental purpose of the waiting period is to prevent the merging parties from combining during the pendency of an antitrust review and to maintain their identity as separate and independent actors.

In October 1999, Gemstar and TV Guide executed a merger agreement that required the filing of the Notification and Report Forms under section 7A of the Clayton Act. Rather then wait for the expiration of the statutory waiting period, however, Gemstar and TV Guide merged most of their IPG decision-making processes, transferred control over important assets, and acted jointly on numerous business decisions.

The Complaint seeks an adjudication that the Defendants' agreements violate section 1 of the Sherman Act, such other relief as the Court deems appropriate, and a civil penalty for violation of section 7A of the Clayton Act.

The United States and the Defendants have reached a proposed settlement that eliminates the need for a trial in this case. The proposed Final Judgment remedies the Sherman Act violations by enjoining the Defendants from reaching similar anticompetitive agreements with competitors. The proposed Final Judgment also provides that customers that signed IPG agreements with TV Guide between June 10, 1999, and July 12, 2000, may elect to terminate their contracts within nine months of filing of this proposed Final Judgment.

To resolve the Clayton Act violation, the proposed Final Judgment prohibits the Defendants, during the period between executing an agreement subject to section 7A and the expiration of the statutory waiting period, from entering into any agreement with the other contracting parties to combine, merge, or transfer, in whole or in part, any operational or decision-making control over the marketing or distribution of any to-be-acquired product, service, or technology. In addition, GTV has agreed to pay a civil penalty of $5,676,000, which is the maximum civil penalty available to address the section 7A violation.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered into after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or

[1] On February 6, 2003, the United States filed a civil Complaint, a Stipulation and Order, a proposed Final Judgment, and a Momorandum Regarding Procedures for Entering Judgments. As set forth in the Memorandum, the proposed Final Judgment would settle this case pursuant to the APPA, which applies to civil antitrust cases brought and settled by the United States. The APPA requires that the United States file a competitive impact statement in such proceedings. 15 U.S.C. 16(b).

enforce the provisions of the proposed Final Judgment and punish violations thereof. Entry of this judgment would not constitute evidence against, or an admission by, any party with respect to any issue of fact or law involved in the case and is conditioned upon the Court's finding that entry is in the public interest.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and Their Merger

GTV is a Delaware corporation with its principal place of business in Pasadena, California. GTV is, as was its predecessor Gemstar, an international media and communications company that, among other things, develops, markets, and support interactive program guides (''IPGs'') and IPG technology to providers of multi-channel subscription television services (''service providers'') as well as to manufacturers of consumer electronics (''CE'') hardware, such as televisions and video cassette recorders. An IPG is a software application that allows television viewers to display and sort program listings on the TV screen.

TV Guide is a Delaware corporation with its principal place of business in Tulsa, Oklahoma. TV Guide is a leading provider of IPGs to service providers. In addition to its sales of IPGs, TV Guide offers several other television guidance products, including the TV Guide magazine.

In Spring 1999, Gemstar and TV Guide were negotiating a settlement of pending patent infringement and antitrust litigation. By June 1999, settlement discussions focused on the possible formation of a joint venture through which Gemstar and TV Guide would jointly market IPGs to service providers. By early August, the parties found that they could not reach final agreement on the proposed joint venture. By August 12, 1999, negotiations between Gemstar and TV Guide had shifted to the possibility of merging or entering into a cross-license agreement.

On October 4, 1999, Gemstar and TV Guide announced an agreement to merge, pursuant to which Gemstar would acquire substantially all of the outstanding TV Guide stock and the two companies would form a new entity. They also entered into an optional agreement to cross-license their patents (the ''Back-Up Cross License''). The Back-Up Cross License would take effect only if the merger failed to close by a certain date and if TV Guide, at its sole option, elected to trigger the agreement.

Gemstar and TV Guide filed the pre-acquisition Notification and Report forms required by section 7A of the Clayton Act in November 1999. After reviewing the parties' filings, the DOJ opened an investigation into the competitive effects of the proposed transaction. The mandatory statutory waiting period expired on June 19, 2000, although the parties voluntarily extended the time for the DOJ to conduct its investigation.

The DOJ ultimately did not file a Complaint seeking to enjoin the merger, and the parties consummated their agreement to merge on or about July 12, 2000. TV Guide is now a wholly owned subsidiary of GTV.

B. Competition in the Relevant Product Markets

A relevant product market defines the boundaries within which competition meaningfully exists. In this instance, one relevant product market consists of the provision of IPGs to service providers for use in providing digital cable and satellite television services in the United States. Service providers offer their subscribers multi-channel packages of television programming. The adoption of digital transmission allowed these providers to offer hundreds of programming options. Service providers considered an IPG—which allows the viewer to sort through these options—a navigational tool for which there was no realistic substitute.

Another relevant market is the market for providing IPGs to cable television service providers with systems committed to the GI/Motorola digital technology platform. In this context, a ''platform'' consists of hardware installed at various points in the cable television system, including digital set-top boxes deployed in television viewers' homes. Once a service provider has committed a system to a particular platform, it can only use IPGs that are compatible with the chosen platform on that system.

The relevant geographic market is the United States, given the need for close technical cooperation and support between IPG providers and U.S.-based set-top box manufacturers, service providers, and software companies.

Gemstar and TV Guide were direct competitors in these markets. Indeed, during the relevant 1999–2000 period, Gemstar and TV Guide were the only two established providers of IPG technology and services compatible with the GI/Motorola digital platform.

C. Illegal Sherman Act Agreements

1. The ''Slow Roll'' Agreement

In late Spring 1999, Gemstar was in the final phases of negotiating a long-term IPG agreement with Cox Communications, Inc. (''Cox''), a large service provider. TV Guide was also vying for Cox's business, having sent a draft IPG contract proposal to Cox in April. Similarly, both Gemstar and TV Guide were competing to sign Charter Communications, Inc. (''Charter'') to a long-term IPG deal.

On June 10, 1999, Peter C. Boyland III, then President and Chief Operating Officer of TV Guide, met with Henry Yuen, then Chief Executive Officer of Gemstar, to discuss the possibility that the two firms could settle their litigation by forming a joint venture that would market their IPG products and services. in a contemporaneous memorandum summarizing the June 10 meeting, Mr. Boylan stated that Dr. Yuen and Mr. Boylan had ''both acknowledged the need to slow roll Charter and Cox.'' What he meant was to cease or suspend competing for these customers' business until Gemstar and TV Guide could act jointly. Three days later, Dr. Yuen backed away from a draft contract with Cox, and thereafter ceased negotiating with Cox and Charter. TV Guide also stopped competing for their business during the joint venture discussions.

2. Market and Customer Allocation Agreements

At almost the same time that Gemstar and TV Guide announced their agreement to merge, they reached a broad agreement that Gemstar would phase out its marketing operations in the relevant markets in order to focus on sales and licensing of IPGs to consumer electronics (''CE'') firms while TV Guide negotiated IPG agreements with most service providers. Pursuant to this agreement, Gemstar stopped actively marketing its IPG to service providers, except for certain very small systems that used technology platforms that were different from those used by traditional cable and satellite television service providers. TV Guide had not previously sought to compete for this business and had not adapted its IPG to the platforms used by these companies.

Gemstar and TV Guide also agreed to allocate specific customers between them, reaching understandings as to whether TV Guide or Gemstar would approach and negotiate with particular customers during the period between the merger agreement and the consummation of the merger (the ''interim period''). Specifically, Gemstar and TV Guide agreed that TV Guide

would negotiate with most service providers during the interim period.

3. Agreements to Fix Prices and Material Terms to Service Providers

Gemstar and TV Guide also agreed on the prices and terms that they would offer to most service providers during the interim period. To effectuate this agreement, they shared detailed and specific information about offers and counter-offers to service providers and kept each other apprised of individual contacts with customers. TV Guide provided Gemstar with its ''rate card,'' which included both rates and non-price terms, and, on at least two occasions, TV Guide provided Gemstar with full drafts of proposed IPG contracts before they were sent to service providers. On at least two occasions, Gemstar sent to TV Guide red-lined comments on TV Guide's draft IPG contracts. In the course of maintaining regular contact with Gemstar, TV Guide blind-copied or forwarded to Gemstar electronic correspondence between TV Guide and service providers related to negotiations for IPG agreements.

As a result of this agreement, the prices and terms that TV Guide offered during the interim period substantially differed from offers it had made prior to June 1999, when it began coordinating with Gemstar. During this period eight service providers entered into IPG agreements with TV Guide under prices and terms that conformed to the illegal agreement.

C. Pre-Merger Acquisition of Assets

Though their agreements and other actions, Gemstar and TV Guide, in effect, merged their IPG decision-making processes, and each acquired substantial operational and decision-making control over important assets of the other, before the expiration of the statutory waiting period prescribed by Section 7A of the Clayton Act. Gemstar, for example, gained review and veto authority over TV Guide's IPG contract offers, converted TV Guide into its agent in various respects, and gained substantial influence over TV Guide's separate IPG advertising business. TV Guide, for its part, acquired substantial amounts of control over Gemstar's business of providing IPGs to service providers, including Gemstar's business opportunities and customer relationships. In addition, the parties shared confidential business information and made joint decisions regarding various business opportunities.

E. The Defendants' Conduct Violates Antitrust Laws

1. Sherman Act Violations

Section 1 of the Sherman Act prohibits any ''contract, combination or conspiracy'' in ''restraint of trade.'' In the context of a merger, Section 1 requires competitors that have agreed to merge to maintain their status as independent economic entities throughout the pre-consummation period, i.e., until they can be legally combined. Here, the Complaint alleges three specific anticompetitive agreements that violated Section 1—to cease competing for customers, to allocate markets and customers, and to fix prices and terms. These agreements eliminated competition and foreclosed the possibility that customers could have obtained lower prices and secured better contract terms during the time before the merger could be legally consummated. Stand-alone agreements to fix prices, allocate markets or customers, or otherwise cease competition have long been condemned as per se violations of Section 1 of the Sherman Act. Given their harmful effect on competition and lack of any redeeming virtue, they are conclusively presumed to be unreasonable, without the need for an elaborate inquiry into the harm actually caused or to any potential business justifications for their use.

Here, the Antitrust Division concluded that no special circumstances justified the Defendants' conduct or removed it from the per se illegal category. The ''slow roll'' agreement, the market and customer allocations, and the fixing of prices and terms were not reasonably necessary to effectuate their merger agreement or the Back-Up Cross License Agreement, and thus were not ancillary to a legitimate business transaction. None of the restraints settled, or were reasonably ancillary to settling, the pending litigation. Similarly, the fact that many of the agreements were reached after the Defendants had agreed to merge did not change the character of the illegal restraints. The extensive coordination on prices and terms to be offered, whether in long-term contracts or otherwise, was not justified as necessary to protect any legitimate interest that Gemstar may have had in preserving TV Guide's business, or in preventing a material change in TV Guide's conduct that might adversely affect the value of the to-be-acquired business.

The Defendants' illegal agreements had the effect of lessening or eliminating competition between Gemstar and TV Guide in the provision of IPG technology and services in violation of Section 1 of the Sherman Act and denied customers the benefits of that competition. During the period when those agreements were in effect, some service providers signed long-term IPG contracts based on the fixed prices and terms. Moreover, but for the illegal agreements, some service providers may have signed long- or short-term IPG agreements on better prices and terms than the Defendants had agreed to offer.

2. Clayton Act Section 7A Violation

Section 7 of the Clayton Act is the principal statute used by the antitrust agencies to challenge anticompetitive mergers and acquisitions. It provides in pertinent part:

> No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.[2]

Prior to the enactment of section 7A of the Clayton Act, the DOJ and FTC often were forced to investigate anticompetitive acquisitions that had already been consummated without public notice. In those situations, the agencies' only recourse was to sue to unwind the parties' merger. The combined entity had the incentive to delay litigation so that years elapsed before adjudication and attempted relief. During this extended time consumers were harmed by the reduction in competition between the acquiring and acquired firms and, if the court ultimately found that the merger was illegal, effective relief was often impossible to achieve.

Congress enacted section 7A as a measure to strengthen and improve antitrust enforcement by giving the enforcement agencies an opportunity to investigate certain large acquisitions before they are consummated. In particular, section 7A prohibits certain acquiring parties from consummating the acquisition before a prescribed waiting period expires or is terminated.[3]

[2] 15 U.S.C. 18.

[3] Section 7A requires that ''no person shall acquire, directly or indirectly, any voting securities or assets of person'' exceeding certain thresholds until both have made premerger notification filings and the post-filing waiting period has expired. 15 U.S.C. 18a(a). At the time of the Defendants'

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The parties are required to remain separate during the statutory waiting period and to preserve their status as independent economic actors during the antitrust investigation. The legislative history of section 7A underscores Congress' desire that competition existing before the merger should be maintained to the extent possible pending review by the antitrust enforcement agencies and the court.

The Complaint alleges that the Defendants violated section 7A by, in effect, merging their IPG decision-making and by giving Gemstar significant control over TV Guide's IPG business before the expiration of the statutory waiting period, thus accomplishing a defacto acquisition of assets under section 7A. Whether a de facto acquisition has occurred depends on the facts of each particular case. Courts have recognized that the execution of an acquisition agreement, combined with the assumption of significant operational or decision-making influence over the to-be-acquired business, can amount to an ''acquisition'' under section 7 of the Clayton Act, even if the parties have not formally consummated the transaction. Similarly, once parties have entered into an executory agreement subject to section 7A's requirements, they may not effectuate the acquisition by, for example, merging their operations or otherwise transferring significant operational, management or decision-making control over the to-be-acquired assets. In other words, once section 7A is triggered, parties to a merger agreement must, at a minimum, avoid combining prematurely in a way that would constitute an acquisition under section 7.[4]

Such premature combination of operations and assets significantly undermines the statutory scheme, which is designed to give the antitrust agencies the opportunity to conduct an investigation before the parties have combined their operations or acquired significant assets. It can contaminate the antitrust agencies' investigation by, among other things, providing a skewed picture of the competitive landscape and making it difficult or impossible to obtain meaningful relief should the antitrust agencies successfully enjoin a transaction.

III. Explanation of the proposed Final Judgment

The proposed Final Judgment contains equitable relief designed to prevent future violations of section 1 of the Sherman Act and section 7A of the Clayton Act, addresses the effects of the Defendants' conduct, and secures a monetary civil penalty for Gemstar's and TV Guide's violation of section 7A. The proposed Final Judgment sets forth required and prohibited conduct, a compliance program the Defendants must follow, and procedures available to the United States to determine and ensure compliance with the Final Judgment. Section IX provides that these conditions will expire ten years after the entry of the Final Judgment.

A. Prohibited Conduct

Section IV(A) of the proposed Final Judgment is designed to prevent future Clayton Act violations of the sort alleged in the Complaint. During the ''pre-consummation period''—after executing an agreement subject to the reporting requirements of section 7A and until the expiration of the statutory waiting period—the Defendants are prohibited from entering into any agreement with the other contracting parties to combine, merge, or transfer, in whole or in part, any operational or decision-making control over the marketing or distribution of any to-be-acquired product, service, or technology. This injunction applies to all transactions subject to the reporting requirements of section 7A, regardless of the particular products involved or whether the other party to the transaction competes with the Defendants. The injunction also applies to partial assumptions of control over the marketing or distribution of any to-be-acquired asset.

Section IV(B) is designed to prevent future violations of Sherman Act. In enjoins the Defendants from entering into various agreements with competitors between the beginning of negotiations until the consummation or abandonment of certain specified types of transactions. Specifically, this provision covers any agreement between the Defendants and any firm offering a competing product to acquire assets or securities, form a joint venture, settle litigation, or license intellectual property. During this period, the Defendants may not reach agreements with the other party affecting price or output, allocating markets or customers, or eliminating or delaying competition. Section IV(B) also enjoins the Defendants from disclosing, or seeking the disclosure of, competitively sensitive information during this period.

In addition, Section IV(C) of the proposed Final Judgment requires GTV to permit specified service providers, those that signed IPG agreements conforming to the agreed-upon prices and terms during the period between June 10, 1999, and July 12, 2000, the option to terminate, without penalty, those agreements. The decision to terminate those agreements rests solely with the service provider.

B. Permitted Conduct

Section V of the proposed Final Judgment identifies certain agreements and conduct that are permitted by the Judgment. Sections V(A) and V(B) ensure that the decree will not be interpreted to forbid certain ''conduct-of-business'' covenants that are typically found in merger agreements. Section V(A) permits the use of agreements obligating the to-be-acquired person generally to operate its business in the ordinary course of business consistent with past practices. Section V(B) permits the use of ''material adverse change'' provisions, which give the acquiring person certain rights to prevent material changes in the way a to-be-acquired firm conducts its business. These are customary provisions found in most merger agreements and are intended to protect the value of the transaction and prevent a to-be-acquired person from wasting assets.

Section V(D) recognizes a narrow exception to the prohibition on the exchange of competitively sensitive information. As a general rule, competitors should not obtain prospective customer-specific price

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conduct, the post filing waiting period was either 30 days after filing or if the enforcement agency requested additional information, 20 days after the parties complied with the enforcement agency's request. 15 U.S.C. 18a(b). The enforcement agency may grant early termination of the waiting period, 15 U.S.C. 18a(b)(2), and often does so when a merger poses no competitive problems.

[4] This conclusion accords with the FTC regulations, which define an ''acquiring person'' as one who will ''hold'' voting securities or assets directly or indirectly through third parties. 16 CFR 801.2(a). ''Hold'' is further defined to mean ''beneficial ownership,'' 16 CFR 801.1(c). In its ''Statement of Basis and Purpose'' (''SBP''), 43 FR 33450 (July 31, 1978), which accompanied the regulations, the FTC stated that the existence of ''beneficial ownership'' was to be determined ''in the context of particular cases'' with respect to the person enjoying the ''indicia of beneficial ownership.'' Id. at 33459. The execution of a reportable agreement, combined with the assumption of significant influence over the to-be-acquired securities or assets, transfers sufficient ''indicia of beneficial ownership'' to amount to ''holding'' the securities or assets under the regulations. See William J. Baer, Report from the [FTC] Bureau of Competition (April 15, 1999) (''In the jargon of [section 7A], signing the contract transfers some indicia of beneficial ownership. By itself, that transfer is entirely lawful. But the transfer of additional indicia of ownership during the waiting period—such as assuming control through management contracts, integrating operations, joint decision making, or transferring confidential business information for purposes other than due diligence inquiries—are inconsistent with the purposes of [section 7A] and will constitute a violation.'')

information prior to the consummation of the transaction. Access to such information raises significant antitrust risks, as it could be used to enter into an illegal agreement that would be harmful to competition if the transaction is subsequently abandoned. Notwithstanding, there may be situations during the due diligence process in which an acquiring person may need information regarding pending contacts to value the business properly. Section IV(D) of the proposed Final Judgment permits GTV to obtain such information, subject to appropriate limitations and confidentiality undertakings.

C. Compliance

Sections VI and VII of the proposed Final Judgment set forth various compliance procedures. Section VI sets up an affirmative compliance program directed toward ensuring GTV's compliance with the limitations imposed by the proposed Final Judgment. The compliance program includes the designation of a compliance officer who is required to distribute a copy of the Final Judgment to each present and succeeding director, officer, employee, and agent with the responsibility for mergers and acquisitions, brief each such person regarding compliance with the Final Judgment, and obtain a certification from each such person that he or she has received a copy of the Final Judgment and understand his or her obligations under the judgment. In addition, the compliance officer must provide a copy of the Final Judgment to a merger partner before the initial exchange of a letter of intent, definitive agreement or other agreement of merger. Section VI of the proposed Final Judgment further requires the compliance officer to certify to the United States that GTV is in compliance and to report any violations of the Final Judgment.

To facilitate monitoring GTV's compliance with the Final Judgment, Section VII grants DOJ access, upon reasonable notice, to GTV's records and documents relating to matters contained in the Final Judgment. GTV must also make its personnel available for interviews or depositions regarding such matters. In addition, GTV must, upon request, prepare written reports relating to matters contained in the Final Judgment.

These provisions are adequate to prevent recurrence of the type of illegal conduct alleged in the Complaint. The proposed Final Judgment should ensure that, in future transactions, GTV will not enter into agreements to limit competition during the pre-consummation period. Consequently, customers will receive the benefits of free and open competition.

D. Civil Penalties [5]

Under section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than $11,000 for each day during which such person is in violation of the Act.[6] Both Gemstar and TV Guide were in violation of section 7A from the first full day following execution of the merger agreement until the expiration of the statutory waiting period. The Defendants have agreed to pay, within thirty days of the entry of the proposed Final Judgment, civil penalties reflecting $11,000 per day per Defendant (or $5,676,000). This is the maximum civil penalty the Court could impose on the Defendants at trial.

V. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no effect as prima facie evidence in any subsequent private lawsuit that may be brought against Defendants.

Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the injunction portion of the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Sherman Act injunction contained in the Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to comments. All comments will be given due consideration by the DOJ, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register.** Written comments should be submitted to: James R. Wade, Chief, Litigation III, United States Department of Justice, Antitrust Division, 325 7th St., NW., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the Defendants. The United States is satisfied, however, that the proposed injunctive relief and payment of civil penalties are sufficient to address the harm alleged in the Complaint.

[5] The United States does not believe that the payment of civil penalties under section 7A is subject to the APPA, and courts in this district have consistently entered consent judgments for civil penalties under section 7A without employing APPA procedures. *See, e.g., United States* v. *Hearst Trust, et al.,* 2001–2 Trade Cases ¶73,451 (D.D.C.); *United States* v. *Input/Output, et al.,* 1999–1 Trade Cas. (CCH) ¶72,528 (D.D.C.); *United States* v. *Blackstone Capital Partners II Merchant Banking Fund, et al.,* 1999–1 Trade Cas. (CCH) ¶72,585 (D.D.C.); *United States* v. *Mahle GMBH, et al.,* 1997–2 Trade Cas. (CCH) ¶71,868 (D.D.C.); *United States* v. *Figgie Int'l, Inc.,* 1997–1 Trade Cas. (CCH) ¶71,766 (D.D.C.); *United States* v. *Foodmaker, Inc.,* 1996–2 Trade Cas. (CCH) ¶71,555 (D.D.C.); *United States* v. *Titan Wheel International, Inc.,* 1996–1 Trade Cas. (CCH) ¶71,406 (D.D.C.); *United States* v. *Automatic Data Processing, Inc.,* 1996–1 Trade Case. (CCH) ¶71,361 (D.D.C.); *United States* v. *Trump,* 1988–1 Trade Cas. (CCH) ¶67,968 (D.D.C.). Thus, in consent settlements seeking both equitable relief and civil penalties, courts have not required use of APPA procedures with respect to the civil penalty component of the proposed final judgment. *See United States* v. *ARA Services, Inc.,* 1979–2 Trade Cas. (CCH) ¶62,861 (E.D. Mo.). Consequently, the civil penalties component of the proposed Final Judgment is not open to public comment. The other provisions of the proposed Final Judgment, including the equitable relief to resolve the alleged violations of section 7A, are covered by the APPA and subject to comment.

[6] *Id.; see also* Pub. L. 104–134 § 31001(s) (Debt Collection Improvement Act of 1996); 16 CFR 1.98 (increasing maximum penalty to $11,000 per day).

VIII. Standard of Review under the APPA for Proposed Final Judgment

The APPA requires that injunctions of anticompetitive conduct contained in proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' In making that determination, the court may consider

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing on the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the Complaint including consideration of the public benefit, if any, to be derived from the determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the Government's Complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft,* 56 F.3d 1448–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree proceedings.[7] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court in making its public interest findings, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[8]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.,* 858 F.2d 456, 462–63 (9th Cir. 1988) quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir), cert. denied, 454 U.S. 1083 (1981); *see also Micosoft,* 56 F.3d at 1458. Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[9]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' ''[10]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Since the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.*

IX. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: March 19, 2003.

Respectfully Submitted,

Robert P. Faulkner (D.C. Bar No. 430163), Erika L. Meyers (D.C. Bar No. 465452), Thomas H. Liddle, Scott A. Scheele (D.C. Bar No. 429061),

Attorneys, U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Ste. 300, Washington, DC 50530, 202/514–0259.

[FR Doc. 03–7285 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on March 5, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Boeing Company, St. Louis, MO; LUVIT AB, Lund, SWEDEN; Campus Pipeline, Salt Lake City, UT; PeopleSoft, Inc., Pleasanton, CA; Eduprise, Morrisville, NC; and R5 Vision Oy, Helsinki, FINLAND have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the

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[7] *United States* v. *Gillette Co.*, 406 F.Supp. 713, 715 (D. Mass. 1975) citing 119 Cong. Rec. 24598 (1973). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, these procedures are discretionary. 15 U.S.C. 16(f). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–9.

[8] *United States* v. *Mid-America Dairymen, Inc.* 1977–1 Trade Cas. (CCD ¶ 61,508, 71980 (W.D. Mo. 1977); *see also United States* v. *Loew's Inc.,* 783 F.Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.,* 662 F.Supp. 865, 870 (S.D.N.Y. 1987).

[9] *United States* v. *Bechtel Corp.,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F.Supp. 1127, 1142–3 (C.D. Cal. 1978) *United States* v. *Gillette Co.,* 406 F.Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983).

[10] *Gillette*, 406 F.Supp. at 716; *See also United States* v. *Alcan Aluminum Ltd.,* 605 F.Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.,* 454 F.Supp. 1215, 1222 (N.D.N.Y. 1978).

Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on December 11, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 13, 2003 (68 FR 1641).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–7284 Filed 3–26–03; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Inititives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel (Resources for Change: Technology category) to the National Council on the Arts will be held from April 22–23, 2003 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting, from 9 a.m. to 10 a.m. on April 23rd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on April 22nd and from 11 a.m. to 2 p.m. on April 23rd, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY-TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: March 20, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–7354 Filed 3–26–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* DOE/NRC Form 742, ''Material Balance Report;'' NUREG/BR–0007, ''Instructions for the Preparation and Distribution of Material Status Reports;'' and DOE/NRC Form 742C, ''Physical Inventory Listing.''

2. *Current OMB approval number:* 3150–0004 and 3150–0058.

3. *How often the collection is required:* DOE/NRC Forms 742 and 742C are submitted annually following a physical inventory of nuclear materials.

4. *Who is required or asked to report:* Persons licensed to possess specified quantities of special nuclear or source material.

5. *The number of annual respondents:*
   DOE/NRC Form 742: 200 licensees.
   DOE/NRC Form 742C: 180 licensees.

6. *The number of hours needed annually to complete the requirement or request:*
   DOE/NRC Form 742: 150 hours.
   DOE/NRC Form 742C: 1,080 hours.

7. *Abstract:* Each licensee authorized to possess special nuclear material totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, and any licensee authorized to possess 1,000 kilograms of source material is required to submit DOE/NRC Form 742. Reactor licensees required to submit DOE/NRC Form 742, and facilities subject to 10 CFR part 75, are required to submit DOE/NRC Form 742C. The information is used by NRC to fulfill its responsibilities as a participant in US/IAEA Safeguards Agreement and bilateral agreements with Australia and Canada, and to satisfy its domestic safeguards responsibilities.

Submit, by May 27, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 21st day of March, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–7338 Filed 3–26–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Unit 2; Exemption

1.0 Background

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License No. DPR–74 which authorizes operation of the Donald C. Cook (D. C. Cook) Nuclear Plant, Unit 2. The licensee provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in Stevensville, Michigan.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, appendix G to 10 CFR part 50 states that ''[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions.'' Further, Appendix G of 10 CFR part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code). In this exemption, consistent with the current provisions of 10 CFR 50.55(a), all references to the ASME Code denote the 1995 Edition through the 1996 Addenda of the ASME Code.

In order to address provisions of amendments to the D. C. Cook Unit 2 Technical Specification (TS) P–T limit curves, the licensee requested in its submittal dated July 23, 2002, that the NRC staff exempt D. C. Cook Unit 2 from application of specific requirements of Appendix G to 10 CFR part 50, and substitute the use of ASME Code Case N–641. ASME Code Case N–641 permits the use of an alternate reference fracture toughness curve for RPV materials and permits the postulation of a circumferentially-oriented flaw for the evaluation of circumferential RPV welds when determining the P–T limits. The proposed exemption request is consistent with, and is needed to support, the D. C. Cook Unit 2 TS amendment that was contained in the same submittal. The proposed D. C. Cook Unit 2 TS amendment will revise the P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) through 32 effective full power years of operation.

Code Case N–641

The licensee has proposed an exemption to allow the use of ASME Code Case N–641 in conjunction with Appendix G to ASME Section XI, 10 CFR 50.60(a) and 10 CFR part 50, Appendix G, to establish the P–T limits for the D. C. Cook 2 RPV.

The proposed TS amendment to revise the P–T limits for D. C. Cook Unit 2 relies in part, on the requested exemption. These revised P–T limits have been developed using the lower bound K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1, in lieu of the lower bound K_{IA} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1, as the basis fracture toughness curve for defining the D. C. Cook Unit 2 P–T limits. In addition, the revised P–T limits have been developed based on the use of a postulated circumferentially-oriented flaw for the evaluation of RPV circumferential welds in lieu of the axially-oriented flaw which would be required by Appendix G to Section XI of the ASME Code. The other margins involved with the ASME Section XI, Appendix G process of determining P–T limit curves remain unchanged.

Use of the K_{IC} curve as the basis fracture toughness curve for the development of P–T operating limits is more technically correct than use of the K_{IA} curve. The K_{IC} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a RPV, whereas the K_{IA} fracture toughness curve codified into Appendix G to Section XI of the ASME Code was developed from more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{IA} fracture toughness curve was initially codified in Appendix G to Section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. However, additional information has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the K_{IA} fracture toughness curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure.

Likewise, the use of a postulated circumferentially-oriented flaw in lieu of an axially-oriented one for the evaluation of a circumferential RPV weld is more technically correct. The flaw size required to be postulated for P–T limit determination has a depth of one-quarter of the RPV wall thickness and a length six times the depth. Based on the direction of welding during the fabrication process, the only technically reasonable orientation for such a large flaw is for the plane of the flaw to be circumferentially-oriented (*i.e.*, parallel to the direction of welding). Prior to the development of ASME Code Case N–641 (and the similar ASME Code Case N–588), the required postulation of an axially-oriented flaw for the evaluation of a circumferential RPV weld provided an additional, unnecessary level of conservatism to the overall evaluation.

In addition, P–T limit curves based on the K_{IC} fracture toughness curve and postulation of a circumferentially-oriented flaw for the evaluation of RPV circumferential welds will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations. The operating window through which the operator heats up and cools down the RCS is determined by the difference between the maximum allowable pressure determined by Appendix G of ASME Section XI, and the minimum required pressure for the reactor coolant pump seals adjusted for instrument uncertainties. A narrow operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent overpressure protection system actuation due to pressure surges associated with normal plant evolutions such as RCS pump starts and swapping operating charging pumps with the RCS in a water-solid condition.

Since application of ASME Code Case N–641 provides appropriate procedures to establish maximum postulated defects and to evaluate those defects in the context of establishing RPV P–T limits, this application of the Code Case maintains an adequate margin of safety for protecting RPV materials from brittle failure. Therefore, the licensee concluded that these considerations were special circumstances pursuant to 10 CFR 50.12(a)(2)(ii), ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

In summary, the ASME Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor coolant pressure boundary materials and the estimated effects of operation. Since 1974, the level of knowledge about the fracture mechanics behavior of RCS materials has been greatly expanded, especially regarding the effects of radiation embrittlement and the understanding of fracture toughness properties under static and dynamic loading conditions. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–641, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety against brittle failure of the RPV.

The NRC staff has reviewed the exemption request submitted by the licensee and has concluded that an exemption should be granted to permit the licensee to utilize the provisions of ASME Code Case N–641 for the purpose of developing D. C. Cook Unit 2 RPV P–T limit curves.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present in that continued operation of D. C. Cook Unit 2 with the P–T curves developed in accordance with ASME Section XI, Appendix G, without the relief provided by ASME Code Case N–641 is not necessary to achieve the underlying purpose of Appendix G to 10 CFR part 50. Application of ASME Code Case N–641 in lieu of the requirements of ASME Code Section XI, Appendix G provides an acceptable alternative methodology which will continue to meet the underlying purpose of Appendix G to 10 CFR part 50. The underlying purpose of the regulations in Appendix G to 10 CFR part 50 is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime.

The NRC staff examined the licensee's rationale to support the exemption request, and agrees within the licensee's determination that an exemption would be required to approve the use of Code Case N–641. The NRC staff agree that the use of ASME Code Case N–641 would meet the underlying intent of Appendix G to 10 CFR part 50. The NRC staff concludes that the application of the technical provisions of ASME Code Case N–641 provided sufficient margin in the development of RPV P–T limit curves such that the underlying purpose of the regulations (Appendix G to 10 CFR part 50) continued to be met such that the specific conditions required by the regulations; *i.e.*, use of all provisions in Appendix G to Section XI of the ASME Code, were not necessary. Therefore, the NRC staff concludes that the exemption requested by the licensee is justified based on the special circumstances of 10 CFR part 50(a)(2)(ii), ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of Appendix G to 10 CFR part 50; Appendix G to Section XI of the ASME Code; and Regulatory Guide 1.99, Revision 2; the staff concludes that application of ASME Code Case N–641 as described would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the NRC staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate, and that the methodology of Code Case N–641 may be used to revise the P–T limits for the D. C. Cook Unit 2 RPV.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.60 and 10 CFR part 50, Appendix G, to allow application of ASME Code Case N–641 in establishing TS requirements for the reactor vessel pressure limits at low temperatures for D. C. Cook Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 13336).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of March 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–7340 Filed 3–26–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–698; License No. SNM–770]

Westinghouse Electric Company, LLC, Waltz Mill Service Center, Madison, PA; Receipt of Request for Action

Notice is hereby given that by petition dated October 30, 2002, Viacom, Inc. (petitioner) has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Westinghouse Test Reactor and the Waltz Mill Service Center. The petitioner requests NRC to issue an Order to Westinghouse Electric Company LLC (''Westinghouse''), the holder of license SNM–770 on the Waltz Mill Service Center near Madison, PA, which would require Westinghouse to: (1) Provide certain radiological survey data to NRC which NRC has requested, and (2) accept under SNM–770 certain residual byproduct materials now held under Viacom license TR–2 and located at the former Westinghouse Test Reactor (WTR) facility at the Waltz Mill Site.

As the basis for this request, the petitioner states that Westinghouse's refusal to provide the survey data and to accept the residual byproduct materials now held under license TR–2 constitutes a violation of 10 CFR 50.5, Deliberate misconduct, which causes Viacom to be in violation of a license condition, the approved Decommissioning Plan (DP) for the WTR. The petitioner claims that granting the petition is necessary for compliance with both the DP and other commitments under SNM–770 and is needed to abate the violation of 10 CFR 50.5 to promote public health and safety by providing for safe completion of decommissioning of the WTR under the DP.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's

regulations. The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards (NMSS). As provided by §2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner met with the NMSS petition review board on February 20, 2003 to discuss the petition. The results of that discussion were considered in the board's determination regarding the petition and the schedule for the review of the petition. A copy of this petition is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS public access component on the NRC's Web site, http://www.nrc.gov.

Dated at Rockville, Maryland, this 13th day of March 2003.

For the Nuclear Regulatory Commission.

Martin Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–7339 Filed 3–26–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Submission for OMB review; request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission.

At OPIC's request, OMB is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420–0019.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Bruce Campbell, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202–336–8563.

Summary Form Under Review

Type of Request: Revised form.

Title: Self-Monitoring Questionnaire for Insurance and Finance Projects.

Form Number: OPIC–162.

Frequency of Use: Annually for duration of project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 3 hours per project.

Number of Responses: 325 per year.

Federal Cost: $19,500.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act. of 1961, as amended.

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: March 10, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–7349 Filed 3–26–03; 8:45 am]

BILLING CODE 3210–01–M

POSTAL RATE COMMISSION

Industry Presentation

AGENCY: Postal Rate Commission.

ACTION: Notice of presentation.

SUMMARY: Two representatives of United Parcel Service will deliver a presentation on mail innovations and emerging mail strategies to Commissioners, special assistants and senior staff members on Tuesday, March 25, 2003. The presentation will begin at 11 a.m.

DATES: March 25, 2003.

ADDRESSES: 1333 H Street NW., Suite 300 (PRC conference room), Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

Steven W. Williams,

Secretary.

[FR Doc. 03–7356 Filed 3–26–03; 8:45 am]

BILLING CODE 7710–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collection, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose Information Collection

Application for Employee Annuity Under the Railroad Retirement Act; OMB 3220–0002 section 2 of the Railroad Retirement Act (RRA), provides for payment of age and service, disability and supplemental annuities to qualified employees. The basic requirement for a regular employee annuity retirement annuity under the RRA is 120 months (10 years) of creditable railroad service. Benefits then become payable after the employee meets certain other requirements, which depend, in turn, on the type of annuity payable. The requirements relating to the annuities are prescribed in 20 CFR 216, and 220.

The RRB currently uses the electronic AA–1cert, Application Summary and Certification process and the following forms to collect the information needed for determining entitlement to and the amount of, an employee retirement annuity: Form AA–1, Application for Employee annuity Under the Railroad Retirement Act, Form AA–1d, Application for Determination of Employee Disability, and Form G–204,

Verification of Workers Compensation/ Public Disability Benefit Information.

The AA–1cert process obtains information from an applicant for either an age and service, or disability annuity by means of an interview with an RRB field-office representative. It obtains information about an applicant's marital history, work history, military service, benefits from other governmental agencies and railroad pensions. During the interview, the field-office representative enters the information obtained into an online information system. Upon completion of the interview, the applicant receives Form AA–1cert, Application Summary and Certification, which summarizes the information that war provided by/or verified by the applicant, for review and signature. The RRB also uses a manual version, RRB Form AA–1, in instances where the RRB representative is unable to contact the applicant in-person or by telephone i.e., the applicant lives in another country.

Form AA–1d, Application for Determination of Employee Disability, is completed by an employee who is filing for a disability annuity under the RRA, or a disability freeze under the Social Security Act for early Medicare based on a disability. Form G–204, Verification of Workers Compensation/ Public Disability Benefit Information, is used to obtain and verify information concerning worker's compensation or public disability benefits that are or will be paid by a public agency to a disabled railroad employee.

The RRB estimates the burden for the collection as follows:

ESTIMATED BURDEN

Form ι	Estimated annual responses	Estimated completion time (per response)	Estimated annual burden hours (hours)
AA–1cert (with assistance)	13,300	30	6,650
AA–1 manual (without assistance)	100	62	103
AA–1d (manual without assistance)	50	60	50
AA–1d (manual) (with assistance)	5,600	35	3,296
G–204	50	15	13
Total	19,100		10,112

The RRB proposes no changes to Form AA–1cert, AA–1 and G–204. Minor non-burden impacting, editorial and formatting changes are proposed to Form AA–1d. Completion of an application is required to obtain a benefit. One response is requested of each respondent.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms,. and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–7307 Filed 3–26–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Banco Nacional De Comercio Exterior, S.N.C. to Withdraw its 7¼% Global Notes (due 2004) From Listing and Registration on the New York Stock Exchange, Inc. File No. 1–11744

March 21, 2003.

Banco Nacional De Comercio Exterior, S.N.C, a United Mexican States corporation (''Issuer''), 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 its 7¼% Global Notes (due 2004) (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

On January 29, 2003, the Board of Directors of the Issuer approved a resolution to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Security from the Exchange, the Issuer states that: (i) The Security is not widely held and has a low trading volume; (ii) the Issuer is subject to administrative costs resulting solely from the listing of the Security, including those related to maintaining the listing of the Security on the NYSE and complying with U.S. securities laws reporting requirements. Given the low trading volume of the Security, the Issuer believes that such costs are not justified. The Security is the only outstanding security the Issuer has listed on a national securities exchange.

The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before April 16, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE 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.

[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).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–7342 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25969; 812–12932]

iShares Trust, et al.; Notice of Application

March 21, 2003.

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for exemption from sections 12(d)(1)(A) and (B) and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY: The order would permit certain registered management investment companies and unit investment trusts to acquire shares of other registered open-end management investment companies and unit investment trusts that operate as exchange-traded funds and are outside the same group of investment companies. The order also would amend a condition in two prior orders.

Applicants: iShares Trust (''Trust''), iShares, Inc. (''Corporation'') and Barclays Global Fund Advisors (''BGFA'').

DATES: The application was filed on February 26, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and servicing applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 14, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Trust and Corporation, c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; BGFA, 45 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, and Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust and the Corporation are open-end management investment companies registered under the Act and are comprised of separate series that seek to provide investment results that correspond generally to the performance of specified market indices and that operate as exchange-traded funds (''ETFs''). BGFA is a registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each existing iShares Fund (as defined below).

2. Applicants request relief to permit registered management investment companies and unit investment trusts to acquire shares of series of the Trust or the Corporation beyond the limitations in section 12(d)(1)(A) and (B). Applicants request that the relief apply to (i) each registered open-end management investment company or unit investment trust that operates as an ETF, is currently or subsequently part of the same ''group of investment companies'' as the Trust or the Corporation within the meaning of section 12(d)(1)(G)(ii) of the Act, and is advised or sponsored by BGFA or an entity controlling, controlled by or under common control with BGFA (such open-end ETFs are referred to as ''Open-End iShares Funds''; such unit investment trust ETFs are referred to as ''UIT iShares Funds'' Open-End iShares Funds and UIT iShares Funds are collectively referred to as ''iShares Funds''),[1] as well as any broker-dealer selling shares of an iShares Fund to an Investing Fund (as defined below); and (ii) each registered management investment company or unit investment trust that is not part of the same ''group of investment companies'' as the iShares Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a participation agreement (''Participation Agreement'') with an iShares Fund (such management investment companies are referred to as ''Investing management Companies''; such unit investment trusts are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing trusts are collectively referred to as ''Investing Funds'').[2] Each Investing Management Company will be advised by an investment adviser that is registered under the Advisers Act or exempt from registration (''Advisor'').

3. Applicants state that the iShares Funds will offer the Investing Funds simple and efficient vehicles to achieve their asset allocation, diversification and other investment objectives, and to implement various investment strategies. Among other purposes, applicants assert that the iShares Funds provide instant and highly liquid exposure to a broad range of markets, sectors or subsectors, geographic regions and industries, and permit investors to achieve such exposure through a single transaction instead of the many transactions that might otherwise be needed to obtain comparable market exposure.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any broker or dealer registered under the Securities Exchange Act of 1934, from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the

[5] 17 CFR 200.30–3(a)(1).

[1] All existing iShares Funds are open-end management investment companies.

[2] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund may rely on the requested order only to invest in iShares Funds and not in any other registered investment company.

acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Investing Funds to acquire shares of the iShares Funds (''iShares'') and the iShares Funds and any broker or dealer to sell iShares to the Investing Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by an Investing Fund or its affiliates over the iShares Funds. To limit the control that an Investing Fund may have over an iShares Fund, applicants propose a condition prohibiting an Advisor, or a sponsor to an Investing Trust (''Sponsor''), and certain affiliates from controlling (individually or in the aggregate) an iShares Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over the iShares Funds, applicants propose conditions 2, 3, 4, 6, 7 and 8, stated below, to preclude an Investing Fund and its affiliated entities from taking advantage of an iShares Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.

5. As an additional assurance that an Investing Fund understands the implications of an investment by an Investing Fund in an iShares Fund under the requested order, each Investing Fund and iShares Fund will execute an agreement stating that the board of directors or trustees of, and the investment adviser to, an Investing Management Company, and the trustee and Sponsor of an Investing Trust, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Open-End iShares Fund in which the Investing Management Company may invest. In addition, an Advisor or a trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by an Investing Management Company or Investing Trust in an amount at least equal to any compensation received by the Advisor or trustee or Sponsor to the Investing Trust or an affiliated person of the investment adviser, trustee or Sponsor from the iShares Funds in connection with the investment by the Investing Management Company or Investing Trust in the iShares Fund. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the National Association of Securities Dealers, Inc. (''NASD'').

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that an iShares Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by an exemptive order allowing the iShares Fund to purchase shares of an affiliated money market fund for short-term cash management purposes. Applicants also represent that the Participation Agreement will require an Investing Fund that exceeds the 5% or 10% limitations in section 12(d)(1)(A)(ii) and (iii) to disclose in its prospectus that it may invest in ETFs and to disclose, in ''plain English,'' in its prospectus the unique characteristics of the Investing Fund investing in ETFs, including, but not limited to, the expense structure and any additional expenses of investing in ETFs.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants state that an iShares Fund could become an affiliated person of an Investing Fund if the Investing Fund acquires more than 5% of an iShares Fund's outstanding voting securities. Although applicants believe that most Investing Funds will purchase iShares in the secondary market and not directly from an iShares Fund, an Investing Fund that owns 5% or more of an iShares Fund might seek to transact directly with an iShares Fund.[3] In light of this possible affiliation, section 17(a) could prevent an iShares Fund from selling iShares to and redeeming iShares from an Investing Fund.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of iShares directly from an iShares Funds will be based on the net asset value of the iShares Fund. Applicants state that the proposed arrangement will be consistent with the policies of each Investing Fund and iShares Fund and with the general purposes of the Act. Applicants also believe that the requested exemption is appropriate in the public interest and submit that the exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

[3] iShares are only purchased and redeemed directly from an iShares Fund in large blocks of iShares (generally between 50,000 and 600,000 shares) called ''creation units.''

C. Prior Orders

Applicants also seek to amend a condition to certain prior exemptive orders (''Prior Orders'') so that the condition is consistent with the relief requested from section 12(d)(1).[4] Existing condition 2 to each of the Prior Orders currently provides that each iShares Fund prospectus and Product Description will clearly disclose that, for purposes of the Act, iShares are issued by the iShares Fund and that the acquisition of iShares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.[5] In light of the requested order to permit Investing Funds to invest in lShares Funds in excess of the limits of section 12(d)(1), applicants wish to replace this condition in the Prior Orders with condition 13, as stated below. Under the new condition, Investing Funds will be alerted that they may invest in iShares Funds in excess of the limits of section 12(d)(1) to the extent that they comply with the terms and conditions of the requested order granting relief from section 12(d)(1), including the requirement that they enter into a Participation Agreement with the iShares Fund regarding the terms of the investment.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. An Advisor, a Sponsor, any person controlling, controlled by, or under common control with an Advisor or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised by an Advisor or sponsored by a Sponsor, or any person controlling, controlled by, or under common control with an Advisor or Sponsor (collectively, the ''Group'') will not control (individually or in the aggregate) an iShares Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an iShares Fund, the Group, in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of an iShares Fund, the Group will vote it shares of the iShares Fund in the same proportion as the vote of all other holders of the iShares Fund's shares.

2. An Investing Fund and its investment adviser, sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, an ''Investing Fund Affiliate'') will not cause any existing or potential investment by the Investing Fund in an iShares Fund to influence the terms of any services or transactions between the Investing Fund or Investing Fund Affiliate and the iShares Fund or its investment adviser, promoter, sponsor, principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, an ''iShares Fund Affiliate'').

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Advisor is conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from an iShares Fund or an iShares Fund Affiliate in connection with any services or transactions.

4. The board of directors/trustees of an Open-End iShares Fund (''Board''), including a majority of the disinterested Board members, will determine that any consideration paid by an Open-End iShares Fund to an Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Open-End iShares Fund; (ii) is within the range of consideration that the Open-End iShares Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned.

5. An Advisor or a trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-End iShares Fund under rule 12b–1 under the Act) received by the Advisor or trustee or Sponsor to the Investing Trust or an affiliated person of the Advisor, trustee or Sponsor from the iShares Funds in connection with the investment by the Investing Management Company or Investing Trust in the iShares Funds.

6. No Investing Fund or Investing Fund Affiliate will cause an iShares Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, employee or sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, investment adviser, employee or sponsor is an affiliated person (each, an ''Underwriting Affiliate''). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an ''Affiliated Underwriting.''

7. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by an Open-End iShares Fund in an Affiliated Underwriting, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in an Open-End iShares Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Open-End iShares Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Open-End iShares Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

8. Each Open-End iShares Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years form the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of

[4] The Prior Orders are iShares, Inc., *et al.*, Investment Company Act Release Nos. 25595 (May 29, 2002) (notice) and 25623 (June 25, 2002) (order) and Barclays Global Fund Advisors, *et al.*, Investment Company Act Release Nos. 25594 (May 29, 2002) (notice) and 25622 (June 25, 2002) (order).

[5] A ''Product Description'' is a document that accompanies secondary market trades of iShares and provides a plain English overview of the iShares Fund.

each purchase, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in an iShares Fund in excess of the limit in section 12(d)(1)(A)(i), each Investing Fund and the iShares Fund will execute an agreement stating, without limitation, that the board of directors or trustees of, and the investment adviser to, an Investing Management Company, and the trustee and Sponsor of an Investing Trust, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-End iShares Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Open-End iShares Fund of the investment. At such time, the Investing Fund will also transmit to the Open-End iShares Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Open-End iShares Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The iShares Fund and the Investing Fund will maintain and preserve a copy of the order, the agreement, and, in the case of an Open-End iShares Fund, the list with any updated information for a period of not less than six years from the end of fiscal year in which any investment occurred, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Open-End iShares Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or services fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

12. No iShares Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order that allows the iShares Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

Amendment to Prior Orders

Applicants agree to replace condition 2 of the Prior Orders with the following condition:

13. Each iShares Fund's prospectus and Product Description will clearly disclose that, for purposes of the Act, the iShares are issued by an iShares Fund, which is an investment company, and that the acquisition of iShares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits investment companies to invest an iShares Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the investment company enter into an agreement with the iShares Fund regarding the terms of the investment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7341 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25968; 812–12866]

SAFECO Common Stock Trust and SAFECO Asset Management Co.; Notice of Application

March 21, 2003.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: SAFECO Common Stock Trust (the ''Trust'') and SAFECO Asset Management Co. (the ''Adviser'').

Filing Dates: The application was filed on August 9, 2002, and amended on March 3, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549–0609. Applicants, 4854 154th PL. NE., Redmond, WA 98052.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634 or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and has multiple series (each series, a ''Fund,'' collectively the ''Funds''), each with its own investment objectives, policies, and restrictions. The Adviser, a Washington corporation, serves as the investment adviser to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').[1]

[1] The applicants also request that any relief granted pursuant to the application apply to future series of the Trust and any other registered open-end management investment companies and their series that: (a) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (b) are managed in a manner consistent with the application; and (c) comply with the terms and conditions in the application (''Future Funds,'' included in the term ''Funds''). The Trust is the only existing investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Sub-adviser (as defined below), the name of the Adviser or the name of the entity

Continued

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between the Trust, on behalf of each Fund, and the Adviser (''Advisory Agreement'') that was approved by the Trust's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and each Fund's shareholder(s). Each Advisory Agreement permits the Adviser to enter into separate investment advisory agreements (''Sub-advisory Agreements'') with sub-advisers (''Sub-advisers'') to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund. Each Sub-adviser is or will be registered under the Advisers Act. The Adviser monitors and evaluates the Sub-advisers and recommends to the Board their hiring, termination, and replacement. The Adviser recommends Sub-advisers based on a number of factors discussed in the application used to evaluate their skills in managing assets pursuant to particular investment objectives. The Adviser compensates the Sub-advisers out of the fee paid to the Adviser by a Fund.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Sub-advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Sub-adviser to one or more of the Funds (''Affiliated Sub-adviser''). None of the current Sub-advisers is an Affiliated Sub-adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders rely on the Adviser to select the Sub-advisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Sub-advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that each Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus with respect to each Fund will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee Sub-advisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Sub-advisory Agreement with any Affiliated Sub-adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Sub-adviser change is proposed for a Fund with an Affiliated Sub-adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-adviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Sub-adviser, shareholders will be furnished all information about the new Sub-adviser that would be included in a proxy statement. Each Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of any new Sub-adviser.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) set the Fund's overall investment strategies; (b) evaluate, select, and recommend Sub-advisers to manage all or part of the Fund's assets; (c) when appropriate, allocate and reallocate a Fund's assets among multiple Sub-advisers; (d) monitor and evaluate the performance of the Sub-advisers; and (e) ensure that the Sub-advisers comply with each Fund's investment objectives, policies and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance.

8. No trustee or officer of the Trust, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-adviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-adviser or an entity that controls, is controlled by, or is under common control with a Sub-adviser.

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controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Sub-adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7343 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 12723, March 17, 2003].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, March 18, 2003 at 10 a.m. and Thursday, March 20, 2003 at 10 a.m.

CHANGE IN THE MEETING: Additional Items.

The following items were added to the Closed Meeting held on Tuesday, March 18, 2003 and Thursday, March 20, 2003:

Formal orders of investigation.

Commissioner Goldschmid, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

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: March 17, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–7480 Filed 3–25–03; 11:09 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 24, 2003:

Closed meetings will be held on Tuesday, March 25, 2003 at 2:30 p.m., and Thursday, March 27, 2003 at 10 a.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, March 25, 2003 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Settlement of administrative proceedings of an enforcement nature; Opinions; and

Amici consideration.

The subject matter of the closed meeting scheduled for Thursday, March 27, 2003 will be:

Formal orders of investigations;

Institution and settlement of administrative proceedings of an enforcement nature; and

Institution and settlement of injunctive actions.

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: March 24, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–7481 Filed 3–25–03; 11:09 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47550; File No. SR–NASD–2003–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. To Adopt, on a Permanent Basis, Margin Requirements for Security Futures Contracts Pursuant to NASD Rule 2520

March 20, 2003.

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 March 19, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. 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

NASD proposes to adopt, on a permanent basis, amendments to NASD Rule 2520 establishing margin requirements for security futures contracts (''SFCs''). The SEC originally approved these amendments on a pilot basis (''the Pilot'') until March 6, 2003,[3] and thereafter extended the Pilot until March 20, 2003.[4] NASD believes that the proposed rule change would make its margin rule consistent with margin rules already adopted by the SEC, the Commodity Futures Trading Commission (''CFTC'') and other self-regulatory organizations (''SROs'') regarding security futures contracts.

Specifically, the proposed rule change would: (1) Permit customer margining of security futures contracts, and establish initial and maintenance margin requirements for security futures contracts; (2) allow for initial and maintenance margin levels for offsetting positions involving security futures contracts and related positions at lower levels than would be required if

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47244 (January 24, 2003), 68 FR 5317 (February 3, 2003) (SR–NASD–2002–166).

[4] *See* Securities Exchange Act Release No. 47470 (March 7, 2003), 68 FR 12397 (March 14, 2003) (SR–NASD–2003–31).

margined separately; (3) provide for a Market Maker exclusion for proprietary trades of a ''Security Futures Dealer'' (''SFD'') and allow for ''good faith'' margin treatment for the accounts of approved options specialists, market makers, and other specialists; (4) provide definitions relative to security futures contracts for application of this rule; (5) provide that security futures contracts transacted in a futures account shall not be subject to any provisions of NASD Rule 2520; (6) provide for money market mutual funds as defined in rule 2a–7 [5] under the Investment Company Act of 1940 (the ''ICA''),[6] to be used to satisfy margin requirements for security futures contracts provided certain conditions are met; (7) require that security futures contracts transacted in a securities account be subject to all other provisions of NASD rule 2520, particularly Rule 2520(f)(8)(B) (''Day Trading''); and (8) permit members for which NASD is the Designated Examining Authority (''DEA'') to participate in the trading of security futures contracts.

In addition, NASD is proposing non-substantive technical changes to NASD Rule 2520.[7]

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

2520. Margin Requirements

(a) Definitions

For the purposes of this paragraph, the following term shall have the meanings specified below:

(1) The term ''basket'' shall mean a group of stocks that NASD or any national securities exchange designates as eligible for execution in a single trade through its trading facilities and that consists of stocks whose inclusion and relative representation in the group are determined by the inclusion and relative representation of their current market prices in a widely-disseminated stock index reflecting the stock market as a whole.

(2) The term ''current market value'' means the total cost or net proceeds of a security on the day it was purchased or sold or at any other time the preceding business day's closing price as shown by any regularly published reporting or quotation service, *except for security futures contracts (see paragraph (f)(11)(C)(ii)).* If there is no closing price, a member may use a reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(3) The term ''customer'' means any person for whom securities are purchased or sold or to whom securities are purchased or sold whether on a regular way, when issued, delayed or future delivery basis. It will also include any person for whom securities are held or carried and to or for whom a member organization extends, arranges or maintains any credit. The term will not include the following: (a) a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member organization or its customers, or (b) an ''exempted borrower'' as defined by Regulation T of the Board of Governors of the Federal Reserve System (''Regulation T''), except for the proprietary account of a broker/dealer carried by a member organization pursuant to section (e)(6) of this rule.

(4) The term ''designated account'' means the account of a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States or any state, or pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or a political subdivision thereof.

(5) The term ''equity'' means the customer's ownership interest in the account, computed by adding the current market value of all securities ''long'' and the amount of any credit balance and subtracting the current market value of all securities ''short'' and the amount of any debit balance. *Any variation settlement received or paid on a security futures contract shall be considered a credit or debit to the account for purposes of equity.*

(6) The term ''exempted security'' or ''exempted securities'' has the meaning as in section 3(a)(12) of the Act.

(7) The term ''margin'' means the amount of equity to be maintained on a security position held or carried in an account.

(8) The term ''person'' has the meaning as in section 3(a)(9) of the Act.

(b) Initial Margin

For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in the account which shall be at least the greater of:

(1) the amount specified in regulation T, *or rules 400 through 406 under the Act or rules 41.42 through 41.48 under the Commodity Exchange Act (''CEA'');* or

(2) the amount specified in section (c)[(3)] of this rule; or

(3) such greater amount as *NASD* [the Association] may from time to time require for specific securities; or

(4) equity of at least $2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to ''when distributed'' securities in a cash account). The minimum equity requirement for a ''pattern day trader'' is $25,000 pursuant to paragraph (f)(8)(B)(iv)a. of this rule.

Withdrawals of cash or securities may be made from any account which has a debit balance, ''short'' position or commitments, provided it is in compliance with regulation T *and rules 400 through 406 under the Act and rules 41.42 through 41.48 under the CEA,* and after such withdrawal the equity in the account is at least the greater of $2,000 ($25,000 in the case of a ''pattern day trader'') or an amount sufficient to meet the maintenance margin requirements of this rule.

(c) Maintenance Margin

The margin that must be maintained in all accounts of customers, except for cash accounts subject to other provisions of this rule, shall be as follows:

(1) 25 percent of the current market value of all securities, *except for security futures contracts,* ''long'' in the account; plus

(2) $2.50 per share or 100 percent of the current market value, whichever amount is greater, of each stock ''short'' in the account selling at less than $5.00 per share; plus

(3) $5.00 per share or 30 percent of the current market value, whichever amount is greater, of each stock ''short'' in the account selling at $5.00 per share or above; plus

(4) 5 percent of the principal amount or 30 percent of the current market value, whichever amount is greater, of each bond ''short'' in the account.

(5) The minimum maintenance margin levels for security futures contracts, long and short, shall be 20 percent of the current market value of such contract. (See paragraph (f) of this rule for other provisions pertaining to security futures contracts.)

(d) No Change.

[5] 17 CFR 270.2a–7.

[6] 15 U.S.C. 80a *et seq.*

[7] *See* NASD Rule 2520(b)(2); (b)(3); (e)(7)(B); and (e)(8). Telephone conversation between Patricia Albrecht, Assistant General Counsel, NASD, and Lisa N. Jones, Attorney, Division of Market Regulation, Commission, dated March 18, 2003.

(e) Exceptions to Rule

The foregoing requirements of this rule are subject to the following exceptions: (1) through (5) No Change.

(6) Broker/Dealer Accounts

(A) A member may carry the proprietary account of another broker/dealer, which is registered with the Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of regulation T *and rules 400 through 406 under the Act and rules 41.42 through 41.48 under the CEA* are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the haircut requirements pursuant to SEC rule 15c3–1 shall be charged against the member's net capital when computing net capital under SEC rule 15c3–1.

(B) No Change.

(7) Nonpurpose Credit

In a nonsecurities credit account, a member may extend and maintain nonpurpose credit to or for any customer without collateral or on any collateral whatever, provided:

(A) the account is recorded separately and confined to the transactions and relations specifically authorized by regulation T;

(B) the account is not used in any way for the purpose of evading or circumventing any regulation of *NASD* [the Association] or of the Board of Governors of the Federal Reserve System *and rules 400 through 406 under the Act and rules 41.42 through 41.48 under the CEA;* and

(C) the amount of any deficiency between the equity in the account and the margin required by the other provisions of this paragraph shall be charged against the member's net capital as provided in SEC rule 15c3–1.

The term ''nonpurpose credit'' means an extension of credit other than ''purpose credit,'' as defined in section 220.2 of regulation T.

(8) No Change.[8]

(f) Other Provisions

(1) through (10) No Change.

(11) Customer Margin rules Relating to Security Futures

(A) Applicability

No member may effect a transaction involving, or carry an account containing, a security futures contract with or for a customer in a margin account, without obtaining proper and adequate margin as set forth in this section. (B) Amount of customer margin.

(i) General rule. As set forth in paragraphs (b) and (c) of this rule, the minimum initial and maintenance margin levels for each security futures contract, long and short, shall be twenty (20) percent of the current market value of such contract.

(ii) Excluded from the rule's requirements are arrangements between a member and a customer with respect to the customer's financing of proprietary positions in security futures, based on the member's good faith determination that the customer is an ''Exempted Person,'' as defined in rule 401(a)(9) under the Act, and rule 41.43(a)(9) under the CEA, except for the proprietary account of a broker/dealer carried by a member pursuant to paragraph (e)(6)(A) of this rule. Once a registered broker or dealer, or member of a national securities exchange ceases to qualify as an ''Exempted Person,'' it shall notify the member of this fact before establishing any new security futures positions. Any new security futures positions will be subject to the provisions of this paragraph.

(iii) Permissible Offsets. Notwithstanding the minimum margin levels specified in paragraph (f)(11)(B)(i) of this rule, customers with offset positions involving security futures and related positions may have initial or maintenance margin levels (pursuant to the offset table below) that are lower than the levels specified in paragraph (f)(11)(B)(i) of this rule.

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
(1) Long security future (or basket of security futures representing each component of a narrow-based securities index) and long put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus pay for the long put in full.	The lower of: (1) 10 percent of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the current market value of the long security future.
(2) Short security future (or basket of security futures representing each component of a narrow-based securities index) and short put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the short security future, plus the aggregate put-in-the-money amount, if any. Proceeds from the put sale may be applied.	20 percent of the current market value of the short security future, plus the aggregate put in-the-money amount, if any.
(3) Long security future and short position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the short stock or stocks.	5 percent of the current market value as defined in Regulation T of the stock or stocks underlying the security future.
(4) Long security future (or basket of security futures representing each component of a narrow-based securities index) and short call option on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus the aggregate call-in-the-money amount, if any. Proceeds from the call sale may be applied.	20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.
(5) Long a basket of narrow-based security futures that together tracks a broad-based index and short a broad-based security index call option contract on the same index.	Narrow-based security index	20 percent of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20 percent of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any.

[8] This provision of the rule text reflects the correction of a typographical error from the rule text that NASD submitted with the proposed rule change.

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
(6) Short based of narrow-based security futures that together tracks a broad-based security index and short a broad-based security index put option contract on the same index.	Narrow-based security index	20 percent of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20 percent of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any.
(7) Long a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index put option contract on the same index.	Narrow-based security index	20 percent of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full.	The lower of: (1) 10 percent of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the current market value of the long basket of security futures.
(8) Short a basket of narrow-based security futures that together tracks a broad-based security index and long a broad-based security index call option contract on the same index.	Narrow-based security index	20 percent of the current market value of the short basket of narrow-based security futures, plus pay for the long call in full.	The lower of: (1) 10 percent of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20 percent of the current market value of the short basket of security futures.
(9) Long security future and short security future on the same underlying security (or index).	Individual stock or narrow-based security index.	The greater of: 5 percent of the current market value of the long security future; or (2) 5 percent of the current market value of the short security future.	The greater of: 5 percent of the current market value of the long security future; or (2) 5 percent of the current market value of the short security future.
(10) Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price (Conversion).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.	10 percent of the aggregate exercise price, plus the aggregate call in-the-money amount, if any.
(11) Long security future, long put option and short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price (Collar).	Individual stock or narrow-based security index.	20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from call sale may be applied.	The lower of: (1) 10 percent of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.
(12) Short security future and long position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long security or securities.	5 percent of the current market value, as defined in Regulation T, of the long stock or stocks.
(13) Short security future and long position in a security immediately convertible into the same security future, without restriction, including the payment of money.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long seucrity or securities.	10 percent of the current market value, as defined in Regulation T, of the long stock or stocks.
(14) Short security future (or basket of security futures representing each component of a narrow-based securities index) and long call option or warrant on the same underlying security (or index).	Individual stock or narrow-based security index.	20 percent of the current market value of the short security future, plus pay for the call in full.	The lower of: (1) 10 percent of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20 percent of the current market value of the short security future.
(15) Short security future, short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price (Reverse Conversion).	Individual stock or narrow-based security index.	20 percent of the current market value of the short security future, plus the aggregate put in-the-money amount, if any, plus pay for the call in full. Proceeds from put sale may be applied.	10 percent of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.
(16) Long (short) a security future and short (long) an identical[9] security future traded on a different market.	Individual stock and narrow-based security index.	The greater of: (1) 3 percent of the current market value of the long security future(s); or (2) 3 percent of the current market value of the short security future(s).	The greater of: (1) 3 percent of the current market value of the long security future(s); or (2) 3 percent of the current market value of the short security future(s).

Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
(17) Long (short) a basket of security futures that together tracks a narrow-based index and short (long) a narrow-based index future.	Individual stock or narrow-based security index.	Threater of: (1) 5 percent of the current market value of the long security future(s); or (2) 5 percent of the current market value of the short security future(s).	The greater of: (1) 5 percent of the current market value of the long security future(s); or (2) 5 percent of the current market value of the short security future(s).

(C) Definitions. For the purposes of paragraph (f)(11) of this rule and the offset table noted above, with respect to the term ''security futures contracts,'' the following terms shall have the meanings specified below:

(i) The term ''security futures contract'' means a ''security future'' as defined in section 3(a)(55) of the Act.

(ii) The term ''current market value'' has the same meaning as defined in rule 401(a)(4) under the Act and rule 41.43(a)(4) under the CEA.

(iii) The term ''underlying security'' means, in the case of physically settled security futures contracts, the security that is delivered upon expiration of the contract, and, in the case of cash settled security futures contracts, the security or securities index the price or level of which determines the final settlement price for the security futures contract upon its expiration.

(iv) The term ''underlying basket'' means, in the case of a securities index, a group of security futures contracts where the underlying securities as defined in subparagraph (iii) above include each of the component securities of the applicable index and that meets the following conditions: (1) The quantity of each underlying security is proportional to its representation in the index, (2) the total market value of the underlying securities is equal to the aggregate value of the applicable index, (3) the basket cannot be used to offset more than the number of contracts or warrants represented by its total market value, and (4) the security futures contracts shall be unavailable to support any other contract or warrant transaction in the account.

(v) The term ''underlying stock basket'' means a group of securities that includes each of the component securities of the applicable index and that meets the following conditions: (1) The quantity of each stock in the basket is proportional to its representation in the index, (2) the total market value of the basket is equal to the underlying index value of the index options or warrants to be covered, (3) the securities in the basket cannot be used to cover more than the number of index options or warrants represented by that value, and (4) the securities in the basket shall be unavailable to support any other option or warrant transaction in the account.

(vi) The term ''variation settlement'' has the same meaning as defined in rule 401(a) under the Act and rule 41.43(a)(32) under the CEA.

(D) Security Futures Dealers' Accounts

(i) Notwithstanding the other provisions of this paragraph (f)(11), a member may carry and clear the market maker permitted offset positions (as defined below) of one or more security futures dealers in an account that is limited to market maker transactions, upon a ''Good Faith'' margin basis that is satisfactory to the concerned parties, provided the ''Good Faith'' margin requirement is not less than the Net Capital haircut deduction of the member carrying the transaction pursuant to rule 15c3–1 under the Act. In lieu of collecting the ''Good Faith'' margin requirement, a carrying member may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the ''Good Faith'' margin required.

For the purpose of this paragraph (f)(11)(D), the term ''security futures dealer'' means (1) a member or member organization of a national securities exchange or a national securities association registered pursuant to section 15A(a) of the Act; (2) is registered with such exchange or association as a security futures dealer pursuant to rules that are effective in accordance with section 19(b)(2) of the Act and, as applicable section 5c(c) of the CEA, that: (a) Requires such member or member organization to be registered as a floor trader or a floor broker with the CFTC under section 4f(a)(1) of the CEA, or as a dealer with the Commission under section 15(b) of the Act; (b) requires such member or member organization to maintain records sufficient to prove compliance with the rules of the exchange or association of which it is a member; (c) requires such member or member organization to hold itself out as being willing to buy and sell security futures for its own account on a regular and continuous basis; and (d) provides for disciplinary action, including revocation of such member's or member organization's registration as a security futures dealer, for such member's or member organization's failure to comply with rule 400 through 406 of the Act and rules 41.42 through 41.49 of the CEA or the rules of the exchange or association of which the security futures dealer is a member or member organization.

(ii) For purposes of this paragraph (f)(11)(D), a permitted offset position means in the case of a security futures contract in which a security futures dealer makes a market, a position in the underlying asset or other related assets, or positions in options overlying the asset or related assets. Accordingly, a security futures dealer may establish a long or short position in the assets underlying the security futures contracts in which the security futures dealer makes a market, and may purchase or write options overlying those assets if the account holds the following permitted offset positions:

a. A long position in the security futures contract or underlying asset offset by a short option position that is ''in or at the money;''

b. A short position in the security futures contract or underlying asset offset by a long option position that is ''in or at the money;''

c. A position in the underlying asset resulting from the assignment of a market-maker short option position or making delivery in respect of a short security futures contract;

d. A position in the underlying asset resulting from the assignment of a market-maker long option position or taking delivery in respect of a long security futures contract;

e. A net long position in a security futures contract in which a security futures dealer makes a market or the underlying asset;

f. A net short position in a security futures contract in which a security futures dealer makes a market or the underlying asset; or

[9] Two security futures contracts will be considered ''identical'' for this purpose if they are issued by the same clearing agency or cleared and guaranteed by the same derivatives clearing organization, have identical specifications, and would offset each other at the clearing level.

g. An offset position as defined in rule 15c3–1 under the Act, including its appendices, or any applicable SEC staff interpretation or no-action position.

(E) Approved Options Specialists' or Market Maker Accounts

(i) Notwithstanding the other provisions of (f)(11) and (f)(2)(J), a member may carry and clear the market maker permitted offset positions (as defined below) of one or more approved options specialists or market makers in an account that is limited to approved options specialist or market maker transactions, upon a ''Good Faith'' margin basis that is satisfactory to the concerned parties, provided the ''Good Faith'' margin requirement is not less than the Net Capital haircut deduction of the member carrying the transaction pursuant to rule 15c3–1 under the Act. In lieu of collecting the ''Good Faith'' margin requirement, a carrying member may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the ''Good Faith'' margin required. For the purpose of this paragraph (f)(11)(E), the term ''approved options specialist or market maker'' means a specialist, market maker, or registered trader in options as referenced in paragraph (f)(2)(J) of this rule, who is deemed a specialist for all purposes under the Act and who is registered pursuant to the rules of a national securities exchange.

(ii) For purposes of this paragraph (f)(11)(E), a permitted offset position means a position in the underlying asset or other related assets. Accordingly, a specialist or market maker may establish a long or short position in the assets underlying the options in which the specialist or market maker makes a market, or a security futures contract thereon, if the account holds the following permitted offset positions:

a. A long position in the underlying instrument or security futures contract offset by a short option position that is ''in or at the money;''

b. A short position in the underlying instrument or security futures contract offset by a long option position that is ''in or at the money;''

c. A stock position resulting from the assignment of a market-maker short option position or delivery in respect of a short security futures contract;

d. A stock position resulting from the exercise of a market maker long option position or taking delivery in respect of a long security futures contract;

e. A net long position in a security (other than an option) in which the market maker makes a market;

f. A net short position in a security (other than an option) in which the market maker makes a market; or

g. An offset position as defined in rule 15c3–1 under the Act, including its appendices, or any applicable SEC staff interpretation or no-action position.

(iii) For purposes of paragraphs (f)(11)(D) and (E), the term ''in or at the money'' means that the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term ''in the money'' means that the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term ''overlying option'' means a put option purchased or a call option written against a long position in an underlying asset; or a call option purchased, or a put option written against a short position in an underlying asset.

(iv) Securities, including options and security futures contracts, in such accounts shall be valued conservatively in light of current market prices and the amount that might be realized upon liquidation. Substantial additional margin must be required or excess Net Capital maintained in all cases where the securities carried: (a) Are subject to unusually rapid or violent changes in value including volatility in the expiration months of options or security futures contracts, (b) do not have an active market, or (c) in one or more or all accounts, including proprietary accounts combined, are such that they cannot be liquidated promptly or represent undue concentration of risk in view of the carrying member's Net Capital and its overall exposure to material loss.

(F) Approved Specialists' Accounts—others

(i) Notwithstanding the other provisions of (f)(11) and (f)(2)(J), a member may carry the account of an ''approved specialist,'' which account is limited to specialist transactions including hedge transactions with security futures contracts upon a margin basis that is satisfactory to both parties. The amount of any deficiency between the equity in the account and haircut requirement pursuant to rule 15c3–1 shall be charged against the member's net capital when computing net capital under SEC rule 15c3–1.

(ii) For purposes of this paragraph (f)(11)(F), the term ''approved specialist'' means a specialist who is deemed a specialist for all purposes under the Act and who is registered pursuant to the rules of a national securities exchange.

(G) Additional Requirements

(i) Money market mutual funds, as defined in rule 2a–7 under the Investment Company Act of 1940, can be used for satisfying margin requirements under this paragraph (f)(11), provided that the requirements of rule 404(b) under the Act and rule 46(b)(2) under the CEA are satisfied.

(ii) Day trading of security futures is subject to the minimum requirements of this rule. If deemed a pattern day-trader, the customer must maintain equity of $25,000. The 20 percent requirement, for security futures contracts, should be calculated based on the greater of the initial or closing transaction and any amount exceeding NASD excess must be collected. The creation of a customer call subjects the account to all the restrictions contained in rule 2520(f)(8)(B).

(iii) The use of the ''time and tick'' method is based on the member's ability to substantiate the validity of the system used. Lacking this ability dictates the use of the aggregate method.

(iv) Security futures contracts transacted or held in a futures account shall not be subject to any provision of this rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The CFTC and SEC have adopted customer margin requirements for SFCs (''SEC/CFTC Margin Regulations'') [10] pursuant to authority delegated to them by the Federal Reserve Board (''FRB'') under section 7(c)(2)(B) of the Act.[11] As noted in the adopting release,[12] section 7(c)(2) of the Act provides that the

[10] 17 CFR 242.400 through 406.

[11] 15 U.S.C. 78g(c)(2)(B).

[12] Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

customer margin requirements for SFCs must satisfy four requirements: (1) They must preserve the financial integrity of markets trading SFCs; (2) they must prevent systemic risk; (3) they must (a) be consistent with the margin requirements for comparable options traded on an exchange registered pursuant to section 6(a) of the Act,[13] and (b) provide for initial and maintenance margin that are not lower than the lowest level of margin, exclusive of premium, required for comparable exchange traded options; and (4) they must be and remain consistent with the margin requirements established by the FRB under Regulation T.[14] These margin regulations became effective on September 13, 2002.

Subsequent to the adoption of the SEC/CFTC Margin Regulations, NASD filed proposed amendments to NASD rule 2520.[15] On January 24, 2003, the Commission approved the amendments on a pilot basis until March 6, 2003.[16] On March 5, 2003, the Commission extended the Pilot until March 20, 2003, to allow the Pilot to permit customers to continue trading SFCs on an uninterrupted basis in securities accounts while NASD considered the comments it received on the Pilot.[17]

Among the amendments approved as part of the Pilot was new NASD rule 2520(f)(11) (''Customer Margin Rules Relating to Security Futures''), which provides that SFCs transacted in a securities account be subject to all other provisions of NASD rule 2520, including 2520(f)(8)(B) (''Day Trading''). Also approved as part of the Pilot were NASD rule 2520(f)(11)(D) (''Security Futures Dealers' Accounts''), rule 2520(f)(11)(E) (''Approved Options Specialists' or Market Makers' Accounts''), and rule 2520(f)(11)(F) (''Approved Specialists'' Accounts—others''). Under the Pilot, NASD rule 2520 permits ''good faith'' margin treatment for specified hedged offset positions carried in the accounts noted above.

However, unlike the SFD rules of other SROs,[18] The Pilot permits members to accord offset treatment in accounts carried for such specialists, market makers, and SFDs only when their activity is limited to bona fide specialist or market making transactions. The limitations imposed are consistent with NASD's belief that market makers bear the primary responsibility and obligation to maintain fair and orderly markets, and provide liquidity to the marketplace.

Discussion of Comments Received

NASD received one comment letter on the Pilot from the Chicago Board Options Exchange, Inc. (''CBOE'').[19] In its letter, the CBOE requested that the Commission not grant permanent approval of NASD's rule as proposed and approved on a pilot basis, unless NASD amended the rule to exempt SFCs from its day trading provisions and deleted references to the term ''bona fide'' in connection with market maker or specialist transactions.

Under the proposed rule change, NASD's day trading margin requirements would apply to SFCs carried in securities accounts. The CBOE believes that day trading provisions should not apply to such accounts because it would create a disparity that the CFMA was designed to eliminate. In this regard, CBOE's letter states that the SEC and CFTC did not impose day trading margin requirements on SFCs carried in futures and securities accounts. The CBOE argues that since similar margin rules recently approved by the Commission do not impose day trading margin requirements on SFCs carried in futures accounts, permanent approval of NASD's proposed rule would lead to a regulatory disparity the CFMA was designed to prevent.

NASD states that, in proposing its rule amendment on the application of day trading margin requirements to SFCs carried in securities accounts, it did not intend to create a regulatory disparity with other SRO rules. However, NASD notes that SRO rules can be more stringent than those of the Commission. While NASD is guided by the Commission's rules in proposing its rules, NASD has latitude to promulgate more stringent rules when it believes they are necessary for the protection of investors. In this regard, NASD believes that the application of day trading margin requirements of NASD rule 2520 to SFCs is consistent with the treatment of all securities transacted in a margin account under this rule. Accordingly, NASD proposes to apply NASD's day trading margin requirements to SFCs carried in securities accounts.

The CBOE also believes that NASD should delete the term ''bona fide'' in connection with market maker or specialist transactions. The CBOE commented that NASD does not define the term ''bona fide'' nor does it use the term in relation to the other provisions of its margin rule relating to market maker and specialist transactions.

In response to these comments, NASD is proposing to amend the rule text by deleting the term ''bona fide'' in connection with specialist or market maker transactions. In proposing such language under the Pilot, it was NASD's intent to permit good faith margin treatment for off-setting positions that were effected by specialists or market makers in discharging the primary responsibilities noted above in its original filing, rather than to permit persons other than qualified market makers to act in such a capacity—hence, the term ''bona fide'' in connection with specialist and market making transactions. Upon consideration, and in order to be consistent with similar rules proposed by other SROs, NASD will not use the term ''bona fide'' and instead incorporate the definition of an SFD as referenced in rule 400(c)(2)(v)[20] under the Act to clarify what constitutes a SFD for purposes of the rule. Notwithstanding this amendment, NASD reiterates that good faith margin treatment will be permitted only for transactions effected by SFDs in discharging their responsibilities and obligations to maintain fair and orderly markets, and to provide liquidity to the marketplace.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[21] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[13] 15 U.S.C. 78f.

[14] 12 CFR 220.

[15] On March 6, 2003, the Commission approved a proposed rule change by the NYSE to adopt, on a permanent basis, margin requirements for security futures contracts pursuant to NYSE Rule 431. *See* Securities Exchange Act Release No. 47460, 68 FR 12123 (March 13, 2003) (SR–NYSE–2003–05).

[16] *See supra* note 3.

[17] *See supra* note 4.

[18] *See e.g.,* Securities Exchange Act Release No. 46555 (September 26, 2002), 67 FR 61707 (October 1, 2002) (SR–OC–2002–01).

[19] *See* letter from Edward J. Joyce, President and Chief Operating Officer (''COO''), CBOE, to Jonathan G. Katz, Secretary, Commission, dated December 20, 2002. CBOE's December 20, 2002 comment letter on NASD's Pilot is a resubmission of its December 9, 2002 comment letter regarding the NYSE's proposed amendments to NYSE Rule 431 relating to margin requirements for security futures contracts. *See* Securities Exchange Act Release No. 46782 (November 7, 2003), 67 FR 69052 (November 14, 2002) (SR–NYSE–2002–53). The CBOE stated that because the proposed amendments were so similar in nature, its comments on the NYSE's proposed amendments were applicable to NASD's proposed rule change. On March 6, 2003, the Commission approved on a permanent basis amendments to NYSE Rule 431 to incorporate security futures contracts. Securities Exchange Act Release No. 47460, 68 FR 12123 (March 13, 2003) (SR–NYSE–2003–05).

[20] 17 CFR 240.400(c)(2)(v).

[21] 15 U.S.C. 78o–3(b)(6).

NASD believes that the proposed rule change is designed to accomplish these goals by permitting customers to trade SFCs in securities accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received from Members, Participants, or Others

NASD received written comments from the CBOE on the original proposed rule change that was filed with the Commission on November 15, 2002 and amended on January 15, 2003. NASD has responded to the CBOE's comments and hereby amends its original rule proposal filed with the Commission on November 15, 2002.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 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 No. SR–NASD–2003–45 and should be submitted by April 17, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The NASD has asked that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register** to accommodate the continuance of trading of security futures in securities accounts pursuant to NASD rule 2520 on an uninterrupted basis after the Pilot ends on March 20, 2003. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission believes that the proposed rule change is consistent with the requirements of 15A(b)(6) of the Act,[22] which requires, among other things, that the rules of NASD be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[23] In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,[24] which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provide that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with rule 403 under the Act, the rule change provides for a minimum margin level of 20% of current market value for all positions in security futures carried in a securities account. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act [25] also provides that a national securities association may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an association's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NASD are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

In addition, the Commission believes it is consistent with the Act for NASD to exclude from its margin requirements positions in SFCs carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of rule 2520, NASD's proposal will make compliance by members with the regulatory requirements of several SROs easier. Moreover, as proposed, NASD members will accord ''good faith'' margin treatment to specified offsetting positions involving security futures, carried in a securities account for an SFD, consistent with the customer margin rules for security futures adopted by the Commission and the CFTC.

After careful consideration of the commenter's concern about applying NASD's day trading margin requirements to SFCs, the Commission believes that it is reasonable for NASD to impose day trading margin requirements on its members with respect to SFCs carried in a securities account. As NASD noted, an SRO may adopt more stringent requirements than those promulgated by the Commission.

The Commission has also carefully considered the commenter's concern of using the term ''bona fide'' with respect to market maker or specialist transactions. The Commission notes that NASD has deleted the term ''bona fide'' in reference to market maker or specialist transactions, and instead is incorporating the definition of an SFD in rule 400(c)(2)(v) under the Act. The Commission believes that if it finds, in approving an SRO's rules for SFDs, that such rules are consistent with the definition of SFD in rule 400(c)(2)(v), those rules would also be consistent with NASD rule 2520 (f)(11)(D). Therefore, the Commission believes this amendment should address the commenter's concerns that NASD not impose a higher standard on transactions by market maker and specialist registered pursuant to rules of another SRO to qualify for favorable margin treatment.

The Commission 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**. The Commission believes that accelerated approval of the proposed rule change should enable NASD members to continue to trade SFCs in securities accounts on an uninterrupted basis. In addition, the Commission believes that granting accelerated approval to the proposed rule change should clarify NASD members' obligations under NASD rule 2520 with respect to their

[22] *Id.*

[23] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78g(c)(2)(B).

[25] 17 CFR 240.403(b)(2).

trading in SFCs. The Commission notes it approved NASD's original filing as a temporary pilot to give members of the public an opportunity to comment on the substance of the proposed rule change before it requests permanent approval. The NASD has responded to the comments received, as described above. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to approve the proposed rule change prior to the thirtieth day after publication of the notice of filing.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–NASD–2003–45) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47558; File No. SR–NASD–2003–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 2340

March 21, 2003.

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 March 12, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. Pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] NASD has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 2340 to eliminate outdated and unnecessary references to Rule 15c3–1 under the Act. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

2200. Transactions with Customers

* * * * *

2340. Customer Account Statements

(a) through (b) No change.

(c) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

(1) No change.

(2) a ''general securities member'' refers to any member [which] *that* conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a)[, except for paragraphs (a)(2) and (a)(3)]. Notwithstanding the foregoing definition, a member [which] *that* does not carry customer accounts and does not hold customer funds [and] *or* securities is exempt from the provisions of this section.

(3) through (5) No change.

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD 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

NASD represents that the proposed rule change would eliminate from NASD Rule 2340 outdated and unnecessary references to Rule 15c3–1 under the Act. NASD Rule 2340 requires that a general securities member send quarterly account statements to customers. Rule 2340(c)(2) defines a general securities member as ''any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3–1(a), except for paragraphs (a)(2) and (a)(3).'' NASD represents that when the SEC amended Rule 15c3–1 to change the net capital requirements of certain broker-dealers, the SEC also moved, with some minor modifications, many of the provisions that were in paragraphs (a)(2) and (a)(3) into new Rule 15c3–1(a)(2)(iv), (v), and (vi) under the Act.[5]

NASD represents that, besides being obsolete, the references to old paragraphs (a)(2) and (3) are unnecessary in light of the broader exemption that already exists in NASD Rule 2340(c)(2). Specifically, the second sentence of NASD Rule 2340(c)(2) excludes from the definition of a general securities member any member that ''does not carry customer accounts and does not hold customer funds and securities.'' Because the broker-dealers described in old paragraphs (a)(2) and (a)(3) of Rule 15c3–1 do not carry customer accounts or hold customer funds or securities, NASD represents that the exemption in NASD Rule 2340(c)(2) automatically excludes them from the definition of general securities member.

NASD represents that it is not proposing new references to the amended provisions of Rule 15c3–1 under the Act because the broker-dealers described in these provisions also do not carry customer accounts or hold customer funds or securities, and therefore, are excluded from the definition of general securities member by the exemption currently provided in NASD Rule 2340(c)(2). In addition, NASD represents that deleting such

[5] Specifically, old paragraph (a)(2) described introducing broker-dealers that do not carry customers' accounts, but that occasionally receive customer funds and securities. Old paragraph (a)(2) has been replaced by Rule 15c3–1(a)(2)(iv), which describes broker-dealers that introduce customer accounts and that also receive, but do not hold, customer funds or securities and Rule 15c3–1(a)(2)(vi), which describes broker-dealers that introduce customer accounts but do not receive or hold customer funds or securities or carry customer accounts. Old paragraph (a)(3) described broker-dealers that engage solely in the sale of redeemable shares of registered investment companies and certain other share accounts. These broker-dealers also do not hold customer funds or securities. This category is now described in Rule 15c3–1(a)(2)(v). As a result of these changes, the references to Rule 15c3–1 in NASD Rule 2340 no longer refer to the sections that were intended when NASD Rule 2340 was adopted.

references in NASD Rule 2340 prevents the need to change the rule if the broker-dealers described in paragraphs (a)(2)(iv), (v), and (vi) are moved to other provisions in Rule 15c3–1 under the Act.

In addition, NASD represents that to ensure that Rule 2340(c)(2) more closely reflects the language in Rule 15c3–1 and the NASD staff's long-standing interpretation, the proposed rule change amends the exclusion from the definition of a general securities member for ''a member that does not carry customer accounts and does not hold customer funds *and* securities'' to state ''a member that does not carry customer accounts and does not hold customer funds *or* securities'' (emphasis added).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD represents that the proposed rule change would amend NASD Rule 2340 to eliminate outdated and unnecessary references to Rule 15c3–1 under the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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 proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(i) of the Act,[7] and Rule 19b–4(f)(1) thereunder,[8] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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, 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 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 NASD. All submissions should refer to File No. SR–NASD–2003–36 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7344 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

[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).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47554; File No. SR–NASD–2003–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Anti-Internalization Qualifier Values

March 21, 2003.

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 March 12, 2003, The National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 14, 2003, Nasdaq filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice, as amended, 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

Nasdaq proposes to allow the Quotes/Orders of Nasdaq Quoting Market Participants and NNMS Order Entry Firms in its SuperMontage system to interact with Quotes/Orders entered by that same participant on the other side of the market based strictly on the execution algorithm selected. Nasdaq also proposes to codify the function that precludes the Quotes/Orders of Nasdaq Quoting Market Participant or NNMS Order Entry Firms from interacting with Quotes/Orders entered by the same participant on the other side of the market. The text of the proposed rule change follows.

Proposed new language is *italicized;* proposed deletions are in [brackets].

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders.

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations for each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 14, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq clarified that the Anti-Internalization Qualifier (''AIQ'') ''I'' Value for Nasdaq Quoting Market Participants would be available on May 12, 2003. For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 14, 2003, the date Nasdaq filed Amendment No. 1.

NNMS Order Entry Firms, shall participate in the NNMS as follows:

(i) NNMS Market Makers, NNMS Auto-Ex ECNs, and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant or NNMS Order Entry Firm in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants or NNMS Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule. The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithms described in paragraphs (i), (ii) and (iii) below, ''Displayed Quotes/Orders'' shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.

(i) through (iii) No Change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Effective February 10, 2003, until [April 28, 2003 (or such earlier date as determined by Nasdaq with appropriate notice to the Securities and Exchange Commission and market participants)] *March 17, 2003,* this processing shall also apply to Non-Directed Orders of NNMS Order Entry Firms. Thereafter, this exception shall not apply to Non-Directed Orders Entered by NNMS Order Entry Firms. *Nasdaq Quoting Market Participants may, and NNMS Order Entry Firms must, avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: ''Y'' or ''I'', subject to the following restrictions:*

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ ''Y'' flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ ''Y'' flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ ''I'' flagged order, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order.

The I value described above shall be available for the use of NNMS Order Entry Firms on March 17, 2003, and available for use by Nasdaq Quoting Market Participants on May 12, 2003.

(b) through (c) No Change.

(C) through (D) No Change.

(2) through (8) No Change.

(c) through (e) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

On January 31, 2003, the Commission approved File No. SR–NASD–2002–173 on a 90-pilot basis,[4] to allow NNMS Order Entry Firms to enter non-marketable limit orders into Nasdaq's SuperMontage system using the SIZE MMID.[5] Under new processing set to commence on March 17, 2003, the quotes/orders of NNMS Order Entry Firms on opposite sides of the market will interact with each other only if such interaction would result based on the execution algorithm selected (price/time, price/time with fee consideration, or price/size). This filing seeks to provide this same option to Nasdaq Quoting Market Participants, and codify current SuperMontage functionality related to the use of the Anti-Internalization Qualifier order flag.

Currently, SuperMontage market participants that do not wish to execute against themselves may voluntarily designate individual quotes/orders so that they do not automatically interact

[4] *See* Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003).

[5] The SIZE MMID is the anonymous MMID that represents the aggregate size of all Non-Attributable Quotes and Orders entered by market participants in Nasdaq at a particular price level. Non-Attributable Quotes and Orders are not displayed in the Nasdaq Quotation Montage using the market participant's MMID. Instead, these are displayed next to the SIZE MMID.

in SuperMontage with any quotes/orders entered by that same firm on the other side of the market by attaching an AIQ flag to the quote/order. The AIQ flag is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. SuperMontage will not cross an AIQ-flagged order with a ''Y'' value that resides in the system's book, or is entered for immediate execution, with another quote/order from that same market participant. Instead, the system executes against eligible trading interest of other market participants at that same price level. If there is no such interest, SuperMontage allows no execution, does not go the next price level, and rejects back to the entering party the most recently entered of its two interacting quote/orders.

In order to accommodate potential interaction of bid and offer quote/orders of NNMS Order Entry Firms based solely on the execution algorithm selected as contemplated in File No. SR–NASD–2002–173, Nasdaq modified the AIQ flag. In addition to the current AIQ default value of ''N'' (allow internalization), and the ability to enter, on an order-by-order basis, an AIQ ''Y'' value (prohibit internalization), a new AIQ value of ''I'' (allow internalization based solely on execution algorithm) was created.[6] Quotes/Orders designated with an AIQ value of I skip SuperMontage's automatic internalization function and match off against trading interest entered by that same firm on the other side of the market only if such buy and sell interest would naturally meet based on the selected execution algorithm. In short, the AIQ I value neither forces nor prohibits internalization, and on March 17, 2003, will become the default value for NNMS Order Entry Firms.[7]

The following example illustrate how the AIQ I value works:

- MMA enters 1000 share market order to buy with AIQ Y value (prohibit internalization), price/time.

Inside Offer

MMB—$20 × 500
ECN1—$20 × 400
MMA—$20 × 400

Resulting executions: 500 against MMB; 400 against ECN1; 100 rejected back to MMA because it would cross/internalize.

- MMA enters 1000 share market order to buy with AIQ I value (internalize based only on execution algorithm selected), price/time.

Inside Offer

MMB—$20 × 500
ECN1—$20 × 400
MMA—$20 × 400

Resulting executions: 500 against MMB; 400 against ECN1; 100 executed against MMA because the interaction of MMA's buy order and its offer quote occurs naturally based on the price/time execution algorithm selected.

This filing seeks to provide this same ''natural'' internalization option to Nasdaq Quoting Market Participants. Like the other AIQ values available to Nasdaq Quoting Market Participants, use of the AIQ I value would be purely voluntary and could be used on an order-by-order basis. Nasdaq believes that the AIQ I value provides additional flexibility for Nasdaq Quoting Market Participants to manage the interaction of quotes/orders submitted by them to better serve their customers. In addition, the natural quote/order interaction provided by the AIQ I value may also assist market participants in satisfying certain ERISA regulatory exemptions and thus permit them to interact with orders from otherwise restricted accounts since such executions would occur naturally in the SuperMontage system. Finally, Nasdaq notes that use of AIQ I value simply results in Nasdaq Quoting Market Participants having the option to have their orders execute pursuant to well-recognized and widely-used execution algorithms such as price/time and price/size that have already been approved by the Commission for the SuperMontage system.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[8] in that the proposal is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities, as well as removing impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, as amended, 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.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.[11] The Commission notes that the proposed AIQ I flag codifies the order interaction contemplated by Nasdaq in File No. SR-NASD–2003–173 for NNMS Order Entry Firms, as well as provides Nasdaq Quoting Market Participants with the same option. Further, the AIQ Y flag codifies the existing function whereby Nasdaq Quoting Market Participants and, now Order Entry Firms, may avoid internalization entirely. The AIQ Y flag exists to assist certain market participants in complying with certain

[6] *See* Nasdaq Head Trader Alert #2003–026 (February 24, 2003).

[7] NNMS Order Entry Firms will continue to be able to use the AIQ Y value on an order-by-order basis, but, in conformity with SR–NASD–2002–173, will not be permitted to use the AIQ N value.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f). As a result of the waiver, the effective and operative date of the filing is March 14, 2003, the date Nasdaq filed Amendment No. 1.

ERISA rules and regulations that preclude and/or limit managing broker-dealers of such accounts from trading as principal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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 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 No. SR–NASD–2003–39 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7345 Filed 3–26–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47547; File No. SR–NYSE–2002–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. To Amend the Exchange's Specialist Combination Review Policy

March 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 2002, the New York Stock Exchange, Inc. (''NYSE'' 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. On January 27, 2003 the NYSE amended the proposed rule change.[3] 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 Proposed Rule Change

The Exchange proposes to amend its Specialist Combination Review Policy (''Policy''), which was recently codified as NYSE Rule 123E. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 123E—Specialist Combination Review Policy

(a) No specialist organization shall complete a ''proposed combination'' (defined below) with one or more other specialist organizations unless the combination has been approved pursuant to this policy.

(b) *Except as provided below,* [I]*i*n any case where a proposed combination involves or would result in a specialist organization accounting for more than five percent of any of the ''concentration measures'' (defined below), the Quality of Markets Committee (the ''Committee'') shall review the proposed combination with the following considerations in mind:

(1) Specialist performance and market quality in the stocks subject to the proposed combination[;]*, with a recommendation from the Market Performance Committee on these matters pursuant to paragraph (e) below.*

(2) The effects of the proposed combination in terms of the following criteria:

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(3) Commitment to the Exchange market, focusing on whether the constituent specialist organizations have worked to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets; and

(4) The effect of the proposed combination on overall concentration of specialist organizations.

The Committee shall approve or disapprove the proposed combination based on its assessment of these considerations. In the case where a combination involves an organization that is not a specialist organization, consideration (b)(3) shall entail an assessment of whether the organization will work to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets.

In any case where a specialist unit currently exceeds five percent of any concentration measure, and then proposes a combination that would not result in increasing its concentration measure by more than two percentage points, or not result in the combined unit moving into a higher tier classification, the Quality of Markets Committee shall not review the proposed combination. The Market Performance Committee shall review the proposed combination from the standpoint of assessing specialist performance and market quality with respect to the securities subject to the proposed combination. The Market Performance Committee will approve, or disapprove in writing, such combination, and may impose such conditions as it deems appropriate with respect to specialist performance and market quality.

(c) In any case where a proposed combination involves or would result in a specialist organization accounting for more than ten percent *(a ''Tier 2 combination'')* of any of the concentration measures, the Committee shall give primary weight to consideration (b)(4). The Committee shall disapprove the proposed combination unless the constituent specialist organizations:

(1)(a) For a proposed combination which involves or would result in a specialist unit accounting for more than ten percent, but less than or equal to 15%, of a concentration measure, prove, by a preponderance of the evidence; or

(b) For a proposed combination that involves or would result in a specialist unit accounting for more than 15% of a concentration measure (a ''[15%] *Tier 3* combination'') present clear and convincing evidence that, if approved, the proposed combination:

(i) Would not create or foster concentration in the specialist business detrimental to the Exchange and its markets;

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 24, 2003 (''Amendment No. 1''). In Amendment No. 1 the Exchange provided a new Exhibit A that completely replaces and supersedes the proposed rule language in the original filing.

(ii) Would foster competition among specialist organizations; [and]

(iii) Would enhance the performance of the constituent specialist organization and the quality of the markets in the stocks involved; [and]

(iv) Demonstrate that, if approved, the proposed combination is otherwise in the public interest.

(d) The Committee may condition any approval under either paragraph 2 or paragraph 3 upon compliance by the resulting specialist organization with any steps the Committee may specify to address any concerns it may have in regard to considerations 2 (a)–(d).

[With respect to proposed combinations which involve or would result in specialist units accounting for more than five percent, but less than or equal to 10%, of a concentration measure, the Committee shall not grant approval unless the proponents of the combination agree to maintain 1.5 times the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are component stocks of the Standard and Poor's Stock Price Index.]

In addition, with respect to proposed combinations which involve or would result in specialist units accounting for more than ten percent of a concentration measure, the Committee shall not grant approval unless the proponents of the combination[:] [(i)] submit an acceptable risk management plan with respect to any line of business in which they engage[;], *and* [(ii)] submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the firm's management and operations.[;]

[(iii) agree to maintain a minimum of 1.5 times (2 times, in the case of a 15 percent combination) the total capital requirement specified in Rule 104.20 with respect to the combined entity's stocks;

(iv) agree to maintain 2 times (2.5 times, in the case of a 15 percent combination) the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are component stocks of the Standard and Poor's 500 Stock Price Index; and

(v) agree that all capital required to be dedicated to specialist operations be accounted for separate and apart from any other capital of the combined entity, and that such specialist capital may not be used for any other aspect of the combined entity's operations;]

(e)(1) In all situations involving a proposed combination of specialist units, the Market Performance Committee shall assess the impact of the proposal upon specialist performance and market quality with respect to the subject securities. In making such assessment, the Market Performance Committee shall:

(a) review the individual unit's overall performance in various measures of specialist performance, such as ratings on the Specialist Performance Evaluation Questionnaire, SuperDOT turnaround performance and administrative response times, capital utilization, dealer participation rates, stabilization rates, continuity, depth, quote spreads, as well as recent regulatory and disciplinary history; and

(b) review performance specifically with respect to each component stock of the Dow Jones Industrial Average, if applicable, if the combination is a Tier 1 combination (more than five percent, but not more than 10 percent of any concentration measure), and, in addition, performance with respect to each component stock of the S&P 100 Stock Price Index, if applicable, if the combination is a Tier 2 or Tier 3 combination.

(2) Proponents of a specialist unit combination must make a written submission to the Quality of Markets Committee or the Market Performance Committee, as appropriate, discussing all factors relevant under this policy to that Committee's review of the proposal. In addition to addressing the specialist performance and market quality considerations noted above, the proponents of the combination must discuss:

(a) performance in any stocks received through previous combinations or transfers of registrations during the preceding two years; and

(b) *whether existing levels of clerical support will be maintained or increased.*

(3) Proponents of any combination subject to a Tier 2 or Tier 3 review by the Quality of Markets Committee must demonstrate that:

(a) the combined unit will have a separate corporate relations department fully staffed to maintain appropriate relations with each of its listed companies, and that it is capable of keeping listed company officials apprised of market developments on a daily basis. Each unit involved in the combination must demonstrate full compliance with Rule 106, or must submit to the Committee a plan providing specific, tangible steps to come into full compliance; and

(b) the combined units will have a real-time surveillance system that monitors specialist trading and uses exception alerts to detect unusual trades or trading patterns.

(4) In addition, the proponents of a Tier 2 or Tier 3 review must discuss whether it has disaster recovery facilities for its computer network and software, whether it has designated specific individuals to handle unusual situations on the Floor (if so, the names of the individuals), whether the combined unit will employ a ''zone'' or other management system on the Floor (with identification of the names of the individuals and their specific responsibilities, as applicable), and whether the combined unit will designate a senior specialist to be responsible for reviewing specialist performance data, with specific procedures for correcting any deficiencies identified.

(f) Proponents of a specialist unit combination subject to review by either the Quality of Markets Committee or the Market Performance Committee under this policy must agree that:

(i) the total amount of capital which each unit had separately prior to the proposed combination shall not be reduced, regardless of whether it would exceed the combined unit's new capital requirement; and

(ii) all required specialist capital be accounted for separately from any other capital, and be used solely for the specialist business.

[(e)]*(g)* For purposes of this policy, a ''proposed combination'' includes:

(1) A merger of specialist organizations or an acquisition of one organization by another;

(2) The formation of a joint account involving two or more existing organizations;

(3) The ''split-up'' of an existing organization (including an organization operating under a joint account) and recombination with another organization;

(4) An individual specialist leaving an existing organization and proposing to take stocks with him to join another existing organization; and

(5) Any other arrangement that would result in previously separate organizations operating under common control.

[(f)]*(h)* For purposes of this policy, the ''concentration measures'' are:

(1) The common stocks listed on the Exchange;

(2) The 250 most active common stocks listed on the Exchange;

(3) The total share volume of trading in common stocks on the Exchange; and

(1) The total dollar value of trading in common stocks on the Exchange.

Supplementary Material:

.10 Guidelines for Applying Consideration (b)(3)

Consideration (b)(3) entails the Committee's review of the constituent

units' past conduct. For example, the Committee shall assess each constituent unit's:

(*a*) Participation upon request in the Exchange's FACTS program, in its marketing seminars, in sales calls and in other of its marketing initiatives seeking to attract order flow and new listings.

(*b*) Acceptance of innovations in order-routing and other trade-support systems and willingness to make optimal use of the systems once they become fully operational.

(*c*) Willingness to apply for *a broad range of new listings and for* allocations of stocks that are less lucrative from the standpoint of profitability to the specialist.

(*d*) Assistance to other units by providing capital and personnel in unusual market situations, such as ''breakouts'' and difficult openings.

(*e*) Efforts at customer relations with both listed companies and order providers, as evidenced by personal contact, return of telephone calls, prompt resolution of complaints, assessment of customer needs and anticipation of customer problems.

(*f*) Efforts to streamline the efficiency of its own operations and its competitive posture.

.20 Guidelines for Applying Consideration (c)(1)(a)(iv)

Consideration (c)(1)(a)(iv) requires review of whether a proposed combination is in the public interest. For example, the Committee may consider the unit's efforts to enhance market quality, its capabilities for maintaining ongoing communications with its listed companies and customers in compliance with Rule 106, and its commitment to applying for new listings and other activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, andStatutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Policy, which was formally codified as NYSE Rule 123E.[4] It has been previously filed with, and approved by, the Commission pursuant to Rule 19b–4.[5]

The Policy requires Exchange approval of proposed specialist unit combinations exceeding five, ten, or fifteen percent of any one of four concentration measures.[6] The Policy provides that the Quality of Markets Committee (''QOMC'') review proposed combinations which, by virtue of the size of the resulting unit (as defined by the four concentration measures), may raise concerns as to: (1) Overall concentration in the specialist community and reduced competition among specialist units as an incentive for allocations of newly-listed stocks; (2) the maintenance of market quality in the unit's stocks; and (3) the maintenance of the financial stability of the specialist system.

The QOMC has conducted 40 concentration reviews under the Policy since its adoption in 1987. This includes 24 Tier 1 reviews (any concentration measure exceeding 5%, but less than or equal to 10%), eight Tier 2 reviews (any concentration measure exceeding 10%, but less than or equal to 15%) and eight Tier 3 review (any concentration measure exceeding 15%). 32 of the 40 reviews (and seven of the eight Tier 2 reviews) occurred after 1993. In the concentration reviews, the QOMC examined the proposals on their own merits, and focused principally on whether the combinations would adversely impact market quality (with input from the Market Performance Committee) and the prospects for financial and operational success of the combined entities.

The NYSE believes that the environmental factors that prompted the adoption of the Policy in December 1986 are even more significant today. The Exchange faces increasing competitive pressures in several areas. In addition, market volatility has increased substantially in the last half dozen years. Daily movements in the S&P 500 Stock Price Index of two percent or more are now as frequent as one percent movements were in 1993. This has required specialists to maintain more capital to cushion price movements and to contribute to the maintenance of fair and orderly markets. The Exchange believes that there is general agreement on the need for a policy to review specialist combinations which, on the one hand, enhances competition among specialists, maximizes the quality of Exchange markets and the services provided by specialists, and minimizes the risk of financial failure, while on the other hand, contributes to improved operational efficiencies, enhances risk management capabilities, and ensures that the specialist units are adequately capitalized and staffed to be better equipped to handle active and volatile markets. To this end, the Exchange believes that the current Policy has worked well, and that the combinations reviewed by the QOMC have enhanced the performance of the specialist organizations and the market quality in the stocks involved. However, the Exchange is continuing to evolve toward a smaller community of specialists. Therefore, it is important that the Policy contain specific guidelines to assist the QOMC in determining whether future combinations will strengthen the Exchange market and specialist system.

The Exchange proposes the following amendments to the Policy.

Scope of Quality of Markets Committee Reviews

De Minimis Increase in Concentration Measure

The filing proposes that when a combination of specialist firms results in an increase in any concentration measure of less than two points within a tier level, no review by the QOMC would be required. A review by the QOMC would still be required if a percentage change of less than two points nonetheless resulted in a unit moving into a higher tier classification (*e.g.*, from Tier 1 to Tier 2). If a combination results in a specialist firm's percentage in any of the concentration measures moving from below 5% (where no QOMC review is required) to over 5% (*e.g.*, moving from 4.5% to 6.3%), a QOMC review will be required, regardless of whether the percentage increase is above or below two points.

The Exchange believes that a 2% or more increase is an acceptable level to

[4] *See* Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31).

[5] It was last approved in Securities Exchange Act Release No. 35343 (February 8, 1995), 60 FR 8437 (February 14, 1995) (SR–NYSE–94–46).

[6] The concentration measures include a specialist unit's share of: (1) common stocks listed on the Exchange; (2) the 250 most active listed common stocks for the last 12 months; (3) total listed common stock share volume for the last 12 months; and (4) total listed common stock dollar volume for the last 12 months.

establish the need for QOMC review of a combination. Combinations below this figure do not usually have a significant impact on specialist operations in terms of capital or manpower. Combinations less than 2% will still require Market Performance Committee review and approval with respect to an assessment of the impact of the proposal on specialist performance and market quality. Requiring QOMC review for combinations greater than 2% is desirable initially to gauge the impact these have on specialist concentration. The Exchange may consider a different *de minimis* level after it gains experience with the 2% level.

The Exchange will explain how the *de minimis* provision of the Concentration Policy will be applied as part of the Information Memo that will be distributed to all members when the proposed rule change is made effective.

Combinations Not Approved

The QOMC has approved each of the proposed combinations presented to the Committee since the adoption of the Policy. The Market Performance Committee has approved all but one of the combinations it has reviewed.

Capital

The Policy currently requires units subject to Tier 1 reviews to maintain a minimum of 1½ times the Rule 104.20 position requirement for each stock that is included in the S&P 500 Stock Price Index (''S&P500''); units subject to Tier 2 reviews to maintain 2 times the position requirement for all S&P 500 stocks, and 1½ times the requirement for all other stocks; and units subject to Tier 3 reviews to maintain 2½ times the requirement for S&P 500 stocks, and 2 times the requirement for all other stocks. These requirements are proposed to be removed from the Policy in light of proposed amendments of other Exchange requirements.

In connection with maintaining more stringent capital requirements for the larger specialist organizations, the formula shown below was approved in changes to Exchange Rule 104.21.[7] In addition, Exchange Rule 104.22 requires any new specialist entities that result from merger, acquisition, consolidation, or other combination of specialist assets to maintain net liquid assets (NLA) equivalent to the greater of either: (1) The aggregate of the NLA of the specialist entities prior to their combination, or (2) the capital requirement prescribed by Rule 104. Below is a chart that shows the current NLA requirement.[8]

Dow Jones Stocks	$4.0 million per stock
S&P 100 Stocks	$2.0 million per stock
S&P 500 Stocks	$1.0 million per stock
Non-S&P Stocks	$0.5 million per stock
Bond Funds	$0.1 million per stock
Preferred Stocks and Structured Products	$0.1 million per stock
Investment Company Units (Exchange-Traded Funds) (''ETFs'')	$0.5 million per ETF[9]

The Exchange also proposes to require that a unit subject to a concentration review must agree that all required specialist unit capital be accounted for separately from any other capital, and be used solely for the specialist business.

Market Performance Committee Assessment

The Market Performance Committee (''MPC'' or the ''Committee'') is charged with the responsibility of reviewing and approving, or disapproving in writing, a specialist combination to see what effect it will have on market quality.[10] The MPC has reviewed specialist combinations since its inception. The Committee receives a summary of the proposal, letters from the specialist firms or individuals involved, information with respect to the stocks involved, historic and proposed capital of the combined units, capital requirements, personnel information, clearing arrangements and operational statistics of the units (*e.g.*, SPEQ ratings, dealer participation rates, stabilization rates, etc.).[11] The proponents of a combination may be asked to appear before the MPC to answer any questions it may have. The MPC then utilizes its expertise and judgment to decide what effect a proposed combination will have on market quality in the stocks involved. If the MPC determines that a proposed combination will significantly erode market quality, it would be required to inform the units of its concerns. If the parties persist in their plans, the MPC can inform them that some or all of the affected stocks will be put up for reallocation.

The MPC's assessment of the impact on market quality in the stocks would include a specific assessment of the performance of each specialist who will be designated to trade a component stock of the Dow Jones Industrial Average (DJIA), if a Tier 1 review; and any S&P 100 stock if a Tier 2 or Tier 3 review. The unit under review must discuss in particular the performance statistics for stocks it received through previous combinations or transfers of registration within the last two years.

Personnel

The Policy is proposed to be amended to require the proponents of the combined units to disclose whether the existing clerical support of the combined units will be maintained or increased. The Policy is also proposed to be amended to provide that specialist units involved in a Tier 2 or Tier 3 combination must have a separate corporate relations department fully staffed to maintain good relations with each listed company and major member organizations, and be capable of keeping listed company officials apprised of market developments on a daily basis. Each unit must show that they have satisfied the listed company and member firm contact requirements of Rule 106, and, if they have not, they must present an acceptable plan to the QOMC that provides specific, tangible steps to improve such contact.

Commitment to the Exchange

Section b(3) of the Policy is proposed to be amended to require that the QOMC assess each constituent unit's willingness to apply for a broad range of new listings and for allocations of stocks that are less lucrative from the standpoint of profitability to the specialist.

Management and Operations

As proposed, the Policy will require that the unit under review in a Tier 2 or Tier 3 review must discuss whether it will:

—Designate a senior specialist to be responsible for reviewing specialist performance data;
—Have procedures for correcting any deficiencies identified;
—Designate specific individuals to handle unusual situations on the Floor and, if so, the names of the individuals;
—Employ a ''zone management'' system on the Floor and, if so, who will be responsible for overseeing each

[7] See Securities Exchange Act Release No. 43098 (July 31, 2000), 65 FR 49044 (August 10, 2000) (SR–NYSE–99–46).

[8] The NYSE requested that the Commission insert this sentence for clarification. Telephone discussion between Jeff Rosenstrock, Senior Special Counsel, NYSE and Mia C. Zur, Attorney, Division, Commission (March 5, 2003).

[9] A unit registered in only one ETF would be subject to the $1m minimum capital requirement of Rule 104.20 *See* SR–NYSE–2001–08 (approved in Securities Exchange Act Release No. 44616)) (July 30, 2001), 66 FR 40761 (August 3, 2001).

[10] In Amendment No. 1, the Exchange added rule language to require that disapprovals be made in writing. The NYSE requested that the Commission modify this sentence to indicate this change. Telephone discussion between Jeff Rosenstrock, Senior Special Counsel, NYSE and Mia C. Zur, Attorney, Division, Commission (March 5, 2003).

[11] *See* Section 5 of the Policy.

zone throughout the trading day; and

—Have disaster recovery facilities for its computer network and software.

The Committee will assess these responses in considering the proposed combination.

The Policy is proposed to be amended to require that the unit in a Tier 2 or Tier 3 review must have a real-time surveillance system that monitors specialist trading and uses exception alerts to detect unusual trades or trading patterns.

Public Interest

The Policy (section c(1)(a)(iv)) provides that specialist units that are involved in a Tier 2 or Tier 3 review must ''demonstrate that, if approved, the proposed combination is otherwise in the public interest.'' The Exchange proposes to add to the Policy a guideline outlining what the QOMC may consider under this provision. This includes: (a) The unit's efforts to enhance market quality; (b) its capability of maintaining ongoing communications with their listed companies and customers in compliance with Rule 106; and (c) the unit's commitment to applying for new listings and other activities.

Reasons for a Specialist Combination Review Policy

The Exchange views the Policy as a necessary mechanism for the review of proposed specialist combinations that may lead to a level of concentration within the specialist community that may be of concern to the Exchange and the quality of its markets. The Exchange recognizes that some specialist organizations seek to grow or attract capital through mergers or acquisitions. The Policy offers a structured approach for reviewing proposed combinations that may raise concentration-related issues. The amendments to the Policy proposed in this filing are part of the Exchange's continued effort to see that the Policy addresses these issues. As the Commission noted in its approval of the Exchange's filing first proposing the Policy, ''the Commission believes it is appropriate for the NYSE to adopt a policy that authorizes it to monitor specialist combinations to determine their impact upon the competitive environment necessary to maintain an orderly market.'' [12]

Other Matters

Specialists Ability to Monitor Real Time Trading

The larger specialist units, representing a significant portion of listed stocks and trading volume, have the capability to monitor the unit's trading on a real-time basis, and use exception alerts to identify unusual trading patterns.

Statistical Information

—There are currently 10 specialist firms, including 3 firms that are registered solely in Exchange-Traded Funds (''ETFs'').

—There are currently 460 members registered as specialists.

—At the end of June 2002, there were 2,796 companies that had common and preferred issues listed on the NYSE.

1. Statutory Basis

The NYSE believes the proposed rule change is consistent with section 6(b)(5) [13] of the Act, which requires that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE believes the proposed amendments are consistent with these objectives in that they address concerns about capitalization, and operational efficiency where proposed combinations would result in large-sized specialist units.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 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 NYSE. All submissions should refer to file number SR–NYSE–2002–41 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7312 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/73–0228]

Toucan Capital Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Toucan Capital Fund II, L.P., 7600 Wisconsin Ave, 7th Floor, Bethesda, MD 20814, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and § 107.730, Financings

[12] *See* Securities Exchange Act Release No. 24411 (April 29, 1987), 52 FR 17870 (May 12, 1987).

[13] 15 U.S.C. 78f(b).

[14] 17 CFR 200.30–3(a)(12).

which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2002)). Toucan Capital Fund II, L.P. proposes to provide preferred equity security financing to Mednav, Inc., 500 Edgewater Drive, Wakefield, MA 01880. The financing is contemplated to provide the company with the necessary working capital.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Toucan Ventures, an Associate of Toucan Capital Fund II, L.P., holds an ownership interest in Mednav, Inc. of greater than 10%. Therefore, this financing is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: March 17, 2003.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 03–7346 Filed 3–26–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4321]

Bureau of Consular Affairs, Office of Overseas Citizens Services (CA/OCS); Notice of Information Collection under Emergency Review: Form DS–3072, Emergency Loan Application and Evacuation Documentation; OMB Control Number 1405–XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: Bureau of Consular Affairs (CA/OCS/PRI).

Title of Information Collection: Emergency Loan Application and Evacuation Documentation.

Frequency: Occasionally.

Form Number: DS–3072.

Respondents: U.S. citizens abroad (and third country nationals, where eligible) who need evacuation, repatriation, or emergency medical and dietary assistance.

Estimated Number of Respondents: Normally, approximately 500 respondents per year. The number of respondents may be much larger in emergency circumstances when lives are endangered by war, civil unrest, or natural disaster, but such circumstances are extraordinary and the number of respondents cannot be predicted.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 83.3 hours in normal circumstances.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB on or before March 30, 2003. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- 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, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Michael Meszaros, Bureau of Consular Affairs, Office of Policy Review and Interagency Liaison, U.S. Department of State, 1800 G Street NW., Suite 2100, Washington, DC 20006, who may be reached on 202–312–9750.

Dated: March 19, 2003.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–7347 Filed 3–26–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4322]

Bureau of Educational and Cultural Affairs Request for Grant Proposal: Middle School Social Studies Pre-Service Education Curriculum Development Project for Azerbaijan

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to support planning, implementing and evaluating a curriculum development project for the pre-service training of middle school-level social studies teachers in Azerbaijan. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to cooperate with the Bureau in the administration of a three-year project to support the development and implementation of a teacher training curriculum that emphasizes new teaching methods and delivery mechanisms for the pre-service training of middle school-level social studies teachers in Azerbaijan.

Overview and Project Objectives

Program Information

Overview: This project is designed to assist educators in Azerbaijan to develop pre-service teacher training courses that will lead to the improvement of social science teaching at the middle school level in Azerbaijan. The rationale for this project is that by introducing more interactive, student-centered teaching practices tied to relevant social studies coursework in Azerbaijan, educators will be preparing students to participate more actively as citizens in a democratic society. Although prior efforts in Azerbaijan have supported the training of in-service teachers in new approaches to classroom teaching, this project will introduce these approaches to pre-service teachers at an earlier, more formative stage in their careers. As part of the effort to promote cooperative relationships within a democratic society, the project should also prepare future teachers to interact productively with other members of the educational community including parents,

administrators, students, and persons responsible for educational oversight.

Project Objectives

Proposals should outline a practical strategy to assist faculty at pedagogical institutes to develop new curricular and instructional materials for the pre-service training of social studies teachers and to pilot test and disseminate the curriculum in pedagogical institutes and teacher training centers throughout Azerbaijan. (Please see the ''Project Objectives, Goals and Implementation'' (POGI) for information on the pedagogical institutes in Azerbaijan). Proposals that introduce ''standards-based'' curriculum development approaches are encouraged. For examples of standards-based curriculum see the National Council for Accreditation of Teacher Education (*http://www.ncate.org*) or the National Council for the Social Studies (*http://www.socialstudies.org*). This project will include the following three phases of activity: Recruiting and selecting Azerbaijan participants; coordinating a U.S.-based training workshop; and testing and publishing the curricular materials. (Full details for each project phase are contained in the POGI).

Selection of Topics

Applicants should suggest in their proposal the process for selecting the specific topics to be developed by the Azerbaijan participants. Final determination of appropriate topics will be made in consultation with the Azerbaijan project participants before the start of the U.S. based curriculum development workshop. Proposals should include a detailed plan for collaboration with local Azerbaijan pedagogical institutes and should include a recruitment plan that encourages participation by faculty from all six major pedagogical institutes.

Proposals should demonstrate an understanding of the issues confronting social studies education in Azerbaijan as well as expertise in pre-service teacher education and curriculum development. The Bureau encourages applicants with the ability to coordinate and to monitor locally the implementation of all Azerbaijan-based, Phase III project activities (pilot testing, teacher training, dissemination and publishing).

Guidelines

Project Planning and Implementation

Grant Duration. Grant activities should begin on or around August 1, 2003 and should last approximately thirty-six months.

Planning. In Phase I, the grantee will undertake work in Azerbaijan over a period of 3–6 months to prepare for the subsequent phases of the project. The U.S. grantee organization will conduct a planning trip to Baku for initial consultations. The planning trip should not exceed two weeks in length. The U.S. grantee organization will communicate with local pre-service educators or representatives of a local NGO active in the education sector and the Public Affairs Section of the U.S. Embassy in Baku to coordinate recruitment and selection of Azerbaijan educators to serve on a curriculum development team. The U.S. applicant should specify in the proposal an NGO or other group of Azerbaijan educators with whom the U.S. applicant proposes to work. After the curriculum team has been selected, in consultation with specialists from the grantee organization and local Azerbaijan pre-service educators, the members of the curriculum development team will assess existing pre-service education curricula, middle school social studies curricula and related teaching materials already used in Azerbaijan, and U.S. materials in the context of the needs of pre-service teachers in Azerbaijan. Based on the analysis of this information, the curriculum development team will select the topics to be covered in the curriculum to be developed.

During the planning stage the grantee organization should consult with representatives of the Azerbaijan Ministry of Education (See POGI for contact information) to negotiate the following assistance to all Azerbaijan participants: (1) Paid leave time for the Azerbaijan participants during their stays in the U.S. and during any subsequent training work in Azerbaijan; and (2) Facilitation of the logistics of training sessions to be conducted in Azerbaijan through appropriate signed agreements with the Ministry of Education or local education authorities.

Project Implementation. In Phase II of this project, members of the curriculum development team will spend approximately 10–12 weeks in the U.S. attending a curriculum development workshop organized by the U.S. grantee; observing relevant aspects of the U.S. educational system; and drafting curriculum and training materials in consultation with U.S. specialists. The grantee organization will develop workshop activities designed to introduce the Azerbaijan team to U.S. education specialists with appropriate expertise in pre-service teacher training, social studies education and curriculum development. Applicants should develop a timetable that incorporates significant time for writing curricular materials. The workshop should include field experiences that are relevant to the materials being produced (such as visits to schools, consultations with U.S. teachers and mentored attendance at professional meetings).

In Phase III of each project, the grantee organization will plan and implement a program for testing, revising and publishing the materials developed in Phase II. Phase III project activities should emphasize outreach and training of local educators by the Azerbaijan curriculum development team members.

Budget Guidelines

The Bureau anticipates awarding one grant in a total amount not to exceed $245,000 to support program and administrative costs required to implement this project. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges are limited to $60,000 in Bureau funding. Therefore, organizations with less than four years of experience in conducting international exchanges are ineligible to apply under this competition. Applicants must submit a comprehensive budget for the entire program.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The summary and detailed project and administrative budget should be accompanied by a narrative, which provides justification for the amount needed.

Allowable costs for the program include the following:

(1) Administrative costs, including salaries and benefits, of grantee organization.

(2) Program costs, including general program costs and program costs for each participant from Azerbaijan in the U.S. based curriculum development workshop and the Azerbaijan-based pilot-testing activities. Please refer to the POGI for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/S/U–03–16.*

FOR FURTHER INFORMATION CONTACT: The Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–5289; Fax: 202–401–1433; or *mwestbro@pd.state.gov,* to request a solicitation package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Marie Westbrook Grant on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received by the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday May 2, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/S/U–03–16,* Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.''

Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA or the Grantee (program office: please specify which) will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Affairs Section overseas, where appropriate will review all eligible proposals. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise in curriculum development, social studies education and pre-service teacher training.

2. *Creativity and feasibility of program plan:* A detailed agenda and relevant work plan should demonstrate substantive undertaking, logistical capacity, and a creative utilization of resources and relevant professional development opportunities. The agenda and work plan should be consistent with the program overview and guidelines described in this solicitation.

3. *Ability to achieve project objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program

venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). The proposal should demonstrate an understanding of the specific diversity needs in Azerbaijan and strategies for addressing these needs in terms of the project goals.

5. *Institutional capacity and record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the goals of the project. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the grants staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate program and financial reports after each project component is concluded or quarterly, whichever is less frequent.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support), which ensures that Bureau supported programs are not isolated events.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate and should reflect a commitment to pursuing project objectives. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (FREEDOM Support Act). Programs and projects must conform to Bureau requirements and guidelines outlined in the Solicitation Package. Bureau projects and programs are subject to the availability of funds.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding.

Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 17, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–7348 Filed 3–26–03; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Privacy Act; System of Records

ACTION: Amendment of system of records to include new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), the Tennessee Valley Authority (TVA) is issuing notice of our intent to amend the system of records entitled TVA–31 ''OIG Investigative Records—TVA'' to include new routine uses. We invite public comment on this publication.

EFFECTIVE DATE: The changes will become effective as proposed on April 28, 2003, unless comments which would warrant our preventing the changes from taking effect are received on or before 30 days from the date of this notice.

ADDRESSES: Interested individuals may comment on this publication by writing to Wilma H. McCauley, Privacy Act Officer, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Wilma H. McCauley at (423) 751–2523.

SUPPLEMENTARY INFORMATION:

Discussion of Proposed Additions to Routine Uses

This publication is in accordance with the Privacy Act requirement that Agencies publish their amended Systems in the **Federal Register** when there is a revision, change or addition. TVA is amending the Routine Uses of Records, TVA–31, OIG Investigative Records—TVA, previously published at 64 FR 29398 (June 1, 1999), specifically to allow the disclosure of names and other information to the public when (1) an investigation has become public knowledge, (2) necessary to preserve confidence in the integrity of the investigative process, (3) necessary to demonstrate the accountability of individuals covered by this system, (4) a legitimate public interest exists, or (5) necessary for protection from imminent threat to life or property. These uses would allow, for example, disclosure of names of indicted or convicted individuals in the OIG Semiannual Report, other reports, and press releases or other forms of communication with the media. TVA's objectives in allowing disclosure of information include enhancing the deterrence of similar crimes against TVA.

In addition, the amended routine uses would allow the disclosure of information to the President's Council on Integrity and Efficiency (PCIE) for the preparation of reports to the President and Congress on the activities of the Inspectors General. Finally, the amendments would allow the disclosure of information to members of the PCIE, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of investigative qualitative assessment reviews. The PCIE is establishing a peer review process to, among other things, ensure that adequate internal safeguards and management procedures are maintained.

TVA–31

SYSTEM NAME:

OIG Investigative Records—TVA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations by the Office of the Inspector General (OIG), or who provide information in connection with such investigations, including but not limited to: Employees; former employees; current or former contractors and subcontractors and their employees; consultants; and other individuals and entities which have or are seeking to obtain business or other relations with TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including information provided by known or anonymous complainants; information provided by the subjects of investigations; information provided by individuals or entities with whom the subjects are associated (*e.g.*, coworkers, business associates, relatives); information provided by Federal, State, or local investigatory, law enforcement, or other Government or non-Government agencies; information provided by witnesses and confidential sources; information from public source materials; information from commercial data bases or information resources; investigative notes; summaries of telephone calls; correspondence; investigative reports or prosecutive referrals; and information about referrals for criminal prosecutions, civil proceedings, and administrative actions taken with respect to the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10450; Executive Order 11222; Hatch Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535; Proposed Plan for the Creation, Structure, Authority, and Function of the Office of Inspector General, Tennessee Valley Authority, approved by the TVA Board of Directors on October 18, 1985; TVA Code XIII INSPECTOR GENERAL, approved by the TVA Board of Directors on February 19, 1987; and Inspector General Act Amendments of 1988, Pub. L. 100–504, 102 Stat. 2515.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the public when: (1) The matter under investigation has become public knowledge, or (2) when the Inspector General determines that such disclosure is necessary (a) to preserve confidence in the integrity of the OIG investigative process, or (b) to demonstrate the accountability of TVA officers, or employees, or other individuals covered by this system; unless the Inspector General determines that disclosure of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

To the news media and public when there exists a legitimate public interest (*e.g.*, to provide information on events in the criminal process, such as indictments), or when necessary for protection from imminent threat to life or property.

To members of the President's Council on Integrity and Efficiency, for the preparation of reports to the President and Congress on the activities of the Inspectors General.

To members of the President's Council on Integrity and Efficiency, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of TVA OIG to ensure that adequate internal safeguards and management procedures are maintained.

* * * * *

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–7314 Filed 3–26–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Otter Tail and Wadena Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 10 from Bluffton to 1.5 miles east of Wadena in Otter Tail and Wadena Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Lori Vanderhider, Project Management Engineer, Minnesota Department of Transportation—District 4, 1000 Trunk Highway 10 West, Detroit Lakes, Minnesota 56501, Telephone (218) 847–1512; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare an EIS on a proposal to improve TH 10 from Bluffton, in Ottertail County, to approximately 1.5 miles east of Wadena, in Wadena County, Minnesota, a distance of approximately 6.5 miles. The proposed action is being considered to address future transportation demand, safety problems, access management, interregional corridor status, and system continuity. Alternatives under consideration include (1) No-Build (2) variations of ''Build'' alternatives involving reconstruction and/or realignment and new construction of TH 10 (3) ''Build'' alternative involving improvements along the existing alignment of TH 10.

The ''Trunk Highway 10 Scoping Document/Draft Scoping Decision Document'' will be published in 2003 and 2004. A press release will be published to inform the public of the document's availability. Copies of the Scoping Document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting.

A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 14, 2003.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul Minnesota.

[FR Doc. 03–7350 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–4334]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for seven individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial motor vehicle drivers.

DATES: This decision is effective April 5, 2003. Comments from interested persons should be submitted by April 28, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce, for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses seven individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these seven petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Joe F. Arnold
Richard D. Carlson
David J. Collier
Dexter L. Myhre
Stephanie D. Randels
Duane L. Riendeau
Darrell L. Rohlfs

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the seven applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226, 64 FR 16517, 65 FR 17994). Each of these seven applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 28, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its

decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: March 20, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Develoment.

[FR Doc. 03–7297 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Notice and Request for Comments

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on January 14, 2003 (68 FR 61884).

DATES: Comments must be submitted on or before April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On January 14, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. See 68 FR 1884. FRA received no comments after issuing the 60-day notice referenced earlier. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); See also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: U.S. DOT Crossing Inventory Form.

OMB Control Number: 2130–0017.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Abstract: Form FRA F 6180.71 is a voluntary form and is used by States and railroads to periodically update certain site specific highway-rail crossing information which is then transmitted to FRA for input into the National Inventory File. This information has been collected on the U.S. DOT–AAR Crossing Inventory Form (previous designation of this form) since 1974 and maintained in the National Inventory File database since 1975. The primary purpose of the National Inventory File is to provide for the existence of a uniform database which can be merged with accidents data and used to analyze information for planning and implementation of crossing safety programs by public, private, and governmental agencies responsible for highway-rail crossing safety. Following the official establishment of the National Inventory in 1975, the Federal Railroad Administration (FRA) assumed the principal responsibility as custodian for the maintenance and continued development of the U.S. DOT/AAR National Highway-Rail Crossing Inventory Program. The major goal of the Program is to provide Federal, State, and local governments, as well as the railroad industry, information for the improvement of safety at highway-rail crossings. Good management practices necessitate maintaining the database with current information. The data will continue to be useful only if maintained and updated as inventory changes occur. FRA previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) Clearance Number 2130–0017. OMB approved the burden for this form through March 31, 2003. FRA is requesting a new three year approval from OMB for this information collection.

Annual Estimated Burden Hours: FRA estimates that the revised burden for these ICRs is 1,487 hours. The total recordkeeping and reporting burden for this information collection will actually decline by 1,617 hours from the previous total of 3,104 hours. The reduction in burden is due to a large increase in the estimated number of electronic records which will be kept over the next three years.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 21, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–7296 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–06–P

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Public Health Authority Notification

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: NHTSA is publishing this notice to inform hospitals and other health care organizations of its status as a ''public health authority'' under the medical privacy requirements of the Health Insurance Portability and Accountability Act of 1996.

FOR FURTHER INFORMATION CONTACT: Tyler Bolden, NHTSA, Office of Chief Counsel, 400 7th Street, SW Suite 5219, Washington, DC 20590. 202–366–1834.

SUPPLEMENTARY INFORMATION: The Health Insurance Portability and Accountability Act of 1996 (''HIPAA'') was enacted to improve the portability and continuity of health insurance coverage, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes (Pub. L. No. 104–191, 110 Stat. 196 (1996)). The Administrative Simplification subtitle of HIPAA authorized the Department of Health and Human Services (''HHS'') to promulgate medical privacy regulations to protect the privacy of individually-identifiable electronic health information. These regulations (the ''Privacy Rule'') were published by HHS on December 28, 2000 and established the standards to identify the rights of individuals who are the subjects of ''protected health information,'' which is defined as individually-identifiable health information; provide procedures for the exercise of those rights; and define the general rules for permitted and required uses and disclosures of protected health information (45 CFR Parts 160–164).

Beginning April 14, 2003, the Privacy Rule prohibits health plans, health care clearinghouses and selected health care providers from using or disclosing protected health information, except as permitted by certain exceptions (45 CFR 164.502). Under one exception, the Privacy Rule permits the disclosure of protected health information to public health authorities authorized to ''collect or receive such information for the purpose of preventing or controlling disease, injury, or disability . . . '' (45 CFR 164.512(b)(1)(i)). A ''public health authority'' includes ''an agency or authority of the United States . . . that is responsible for public health matters as part of its official mandate'' (45 CFR 164.501). Examples of public health matters include the reporting of disease, injury, or vital events; and public health surveillance, public health investigations or public health interventions (45 CFR 164.512(b)(1)(i)).

Guidance issued by HHS on December 2, 2002 further addressed the issue of disclosures to public health authorities. Specifically, the guidance stated that:

> The HIPAA Privacy Rule recognizes the legitimate need for public health authorities and others responsible for ensuring public health and safety to have access to protected health information to carry out their public health mission . . . the [Privacy] Rule permits covered entities to disclose protected health information without authorization for specified public health purposes.

NHTSA's mission is to prevent and reduce deaths, injuries and economic losses resulting from automotive travel on our nation's roadways. To accomplish this mission, NHTSA has statutory authority to conduct crash injury research and collect relevant data in the interest of public health. Specifically, NHTSA is authorized to: (1) Engage in research on all phases of highway safety and traffic conditions; (2) undertake collaborative research and development projects with non-Federal entities for the purposes of crash data collection and analysis; and (3) conduct research and collect information to determine the relationship between motor vehicles and accidents, and personal injury or deaths resulting from such accidents (See 23 U.S.C. 403(a)(1), 23 U.S.C. 403(f) and 49 U.S.C. 30168(a)). The term ''safety'' is defined as ''highway safety and highway safety'related research and development, including research and development relating to highway and driver characteristics, crash investigations, communications, emergency medical care, and transportation of the injured'' (23 U.S.C. 403(a)(3)).

In light of the above-referenced statutory authority, which demonstrates a responsibility for public health matters as part of the agency's mandate, NHTSA has determined that it is a public health authority within the meaning of the Privacy Rule. As a public health authority, NHTSA is entitled to receive protected health information from hospitals and other health care organizations, without written consent or authorization, because disclosures of protected health information to a public health authority are permitted disclosures under the Privacy Rule (45 CFR 164.502(a)(1)(vi)).

Issued on: March 21, 2003.

Jeffrey W. Runge,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 03–7301 Filed 3–26–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Interim Guidance Providing Procedure for Rebuttal of Presumption of Control of an Insurer for Purposes of the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: This notice provides interim guidance to insurers that wish to rebut a presumption of control by the Department of Treasury as administrator of the Terrorism Risk Insurance Program.

DATES: This notice is effective immediately and will remain in effect until superceded by regulations or by subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy 202–622–2730; Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking and Finance) 202–622–0480.

SUPPLEMENTARY INFORMATION: This notice provides interim guidance to assist insurers that wish to rebut a presumption of controlling influence for purposes of the Terrorism Risk Insurance Program (the Program) established by Title I of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) prior to the issuance by the Department of Treasury (Treasury) of regulations incorporating a procedure for rebuttal of a controlling influence presumption. This interim guidance remains in effect until superceded by regulations or subsequent notice.

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (the Act). The Act became effective immediately. It establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting

from an ''act of terrorism,'' as defined in the Act. The Program is administered and implemented by Treasury and will sunset on December 31, 2005.

Section 102(3) of the Act sets forth the Act's definition of the term ''control.'' Treasury issued an interim final rule containing Program definitions, including the definition of an ''affiliate'' of an ''insurer.'' 68 FR 9803 (February 28, 2003). The definition of ''affiliate'' in the interim final rule incorporates the three categories in the statutory definition of control: (a) If an insurer directly or indirectly owns, controls or has the power to vote 25 percent or more of any class of voting securities of the other insurer; (b) if an insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or (c) even if there is no control under (a) or (b), if the Secretary determines after notice and opportunity for hearing that an insurer directly or indirectly exercises a controlling influence over the management or policies of the other insurer.

In the interim final rule at 31 CFR 50.5(c)(2), Treasury established several rebuttable presumptions for purposes of a determination of controlling influence, and, therefore, of control by an insurer over another insurer for purposes of the Program. If an insurer controls another insurer, then, for example, their direct earned premiums are consolidated for purposes of calculating the insurer deductible. The rebuttable presumptions of control in the interim final rule apply unless (i) subsequently modified by Treasury by regulation or order, or (ii) an affected insurer or insurers makes a rebuttal submission to Treasury, as set forth below, and Treasury determines that no control relationship exists for purposes of the Program.

II. Interim Guidance

Treasury will be issuing regulations containing a procedure for rebutting presumptions of a controlling influence for purposes of the Program. Treasury is issuing the following procedure as interim guidance for an insurer (as that term is defined by section 102 (6) of the Act and under Treasury's interim final regulations) to follow if such insurer wishes to rebut a presumption of controlling influence prior to the issuance of such regulations. This rebuttal procedure may also be found on Treasury's Terrorism Risk Insurance Program Web site at *http://www.treasury.gov/trip.*

Procedure for Rebutting Presumption of Control

(1) An insurer or insurers may make a written submission to Treasury to rebut a presumption, established under 31 CFR 50.5(c)(2), of a controlling influence by the insurer under the Program. Prior to establishment of a Terrorism Risk Insurance Program Office within Treasury, such rebuttal submissions shall be made to the Office of Financial Institutions Policy, Terrorism Risk Insurance Program, Room 3160 Annex, Department of Treasury, 1500 Pennsylvania Ave, NW., Washington, DC 20220. The submission to rebut a controlling influence presumption should be entitled ''Submission to Rebut Control Presumption'' and should provide the full name and address of the submitting insurer(s) rebutting control and the name, title, address and telephone number of the designated contact person(s) for such insurer(s).

(2) Following receipt of a rebuttal submission, Treasury will review the submission and determine whether Treasury needs additional written or orally presented information from the submitting insurer in order to determine whether the presumption of controlling influence has been rebutted. In its discretion, Treasury may schedule a date, time and place for an oral presentation by the insurer(s).

(3) A rebuttal submission by an insurer or insurers under the Program shall provide all relevant facts and circumstances concerning the relationship(s) between or among the affected insurers; explain in detail why no controlling influence exists and provide support for why the rebuttable presumption should not apply in light of particular facts and circumstances and the Act's language, structure and purpose.

(a) *General Information for Rebuttal Submission.* The types of information that Treasury may consider in reviewing rebuttal submissions include:

(i) The ownership structure of the insurer that is subject to the presumption of control, such as an organization chart and whether its stock or other capital is widely or closely held;

(ii) The degree to which the ownership or capacity providers of the insurer share in the profits and losses of the insurer;

(iii) The management structure of the insurer, including a description and copies of management contracts and any informal management arrangements;

(iv) Information on financial support provided by the insurer presumed in control to the insurer presumed to be controlled, including the nature and amount of debt instruments held by one insurer in the other and information on financial support provided by companies other than the insurer presumed to be in control;

(v) Information on who makes management, investment or other significant business decisions for the insurer presumed to be controlled and how these are made and similar information; and

(vi) Any other information that may be relevant to the determination of control.

(b) *Information for Rebuttal of Specific Presumptions.* In addition to the general information described above in (a), the types of information Treasury may review in connection with a rebuttal of a specific presumption includes the following:

(i) In rebutting a presumption based on a State determination of control, the insurer's submission must include a copy of the State's determination of control, the name, title and telephone number of the head of the appropriate State agency along with copies of relevant State regulations or rulings and citations to relevant statutes;

(ii) In rebutting a presumption based on provision by one insurer of 25 percent or more of capital, policyholder surplus or corporate capital, the insurer's submission should include financial and accounting statements for the most recent calendar year and copies of relevant financial and control information provided to State regulators; and

(iii) In rebutting a presumption based on the fact that an insurer supplies 25 percent or more of the underwriting capacity for that year to another insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters, the insurer submission shall include financial statements for the most recent calendar year and copies of relevant financial and control information provided to State regulators.

(c) *Confidential Information.* Any confidential business or trade secret information submitted to Treasury in a rebuttal submission should be clearly marked. (4) Treasury shall review and consider the insurer submission and other relevant facts and circumstances, including information provided by the insurer's State regulator. Unless otherwise extended by Treasury, within 60 days after receipt of a complete submission, including any oral presentation, Treasury shall issue a final determination of whether a submitter has rebutted the relevant regulatory

presumption of a controlling relationship for purposes of the Program. The determination shall set forth Treasury's basis for its determination.

III . Paperwork Reduction Act

The collection of information contained in this interim guidance has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) under control number 1505—0190. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

This information is required in order for Treasury to determine whether an insurer has rebutted the presumption of control. The collection of information is mandatory with respect to an insurer seeking to rebut the presumption of control. The estimated average burden associated with the collection of information in this final rule is 40 hours per respondent.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Financial Institutions Policy, Terrorism Risk Insurance Program, Room 3160 Annex, Department of Treasury, 1500 Pennsylvania Ave, NW., Washington, DC 20220 and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503.

Dated: March 21, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–7304 Filed 3–26–03; 8:45 am]

BILLING CODE 4810–25–P

Reader Aids

Federal Register

Vol. 68, No. 59

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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 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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