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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 920

**[Docket No. FV03–920–1 FR]**

## Kiwifruit Grown in California; Relaxation of Pack Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises pack requirements currently prescribed for California kiwifruit under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule removes the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; continues to suspend, for the 2003–04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and exempts the ''Hort16A'' kiwifruit variety from the ''tightly packed'' standard pack requirement. These changes were recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns.

**EFFECTIVE DATE:** This final rule becomes effective July 29, 2003.

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

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

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This final rule revises pack requirements currently prescribed for California kiwifruit under the order. This rule: (1) Removes the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; (2) continues to suspend, for the 2003–04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and (3) exempts the ''Hort16A'' kiwifruit variety from the ''tightly packed'' standard pack requirement. The Committee recommended these changes at its March 12, 2003, meeting. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns.

### Volume Filled Containers Designated by Count

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.52(a)(1) and (3) of the order authorizes the establishment of pack requirements for California kiwifruit.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines specific pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) provides that for volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the U.S. Standards for Grades of Kiwifruit (Grade Standards). For example, if the fruit has a size designation of ''30'' marked on the container, then three times the size designation or 90 kiwifruit must be packed into the container and the container must be marked with ''90 count.''

During the early 1990's handlers packed kiwifruit into several styles of containers: trays, bins, consumer packs, and volume filled containers. (Volume filled containers are those in which kiwifruit are loosely packed without cell

compartments, cardboard fillers, or molded trays). Volume filled containers were designated by size and also either net weight or count. It was a customary industry practice to pack the equivalent of three single layer trays into a volume filled container and to specify the quantity of the kiwifruit placed into the volume filled container by count.

In 1993, the Committee recommended and the USDA established a pack requirement under the order's administrative rules and regulations which specified that for shipments in volume filled containers in which the quantity was specified by count, the count must equal three times the size designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the Grade Standards, (58 FR 43243, April 16, 1993). This requirement was established to ensure that volume filled containers designated by size and count held a consistent number of kiwifruit.

During the 1993–94 season handlers realized that it was more labor intensive and more expensive to pack volume filled containers designated by count than by net weight. They also realized that the difference in the average FOB values for each type of volume filled container was negligible. Retailers were unwilling to pay a higher price for volume filled containers designated by count and handlers were unwilling to pack these more labor-intensive and more expensive containers, if they could not recoup the extra handling costs. As a result, the amount of kiwifruit packed into volume filled containers designated by count and size declined to 2 percent during the 1995–96 season. While kiwifruit handlers have not used volume filled containers designated by count and size since the 1995–96 season, they continue to use volume filled containers designated by net weight and size.

Recently, retailers have requested new, smaller containers of kiwifruit designated by count and size. Some handlers in the industry, including those that are packing a new variety, ''Hort16A'', want the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer requests for smaller volume filled containers of kiwifruit, as the order's administrative rules and regulations require the count to equal three times the size designation in volume filled containers in which the quantity is specified by count. For example, if a retailer requests containers of Size 20 fruit with 50 kiwifruit in each container, the handler will not be able to meet the retailer's requirements because the order's administrative rules and regulations require that 60 kiwifruit (a count equal to three times the size designation) be packed into the container.

Thus, the Committee, at its March 12, 2003, meeting, unanimously recommended removing this requirement as it is obsolete and no longer meets the industry's needs. This relaxation in pack requirements is expected to enable handlers to compete more effectively in the marketplace and to improve grower returns.

**Continued Suspension of Standard Packaging Requirement for Volume Filled Containers Designated by Weight**

Section 920.52(a)(3) of the order authorizes the establishment of weight requirements for containers of California kiwifruit.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Prior to the issuance of an interim final rule on August 22, 2002 (67 FR 54327), § 920.302 (a)(4)(v) specified that all volume filled containers of kiwifruit designated by weight had to hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. This standard packaging requirement was unanimously recommended by the Committee and established under the order's administrative rules and regulations by a final rule issued on October 25, 1994, (59 FR 53563).

During the 1994–95 season 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) net weight volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled containers from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

At its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers for the 2002–03 season. This suspension was implemented by an interim final rule published on August 22, 2002 (67 FR 54327) and will be in effect until July 31, 2003. This was made final on November 21, 2002 (67 FR 76140).

To date during the 2002–03 season, handlers shipped 85 percent of the crop in volume filled containers (73 percent in 22-pounds (10-kilograms) net weight volume filled containers, 12 percent in 19.8-pounds (9-kilograms) net weight containers, and less than 1 percent in volume filled containers of other weights).

At its March 12, 2003, meeting, the Committee discussed three options for volume filled containers: (1) Establishing a standard packaging requirement of 19.8-pounds (9-kilograms) net weight, (2) reestablishing a standard packaging requirement of 22-pounds (10-kilograms) net weight and (3) continuing the suspension of the standardized packaging requirement for the 2003–04 season, thus allowing flexibility to pack any net weight volume filled container. In its deliberations, the Committee discussed grower returns and the ability to meet buyer's preferences for alternate containers. Committee members mentioned that 10 percent more containers could be packed if the standard were set at 19.8-pounds (9-kilograms) net weight. Others mentioned that the increased number of containers will not offset the increased handler costs of packing more, smaller containers and could result in decreased grower returns. Many retailers do not differentiate between 19.8-pounds (9-kilograms) net weight volume filled containers and 22-pounds (10-kilograms) net weight volume filled containers and pay the same price for each. Thus, packaging 19.8-pounds (9-kilograms) net weight containers may not be beneficial for growers and handlers.

The Committee also discussed reestablishing the 22-pounds (10-kilograms) net weight container standard packaging requirement. Some Committee members believe that increased flexibility benefits growers and handlers, as handlers are able to meet buyer's preferences for alternate containers. Before making the change permanent, the Committee needs to gather more data to further evaluate the benefits of suspending standard pack requirements for another season, the 2003–04 season.

The majority of the Committee members agreed that the suspension of the standard packaging requirement for volume filled containers by net weight should be continued for the 2003–04 season. Of the twelve members present,

eight voted for this change and four voted against it. Opponents of this recommendation preferred standard packaging, but could not agree whether the 22-pound (10-kilogram) or 19.8-pound (9-kilogram) net weight containers should be the standard. The majority of the Committee believes that handlers and growers will benefit by being able to meet buyer's preferences for alternate containers. Small and large growers and handlers are expected to continue benefiting from this change. This suspension will be in effect until July 31, 2004.

**Standard Pack ''tightly packed'' Requirement**

Section 920.52(a)(2) of the order authorizes the establishment of grade standards.

Section 920.302(a)(1) of the order's administrative rules and regulations states the minimum grade shall be at least KAC No. 1 quality.

Section 920.302(b) defines the term KAC No. 1 quality as kiwifruit that meets the requirements of U.S. No. 1 grade as defined in 7 CFR 51.2335 through 51.2340 of the Grade Standards, except that the kiwifruit shall be ''not badly misshapen'' and an additional 7 percent tolerance is provided for ''badly misshapen'' fruit. Section 51.2338(a) of the Grade Standards defines standard pack requirements, requires containers to be well filled; and requires the contents to be tightly packed, but not excessively or unnecessarily bruised by overfilling or oversizing.

The Grade Standard's ''tightly packed'' provisions were established under the order to ensure that the ''Hayward'' variety (the predominant kiwifruit variety produced in the production area) fits tightly into the tray-liner cups (55 FR 42179, October 18, 1990). Kiwifruit that is packed tightly into the cups of the tray-liners is less subject to movement and therefore less damage.

Recently, a new kiwifruit cultivar, the *Actinidia chinensis* ''Hort16A'' has been introduced in California and is expected to be harvested and sold commercially during the 2003–04 season. The ''Hort16A'' is referred to as a ''gold'' variety because the internal flesh is a yellow to gold color when fully mature. The ''Hort16A'' kiwifruit is more susceptible to bruising and injury and has a protrusion on the blossom end, referred to as a ''beak.'' Therefore, the ''Hort16A'' must be handled differently than the ''Hayward'' variety. Care must be taken during the packing process to protect the beak. To minimize damage, the ''Hort16A'' is packed into a special shallow molded tray with a notch for the beak. The ''Hort16A'' kiwifruit, when packed in this shallow tray, may not meet the ''tightly packed'' requirement for standard pack under the Grade Standards.

Therefore, the Committee, at its March 12, 2003, meeting, unanimously recommended an exemption for all ''gold'' kiwifruit varieties from the order's ''tightly packed'' requirement. However, the ''Hort16A'' with its unique ''beak'' is currently the only known commercially produced ''gold'' kiwifruit. Because it is not known whether other ''gold'' kiwifruit varieties will experience the same difficulty in meeting the ''tightly packed'' standard pack requirement, this final rule limits the exemption to the ''Hort16A'' variety.

This change is expected to enable handlers to be more competitive in the marketplace and to provide consumers with higher quality ''Hort16A'' kiwifruit.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 46 handlers of California kiwifruit subject to regulation under the marketing order and approximately 300 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. None of the 46 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, six growers subject to regulation have annual sales exceeding $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This final rule revises pack requirements prescribed under the California kiwifruit order. This rule: (1) Removes the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; (2) continues to suspend, for the 2003–04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and (3) exempts the ''Hort16A'' kiwifruit variety from the ''tightly packed'' standard pack requirement.

The Committee recommended these changes at its March 12, 2003, meeting. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns. Authority for these actions is provided in § 920.52 of the order.

**Volume Filled Containers Designated by Count**

Section 920.302(a)(4) of the order's administrative rules and regulations outlines specific pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) of the order's administrative rules and regulations provides that for volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in the Grade Standards listed in 7 CFR 51.2328(c)(2). For example, if the fruit has a size designation of ''30'' marked on the container, then three times the size designation or 90 kiwifruit must be packed into the container and the container must be marked with ''90 count.''

During the early 1990's handlers packed kiwifruit into several styles of containers: trays, bins, consumer packs, and volume filled containers. Volume filled containers were designated by size and also by either net weight or count. It was a customary industry practice to pack the equivalent of three single layer trays into a volume filled container and to specify the quantity of the kiwifruit placed into the volume filled container as the count.

In 1993, the Committee recommended and the USDA established a pack requirement under the order's administrative rules and regulations which specified that for shipments in volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the Grade Standards, (58 FR 43243, April 16, 1993). This requirement was established to ensure

that volume filled containers designated by size and count held a consistent number of kiwifruit.

During the 1993–94 season handlers realized it was more labor intensive and more expensive to pack volume filled containers by count than by net weight. They also realized that the difference in the average FOB values for each type of volume filled container was negligible. Retailers were unwilling to pay a higher price for volume filled containers designated by count and handlers were unwilling to pack these more labor-intensive and more expensive containers, if they could not recoup the extra handling costs. As a result, the amount of kiwifruit packed into volume filled containers designated by count and size declined to 2 percent during the 1995–96 season. While kiwifruit handlers have not used volume filled containers designated by count and size since the 1995–96 season, they continue to use volume filled containers packed by net weight and size designation.

Recently, retailers have requested new, smaller containers of kiwifruit designated by count and size. Some kiwifruit handlers in the industry, including those that are packing a new variety, ''Hort16A'', want the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer's requests for smaller volume filled containers of kiwifruit, as the order's administrative rules and regulations require the count to equal three times the size designation in volume filled containers in which the quantity is specified by count. For example, if a retailer requests containers of Size 20 fruit with 50 kiwifruit in each container, the handler will not be able to meet the retailer's requirements because the order's administrative rules and regulations require that 60 pieces of fruit (a count equal to three times the size designation) be packed into the container.

Thus, the Committee, at its March 12, 2003, meeting, unanimously recommended removing the requirement as it is obsolete and no longer meets the industry's needs. The Committee discussed alternatives to this change, including not removing this requirement from the order's administrative rules and regulations, but concluded that small and large growers and handlers will benefit from this change. This change will not affect volume filled containers packed by net weight and is expected to help handlers compete more effectively in the marketplace and to improve grower returns.

**Continued Suspension of Standard Packaging for Volume Filled Containers Designated by Weight**

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Prior to the issuance of an interim final rule on August 22, 2002 (67 FR 54327), § 920.302(a)(4)(v) specified that all volume filled containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. This standard packaging requirement was unanimously recommended by the Committee and established under the order's administrative rules and regulations by a final rule issued on October 25, 1994, (59 FR 53563).

During the 1994–95 season, 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 9.8-pound (9-kilogram) net weight volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled containers from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

At its April 9, 2002, meeting, the Committee, unanimously recommended and the USDA approved suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers for the 2002–03 season. This suspension was implemented by an interim final rule published on August 22, 2002 (67 FR 54327) and will be in effect until July 31, 2003. This was made final on November 21, 2002 (67 FR 76140). To date, relaxation of these packaging requirements during the 2002–03 season enabled handlers to ship 73 percent of the crop in 22-pound (10-kilogram) net weight volume filled containers, 12 percent of the crop in 19.8-pound (9-kilogram) net weight containers and less than 1 percent in volume filled containers of other weights.

The Committee concluded that while suspending the standard packaging requirements for the 2002–03 season had enabled handlers to compete more effectively in the marketplace, it needs to gather more data to further evaluate the benefits of suspended standard pack requirements for another season, the 2003–04.

Therefore, the majority of the Committee members agreed that the suspension of the standard packaging requirement for volume filled containers by net weight should be continued for the 2003–04 season. Of the twelve members present, eight voted for this change, and four voted against it. Opponents of this recommendation preferred standard packaging, but could not agree whether the 22-pound (10-kilogram) or the 19.8-pound (9-kilogram) net weight container should be the standard. Small and large growers and handlers are expected to benefit from the continued suspension of the standard packaging requirements. The majority of the Committee believes that handlers and growers will benefit by being able to meet buyer's preferences for alternate containers. This suspension will be in effect until July 31, 2004.

The Committee discussed alternatives to this change including reinstating the 22-pound (10-kilogram) net weight standard packaging requirement for the 2003–04 season. Committee members also suggested two other alternatives. One alternative was to establish a standard packing requirement that will require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9 kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. The other alternative suggested was to establish a standard packing requirement that requires volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15-pounds or more than 35-pounds net weight of kiwifruit. The Committee did not adopt these suggestions, as it believes that continuing the suspension of the standard packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers of kiwifruit designated by weight will allow handlers the flexibility to meet buyer container preferences and to increase sales. Further, the majority of the Committee believes that establishing standard packaging requirements for volume filled containers of kiwifruit packed by net weight may negatively impact grower returns.

**Standard Pack ''tightly packed'' Requirement**

Section 920.302(a)(1) of the order's administrative rules and regulations states the minimum grade shall be at least KAC No. 1 quality.

Section 920.302(b) defines the term KAC No. 1 quality as kiwifruit that meets the requirements of U.S. No. 1 grade as defined in 7 CFR 51.2335 through 51.2340 of the Grade Standards, except that the kiwifruit shall be ''not badly misshapen'' and an additional 7 percent tolerance is provided for badly misshapen fruit. Section 51.2338(a) of the Grade Standards defines standard pack requirements, requires containers to be well filled; and requires the contents to be tightly packed, but not excessively or unnecessarily bruised by overfilling or oversizing.

The Grade Standard's ''tightly packed'' provisions were established in the order to ensure that the ''Hayward'' variety (the predominant kiwifruit produced in the production area) fits tightly into the tray-liner cups (55 FR 42179, October 18, 1990). Kiwifruit that is packed tightly into the cups of the tray-liners is less subject to movement and therefore less damage.

As previously mentioned, a new kiwifruit cultivar, the *Actinidia chinensis* ''Hort16A'' has recently been introduced in California and is expected to be harvested and sold commercially during the 2003–04 season. The ''Hort16A'' is referred to as a ''gold'' variety because the internal flesh is a yellow to gold color when fully mature. The ''Hort16A'' kiwifruit is more susceptible to bruising and injury and has a protrusion on the blossom end, referred to as a ''beak.'' Therefore, the ''Hort16A'' must be handled differently than the ''Hayward'' variety. Care must be taken during the packing process to protect the beak. To minimize damage, the ''Hort16A'' is packed into a special shallow molded tray with a notch for the beak. The ''Hort16A'' kiwifruit, when packed in this shallow tray, may not meet the ''tightly packed'' requirement for standard pack under the Grade Standards.

Therefore, the Committee, at its March 12, 2003, meeting, unanimously recommended an exemption for all ''gold'' kiwifruit varieties from the order's ''tightly packed'' requirement. However, the ''Hort16A'' with its unique ''beak'' is currently the only known commercially produced ''gold'' kiwifruit. Because it is not known whether other ''gold'' kiwifruit varieties will experience the same difficulty in meeting the ''tightly packed'' standard pack requirement, this rule limits the exemption to the ''Hort16A'' variety.

This change is expected to enable handlers to be more competitive in the marketplace and to provide consumers with higher quality ''Hort16A'' kiwifruit.

The Committee discussed alternatives to this change, including exempting all kiwifruit packs from the ''tightly packed'' requirement, but did not adopt this suggestion because eliminating the requirement for the ''Hayward'' variety is unnecessary and ''tightly packed'' is still a pack standard desired by the industry for the vast majority of kiwifruit currently packed in California. It is anticipated that within the next 5 to 10 years more than 1,000 acres of ''Hort16A'' will be planted in California with production exceeding one million tray equivalents (one tray equivalent equals approximately 7 pounds). Small and large growers and handlers are expected to benefit from this change. These changes are expected to help handlers compete more effectively in the marketplace and to improve grower returns.

These changes relax pack requirements under the kiwifruit order. Accordingly, these actions will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. However, as previously stated, California kiwifruit must meet the ''tight-fill'' requirements, as specified in the U.S. Standards for Grade of Kiwifruit (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Agreement Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 12, 2003, meeting, was a public meeting and all entities, both large and small, were able to express their views on these issues.

A proposed rule concerning this action was published in the **Federal Register** on June 23, 2003 (68 FR 37097). Copies of the rule were mailed or sent via facsimile to all Committee members and kiwifruit handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending July 8, 2003, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the fiscal period for kiwifruit begins on August 1, 2003, and these relaxations should be made as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

**List of Subjects in 7 CFR Part 920**

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

## PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

### § 920.302 [Amended]

■ 2. Section 920.302 is amended as follows:

■ a. Paragraph (a)(4)(iv) is removed;

■ b. Paragraph (a)(4)(v) is redesignated as paragraph (a)(4)(iv);

■ c. The existing suspension of newly designated paragraph (a)(4)(iv) is extended until July 31, 2004;

■ d. Paragraph (b) is revised to read as follows:

### § 920.302 Grade, size, pack, and container regulations.

* * * * *

(b) *Definitions.* The term *KAC No. 1 quality* means kiwifruit that meets the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) except that the kiwifruit shall be ''not badly misshapen,'' and an additional tolerance of 7 percent is provided for kiwifruit that is ''badly misshapen,'' and except that the ''Hort16A'' variety of kiwifruit is exempt from the ''tightly packed'' standard as defined in § 51.2338(a) of the U.S. Standards for Grades of Kiwifruit. The terms *fairly uniform in size and diameter* mean the same as defined in the U.S. Standards for Grades of Kiwifruit.

* * * * *

Dated: July 23, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 03–19131 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–62–AD; Amendment 39–13246; AD 2003–15–04]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, that requires inspection of the drive trunnion pins for the main landing gear (MLG) doors to determine the part number of the pins and corrective action if necessary. The actions specified by this AD are intended to prevent failure of the MLG and consequent reduced controllability of the airplane during takeoff or landing.

**DATES:** Effective September 2, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175, fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes was published in the **Federal Register** on April 15, 2003 (68 FR 18168). That action proposed to require inspection of the drive trunnion pins for the main landing gear (MLG) doors to determine the part number of the pins, and corrective action if necessary.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

### Change to Labor Rate Estimate

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 to $65 per work hour. The economic impact information below has been revised to reflect this increase in the specified hourly labor rate.

### Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,410, or $130 per airplane.

The cost impact figure discussed above is 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 adding the following new airworthiness directive:

**2003–15–04 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Amendment 39–13246. Docket 2002–NM–62–AD.

*Applicability:* All Model Jetstream 4101 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 (b) 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 prevent failure of the main landing gear (MLG) and consequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

**Inspection, and Replacement if Necessary**

(a) Within 60 days after the effective date of this AD, perform a general visual inspection of the drive trunnion pins for the MLG doors to determine the part number (P/N) of the pins, per ''Part 1—Inspection'' of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–080, dated January 24, 2002.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If P/N AIR135154 is found on both pins: No further action is required by this paragraph.

(2) If any pin having P/N AIR134402 is found, or if any pin having no P/N is found: Within 90 days after accomplishing the inspection, replace the pin having P/N AIR134402 or the pin having no P/N, with a new, improved pin, per ''Part 2—Rectification'' of the Accomplishment Instructions of the service bulletin.

**Alternative Methods of Compliance**

(b) 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, Transport Airplane Directorate, FAA. 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.

**Note 3:** 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**

(c) 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**

(d) The actions shall be done in accordance with BAE Systems (Operations) Limited Service Bulletin J41–32–080, dated January 24, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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 4:** The subject of this AD is addressed in British airworthiness directive 007–01–2002.

**Effective Date**

(e) This amendment becomes effective on September 2, 2003.

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

**Ali Bahrami,**

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

[FR Doc. 03–18790 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–34–AD; Amendment 39–13245; AD 2003–15–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires replacement of the aileron control override quadrant with a modified unit. The actions specified by this AD are intended to prevent corrosion of the input override mechanism bearings of the lateral central control actuator, which, in the event of a subsequent jam in the pilot's aileron control system, could result in failure of the aileron override system and consequent reduced lateral controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective September 2, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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:** Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 24, 2003

(68 FR 8566). That action proposed to require replacement of the aileron control override quadrant with a modified unit. That action also proposed to revise the applicability of the original NPRM.

**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. One commenter has a program in place to do the modification specified in the supplemental NPRM. Another commenter concurs with the contents of the supplemental NPRM and has no additional comments.

**Request for Immediate Check of the Fleet Before Replacement**

One commenter agrees that the replacement of the aileron control override quadrant with a modified unit that is not susceptible to corrosion, as specified in the supplemental NPRM, is necessary. However, the commenter states that it would have preferred that an additional immediate check of the fleet be added to the supplemental NPRM to identify any seized assemblies so that they could be replaced before a dormant failure became critical. The commenter adds that 18 months is a long time for airplanes to be exposed to the identified deficiency.

We do not agree that it is necessary to add an immediate check of the fleet to the final rule to identify seized assemblies of the aileron control override quadrant before accomplishment of the replacement. In developing the 18-month compliance time for the replacement of the aileron control override quadrant, we considered the effects of a jammed lateral system, combined with a seized override bearing (increased wheel load), and determined that such a compliance time would allow operators sufficient time to accomplish the replacement and would adequately address the unsafe condition. However, operators are always permitted to perform the actions earlier than the compliance time specified in an AD. No change to the final rule is necessary in this regard.

**Request To Extend Compliance Time**

One commenter asks that the compliance time specified in the supplemental NPRM be extended from 18 months to 24 months or at the next C-check, whichever is later. The commenter states it has reworked four of its airplanes and submits the following supporting data:

- No signs of corrosion or seizure of bearings was present.
- Currently, limited quantities of compliant spares exist in industry.
- Costs and turnaround times far exceed the supplemental NPRM estimates.

Paragraph (a) of the supplemental NPRM specifies an 18-month compliance period to replace the aileron control quadrant with a modified unit. The commenter does not have ''in house'' capabilities to accomplish the retrofit of the aileron quadrants, nor is its machine shop utilized for heavy maintenance. Therefore, the quadrants must be sent to Boeing for modification and/or repair, which exceeds the specified turnaround time and costs.

We do not agree with the commenter's request to extend the compliance time to 24 months or the next C-check, whichever is later. With regard to parts availability, as stated above, we find that an 18-month compliance time will be adequate for a sufficient quantity of parts to be available. With regard to extending the compliance time to allow the replacement to be accomplished at a C-check, we have already considered factors such as operators' maintenance schedules in setting a compliance time for the required replacement and determined that 18 months is an appropriate compliance time in which the replacement may be accomplished during scheduled airplane maintenance for the majority of affected operators. Since maintenance schedules vary from operator to operator, it would not be possible to guarantee that all affected airplanes could be modified during scheduled maintenance, even with a compliance time of 24 months. In any event, we find that 18 months represents the maximum time wherein the affected airplanes may continue to operate without compromising safety. No change to the final rule is necessary in this regard.

**Alternate Method of Compliance**

One commenter asks that, as an alternate method of compliance to the required roller swage installation procedures done during the specified replacement, operators be allowed to stake the subject bearings per the Boeing Standard Overhaul Practices Manual (SOPM), Chapter 20–50–03.

We infer that the commenter requests this alternate method because it's easier to do; however, we do not agree with the commenter that the suggested alternative method of staking the bearings per the SOPM, instead of doing the roller swage installation procedures, can be done. The replacement bearings and the bearing lugs of the aileron control quadrant are specifically designed for roller swaging, not bearing staking. No change to the final rule is necessary in this regard.

**Request To Change Cost Impact Section**

One commenter asks that the Cost Impact section in the supplemental NPRM be changed. In addition to the supporting information provided in the Request To Extend Compliance Time section discussed previously, the commenter adds that two of the four aileron quadrant assemblies on its airplanes were damaged during the removal process. As a result of this damage, the assemblies were sent to Boeing for repair, at a cost of $2,816.67, with an estimated turnaround time of 45 days. Boeing indicated that the damage caused is common to this type of bearing housing when removed. Two new units were purchased by the commenter to replace the damaged units at a cost of approximately $13,000.00 per unit. The commenter notes that this cost is not specified in the referenced service bulletin, and adds that the supplemental NPRM should be re-evaluated for costs and work hours necessary for the replacement.

We have investigated the commenter's concerns regarding the cost information specified in the supplemental NPRM, and we do not agree with the request to re-evaluate the costs and work hours necessary for the replacement specified in the Cost Impact section of the supplemental NPRM. The Cost Impact section only includes the ''direct'' costs of the specific actions required, not costs associated with repair of parts damaged while performing the actions, costs of new parts to replace the damaged parts, or costs associated with the turnaround time for the repair. Such costs would be required regardless of AD direction, to correct an unsafe condition identified in an airplane and to ensure the airworthiness of that airplane, as required by the Federal Aviation Regulations. No change to the Cost Impact section in the final rule is necessary.

**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 as proposed.

**Changes to 14 CFR Part 39/Effect on the AD**

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material

that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the supplemental NPRM regarding that material.

## Cost Impact

There are approximately 836 airplanes of the affected design in the worldwide fleet. The FAA estimates that 443 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $146 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $330,478, or $746 per airplane.

The cost impact figure discussed above is 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 adding the following new airworthiness directive:

**2003–15–03 Boeing:** Amendment 39–13245. Docket 2002–NM–34–AD.

*Applicability:* Model 767–200, –300, and –300F series airplanes; certificated in any category; line numbers 1 through 836 inclusive.

**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 (c) 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 prevent corrosion of the input override mechanism bearings of the lateral central control actuator, which, in the event of a subsequent jam in the pilot's aileron control system, could result in failure of the aileron override system and consequent reduced lateral controllability of the airplane, accomplish the following:

**Replacement**

(a) Within 18 months after the effective date of this AD, replace the aileron control override quadrant with a modified unit, in accordance with Boeing Alert Service Bulletin 767–27A0175, dated October 25, 2001.

**Note 2:** This AD does not require accomplishment of the actions specified by Boeing Service Bulletin 767–27–0142.

**Part Installation**

(b) As of the effective date of this AD, no person may install, on any airplane, an aileron control override quadrant that has not been modified in accordance with the requirements of this AD.

**Alternative Methods of Compliance**

(c) 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, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(d) 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**

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–27A0175, dated October 25, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

**Effective Date**

(f) This amendment becomes effective on September 2, 2003.

Issued in Renton, Washington, on July 17, 2003.

**Ali Bahrami,**

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

[FR Doc. 03–18787 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–14608; Airspace Docket No. 03–AAL–02]**

## Establishment of Class E Airspace; Ambler, AK

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Ambler, AK to provide adequate controlled airspace to contain aircraft executing two new Standard

Instrument Approach Procedures (SIAP). This rule results in new Class E airspace upward from 1,200 ft. above the ground at Ambler, AK.

**EFFECTIVE DATE:** 0901 UTC, October 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

**SUPPLEMENTARY INFORMATION:**

## History

On Thursday, April 3, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 1,200′ above the surface at Ambler, AK (68 FR 16227). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft within a Terminal Arrival Area (TAA) while executing two new SIAPs for the Ambler Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) Z Runway 36 original, and (2) RNAV (GPS) Y Runway 36 original. The proposed Class E airspace encompasses small and unusable pieces of Class G airspace that remained from Class E airspace actions in the past. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

## The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Ambler, Alaska. This additional Class E airspace is being created to accommodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Ambler Airport, Ambler, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 Ambler, AK [Revised]**

Ambler Airport, AK
(Lat. 67°06′23″ N., long. 157°51′27″ W.)
Ambler NDB
Lat. 67°06′24″ N., long. 157°51′29″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3°-mile radius of the Ambler Airport and within 3.5 miles each side of the 193°-bearing of the Ambler NDB extending from the 6.3 mile radius to 7.2 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 47-mile radius of the Ambler Airport.

* * * * *

Issued in Anchorage, AK, on July 17, 2003

**Trent S. Cummings,**

*Manager, Air Traffic Division, Alaskan Region.*

[FR Doc. 03–19155 Filed 7–25–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15080; Airspace Docket No. 03–ACE–48]**

## Modification of Class E Airspace; Sibley, IA

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Sibley, IA.

**EFFECTIVE DATE:** 0901 UTC, September 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on May 23, 2003 (68 FR 28126) and subsequently published a correction in the **Federal Register** on June 3, 2003 (68 FR 33231). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 15, 2003.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–19159 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15077; Airspace Docket No. 03–ACE–45]**

## Modification of Class E Airspace; Pocahontas, IA

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Pocahontas, IA.

**EFFECTIVE DATE:** 0901 UTC, September 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on May 23, 2003 (68 FR 28121) and subsequently published a correction in the **Federal Register** on June 4, 2003 (68 FR 33579). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on July 15, 2003.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–19160 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15078; Airspace Docket No. 03–ACE–46]**

## Modification of Class E Airspace; Red Oak, IA

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Red Oak, IA.

**EFFECTIVE DATE:** 0901 UTC, September 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on May 23, 2003 (68 FR 28123) and subsequently published a correction in the **Federal Register** on June 4, 2003 (68 FR 33579). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 15, 2003.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–19161 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15079; Airspace Docket No. 03–ACE–47]**

## Modification of Class E Airspace; SAC City, IA

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Sac City, IA.

**EFFECTIVE DATE:** 0901 UTC, September 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on May 23, 2003 (68 FR 28127). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 15, 2003.

**Paul J. Sheridan**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–19163 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2003–14644; Airspace Docket No. 03–AGL–01]**

### Modification of Class E Airspace; Kenton, OH; Revocation of Class E Airspace; Bellefontaine, OH

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Kenton, OH, and revokes Class E airspace at Bellefontaine, OH. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) have been developed for a new airport at Bellafontaine, OH, which has been named Bellefontaine Regional Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action modifies existing controlled airspace for Hardin County Airport, and revokes existing controlled airspace for the old Bellefontaine Municipal Airport.

**EFFECTIVE DATE:** 0901 UTC, October 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Monday, March 31, 2003, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Kenton, OH, and revoke Class E airspace at Bellefontaine, OH, (68 FR 15388). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

### The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Kenton, OH, and revokes Class E airspace at Bellefontaine, OH. This will accommodate aircraft executing instrument flight procedures. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

**AGL OH E5 Bellefontaine, OH [Revoked]**

**AGL OH E5 Kenton, OH [Revised]**

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 40°43′34″ N., long. 83°33′51″W., to lat. 40°38′16″N., long. 83°23′39″W., to lat. 40°30′37″N., long. 83°30′57″W., to lat. 40°24′00″N., long. 83°33′37″W., to lat. 40°13′31″N., long. 83°40′22″W., to lat. 40°11′47″N., long. 83°52′11″W., to lat. 40°16′44″N., long. 84°01′10″W., to lat. 40°24′31″N., long. 84°02′39″W., to lat. 40°31′30″N., long. 83°56′56″W., to lat. 40°32′35″N., long. 83°46′53″W., to lat. 40°38′56″N., long. 83°48′49″W., to lat. 40°43′49″N., long. 83°42′14″W., to the point of beginning, excluding that airspace within the Urbana, OH Class E airspace area.

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Issued in Des Plaines, Illinois on July 9, 2003.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 03–19167 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2003—15360; Airspace Docket No. 03–ASO–7]**

### Amendment of Class E5 Airspace; Tuscaloosa, AL; Correction

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the final rule (FAA–2003–15360; 03–ASO–7), which was published in the **Federal Register** on June 16, 2003, (68 FR 35535), amending Class E5 airspace at Tuscaloosa, AL. This action changes the name of the Tuscaloosa Municipal Airport to the Tuscaloosa Regional Airport.

**EFFECTIVE DATE:** Effective 0901 UTC, September 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### Background

**Federal Register** Document 03–15142, Docket No. FAA–2003–15360; Airspace

Docket 03–ASO–7, published on June 16, 2003, (68 FR 35535), amends Class E5 airspace at Tuscaloosa, AL, changing the name of the Tuscaloosa VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) to Crimson VORTAC. On July 15, 2003, the Tuscaloosa Municipal Airport name was changed to the Tuscaloosa Regional Airport. This action corrects the published docket.

Designations for Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**Need for Correction**

As published, the final rule contains an error which incorrectly identifies the name of the airport. Accordingly, pursuant to the authority delegated to me, the legal description for the Class E5 airspace area at Tuscaloosa, AL, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on June 16, 2003, (68 FR 35535), is corrected by making the following correcting amendment.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14 CFR part 71, by making the following correcting amendment:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

**§ 71.1 [Corrected]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

*Paragraph 6002 Class E airspace designated as surface areas.*

* * * * *

**ASO AL E5 Tuscaloosa, AL [Corrected]**

Tuscaloosa Regional Airport, AL

(Lat. 33°13′14″ N., long. 87°36′41″ W.

CRIMSON VORTAC

(Lat. 33°15′32″ N., long. 87°32′13″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tuscaloosa Regional Airport and within 2.4 miles each side of Crimson VORTAC 058° radial, extending from the 7 mile radius to 7 miles northeast of the VORTAC.

* * * * *

Issued in College Park, Georgia, on July 18, 2003.

**Walter R. Cochran,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 03–19156 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30378 ; Amdt. No. 3067 ]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective July 28, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 2003.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the

affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on July 18, 2003.

**James J. Ballough,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S. C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended as follows:

### §§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 7, 2003*

Frederick, MD, Frederick Muni, RNAV (GPS) RWY 23, Amdt 1

** * * Effective September 4, 2003*

Blytheville, AR, Arkansas International, VOR RWY 18, Amdt 1
Blytheville, AR, Arkansas International, VOR RWY 36, Amdt 1
Blytheville, AR, Arkansas International, ILS RWY 18, Orig
Blytheville, AR, Arkansas International, ILS/DME RWY 18, Orig-B, CANCELLED
Blytheville, AR, Arkansas International, RNAV (GPS) RWY 18, Orig
Blytheville, AR, Arkansas International, RNAV (GPS) RWY 36, Orig
Brooksville, FL, Hernando County, RNAV (GPS) RWY 3, Orig
Brooksville, FL, Hernando County, RNAV (GPS) RWY 9, Orig
Brooksville, FL, Hernando County, RNAV (GPS) RWY 21, Orig
Brooksville, FL, Hernando County, RNAV (GPS) RWY 27, Orig
Brooksville, FL, Hernando County, GPS RWY 3, Orig, CANCELLED
Brooksville, FL, Hernando County, GPS RWY 9, Amdt 1, CANCELLED
Brooksville, FL, Hernando County, GPS RWY 21, Amdt 1, CANCELLED
Brooksville, FL, Hernando County, GPS RWY 27, Amdt 1, CANCELLED
Kamulea, HI, Waimea-Kohala, VOR/DME–A, Orig
Kamulea, HI, Waimea-Kohala, VOR/DME RWY 4, Orig
Kamulea, HI, Waimea-Kohala, RNAV (GPS) RWY 4, Orig
Kamulea, HI, Waimea-Kohala, RNAV (GPS) RWY 22, Orig
Mansfield, LA, Desoto Parish, NDB RWY 18, Amdt 2
Mansfield, LA, Desoto Parish, RNAV (GPS) RWY 18, Orig
Mansfield, LA, Desoto Parish, GPS RWY 18, Orig, CANCELLED
Galliano, LA, South Lafourche, RNAV (GPS) RWY 18, Orig
Galliano, LA, South Lafourche, GPS RWY 18, Orig, CANCELLED
Patterson, LA, Harry P. Williams Memorial, VOR/DME–A, Amdt 10
Patterson, LA, Harry P. Williams Memorial, NDB RWY 6, Amdt 10
Patterson, LA, Harry P. Williams Memorial, ILS RWY 24, Amdt 1
Patterson, LA, Harry P. Williams Memorial, RNAV (GPS) RWY 6, Orig
Patterson, LA, Harry P. Williams Memorial, RNAV (GPS) RWY 24, Orig
Mitchellville, MD, Freeway, VOR RWY 36, Orig-B
Mitchellville, MD, Freeway, RNAV (GPS) RWY 18, Orig
Mitchellville, MD, Freeway, RNAV (GPS) RWY 36, Orig
Windom, MN, Windom Muni, NDB RWY 17, Amdt 5
Windom, MN, Windom Muni, RNAV (GPS) RWY 17, Orig
Windom, MN, Windom Muni, RNAV (GPS) RWY 35, Orig
Brookfield, MO, North Central Missouri Regional, RNAV (GPS) RWY 18, Orig
Brookfield, MO, North Central Missouri Regional, RNAV (GPS) RWY 36, Orig
New Madrid, MO, County Memorial, NDB RWY 18, Amdt 3, CANCELLED
Beatrice, NE, Beatrice Municipal, VOR RWY 13, Amdt 16B
Beatrice, NE, Beatrice Municipal, VOR RWY 35, Amdt 7A
Beatrice, NE, Beatrice Municipal, NDB–A, Amdt 3B
Beatrice, NE, Beatrice Municipal, NDB RWY 13, Amdt 8B
Beatrice, NE, Beatrice Municipal, RNAV (GPS) RWY 13, Orig
Beatrice, NE, Beatrice Municipal, RNAV (GPS) RWY 17, Orig
Beatrice, NE, Beatrice Municipal, RNAV (GPS) RWY 31, Orig
Beatrice, NE, Beatrice Municipal, RNAV (GPS) RWY 35, Orig
Beatrice, NE, Beatrice Municipal, GPS RWY 35, Orig-B, CANCELLED
Falls City, NE, Brenner Field, NDB–A, Amdt 3B
Falls City, NE, Brenner Field, RNAV (GPS) RWY 14, Orig
Falls City, NE, Brenner Field, RNAV (GPS) RWY 32, Orig
Falls City, NE, Brenner Field, GPS RWY 32, Orig, CANCELLED
Clayton, NM, Clayton Muni Arpk, RNAV (GPS) RWY 2, Orig
Clayton, NM, Clayton Muni Arpk, RNAV (GPS) RWY 20, Orig
Guthrie, OK, Guthrie Muni, RNAV (GPS) RWY 16, Orig
Guthrie, OK, Guthrie Muni, RNAV (GPS) RWY 34, Orig

Guthrie, OK, Guthrie Muni, GPS RWY 16, Orig-A, CANCELLED
Guthrie, OK, Guthrie Muni, GPS RWY 34, Amdt 1, CANCELLED
Oklahoma City, OK, Clarence E. Page Muni, RNAV (GPS) RWY 17R, Orig
Oklahoma City, OK, Clarence E. Page Muni, RNAV (GPS) RWY 35L, Orig
Oklahoma City, OK, Clarence E. Page Muni, GPS RWY 17R, Orig-A, CANCELLED
Oklahoma City, OK, Clarence E. Page Muni, GPS RWY 35L, Orig-A, CANCELLED
Sallisaw, OK, Sallisaw Muni, NDB–A, Amdt 2
Sallisaw, OK, Sallisaw Muni, RNAV (GPS) RWY 35, Orig
Sallisaw, OK, Sallisaw Muni, GPS RWY 35, Orig, CANCELLED
Corvallis, OR, Corvallis Muni, RNAV (GPS) RWY 35, Orig
Corvallis, OR, Corvallis Muni, GPS RWY 35, Orig-A, CANCELLED
Rock Springs, WY, Rock Springs-Sweetwater County, VOR–B, Amdt 4A
Rock Springs, WY, Rock Springs-Sweetwater County, NDB–C, Amdt 2A
Rock Springs, WY, Rock Springs-Sweetwater County, ILS OR LOC/DME RWY 27, Orig
Rock Springs, WY, Rock Springs-Sweetwater County, ILS/DME RWY 27, Amdt 5A, CANCELLED
Rock Springs, WY, Rock Springs-Sweetwater County, GPS RWY 27, Orig, CANCELLED
Rock Springs, WY, Rock Springs-Sweetwater County, RNAV (GPS) Z RWY 27, Orig
Rock Springs, WY, Rock Springs-Sweetwater County, RNAV (GPS) Y RWY 27, Orig

** * * Effective October 30, 2003*

Bethel, AK, Bethel, VOR/DME RWY 36, Amdt 1

The FAA published the following procedures in Docket No. 30376; Amdt No. 3065 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 134, Page 41524; dated Monday, July 14, 2003) under section 97.33 effective September 4, 2003 which are hereby rescinded:

Frederick, MD, Frederick Muni, RNAV (GPS) 23, Amdt 1

The FAA published the following procedures in Docket No. 30376; Amdt. No. 3065 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 134, Page 41524; dated Monday, July 14, 2003) under sections 97.23 and 97.33 as cancelled effective September 4, 2003. The following procedures are hereby reinstated and will be published effective September 4, 2003:

Pleasanton, TX, Pleasanton Muni, NDB–A, Amdt 5A
Pleasanton, TX, Pleasanton Muni, GPS RWY 34, Orig

[FR Doc. 03–18903 Filed 7–25–03; 8:45 am]
BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30379; Amdt. No. 3068]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective July 28, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 2003.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S.

Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on July 18, 2003.

**James J. Ballough,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended as follows:

### §§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

*Effective Upon Publication*

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 07/03/03 | TX | EASTLAND | EASTLAND MUNI | 3/5347 | RNAV (GPS) RWY 35, ORIG |
| 07/03/03 | SD | PIERRE | PIERRE REGIONAL | 3/5274 | RNAV (GPS) RWY 25, ORIG |
| 07/03/03 | SD | PIERRE | PIERRE REGIONAL | 3/5275 | VOR OR TACAN RWY 25, ORIG |
| 07/09/03 | AZ | CASA GRANDE | CASA GRANDE MUNI | 3/5370 | VOR RWY 5, AMDT 4B |
| 06/25/03 | UT | WENDOVER | WENDOVER | 3/4988 | VOR/DME OR TACAN RWY 26, ORIG-A |
| 07/09/03 | FL | VERO BEACH | VERO BEACH | 3/5619 | RNAV (GPS) RWY 11R, ORIG |
| 07/09/03 | FL | VERO BEACH | VERO BEACH | 3/5618 | RNAV (GPS) RWY 29L, ORIG |
| 07/10/03 | GA | SAVANNAH | SAVANNAH/HILTON HEAD INTL | 3/5701 | ILS RWY 9, AMDT 26 |
| 07/10/03 | GA | SAVANNAH | SAVANNAH/HILTON HEAD INTL | 3/5700 | NDB RWY 9, AMDT 22 |
| 07/09/03 | PR | SAN JUAN | SAN JUAN/LUIS MUNOZ MARIN INTL. | 3/5635 | RNAV (GPS) RWY 8, ORIG-A |
| 07/09/03 | PR | SAN JUAN | SAN JUAN/LUIS MUNOZ MARIN INTL. | 3/5637 | RNAV (GPS) RWY 26, ORIG-A |
| 07/09/03 | PR | SAN JUAN | SAN JUAN/LUIS MUNOZ MARIN INTL. | 3/5636 | RNAV (GPS) RWY 10, ORIG-B |
| 07/09/03 | VI | CHRISTIANSTED, ST. CROIX. | CHRISTIANSTED, ST. CROIX/HENRY E. ROHLSEN. | 3/5634 | RNAV (GPS) RWY 10, ORIG–B |
| 07/11/03 | CA | SACRAMENTO | SACRAMENTO INTL | 3/5599 | RNAV (GPS) RWY 16L, ORIG |
| 07/11/03 | CA | SACRAMENTO | SACRAMENTO INTL | 3/5600 | RNAV (GPS) RWY 16R, ORIG |
| 07/11/03 | CA | SACRAMENTO | SACRAMENTO INTL | 3/5601 | RNAV (GPS) RWY 34L, ORIG |
| 07/11/03 | CA | SACRAMENTO | SACRAMENTO INTL | 3/5602 | RNAV (GPS) RWY 34R, ORIG |
| 07/11/03 | HI | HILO | HILO INTL | 3/5611 | RNAV (GPS) RWY 26, ORIG-A |
| 07/11/03 | AK | ANCHORAGE | TED STEVENS ANCHORAGE INTL | 3/5613 | RNAV (GPS) RWY 14, ORIG |
| 07/11/03 | AK | KENAI | KENAI | 3/5614 | RNAV (GPS) RWY 19R, ORIG |
| 07/15/03 | IN | AUBURN | DE KALB | 3/5903 | VOR RWY 9, AMDT 7 |
| 07/15/03 | GU | AGANA | GUAM INTL | 3/5603 | RNAV (GPS) Z RWY, ORIG-A |
| 3/17/03 | VT | BURLINGTON | BURLINGTON INTL | 3/2181 | NDB RWY 15, AMDT 19E |
| 07/10/03 | MA | PROVINCETOWN | PROVINCETOWN MUNI | *3/5662 | RNAV (GPS) RWY 17, ORIG-A |
| 07/10/03 | TX | HOUSTON | ELLINGTON FIELD | 3/5604 | RNAV (GPS) RWY 4, ORIG |
| 07/10/03 | TX | HOUSTON | ELLINGTON FIELD | 3/5608 | RNAV (GPS) RWY 17R, ORIG |
| 07/10/03 | TX | AUSTIN | AUSTIN-BERGSTROM INTL | 3/5725 | ILS RWY 17R, AMDT 2 |
| 07/11/03 | AR | CARLISLE | CARLISLE MUNI | 3/5803 | GPS RWY 9, AMDT 1 |
| 07/11/03 | MO | JOPLIN | JOPLIN REGIONAL | 3/5798 | ILS RWY 13, AMDT 23A |
| 07/15/03 | AR | CLARKSVILLE MUNI | CLARKSVILLE MUNI | 3/5948 | GPS RWY 9, ORIG |
| 07/15/03 | AR | BENTON | SALINE COUNTY/WATTS FIELD | 3/5949 | GPS RWY 17, ORIG |
| 07/15/03 | AR | BENTON | SALINE COUNTY/WATTS FIELD | 3/5950 | GPS RWY 35, ORIG |
| 07/15/03 | NE | CAMBRIDGE | CAMBRIDGE MUNI | 3/5973 | NDB RWY 32, AMDT 4 |

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 07/15/03 | TX | LAREDO | LAREDO INTL | 3/5982 | ILS RWY 17R, AMDT 9 |
| 07/15/03 | NM | ARTESIA | ARTESIA MUNI | 3/5988 | NDB RWY 30, AMDT 4 |
| 07/14/03 | PA | PERKASIE | PENNRIDGE | 3/5888 | RNAV (GPS) RWY 8, ORIG-A |
| 07/14/03 | NY | LAKE PLACID | LAKE PLACID | 3/5791 | RNAV (GPS)-A, ORIG |
| 07/11/03 | CO | HAYDEN | YAMPA VALLEY | 3/5767 | RNAV (GPS) Y RWY 10, ORIG |
| 07/11/03 | CO | HAYDEN | YAMPA VALLEY | 3/5769 | RNAV (GPS) RWY 28, ORIG |
| 07/11/03 | CO | HAYDEN | YAMPA VALLEY | 3/5768 | RNAV (GPS) Z RWY 10, ORIG |

*Replaces 3/5078.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 101

**[Docket No. 2001Q–0313]**

## Food Labeling: Health Claims; Soluble Dietary Fiber From Certain Foods and Coronary Heart Disease

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is adopting as a final rule, without change, the provisions of the interim final rule that amended the regulation authorizing a health claim on the relationship between beta-glucan soluble fiber from whole oat sources and reduced risk of coronary heart disease (CHD). FDA is taking this action to complete the rulemaking initiated with the interim final rule.

**DATES:** This rule is effective July 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1450.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of October 2, 2002 (67 FR 61773), the agency published an interim final rule to amend the regulation in part 101 (21 CFR part 101) that authorizes a health claim on the relationship between soluble dietary fiber from certain foods and reduced risk of CHD, to include an additional eligible source of whole oat beta-glucan soluble fiber, oatrim, the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour. Under section 403(r)(3)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i)), FDA issued this interim final rule in response to a petition filed under section 403(r)(4) of the act (21 U.S.C. 343(r)(4)). Section 403(r)(3)(B)(i) of the act states that the Secretary of Health and Human Services (the Secretary) (and, by delegation, FDA) shall issue a regulation authorizing a health claim only if he or she determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (see also § 101.14(c)). Section 403(r)(4) of the act sets out the procedures that FDA is to follow upon receiving a health claim petition.

On April 21, 2001, the Quaker Oats Co. and Rhodia, Inc., (the petitioners) jointly filed a petition requesting that the agency amend the ''soluble fiber from certain foods and coronary heart disease health claim'' at § 101.81 to include a fourth source of beta-glucan soluble fiber eligible for the health claim. The petitioners requested that this amendment be made ''with specific reference to the Quaker-Rhodia group oatrim, known as Oatrim (BETATRIM)'' (Ref. 1). FDA filed the petition for comprehensive review in accordance with section 403(r)(4) of the act on July 20, 2001.

FDA considered the relevant scientific evidence presented in the petition as part of its review of the scientific literature on soluble fiber from the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour (referred to as ''oatrim'') and CHD risk. The agency summarized this evidence in the interim final rule and determined that based on the available evidence: (1) CHD continues to be a disease for which the U.S. population is at risk; (2) soluble fiber from oatrim when used at levels providing 0.75 grams of beta-glucan soluble fiber per serving is a food because it provides nutritive value; (3) oatrim when used at levels necessary to justify the health claim is safe and lawful; (4) there is a physiological equivalence of beta-glucan soluble fiber from oatrim and beta-glucan soluble fiber from whole oat sources such as oat bran and rolled oats; and (5) there is significant scientific agreement, among qualified experts, that oatrim with a beta-glucan content of up to 10 percent on a dry weight basis (dwb) and not less than that of the starting material (dwb) may reduce the risk of CHD (67 FR 61773 at 61775 to 61779). Consequently, FDA published an interim final rule amending the health claim on the relationship between soluble dietary fiber from certain foods and reduced risk of CHD (§ 101.81) to include oatrim, the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour with a beta-glucan soluble fiber content of up to 10 percent on a dwb and not less than that of the starting material (dwb) as a source of oat beta-glucan soluble fiber eligible for the health claim.

### II. Summary of Comments and the Agency's Response

FDA solicited comments on the interim final rule. The 75-day comment period closed on December 16, 2002. The agency received no comments in response to the interim final rule. Given the absence of contrary evidence on the agency's decisions announced in the interim final rule, FDA is adopting as a final rule, without change, the interim final rule that amended § 101.81 to add oatrim, the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour with a beta-glucan soluble fiber content of up to 10 percent on a dwb and not less than that of the starting material (dwb) as a substance eligible for the health claim.

### III. Environmental Impact

The agency has determined under 21 CFR 25.32(p) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

## IV. Analysis of Impacts

### *A. Regulatory Impact Analysis*

We have examined the economic implications of this final rule as required by Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

With this final rule, FDA is adopting, without change, the provisions of the interim final rule published in the **Federal Register** of October 2, 2002. The interim final rule amended the regulation authorizing a health claim on the relationship between beta-glucan soluble fiber from whole oat sources and reduced risk of CHD to include oatrim, the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour with a beta-glucan content up to 10 percent dwb and not less than that of the starting material (dwb). We assessed the costs and benefits of the interim final rule in that **Federal Register** document (67 FR 61773 at 61781). By now reaffirming that interim final rule, FDA has not imposed any new requirements. There are, therefore, no additional costs and benefits associated with this final rule.

### *B. Regulatory Flexibility Analysis*

We have examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires the agency to analyze regulatory options that would minimize the economic impact of the rule on small entities.

As this final rule does not make any changes to the interim final rule or our analysis included therein, this final rule does not impose any new costs on firms. Accordingly, we certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

### *C. Unfunded Mandates*

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before issuing any final rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this rule, because the rule is not expected to result in any 1 year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $113 million.

## V. Paperwork Reduction Act

FDA concludes that the labeling provisions of this final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between oatrim and reduced risk of CHD is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

## VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. That section provides that ''no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce'' certain food labeling requirements, unless an exemption is provided by the Secretary (and by delegation, FDA). Relevant to this final rule, one such requirement that states and political subdivisions may not adopt is ''any requirement respecting any claim of the type described in section 403(r)(1) of the act made in the label or labeling of food that is not identical to the requirement of section 403(r) * * *'' (section 403A(a)(5) of the act (21 U.S.C. 343–1(a)(5)). Prior to the effective date of this rule and the interim final rule that preceded it, this provision operated to preempt States from imposing health claim labeling requirements concerning beta glucan soluble fiber from oatrim and reduced risk of CHD because no such requirements had been imposed by FDA under section 403(r) of the act. Under this final rule and the interim final rule that preceded it, States are preempted from imposing any health claim labeling requirements for beta-glucan soluble fiber from oatrim and reduced risk of CHD that are not identical to those required by these rules. Section 403A(a)(5) of the act displaces both state legislative requirements and state common-law duties. *Medtronic* v. *Lohr*, 518 U.S. 470, 503 (1996) (Breyer, J., concurring in part and concurring in judgment); *id.* at 510 (O'Connor, J., joined by Rehnquist, C.J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 521 (1992) (plurality opinion); *id.* at 548–49 (Scalia, J., joined by Thomas, J., concurring in judgment in part and dissenting in part). Although this final rule has preemptive effect in that it would preclude States from adopting statues, issuing regulations or adopting or enforcing any requirements including state tort-law requirements, about beta-glucan soluble fiber from oatrim and reduced risk of CHD that are not identical to the provisions of the interim final rule as adopted by this final rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' Similarly, section 6(e) of the Executive order states that ''to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts state law, unless the agency, prior to the formal promulgation of the regulation *** consulted with State and local officials early in the process of developing the proposed regulation.'' This requirement, that FDA provide the States with an opportunity for appropriate participation in this rulemaking, has been met. FDA sought input from all stakeholders through publication of the interim final rule in the **Federal Register**. There were no

comments from State or local government entities received.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the Executive order and has determined that the preemptive effects of this final rule are consistent with Executive Order 13132.

**VII. References**

The following reference has been placed on display at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. The Quaker Oats Co. and Rhodia, Inc., ''Oatrim (BETATRIM) Health Claim Petition,'' HCN1, vol. 1, Docket No. 01Q–0313, April 12, 2001.

■ Accordingly, the interim final rule amending 21 CFR 101.81 that was published in the **Federal Register** of October 2, 2002 (67 FR 61773), is adopted as a final rule without change.

Dated: July 21, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–19027 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

## 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, Willamette River, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation of regulation.

**SUMMARY:** The Captain of the Port Portland will begin enforcing the safety zone for the Oregon Symphony Concert Fireworks Display established by 33 CFR 165.1315 on May 30, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

**DATES:** 33 CFR 165.1315 will be enforced August 28, 2003 from 8:30 p.m. (PDT) until 9:30 p.m. (PDT). A rain date is scheduled for August 29.

**SUPPLEMENTARY INFORMATION:** On May 30, 2003, the Coast Guard published a final rule (68 FR 32366) establishing safety zones, in 33 CFR § 165.1315, to provide for the safety of vessels in the vicinity of fireworks displays. One of these fireworks displays is the Oregon Symphony Concert fireworks display. The safety zone covers 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. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on August 28, 2003 from 8:30 p.m. (PDT) until 9:30 p.m. (PDT). A rain date is scheduled for August 29. The Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this safety zone.

**FOR FURTHER INFORMATION CONTACT:** Captain of the Port Portland, 6767 N. Basin Ave., Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: July 13, 2003.

**Paul D. Jewell,**

*Captain, Coast Guard, Captain of the Port, Portland.*

[FR Doc. 03–19144 Filed 7–25–03; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 512

**[Docket No. NHTSA–02–12150; Notice 2]**

**RIN 2127–AI13**

## Confidential Business Information

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT

**ACTION:** Final rule

**SUMMARY:** This document amends the regulation on Confidential Business Information to simplify and update the regulation to reflect developments in the law and to address the application of the regulation to the early warning reporting regulation issued pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.

**DATES:** This rule is effective on September 11, 2003. If you wish to submit a petition for reconsideration of this rule, your petition must be received by September 11, 2003.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For questions relating to procedures under Part 512, contact Lloyd Guerci or Otto Matheke. For questions relating to the treatment of material under the early warning reporting regulations, contact Lloyd Guerci or Michael Kido. For questions relating to the early warning regulation itself, contact Lloyd Guerci or Andrew DiMarsico. All can be reached in the Office of the Chief Counsel at the National Highway Traffic Safety Administration, 400 7th Street SW., Room 5219, Washington, DC 20590. They can be reached by telephone at (202) 366–5263.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

On April 30, 2002, NHTSA published a Notice of Proposed Rulemaking (NPRM) to amend 49 CFR part 512, Confidential Business Information (part 512). The proposal was intended to make the regulation clearer and easier to follow, particularly for organizations or individuals who do not submit materials to the agency on a regular or frequent basis, and to update specific sections of the regulation to reflect developments in the law. The agency proposed to reorganize the provisions of part 512 and to use a question and answer format, designed to guide the reader through the procedural steps of making a claim for confidential treatment of business information. The NPRM also addressed a variety of procedural matters relating to such claims.

The agency sought comment on whether it should create a series of class determinations of information presumed not to cause substantial competitive harm, in addition to those classes already contained in Appendix B to Part 512 applicable to information the disclosure of which has been determined to cause substantial competitive harm. Although the final rule establishing the early warning reporting obligations had not yet been issued, the agency sought comment on whether to establish class determinations relating to the early warning reporting information.

## II. Comments Received

The comment period closed on July 1, 2002. The agency received timely comments from various sectors of the automotive industry, including vehicle manufacturers, tire manufacturers, supplier and equipment manufacturers, and other interested parties. Comments were received from the following trade associations: the Alliance of Automobile Manufacturers (Alliance), the Association of International Automobile Manufacturers (AIAM), the Rubber Manufacturers Association (RMA), the Tire Industry Association (TIA), the Motor and Equipment Manufacturers Association and the Original Equipment Suppliers Association (MEMA/OESA), the Automotive Occupant Restraints Council (AORC), the Juvenile Products Manufacturers Association (JPMA), the Truck Manufacturers Association (TMA) and the Motorcycle Industry Council (MIC). Comments were received also from individual manufacturers: General Motors North America (GM), Cooper Tire (Cooper), Utilimaster, Blue Bird Body Company (Blue Bird), Bendix, Harley-Davidson Motorcycle Company (Harley-Davidson), WABCO North America (WABCO), Meritor-WABCO, and Workhorse Custom Chassis (Workhorse). Enterprise Rent-A-Car Company (Enterprise) and the Washington Legal Foundation (WLF) also filed comments.

On October 17, 2002, representatives of Public Citizen met with the agency and requested the opportunity to file comments three months after the closing of the comment period. As was noted in a memo to the docket, the agency informed Public Citizen that, consistent with its longstanding practice, the agency would consider late filed comments to the extent possible.[1] Public Citizen filed its comments on November 27, 2002.

## III. Overview of the Comments

Most of the comments supported the NPRM's approach to make Part 512 easier to read and to update the substantive description of what constitutes confidential business information to conform to developments in the law. Many commenters expressed concern over the number of copies the agency was considering requiring to be filed, the agency's request that certain submitters redact personal identifiers, and various other aspects of the proposal. Objections were also raised to the concept of establishing categories of information presumed not to cause substantial competitive harm if disclosed.

The majority of the comments responded to the agency's request that commenters address the early warning reporting requirements, which were proposed on December 21, 2001. *See* 66 FR 66190. Most of the business interests argued that the TREAD Act's disclosure provision in 49 U.S.C. 30166(m)(4)(C) created a categorical, statutory exemption for information submitted pursuant to the early warning reporting regulations, unless the Administrator makes certain findings specified in 49 U.S.C. 30167(b). This position was presented with the most detail in the comments filed by the RMA.

Many of the comments also expressed substantive concerns that the early warning data, given that it is ''raw'' and comprehensive in scope, could be misleading, available for misuse, and create public confusion. Many business interests presented arguments as to why the disclosure of specific elements of the early warning data would be competitively harmful within their particular sections of the motor vehicle or equipment industry. In addition, many commenters expressed concern that the public disclosure of the early warning information would be unfair to those companies that proactively seek out and collect customer feedback and field data.

The Alliance and Public Citizen did not adopt the view that the TREAD Act created a statutory exemption from disclosure. Public Citizen and the Alliance agreed with much of the analysis set forth in an internal departmental memo, dated October 27, 2000, and placed into the public docket on March 6, 2001. That memo expressed the view of NHTSA's Chief Counsel that the TREAD Act's disclosure provision did not create a statutory categorical exemption because of the manner in which it referenced 49 U.S.C. 30167(b). The memo concluded that the provision instead indicated a Congressional intent that NHTSA determine the confidentiality of the early warning reporting data in the same manner as it treated other data submitted to the agency; *i.e.*, under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 502(b)(4).

The Alliance suggested that, in accordance with the October 27, 2000 memo, the agency could apply either Exemption 4 (confidential business

[1] The agency's analysis is scheduled to begin promptly after the comment period closes and, in general, we expect all comments to be filed within the specified period. We analyze the comments and all other available data to make decisions on how to shape our final rules. Allowing commenters to file late provides an unfair opportunity to critique the comments of those who submitted their comments in a timely manner. In some rulemakings it is possible to consider late comments without delaying the agency's decision making. In general, however, we only consider late comments to the extent they are filed before the agency has made significant progress towards the next step in the regulatory process and to the extent that they critique the agency's proposal.

information) or Exemption 7 (investigative records), and further argued that either exemption allows the agency to retain the data as confidential. The Alliance asserted that Congress considered the early warning data to be pre-investigative screening information of the type NHTSA traditionally considers part of its internal deliberative process, and intended that the information be confidential until such time as a defect investigation is opened. The Alliance contended that the effect of Section 30166(m)(4)(C) was to modify a presumption in Section 30167(b) generally favoring disclosure.

Public Citizen argued that the TREAD Act did not create a categorical, statutory exemption from disclosure, and that a class determination that information does not presumptively create competitive harm should apply to information about consumer complaints, warranty data and property damage claims. Public Citizen further contended that it is reasonable to disclose each of the other categories of information because it is summary data by make and model and therefore, in Public Citizen's view, not competitively harmful. Public Citizen also asserted that reports of death and injuries and field reports are materials prepared as part of a defect investigation and therefore should be disclosed.

## IV. Overview of the Final Rule

In the NPRM, we proposed changes to part 512 that were designed primarily to simplify and improve the clarity of the regulation and to update specific sections of the regulation to reflect current case law and legislation. The proposal was intended to ensure the efficient processing of requests for confidential treatment and the proper protection for sensitive business information received by NHTSA.

In a newly captioned Subpart A, the final rule includes the general provisions that establish the purpose, scope, and applicability of the regulation governing claims for confidential treatment, and that define the terms used in the regulation. Additionally, the final rule revises the definition of confidential business information to reflect developments in the law.

The final rule addresses the number of copies to be submitted to the agency when information is claimed to be confidential. The following must accompany any claim for confidential treatment: (1) A complete copy of the submission, (2) a copy of a public version of the submission and (3) either a second complete copy of the submission or, alternatively, only those portions of the submission containing the material relating to the request for confidential treatment, with any appropriate sections within the pages marked in accordance with this rule. Those filing comments to rulemakings must additionally submit a copy of the public version to the docket. The submissions must also be marked in accordance with this final rule.

The final rule has eliminated the requirement that submitters redact personal identifying information from their submissions. The final rule specifies in Subpart B the manner in which information submitted to NHTSA and claimed to be confidential must be marked and identifies the supporting documentation that must accompany each submission. Each page containing information claimed to be confidential must be marked. If an entire page is claimed to be confidential, the markings must indicate this clearly. If portions of a page are claimed to be confidential, they must be marked by enclosing them within brackets ''[ ].''

The final rule clarifies issues relating to the duty to amend claims for confidential treatment. It also provides that, when confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter is responsible for obtaining from the third party the information that is necessary to comply with the submission requirements of Part 512, including the requirement to submit a certificate and supporting information.

We have decided against the creation of categories of information presumed not to cause substantial competitive harm for a variety of reasons, including the fact that such a presumption is duplicative of existing law. Class determinations are intended to reduce or eliminate the need for individual consideration of information that, by its nature, has been determined to cause substantial competitive harm if released. Class determinations alleviate the unnecessary burden of filing individual claims for confidential treatment. Information not subject to one of the class determinations is already presumed to be publicly available. Submitters must make individual claims relating to the information and carry the burden of showing that disclosure would either likely cause substantial competitive harm or, if the information is voluntarily submitted, that it is not ordinarily released to the public.

We nonetheless remain concerned that submitters may routinely seek confidential treatment for information the agency has consistently determined would not cause competitive harm if released. We will take appropriate action to discourage those who repeatedly file claims for confidential treatment despite our consistent rejection of similar requests.

Consistent with the analysis contained in the October 27, 2000 memo, we have determined that Section 30166(m)(4)(C) of the TREAD Act did not create a categorical statutory exemption pursuant to Exemption 3 of the FOIA applicable to all early warning reporting information. We have decided to consider the confidentiality of early warning reporting information pursuant to Exemption 4 of the FOIA, which exempts confidential business information from disclosure. We have created a series of class determinations covering those portions of the early warning reporting information we have determined are entitled to confidential treatment. We are permitting the information in these classes to be submitted and given confidential treatment without the filing of a part 512 justification and the accompanying certificate.

## V. Specific Provisions of Part 512

### *A. Subpart A—General Provisions*

The agency proposed to include in Subpart A the general provisions that establish the purpose, scope, and applicability of the regulation governing claims for confidential treatment, and that define the terms used in the regulation. In addition, we proposed to revise the definition of confidential business information to reflect developments in the law.

The agency did not receive any comments objecting to these portions of the regulation, and is adopting the proposed changes to this subpart without modification.

### *B. Subpart B—Submission Requirements*

The agency proposed to delineate in Subpart B the specific requirements that submitters must follow when they request confidential treatment for materials submitted to NHTSA. The NPRM described the information required to be submitted with a confidentiality request, how documents were to be marked, how many copies would be required, where materials were to be submitted and what supporting documentation would be needed. The comments raised no concerns regarding most provisions contained in proposed Subpart B, but several commenters objected to certain of its features.

1. Copies of Submissions

Part 512 previously provided that submitters send to the Chief Counsel two copies of documents containing information claimed to be confidential and one copy of a public version of the documents, from which portions claimed to be confidential were redacted. Submitters were also to send a second copy of the public version of the document to the appropriate program office within NHTSA (typically those engaged in the development of motor vehicle safety—Enforcement, Rulemaking or Applied Research). Thus, the submitter sent the agency two confidential sets of documents and two public sets of documents.

We proposed changing the regulation to require the submitters to send to the Office of the Chief Counsel one confidential and one public set of submitted documents. The submitter could also send, along with the confidential set, any non-confidential information the submitter wanted NHTSA to consider along with its request. We also proposed that submitters send a confidential and a public set of the documents to the appropriate program office.

A number of comments characterized this proposal as requiring the creation of a ''third version'' of the submitted materials, and argued that it would significantly increase the time, expense, and difficulty associated with the exercise of the statutory right to protection of confidential commercial and financial information. JPMA and others suggested instead that the agency require submitters to furnish two copies of the complete submission and one or two redacted versions.

The agency did not intend to require the creation of any ''third version'' of submitted documents. The agency believes that some companies may find it easier to send the Chief Counsel only those material for which confidential treatment is sought, especially when the amount of material claimed to be confidential is small in comparison to the whole submission or when it is limited to documents that are easily severable from the whole. We have accordingly modified this provision to provide this option when submitting confidentiality claims.

Each claim for confidential treatment must be accompanied with the following: (1) A complete copy of the submission, (2) a copy of a public version of the submission and (3) either a second complete copy of the submission or, alternatively, only those portions of the submission containing the material relating to the request for confidential treatment, with any appropriate sections within the pages marked in accordance with this rule. Those individuals who are filing comments to rulemakings must additionally file an electronic or hard copy of the public version to the docket. All submissions must be appropriately marked in accordance with this final rule. Information for which the submitter requests confidential treatment may be submitted electronically or in an electronic format. Submitters should also provide any special software necessary to review the submitted materials.

The Chief Counsel will distribute the complete copy and the public version of the material to the program office for its use, and will use the additional marked copy or set of material to evaluate the claim for confidential treatment. This will provide the program office expeditiously with the information necessary for program activity and ensure that the program office is aware of which material is claimed to be confidential and which is not. This process will also provide the Chief Counsel with the information needed to consider the claim for confidential treatment. Generally, this will simply be the material for which confidential treatment is sought. The submitter may also include any additional information it wishes the Chief Counsel to evaluate in considering the claim.

2. Personal Information

The agency proposed to include in Part 512 a request that submitters remove personal information, such as names, addresses and telephone numbers of consumers, from the redacted version of submitted materials, to protect the privacy of individuals. The agency's policy has been to redact personal identifiers from all owner complaints (whether filed directly with the agency or from documents obtained from manufacturers in the course of a defect investigation) before placing them on the public record. The policy was designed to encourage the submission of information by protecting personal privacy concerns. The agency believes that consumers may be less willing to make complaints if their personal contact and other information are made publicly available.

In *Center for Auto Safety* v. *National Highway Traffic Safety Administration*, 809 F. Supp. 148 (D.D.C. 1993), the Center for Auto Safety sought release of the names and addresses of consumers who filed complaints directly with the agency. The court analyzed the possible effects of disclosure, balancing the interests of the individuals filing complaints with the asserted public interest in obtaining not only the substance of the complaint, which was publicly available, but also the identities of those filing them. The Court ruled that the privacy of the complainants will be recognized and protected because ''there is no ascertainable public interest of sufficient significance or certainty to outweigh [a complainant's privacy] right'' that would justify the release of this personal contact information provided by consumers. *Id.* at 150. Thus, the court upheld the agency's decision not to release the names of, and other personal information about, those voluntarily providing information to the agency.[2]

The same policy concerns apply to personal identifiers on copies of information submitted by manufacturers. The judicially recognized privacy interest in protecting the personal identifiers and contact information when a consumer complains to the agency is at least as strong when applied to a consumer who complains directly to the company, and is in all likelihood unaware that the company may be required to send that communication to the government, which, in turn, will place it into a publicly accessible file.

Many comments, including those from TMA and the Alliance, objected to the proposed requirement that submitters remove personal information, pointing out that the legal burden of reviewing and redacting personal identifiers lay with the agency, not with the private submitters of the information. TMA also argued that relying on submitters to redact the information might lead to inconsistent approaches and cause confusion over what personal identifiers are or are not redacted.

In light of the comments, we have revised the proposed regulation to eliminate this requirement. The agency nonetheless would appreciate submissions, in addition to the complete copy, of redacted versions deleting any personal identifiers from any companies willing to provide them.

[2] Public Citizen expressed opposition to the agency's practice of providing a release option on its Vehicle Owner Questionnaires to allow the agency to share consumer names with manufacturers but not a similar release option with respect to advocacy groups. Manufacturers have a legal obligation to investigate vehicle problems and make timely defect determinations. The release of information to them, with the owner's permission, assists in their performance of their legal responsibilities by enabling them to investigate reports of vehicle problems. Advocacy groups and other members of the public have no such statutory obligation.

3. Stamp Each Page

The proposal specified the manner in which information submitted to NHTSA and claimed to be confidential must be marked, and identified the supporting documentation that must accompany each submission. The NPRM intended to continue the requirement that each page containing information claimed to be confidential be marked as such. The markings would indicate if an entire page was claimed to be confidential or would identify with brackets any particular portions of a page claimed to be confidential.

This proposal was intended to avoid misunderstanding by establishing a system through which companies could provide the agency with clear direction as to which portions of the pages or documents were claimed to be confidential. To allow the pages with confidential information to be identified easily, the proposal provided also that each page claimed to contain confidential information must be numbered.

The RMA claimed that the combination of this feature with other parts of the proposed regulation would create an unreasonable burden and violate the Paperwork Reduction Act. The RMA was concerned with the combined effect of presumably requiring three versions of the same information, stamping each appropriate page with the word ''confidential,'' potentially redacting personal information, and the potential application of all the requirements to each quarterly submission of the early warning reporting information.

As noted above, we have made various modifications to address many of these concerns. We have clarified that we did not intend to require a so-called third version of each submission, have eliminated the proposal to require the redaction of personal identifiers, and have addressed the early warning reporting information through a series of class determinations covering those portions we have determined are entitled to confidential treatment under Exemption 4 of the FOIA.

In sum, we believe that this final rule simplifies the process for submitting confidentiality claims, allows for the more efficient handling of those claims within the agency and imposes no additional burden on those submitting the information. The final early warning reporting regulation likewise clarified those reporting obligations and, we believe, assuages many of the concerns raised by the RMA.

Those providing submissions electronically must either separate the material that is confidential from that which is not, or find an alternative method of marking those pages that are confidential. We note that companies increasingly are supplying information required as part of a defect or noncompliance investigation in electronic formats.

*C. Subpart C—Additional Requirements*

In Subpart C, the agency proposed to retain additional requirements from the existing regulation that submitters must follow when certain circumstances apply. The NPRM stated that we did not intend to change these requirements substantively, only to clarify the requirements and assemble them in a single subpart.

The requirements contained in this portion of the proposed rule covered such issues as the submitter's continuing obligation to amend information provided in support of a claim for confidential treatment, the manner in which confidential treatment is to be claimed for multiple items of information or for information submitted by a third party, the steps submitters must take if they need an extension of time to claim confidential treatment, and the consequences for noncompliance with part 512.

The final rule includes the requirement that submitters specify with their claim the length of time for which confidential treatment is sought. The information supporting the confidentiality request must include adequate justification for the time period specified in the claim.

The agency did not receive comments objecting to the proposed reorganization of these provisions into Subpart C, or to most of the specific requirements contained in this portion of the proposal. Objections were raised, however, regarding two provisions of the proposal:

1. Duty To Amend

The existing regulation provides that submitters of information ''shall promptly amend supporting information'' justifying a claim for confidential treatment ''if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.'' 49 CFR 512.4(i). The NPRM proposed to revise this language to provide that submitters ''shall promptly amend any information under § 512.4 of this part whenever the submitter knows or becomes aware that the information was incorrect at the time it was provided to NHTSA, or that the information, although correct when provided to NHTSA, is no longer correct.''

Several comments, including those submitted by TMA and AIAM, objected to this proposed change on the grounds that it would impose an unreasonable burden on submitters to monitor submissions constantly in order to avoid civil penalties. Workhorse expressed concern that, by removing the ''knowing concealment'' standard, the rule would subject submitters to civil penalties based on ''constructive knowledge.'' Business interests urged the agency not to adopt the proposed changes. Public Citizen, on the other hand, considers the ''knowing concealment'' standard ''too weak'' and believes it allows situations in which materials that are no longer confidential receive continued protection ''long after the conditions justifying its confidentiality have been removed.''

We note that the agency requires the submitter to identify the length of time for which confidential treatment is sought. The agency will evaluate these requests when determining whether to grant confidential treatment and will release information once the time period for which confidential treatment is granted has lapsed. If the time period between the grant and the possible disclosure is long, the agency may seek reconfirmation, with appropriate support, that the information remains confidential.

The comments show that the proposed language could impose substantial and unnecessary burdens on submitters to monitor information previously submitted to the agency without providing additional benefit, since the agency is able to monitor the time for which confidential treatment is granted and is able to reassess a confidentiality grant should the information be requested. Accordingly, we have revised the final rule to clarify that the duty to amend relates to the supporting information submitted to justify the claim for confidential treatment, not to the substance of the reported information itself. In addition, we have revised the rule further so that, as before, the duty to amend is triggered only when circumstances are such that a failure to amend the supporting information would constitute a knowing concealment.

2. Third Parties

In the NPRM, the agency proposed that, when confidentiality is claimed for information obtained by the submitter

from a third party, such as a supplier, the submitter is responsible for obtaining from the third party the information that is necessary to comply with the requirements of this regulation, including the requirement to submit a certificate of confidentiality.

The agency received several comments, all from suppliers, raising questions concerning this aspect of the agency's proposal. MEMA/OESA, AORC, Bendix, and WABCO, among others, argued that they should have the opportunity to request confidentiality directly with respect to information that they submit to their customers, and should be able to deal directly with the agency regarding information that is not available to the original submitter.

The agency believes these comments reflect a misunderstanding of the proposed regulation. The proposed regulation would not prevent suppliers from submitting information to the agency or seeking confidential treatment directly. This provision of the NPRM merely provided that if a person submits information that was obtained from a third party (such as an automobile manufacturer submitting information obtained from a supplier, a supplier submitting information obtained from a vehicle manufacturer, a contractor submitting information obtained from a subcontractor, or a similar situation involving wholly different parties), and if the submitter seeks confidential treatment for the information, it must obtain adequate supporting documentation to justify the claim. For example, it may be appropriate, or even necessary, to obtain and submit a Certificate in Support of the Request for Confidentiality that was prepared by the entity from which the information was obtained. In the absence of adequate supporting information, the agency will have no choice but to make the information public. Accordingly, this provision of the proposed rule is adopted without change.

*D. Subpart D—Agency Determination*

NHTSA proposed in the NPRM to delineate the confidentiality standards and procedures used by the agency to render a confidentiality determination. We also proposed to state that the agency may render determinations involving classes of information and that submitters may request reconsideration if they disagree with an agency decision. We indicated that we were proposing to clarify these provisions and assemble them into a single subpart. We indicated also that we were proposing some substantive changes to these portions of the regulation.

The majority of the comments related to the submission and protection of early warning reporting information, but a few additional issues were also addressed:

1.Time To Request Reconsideration or To Respond When a FOIA Request Is Pending

Part 512 previously provided that, if a request for confidential treatment is denied in whole or in part, the agency would inform the submitter of its right to petition for reconsideration of the denial within ten working days after receiving notice of the agency's decision. The NPRM proposed no changes to this aspect of the rule. A number of comments, primarily from smaller businesses, requested that this period of time be extended.

Blue Bird, for example, asserted that small-to medium-sized companies should have ''the opportunity to undertake the type of expanded review which the Company would need in cases where it must fully consider and present all possible arguments and justifications to protect what [it considers to be] proprietary, competitively sensitive information.'' In addition, MEMA/OESA asserted that ''requests for reconsideration where sensitive company documents are otherwise at risk will often require the input of many company employees * * * [and that] the ten-day period under the current and proposed rules * * * provides insufficient time.'' These comments recommended that the period of time should be extended from 10 working days to 20 working days or 30 calendar days.

Upon consideration of the difficulties faced by small companies (Blue Bird) and the potential need to coordinate responses with widely dispersed employees (MEMA/OESA), the agency has decided to adopt the commenters' request to extend the period of time to request reconsideration of denials of confidential treatment rendered by the agency, from ten working days to twenty working days.

In related comments, citing sections 512.22 and 512.23 of the regulation, which appear in Subpart E and relate to modifications of confidentiality decisions and the public release of confidential information under certain limited circumstances, the WLF recommended that ''the agency should [n]ever give less than ten (10) day advance notice to [a] company before releasing business documents.'' Although not specifically raised in any other comments, the agency notes that several portions of part 512 provide submitters of information with ten working days within which to seek review of agency decisions.

For example, if a petition for reconsideration is denied in whole or in part under Section 512.19 (also in subpart D), or if the agency determines that an earlier determination of confidentiality should be modified under section 512.22 or that information previously determined or claimed to be confidential will be disclosed under section 512.23 (in subpart E), the submitter is advised that the information will be made available to the public not less than ten working days after the date on which notification of the agency's action is received.

The reasons that support an extension from ten working days to twenty working days for requesting reconsideration also justify the extension of these other time periods. Nonetheless, while we are revising the regulations to provide a period of twenty working days, rather than ten, in each of the sections referenced above, we are reserving the right to shorten these periods when the agency finds it to be in the public interest.

WLF asserted that the NPRM would provide ''an inadequate amount of time to businesses to review and respond to FOIA requests submitted to the [agency] by third parties,'' and recommended that the agency ''provide the third-party FOIA request to the affected business within three (3) business days after receiving it * * * [and] copies of all correspondence between the agency and the FOIA requester.''

The agency notes that while the WLF's comments asserted that they concern notice to businesses upon the agency's receipt of a FOIA request for the information, the sections of the NPRM that WLF cites do not relate to these circumstances. Moreover, the agency does not believe that additional notice to submitters is needed at the time a FOIA request is received. Unlike many other Federal agencies, NHTSA does not wait until it has received a FOIA request before asking a submitter to justify the withholding of information. Instead, NHTSA's regulation provides that submitters must support their claims for confidential treatment at the time of submission. *See* 49 CFR 512.4. The agency would not expect, nor would we welcome, any additional materials from a submitter simply because a FOIA request has been filed. If a submitter disagrees with the agency's confidentiality determination (whether or not it is made in the context of a FOIA request), it can then request reconsideration. Therefore, there is no need to notify submitters if a FOIA

request is received by the agency for submitted information.

2. Whether Voluntarily Submitted Materials Should Be Returned Following a Denial of a Confidentiality Request

Bendix suggested that Section 512.18 should be amended to ''clarify'' that information voluntarily provided to the agency subject to a claim for confidential treatment should be returned to the submitter if the agency denies the request for confidential treatment. Such information may be submitted as part of a rulemaking, research activity or a request for interpretation of our statutes and regulations.

We note that the Federal Records Act imposes limitations on the agency's ability to return information voluntarily submitted to the agency. That Act mandates the maintenance and preservation of federal records.[3] It does not contemplate the return of records to individual submitters. Those providing technical or market information as part of a rulemaking or in connection with the agency's research activity do so voluntarily and with knowledge of the standards applicable to the treatment of the data. Further, we believe we can respond to interpretation requests while maintaining the confidentiality of any information. Accordingly, we are not adopting this suggestion.

3. Class Determinations

The NPRM proposed no specific changes to the already established class determinations applicable to information found to cause substantial competitive harm if released. Appendix B to part 512 currently contains three such determinations. These classes are blueprints and engineering drawings (under certain circumstances), future specific model plans, and anticipated vehicle or equipment production or sales figures (in some cases, for limited periods of time).

The NPRM sought comment with regard to whether the agency should also consider the establishment of class determinations applicable to categories of information that presumptively would not cause substantial competitive harm if released. The proposal suggested that such class determinations, if established, would be applicable only to compelled information. The agency did not intend that any such class determinations would be applicable to information voluntarily submitted to the agency. Such information is subject to disclosure under a different legal standard and only upon a showing that the company customarily discloses the information to the public.

We have decided against the creation of class determinations trying to address categories of information the release of which would be presumed not to cause substantial competitive harm. Such class determinations are unnecessary because all data the agency requires to be submitted is already presumptively subject to disclosure under FOIA unless shown to be subject to a FOIA exemption or covered by a class determination. Class determinations merely set forth those categories in which it is unnecessary to make individual submissions regarding the release of data that by its very nature would cause substantial competitive harm or impair the Government's ability to obtain the information in the future. In addition, we have concluded that some of the areas we posed as candidates for such treatment, such as testing conducted pursuant to ''known'' procedures, would require specific evaluation, thus rendering the class determination futile.

We nonetheless remain concerned that submitters may routinely seek confidential treatment for information the agency has consistently determined would not cause competitive harm if released. We will take appropriate action to discourage those who repeatedly file claims for confidential treatment despite our consistent rejection of similar requests.

*E. Subpart E—Agency Treatment of Information*

In Subpart E, the proposal described the manner in which information claimed to be confidential would be treated by the agency. The proposal intended to continue the practice of providing that any information identified and claimed to be confidential would be protected from disclosure by the agency pending an agency decision, and would continue to be treated confidentially as if the submitter's request for confidential treatment were granted, except under certain limited circumstances.

The Alliance suggested that the final rule should explicitly state that information claimed to be confidential would remain confidential pending the agency's administrative determination that the information is not entitled to confidential treatment. The NPRM expressly proposed such protection during the administrative reconsideration process: ''Upon receipt of a timely petition for reconsideration * * * the submitted information will remain confidential, pending a determination regarding the petition.'' The Alliance also suggested an express regulatory provision maintaining the confidentiality of material pending any judicial review of the agency's final administrative action regarding confidential treatment.

The agency will continue to treat as confidential any information that remains subject to an administrative review. This includes both the initial determination and the agency's response to any petition for reconsideration. The agency declines, however, to adopt the Alliance's suggestion that we continue automatically to treat such information as confidential pending judicial review. The agency will make the information publicly available, consistent with its administrative decision, unless ordered otherwise by a court of competent jurisdiction. We recognize that if we were to make information available immediately following the denial of a petition for reconsideration, it would obviate the submitters' right to judicial review. Accordingly, the regulation will provide that the agency will allow the submitter twenty working days within which to obtain a court order (*e.g.*, through a temporary restraining order) requiring the agency to maintain the confidentiality of information pending judicial review. We have chosen twenty working days to be consistent with the other time periods incorporated into this final rule. We also recognize that, while the basis and arguments for the confidentiality claim should have been fully developed by the time a submitter seeks judicial review of our determination, additional work may be necessary before a lawsuit is filed. In the absence of a judicial order to the contrary, information we have determined is not entitled to confidential treatment will be placed into the public record twenty working days after receipt of the agency's decision on reconsideration. As in other contexts, we reserve the right to shorten this period if we find that it is in the public interest to do so.

The proposal also provided that a grant of confidentiality may be modified

[3] The Act defines a ''federal record'' as consisting of ''all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.'' 44 U.S.C. 3301. The disposal of these records is governed by 44 U.S.C. 3314 and related provisions of the Act. See 44 U.S.C. 3302, *et seq.*

under certain circumstances, including newly discovered or changed facts, a change in applicable law, a change in a class determination, or a finding that the prior determination was erroneous.

The proposal further incorporated certain statutory provisions under which information that has been claimed or determined to be entitled to confidential treatment may nonetheless be publicly released in some situations, including releases made to Congress, pursuant to a court order, to the Secretary of Transportation or to other Executive agencies in accordance with applicable law, with the consent of the submitter, and to contractors (subject to certain conditions).

The agency's existing regulation also listed three additional situations under which information determined to be confidential may nonetheless be disclosed to the public. The proposed rule explained that the Cost Savings Act and the Vehicle Safety Act have been repealed and their pertinent provisions have been codified under title 49 of the United States Code. Accordingly, the NPRM proposed to modify part 512 in a manner consistent with these statutory changes. We are adopting these revisions.

## VI. Early Warning Reporting Information

The NPRM sought public comment on how the agency should handle the data to be submitted under the new early warning reporting regulation. Although the final rule prescribing the early warning reporting requirements had not yet been issued, the agency received numerous comments with regard to that data.

Some business interests argued that the TREAD Act itself prohibits the disclosure of any early warning reporting information under Exemption 3 of the Freedom of Information Act (FOIA). Others argued that Exemption 4 of the FOIA, applicable to confidential business information, governs whether the information should be disclosed. All business interests contended that release of the early warning data is likely to cause substantial competitive harm and many pointed out that disclosure is likely to impair the agency's ability to obtain the material in the future. Public Citizen, while agreeing that Exemption 4 is applicable, argued that all the data should be released because it is summary in nature, is important to the identification of potential defects and is often released in the course of individual defect determinations.

As the Court of Appeal for the District of Columbia Circuit recently noted, the Freedom of Information Act is premised on public access to information within enumerated bounds ensuring that the government's proper functions are not impeded:

> ''Public access to government documents'' is the ''fundamental principle'' that animates FOIA. *John Doe Agency* v. *John Doe Corp.,* 493 U.S. 146, 151 (1989). ''Congress recognized, however, that public disclosure is not always in the public interest.'' *CIA* v. *Sims,* 471 U.S. 159, 166–67 (1985). Accordingly, FOIA represents a balance struck by Congress between the public's right to know and the government's legitimate interest in keeping certain information confidential. John Doe Agency, 493 U.S. at 152. To that end, FOIA mandates disclosure of government records unless the requested information falls within one of nine enumerated exemptions, see 5 U.S.C. 552(b). While these exemptions are to be ''narrowly construed,'' *FBI* v. *Abramson,* 456 U.S. 615, 630 (1982), courts must not fail to give them a ''meaningful reach and application,'' John Doe Agency, 493 U.S. at 152. The government bears the burden of proving that the withheld information falls within the exemptions it invokes. 5 U.S.C. 552(a)(4)(b).

*See Center for National Security Studies, et. al.* v. *U.S. Department of Justice,* 331 F.3d 918 (D.C. Cir. 2003).

We have determined that the confidentiality of the early warning submissions should be reviewed under Exemption 4 of FOIA relating to confidential business information. Below we briefly set forth the early warning reporting requirements and the arguments made in favor and against disclosure. We then apply the principles set forth in *National Parks & Conservation Ass'n* v. *Morton* (*National Parks*), 498 F.2d 765 (D.C. Cir. 1974), and its progeny to each element of the early warning reporting information.

### *A. Summary of the Early Warning Reporting Requirements*

The bulk of the early warning reporting requirements apply to larger manufacturers of motor vehicles, and all manufacturers of child restraint systems and tires (*see* 49 CFR part 579). In general, vehicle manufacturers must submit quarterly reports with regard to the following categories of vehicles, if they produce 500 or more vehicles of a category annually: light vehicles, medium-heavy vehicles and all buses, trailers, and motorcycles. The reporting information required of these manufacturers is summarized below:

- *Deaths.* These manufacturers must report certain specified information about each incident involving a death that occurred in the United States that is identified in a claim (as defined) against and received by the manufacturer. They must also report information about incidents involving a death in the United States that is identified in a notice received by the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. Finally, they must report on each death occurring in foreign countries that is identified in a claim against the manufacturer involving the manufacturer's product, or one that is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.
- *Injuries.* These manufacturers must report certain specified information about each incident involving an injury that occurred in the United States that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer which notice alleges or proves that the injury was caused by a possible defect in the manufacturer's product.
- *Property damage.* These manufacturers (other than child restraint system manufacturers) must report the numbers of claims for property damage that occurred in the United States that are related to alleged problems with certain specified components and systems, regardless of the amount of such claims.
- *Consumer complaints.* These manufacturers (other than tire manufacturers) must report the numbers of consumer complaints they receive that are related to problems with certain specified components and systems that occurred in the United States. Manufacturers of child restraint systems must report the combined number of such consumer complaints and warranty claims, as discussed below.
- *Warranty claims information.* These manufacturers must report the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they receive that are related to problems with certain specified components and systems that occurred in the United States. As noted above, manufacturers of child restraint systems must combine these with the number of reportable consumer complaints.
- *Field reports.* These manufacturers (other than tire manufacturers) must report the total number of field reports they receive from the manufacturer's employees, representatives, and dealers, and from fleets, that are related to problems with certain specified components and systems that occurred in the United States. In addition, manufacturers must provide copies of certain field reports received from their employees, representatives, and fleets, but are not required to provide copies of reports received from dealers.
- *Production.* These manufacturers must report the number of vehicles, child restraint systems, and tires, by make, model, and model year, during the reporting period and the prior nine model years (prior four years for child restraint systems and tires).

In addition, these manufacturers must submit to the agency, on a one-time basis, historical data relating to the number of warranty claims/adjustments and field reports for each calendar quarter during the three-year period

from July 1, 2000 through June 30, 2003.[4]

Smaller manufacturers (as defined in the early warning rule), and manufacturers of original motor vehicle equipment or replacement equipment other than child restraint systems and tires, are required to submit reports containing information about claims and notices of deaths allegedly caused by their products, but are not required to submit other information.

*B. Application of the FOIA to the Early Warning Reporting Program*

The TREAD Act's disclosure provision applies to information provided under 49 U.S.C. 30166(m), which was added to the Vehicle Safety Act in the aftermath of hearings held in connection with NHTSA's investigation of Firestone ATX and Wilderness AT tires. That statutory section mandates that the agency initiate a rulemaking ''to establish early warning reporting requirements for manufacturers of motor vehicles and motor vehicle equipment to enhance the Secretary's ability to carry out the provisions of this chapter.'' 49 U.S.C. 30166(m)(1).

Section 30166(m)(3) sets forth the type of information Congress expected the rulemaking to include. Congress specifically directed the agency to require the submission of information relating to repair and/or replacement campaigns. The Act provides for the submission of data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment that may assist in the identification of defects. 49 U.S.C. 30166(m)(3)(A). Congress also specifically provided for manufacturers to submit information relating to claims of death or serious injury alleged to be caused by a defect where the manufacturer receives actual notice. 49 U.S.C. 30166(m)(3)(C).

Congress recognized that additional types of information may be useful to the agency in carrying out its mission to identify safety related defects. In Section 30166(m)(3)(B), Congress gave the agency the authority to mandate the submission of ''other data'' in addition to the information described above ''to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States.'' Pursuant to that authority, NHTSA's early warning reporting rule requires the submission of information relating, among others, to warranty claims, field reports and consumer complaints.

Congress also considered the extent to which the data submitted as part of the early warning reporting regulation should be subject to public disclosure or, alternatively, the extent to which it should be held confidential to enhance the agency's ability to identify potential safety defects. The TREAD Act's disclosure provision, Section 30166(m)(4)(C), reads:

> None of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.[5]

1. The TREAD Act and the FOIA Exemptions

In a letter to Secretary Slater dated October 20, 2000, days after passage of the TREAD Act, but before President Clinton signed the Act into law, Public Citizen objected to the disclosure provision.[6] Public Citizen was concerned that the provision would be construed to prohibit the disclosure of any early warning reporting data:

> The secrecy provision in sec. 3(b)(4)(c) is imposed upon all safety defect information collected as part of the bill's ''early warning reporting requirements'' rulemaking. We believe that the secrecy provision thwarts the clear purpose of the legislation—to protect the public from defect cover-ups—and may drastically reduce public access to safety defect information. Under that section, the Secretary shall not disclose defect and early warning information about lawsuits, consumer complaints, deaths, injuries, component failures or consumer satisfaction campaigns unless you determine that disclosure will assist in carrying out the law. This inverts existing law, as the current presumption of 49 U.S.C. sec. 30167(b) is to favor the disclosure over and above the disclosure requirements of the Freedom of Information Act (FOIA). Indeed, the function of this reversal in presumptions is to create a categorical exemption under FOIA's exemption three, and thus to keep information submitted under the new rule totally secret, probably indefinitely. (Emphasis in original)[7]

NHTSA's Chief Counsel considered and rejected this view of the TREAD Act's disclosure provision in an internal departmental memo, which was subsequently placed in the public record. That memo stated in part:

> Ms. Claybrook's letter seems to suggest that the variation in language could be interpreted to prevent the disclosure of any early warning information submitted to the agency in the absence of a decision by the Secretary that disclosure of the information ''will assist in carrying out'' the purposes of the Act. However, the legislation clearly requires that such a decision be made prior to disclosure only when the disclosure is being made under section 30167(b), which by its terms is invoked only when the disclosure involves information that has been determined to be entitled to confidential treatment.
>
> Moreover, section 30167(b) provides specifically that ''A requirement to disclose information under this subsection is in addition to the requirements of [the FOIA].'' Accordingly, neither section 30167(b) nor paragraph (4)(C) would affect the agency's initial decision regarding whether information submitted to the agency is entitled to confidential treatment. Such decisions will continue to be made in accordance with Exemption 4 of [the FOIA], the Trade Secrets Act and the agency's regulations concerning the treatment of confidential business information, 49 CFR part 512.[8]

In its comments to this rulemaking, Public Citizen agreed that Section 30166(m)(4)(C) permits the agency to consider the early warning information under Exemption 4 of the FOIA. Public Citizen claimed that the effect of the provision is to alter a preexisting presumption in Section 30167(b) from one of disclosure to nondisclosure in the absence of the specified findings of the Secretary. Public Citizen also clarified that its ''statements about the possible meaning of the bill were concerned with its potential for legal manipulation by the industry, *i.e.*, what in the worst case it could mean, rather than any suggestion of what it should or actually does mean in agency practice.''

The RMA argued that the TREAD Act provision falls within Exemption 3(b) of the FOIA, which negates disclosure when Congress has established particular criteria for withholding

[4] The early warning regulation contains definitions and explanations that provide further context to these requirements and that are not repeated here.

[5] Section 30167(B) provides: ''Subject to subsection (a) of this section, the Secretary shall disclose information obtained under this chapter related to a defect or noncompliance that the Secretary decides will assist in carrying out sections 30117(b) and 30118–30121 of this title or that is required to be disclosed under section 30118(a) of this title. A requirement to disclosure information under this subsection is in addition to the requirements of section 552 of title 5.''

[6] Public Citizen's letter appears in the docket as an attachment to the comments submitted by the RMA.

[7] Exemption 3 applies to material ''specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.'' 5 U.S.C. 552(b)(3).

[8] Memo from Frank Seales, Chief Counsel, NHTSA, to Rosalind Knapp, Acting General Counsel of the Department of Transportation, at 2 (Oct. 27, 2000) (emphasis in original).

information or has referred to particular types of matters to be withheld. The RMA asserted that the reference in the disclosure provision to the rulemaking required by Section 30166(m)(1) is sufficient to bring the statute within the purview of Exemption 3. According to the RMA, the analysis prepared by the agency in the October 27, 2000 memorandum would render the statutory provision meaningless and violate a central tenet of statutory construction.

The RMA, as well as individual tire makers and many other manufacturers, further argued that the information required by the early warning reporting regulation would lead to substantial competitive harm if disclosed. In addition, they suggest that disclosure would lead to less candor from field personnel, resulting in less reliable information, and would discourage marketing efforts that lead to more complete and useful data.

The Alliance suggested that the provision assumes the confidentiality of the early warning reporting data because information cannot be disclosed under section 30167(b) unless it is otherwise confidential. The Alliance asserted that the information may be found to be confidential under either Exemption 4 or Exemption 7 of the FOIA. The Alliance submitted affidavit evidence to support its claim that disclosure of the early warning reporting information would lead to substantial competitive harm within the automotive industry. General Motors also submitted comments explaining how, in its view, substantial competitive harm is likely to result if the data were disclosed.

The TREAD Act mandated that NHTSA collect and maintain information in a manner not previously followed by the agency. Historically, the agency has received information relating specifically to a particular alleged defect or noncompliance, including engineering drawings, warranty claim information, customer complaints, field reports and lawsuit information. Manufacturers submitting information in response to the agency's information requests frequently seek confidential treatment for portions of the information submitted. The agency reviews those requests in accordance with Exemption 4 of the FOIA.

The early warning reporting regulation requires regular periodic submissions of data that relate not simply to alleged problems, but to all of a manufacturer's products. These submissions are not necessarily indicative of any problem needing investigation. We do not believe that the language of Section 30166(m)(4)(C), and the colloquy accompanying its enactment (*See* Appendix A), expresses a Congressional mandate to treat all early warning reporting information confidentially. Instead, we believe that Congress expected the agency to review the confidentiality of early warning reporting information under Exemption 4 of the FOIA, but to apply Section 30167(b) in a more restrictive manner to that data than to other information received by the agency.[9]

As many of the commenters pointed out, Section 30167(b) applies only after we have determined that information is entitled to confidential treatment. The provision permits the disclosure of confidential information whenever the Secretary, in his discretion, believes that the information can be useful in carrying out the agency's defect identification and remediation function. In contrast, the TREAD Act's disclosure provision does not permit the disclosure of confidential early warning reporting information unless the Secretary specifically finds that disclosure is necessary to carry out the agency's responsibility to identify potential safety-related defects. Thus, the basis for justifying disclosure of the early warning reporting information is significantly more stringent than that for all other material submitted to the agency and found entitled to confidential treatment under the FOIA.

Both Public Citizen and the Alliance construed the TREAD Act provision in a manner consistent with our analysis. Public Citizen stated that the provision ''inverts existing law, as the current presumption of 49 U.S.C. § 30167(b) is to favor disclosure over and above the disclosure requirements of the Freedom of Information Act (FOIA).''[10] The Alliance similarly argued that Congress enacted the TREAD Act aware that the Vehicle Safety Act contained a provision generally favoring disclosure of information, even if it is otherwise confidential, when deemed necessary to assist in carrying out the agency's defect remediation function. According to the Alliance, Congress intended to neutralize that presumption and to disfavor disclosure of the early warning information:

> [U]nder longstanding NHTSA practice, *nonconfidential* information related to potential defects or noncompliances under investigation by the agency is routinely available in the agency's public reference reading room, without need for a Secretarial ''determination'' under § 30167(b), even though NHTSA could lawfully invoke FOIA Exemption Seven (relating to law enforcement investigations) to protect this information. Thus, as a practical matter, information in NHTSA's possession *is not even considered for release* under § 30167(b) of the Safety Act, **unless and until that information is already entitled to confidential treatment** under one of the Freedom of Information Act exemptions. (Emphases in original.)

As set forth in the October 27, 2000 memo, the agency disagrees with the assertion presented by the RMA and other business interests that the TREAD Act provision categorically prohibits the disclosure of any early warning reporting information pursuant to Exemption 3 of the FOIA. Our analysis of the arguments in favor of the application of FOIA Exemption 3, and our reasons for rejecting those arguments are amplified in Appendix A to this Final Rule. In sum, we believe the TREAD Act provision intended the Secretary initially to determine which information is entitled to confidential treatment as confidential business information, and, if so and only then, to consider whether disclosure is nonetheless necessary for the agency to fulfill its responsibilities to detect and enforce the laws governing the recall of vehicles and equipment containing safety related defects.

2. The Early Warning Reporting Information and FOIA Exemption 4

Consistent with the October 27, 2000 memo, we have determined that the confidentiality of the early warning reporting information should be construed under Exemption 4 of the FOIA. Exemption 4 protects information from disclosure that are ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. 552(b)(4). Information is confidential if its disclosure is likely ''(1) to impair the Government's ability to obtain necessary

[9] We must give meaning to all words and phrases of a statute, and therefore we must give meaning to the reference in Section 30166(m)(4)(C) to the preexisting Section 30167(b). *See, e.g., TRW Inc.* v. *Andrews,* 534 U.S. 19, 31 (2001) (''It is 'a cardinal principle of statutory construction that a statute ought, upon the whole, to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant' '') *and United States* v. *Menasche,* 348 U.S. 528, 538–539 (1955)(''It is our duty ''to give effect, if possible, to every clause and word of a statute.' '' We must also ensure that our construction of the statute does not render the TREAD Act provision meaningless or duplicative of existing law. *See, e.g., Dunn* v. *Commodity Futures Trading Commission,* 519 U.S. 465, 472 (1997) (''Our reading of the exemption is therefore also consonant with the doctrine that legislative enactments should not be construed to render their provisions mere surplusage'').

[10] In its comments, Public Citizen expressed its view that the provision is not an Exemption 3 statute, stating that ''while the TREAD Act provision may *reverse a presumption* available for certain information under Section 30167(b), the language of the statute falls far short of creating a withholding statute or exemption from FOIA.'' (Emphasis in original.)

information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.'' *National Parks,* 498 F.2d at 770. *See also Center for Auto Safety* v. *National Highway Traffic Safety Administration* (*CAS* v. *NHTSA*), 244 F.3d 144, 147–48 (D.C. Cir. 2001) (discussing application of Exemption 4 to mandatory submissions).[11]

Business interests contended that the early warning reporting information is entitled to protection under both prongs. They argued that early warning submissions would provide insight into the field experience and performance of a submitter's entire product line. Business enterprises were concerned that this information could then be analyzed by competitors to assess various factors, such as a submitter's experience with a particular supplier, production cycles, and the reliability of that submitter's products. Many of the commenters also pointed out that the disclosure of information may deter candor and discourage efforts to obtain reliable information from the field.

The RMA asserted that disclosure of early warning reporting information would harm individual competitors. The Alliance echoed these concerns and emphasized that the information would be valuable to competitors, particularly within the context of competition among its member companies, aftermarket parts manufacturers, potential new entrants, and franchised dealers. Many commenters pointed out that the early warning reporting information constitutes a unique and comprehensive compilation of information not otherwise available, and, while subject to misinterpretation by the public, is especially valuable to competitors.

The Alliance submitted affidavit evidence with its comments from an automotive marketing consultant to support its claim that the early warning reporting information relates to issues of importance to new car buyers, and therefore that the material is likely to be used (and potentially misused) in the competitive marketplace. The Alliance pointed out that the most significant factors cited by automobile consumers when choosing a vehicle relate to reliability, quality and dependability—all factors upon which the early warning reporting information is likely to shed some light.

The Alliance and others expressed concern over the potential misuse of the early warning reporting information, either by competing companies or others who may draw conclusions from the data that, according to the Alliance and others, may be unwarranted. The Alliance stated that in addition to ''[t]he unfairness of subjecting the submitting manufacturers to the competitive harm that would flow from the disclosure of [early warning information],'' any comparison of this information by the public would not be valid because of the differences in warranty periods among manufacturers.

GM reiterated this concern. Workhorse similarly wrote that disclosure of early warning information would create ''a serious risk that the public will be misled by disclosing such raw, unverified data'' and lead to ''consumer confusion and manufacturer harm.'' The RMA, while arguing that the potential misuse should support a blanket prohibition from disclosure, also asserted that the early warning reporting information is commercially valuable, and that its value is directly related to the extent of its confidentiality.

The Alliance recognized and did not take issue with NHTSA's current practice of releasing similar types of information submitted during specific defect investigations, but argued that this ''does not justify the release of the comprehensive compilations of information'' collected under the early warning reporting rule. The Alliance explained that ''[a] limited release of information that is relevant to, and specific to, an individual defect investigation is much different from a competitive standpoint than the automatic release of the continually collected, full compendium of quality and customer satisfaction information that is represented by the complete 'early warning' submission each quarter.''

Because of the comprehensive nature of the early warning information, the Alliance argued that these submissions ''should * * * be protected by a class determination presuming their confidentiality and * * * should not have to be accompanied by a traditional part 512 justification with each quarterly submission.'' The Alliance added that NHTSA's ''long-standing practice of releasing information limited in terms of scope and timeframe related to consumer complaints, warranty claims, property damage claims, field reports, etc., when this information has been submitted in connection with an individual, specific defect investigation does not defeat the presumptive confidentiality of the comprehensive collection of such information.''

AIAM asserted a similar argument in favor of protecting early warning information, claiming that its main point of contention ''lies with a comprehensive disclosure of all, unscreened early warning information.'' The AIAM added that ''we recognize that, in appropriate instances, portions of the early warning information could still be disclosed to the public.'' AIAM explained that such releases could occur ''after NHTSA has processed and evaluated early warning information and decided to pursue an investigation about a particular vehicle/component.''

GM also distinguished between the disclosures that NHTSA currently makes during defect investigations and the disclosures that would occur if the class determinations the agency proposed for warranty information were made. The company explained that its responses to agency information requests ''often include warranty data for a limited number of makes, models, and years.''

Public Citizen argued that most of the information to be submitted under the early warning reporting rule is summary in nature and not specific enough to qualify for confidential treatment. Public Citizen also contended that because information to be submitted is similar or identical to the type of information submitted as part of a defect investigation, it should be treated as it currently is in a defect investigation. Public Citizen noted that the agency had speculated early in the development of the early warning reporting regulation that it thought manufacturers may not seek confidential treatment of the early warning reporting information.

We believe that the information submitted in the course of a defect investigation is qualitatively and quantitatively different from the comprehensive compendium of pre-investigation information to be submitted under the early warning reporting rule, and further that the competitive harm caused by the disclosure of some of the early warning reporting data is substantial. While the early warning reporting information will generally not be as specific as the data submitted during a defect investigation into a defined and particular problem, each company must provide data with regard to each product it manufacturers. The information relating to certain elements of reporting provides specific information that competitors are likely to find valuable and, at the same time,

[11] A different standard applies to information that is submitted voluntarily to a government agency. *See Critical Mass Energy Project* v. *Nuclear Regulatory Commission,* 975 F.2d 871 (D.C. Cir. 1992) (en banc). Since all the information provided under the early warning reporting regulation is ''required,'' *Critical Mass* does not apply.

provides comparative data across each manufacturer's entire product line.

The U.S. Court of Appeals for the D.C. Circuit has also recognized that a collection of information may be found likely to cause substantial competitive harm even if some of the individual pieces of data are not independently entitled to confidential treatment. *See Trans-Pacific Policing Agreement* v. *United States Customs Service*, 177 F.3d 1022 (D.C. Cir. 1999).[12] *See also Center for National Security Studies, et. al.* v. *U.S. Dept. of Justice*, 331 F.3d 918 (D.C. Cir. 2003) (finding that Exemption 7 protects a comprehensive list of names and other personal information even though individual pieces of information have been otherwise revealed). We further note that the D.C. Circuit has acknowledged that potential consumer misuse, with competitive consequences, is a legitimate factor to consider when determining the confidentiality of the information required to be submitted to the agency. *See Worthington Compressors* v. *Costle*, 662 F.2d 45, 52 n.43 (D.C. Cir. 1981)(trial court should consider ''whether competitors or consumers may misuse the information to the detriment'' of the submitters' competitive positions).[13]

NHTSA has consistently recognized the importance of providing accurate (and complete) information to the public about motor vehicle safety. The agency issues Consumer Advisories to help instruct consumers on the proper use of automotive products and encourages the public to refer to its New Car Assessment Program (NCAP) when choosing a vehicle to purchase. In developing the NCAP program, the agency expressed its belief that ''if consumers have valid comparative information on important motor vehicle characteristics, they will use that information in their vehicle purchase decisions.'' *See* 52 FR 31691 (Aug. 21, 1987). The agency has even rescinded certain aspects of its Consumer Information programs after concluding that the data may mislead consumers and, therefore, will not provide valuable safety information. *See* 60 FR 32918 (June 26, 1985).

Some of the commenters also raised the possibility that NHTSA's release of early warning information would impair both the agency's ability to obtain this information in the future and the quality of the information that the agency receives. For example, AIAM noted that ''[d]espite the manufacturer's intent to the contrary, individuals who prepare field reports may be less thorough or candid if they know that their reports will be available to the general public and not just to experienced, sophisticated analysts employed by the manufacturer and the government.'' Similarly, TIA asserted that, under the proposed presumptive categories, submitters ''will produce the bare minimum required.'' TIA added that if the information were protected, submitters ''will be more likely to provide robust amounts of data.''

The purpose of the TREAD Act's mandate to develop a regulation requiring the submission of the early warning data to the agency is made clear in the language of the law itself. The purpose of the early warning reporting regulation is ''to enhance *the Secretary's* ability to carry out the provisions of this chapter,'' 49 U.S.C. 30166(m)(1), which includes reducing both the number of traffic accidents and the fatalities and injuries arising from them. (Emphasis added). The Secretary has delegated those responsibilities to NHTSA. *See* 49 CFR 501.2. The agency's ability promptly to identify safety related defects would not be ''enhanced'' if disclosure of all or part of the data diminishes the volume and/or reliability of the information, nor would the public interest in motor vehicle safety be served if disclosure has the result of discouraging manufacturers from being responsive to consumer concerns that may relate to motor vehicle safety or imposing greater costs on consumers who need to address such concerns.[14] Therefore, we must consider whether the disclosure of each reporting element has the potential to impair our early detection of possible safety related defects.

The Alliance argued that all early warning data are entitled to confidential treatment under Exemption 4, although both it and General Motors placed particular emphasis on the confidential nature of warranty information. Conversely, Public Citizen argued that all of the early warning data should be categorically considered public in order to achieve what it perceives to be the purpose of the TREAD Act—that is, to give the public complete access to the data required pursuant to the TREAD Act so that the public can make its own decisions relating to products. Public Citizen contended that some Members of Congress voted for the TREAD Act only because they believed the information required by it would be publicly available, citing unreported conversations between NHTSA's and Congressional staff. [15] Public Citizen also argued that business interests failed to establish that early warning reporting submissions qualify for blanket confidential treatment under Exemption 4.

We do not believe that Exemption 4 should be applied to the early warning reporting information on a wholesale basis, whether in favor or against disclosure. Instead, we will consider the application of Exemption 4 to each ''reporting element'' to be submitted under the early warning reporting regulation. In doing so, we consider whether the disclosure of each element of information is either likely to cause substantial competitive harm or likely to impair the agency's ability to obtain necessary information in the future (and thereby impair an important government function). An analysis of the case law applying *National Parks* and its progeny, and discussing the impairment prong in particular, is included as Appendix B.

### *C. Specific Types of Information To Be Provided Under the Early Warning Regulation*

Congress provided for the agency to collect from manufacturers reports of safety related recalls and campaigns conducted outside the United States, and reports relating to claims for deaths

[12] We do not agree with Public Citizen's assertion that the analysis in *Trans-Pacific* is limited to its facts and has no applicability to other, similar situations. *Trans-Pacific* neither compels the protection of the information here, nor does it compel its disclosure. The case supports consideration of any substantial competitive harm arising from the disclosure of a comprehensive compendium of information, even if the disclosure of individual pieces of that compendium are not competitively harmful.

[13] NHTSA has long maintained that public embarrassment per se (that is, in the absence of substantial competitive harm or a deleterious effect on a government program) is not a basis for confidential treatment. The record here, however, provides support that public disclosure of some of the early warning reporting information may lead to mischaracterizations causing substantial competitive harm and may lead to less, rather than more, reporting.

[14] Section 30166(m)(4)(B) provides that ''the regulations promulgated by the Secretary under paragraph (1) may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer.''

[15] Public Citizen neither provided evidence to support this claim, nor identified those Members who might have voted differently. Further, the analysis in the memo was prepared in response to the October 20, 2000 letter and post-dated the Congressional votes. The TREAD Act passed in the House of Representatives on October 10, 2000 and in the Senate on October 11, 2000. The letter to Secretary Slater was dated October 20, 2000, and the memo was dated October 27, 2000. The TREAD Act was signed into law on November 1, 2000. The memo was placed in the public docket in March 2001. There is no reference to the memo in the Congressional record. Nor are we aware of any public dissemination of the memo, or its analysis, prior to its placement in the docket approximately five months after the TREAD Act was passed.

and serious injuries.[16] These mandates grew directly from information arising from the Ford/Firestone tire problem—reports of foreign safety related service actions and a plethora of lawsuits, neither of which had been reported to the agency. Congress also directed the agency to collect aggregate statistical information on property damage claims and authorized it to collect any other data that would assist the agency in its efforts to identify safety related defects in the field.

The purpose of the early warning reporting rule is to ensure that the agency has information from which it can detect potential safety problems and investigate them in a timely manner. We are concerned that our decisions on whether information will be disclosed could discourage manufacturers from collecting the information in the first instance, thereby reducing the information available to the agency to serve this critical function. We are also worried that the public interest in motor vehicle safety will be adversely affected if disclosure has the result of causing manufacturers to be less responsive to consumer safety concerns or to impose greater costs on consumers who need to address problems with their vehicles and equipment, thereby reducing the likelihood of repairing potential safety issues.

The case law construing Exemption 4 makes clear that, while the functioning of our early warning defect detection program is an appropriate consideration when construing the confidentiality of the data, assertions that the data may be useful in a broader public context is not. (*See* Appendix B) We must consider whether each element required to be submitted pursuant to the early warning reporting regulation is entitled to confidential treatment either because its disclosure will likely cause substantial competitive harm or because its disclosure will likely impair our ability to obtain in the future information important to our early warning defect detection program.

[16] The provision requiring the reporting of safety related recalls and other safety campaigns conducted in foreign countries on vehicles that are identical or substantially similar to those offered for sale in the United States is section 30166(l). The disclosure provision in Section 30166(m)(4)(C) does not apply to this category of information. We mention it, however, because it is a critical element of the information Congress thought important for the agency to obtain. As in the case of information delineating safety recalls in the United States and other widely distributed technical information, we do not consider this category of information confidential and will not protect it from public disclosure.

1. Production Numbers

The early warning reporting rule requires certain manufacturers to submit the number of vehicles, tires and child restraint systems, by make, model, and model (or production) year, produced during the model year of the reporting period and the prior nine model years (prior four years for child restraint systems and tires). The agency previously noted in the early warning reporting NPRM that it has generally granted confidential treatment to production data on child restraints and tires submitted to NHTSA, but that light vehicle production numbers are generally available to the public through the automotive press and have generally not been granted confidential status.

Many business interests discussed their efforts to maintain the confidentiality of their production figures. Harley Davidson and MIC stated that production numbers by model have never been generally available in the motorcycle industry. Cooper Tire submitted an affidavit, further confirmed through RMA's comments, with regard to the competitive harm that disclosure of otherwise confidential production numbers would have in the tire industry. JPMA argued that disclosure of these data would provide new entrants and competitors in the child restraint industry with information about production capacities, sales and market performance not otherwise available in the absence of considerable investment in market research. Bluebird (buses, school buses and motor homes), Utilimaster (final stage walk-in vans and freight bodies for commercial use) and the AORC (occupant restraint systems and other components) also each stated that production numbers in their segment of the industry are confidential and likely to lead to substantial competitive harm if released.

The comments substantiate that production numbers in many sectors of the automotive and equipment industries are competitively protected information, revealing otherwise unobtainable data relating to business practices and marketing strategies. Production numbers for manufacturers other than light vehicle manufacturers have been treated confidentially in the past and their disclosure is likely to cause substantial competitive harm to the businesses engaged in these industries. Accordingly, we are establishing a class determination applicable to such information.

2. Claims and Notices Involving Death, Personal Injury and Property Damage

The early warning reporting rule requires all vehicle and equipment manufacturers, including those producing less than 500 vehicles annually, to report certain information about each incident involving a death that occurred in the United States that is identified in a claim against and received by the manufacturer. They must also report information about incidents involving a death in the United States that is identified in a notice received by the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. Finally, they must report on each death occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's product, if it is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.

Certain manufacturers are also required to report specified information about each incident involving an injury that occurred in the United States that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer alleging or proving that the injury was caused by a possible defect in the manufacturer's product.

In general, the information that must be reported includes, for each claim or notice: the make, model, model year and Vehicle Identification Number of the vehicle involved, the date of the incident, the number of deaths and/or injuries involved, the state or foreign country in which the incident occurred, and each system or component that is referred to in the claim or notice. In addition, the larger vehicle manufacturers and tire manufacturers must report the numbers of claims for property damage that occurred in the United States that involve certain specified components and systems, regardless of the amount of such claims.

Industry commenters, such as TMA and MEMA/OESA, alleged that release of death and injury data will result in substantial competitive harm. Public Citizen claimed that such reports do not reveal detailed competitive information, but rather reveal only summary information about the incidents reported.

The submissions relating to claims and notices of death, personal injury or property damage involve a collection of information, many of the pieces of which are publicly available. While the data are not generally available to the

public in this type of compilation, the disclosure of this collected information is not likely to reveal business strategies or other data that can be used competitively. These kinds of claims tend to be more historical than other types of information required by the early warning reporting regulation, with any apparent trends arising over longer periods of time. Given the nature of the data, we consider it unlikely that information about claims of death, personal injury or property damage will lend itself to cross-company comparison. We further note that the claims about a particular issue against a particular manufacturer, and in particular a developing set of claims, often receive media attention and are already in the public domain.

Nor are we concerned that disclosure will detract from the future availability or reliability of this information. Manufacturers receive claims based on incidents occurring in the field, not as the result of proactive efforts to obtain data or customer feedback. They are required under 49 CFR part 576 to retain this information and do not have the option to refuse to amass it. Further, the required information relating to these claims does not involve subjective determinations or require companies to make any admissions relating to facts or legal conclusions in dispute. The reports simply reflect the existence of allegations made with regard to events that occurred in the field.

For these reasons, we have decided not to create a class determination to cover the early warning reporting information relating to claims and notices of death or personal injury, or property damage claims. We have determined that release of that data generally will neither lead to substantial competitive harm nor impair our ability to obtain such information in the future.

3. Information Regarding Warranty Claims

Manufacturers of more than 500 vehicles per year and tire manufacturers must report quarterly the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they paid that involved certain specified components and systems and that arose in the United States. Manufacturers of child restraint systems must combine these with the number of reportable consumer complaints. In addition, these manufacturers must provide similar historical information relating to warranty claims paid during each calendar quarter from July 1, 2000 to June 30, 2003. The information is provided on a make/model basis and categorized with reference to the twenty-two categories defined as part of implementation of the early warning regulation.

Public Citizen argued that the information is summary in nature and typical of that generally provided as part of particularized defect investigations. Conversely, almost all the corporate commenters decried the potential disclosure of warranty data claims as the revelation of vital competitive information. Comments from the Alliance and Cooper Tire included affidavits providing evidence relating to the competitive harm that would be associated with the disclosure of warranty data within the light vehicle and tire industry, respectively.

As suggested by the affidavit from AutoPacific, Inc., submitted by the Alliance, knowledge of the warranty experience of one of the specified components or systems on a make/model level can provide other manufacturers with information about the reliability of a component or system not otherwise available to them, except perhaps through extensive investment in market research. GM offered the following example:

> If supplier A offers a newly-designed system to OEMs, any OEM can tear it down and test it, but no practical test duplicates the experience that is gained from having the system in hundreds of thousands of vehicles. If OEM1 makes the investment to put the system in some of its vehicles, it would gain that field experience and could use it to make better decisions about the future use of the system. With early warning warranty data disclosure, other OEMs would have access to some of the same information and would be able to make their decisions with less extensive testing and analysis. Through the loss of its confidential information, OEM1 is forced to subsidize the other OEMs, reducing their costs at OEM1's expense.

General Motors also makes the further point that warranty cost information is critical in the competitive automotive marketplace. While particular warranty information (such as that submitted as part of a particular defect investigation) does not reveal a company's cost structure, when aggregated by make, model and model year and applied across systems, a cost index is created. As GM notes, cost structure information has consistently been considered data likely to cause substantial competitive harm if released.

Cooper Tire raised concerns that competitors could mischaracterize the data and use it to their competitive advantage. In an affidavit submitted to the docket, Cooper Tire's expert explained that the release of ''a few statistics, such as the warranty adjustment rate, without the complete background behind those statistics could lead to a very misleading picture of tire performance.'' The company indicated that the differences between warranties among otherwise identical tire lines sold to different types of users ''could lead to erroneous inferences about tire safety which, in turn could lead to erroneous and justified competitive harm.'' Many other commenters echoed this same concern, asserting that because warranty practices differ and because the raw data do not reflect any technical evaluation, the data can be used and abused competitively.

In addition to the comments filed in the docket, additional public information illustrates the extent to which the industry as a whole relies on and uses sensitive warranty information. For example, GM uses its warranty data to help it pinpoint problem areas and to help it reduce its warranty costs. *See, e.g.*, Gregory L. White, ''GM Takes Tips from CDC to Debug its Fleet of Cars,'' Wall St. J., April 8, 1999, at B1 (noting GM's adaptation of the epidemiological system used by the Centers for Disease Control and Prevention to warranty issues) *and* ''A Message to Dealers Regarding the Ford Recall of Firestone Wilderness AT Tires and General Motors Continued Use of Firestone Tires on its Vehicles'' (May 25, 2001)(stating that GM and Firestone tire engineers ''are on site at GM's tire and wheel laboratory two days a week'' to ''monitor tire warranty data''), published on GM's Web site at *http://www.gmfleet.com.*

The comments and affidavits submitted support a conclusion that the warranty information required by the early warning reporting rule—that is, the number of claims associated with specific components and systems broken down by make, model and model year (with slightly different breakouts for tires and child restraint systems)—is likely to provide competing manufacturers with sufficient information about the field experience of those components and systems to provide commercial value to competitors who may be deciding whether to purchase similar components, the price at which to purchase those components and which suppliers to choose.

While manufacturers are likely to explore the practices and policies of their competitors when reviewing any publicly available warranty claims information, the public is more likely simply to rely on generic cross-company comparisons. The warranty claims information may be used as part of

vehicle comparisons, even though the warranty terms and conditions and corporate warranty practices may differ. As a result, the potential for the warranty claims information to give rise to misleading comparisons and cause substantial competitive harm is also strong.

For the reasons set forth above, we have determined that the early warning reporting of warranty information, both as regards the quarterly reports and the one-time seeding of the system, is entitled to confidential treatment because its disclosure is likely to cause substantial competitive harm.[17]

The warranty data required by the early warning reporting regulation are also entitled to confidential treatment because their disclosure is likely to impair the agency's ability in the future to obtain and use reliable warranty information as part of its program to identify potential safety related defects. Warranty claims data—which begin to accumulate as soon as vehicles are sold and continue for the length of any given warranty policy—will be a significant indicant of potential defects. The quarterly warranty claims reports, combined initially with the historical seeding material, will help the agency to identify trends involving particular equipment and systems or components in a particular make, model and model year of a given product.

The more warranty information available to the agency, the more useful the warranty data will be in assisting the agency in identifying areas for further investigation. Warranty information is particularly important since it is generated early in the life of the vehicle, thus assisting in the prompt identification of potential defects. The record is replete with comments explaining why disclosure is likely to impair corporate willingness to provide expansive warranty coverage or to apply warranty policy in a more generous and less restrictive way. Longer warranties, and more liberal applications of warranty policy, will increase the number of claims paid by manufacturers and, therefore, the amount of data available to the agency. Moreover, changes in warranty policy caused by a reaction to disclosure of warranty data would likely reduce the ability of the agency to compare current data with historical data and to explore apparent changes in the data.

We are aware that, for marketing purposes, manufacturers may choose to make available to their customers warranties of longer duration and broader mileage (*e.g.,* a company may offer a 5 year/50,000 mile warranty or a 3 year/36,000 mile warranty), making more warranty claims information available to the agency. DaimlerChrysler, for example, lengthened its engine warranty period to gain in the competitive market. *See, e.g.*, Jeff Green, ''DC Emphasizes Warranty,'' Bloomberg, Sept. 6, 2002, available at *http://www.theautochannel.com.* Not only do warranties differ by manufacturer, they also differ based on the targeted market (*e.g.* luxury v. non-luxury) and on system components. *See*, 2003 Manufacturers' Warranties, available at *http://www.enterprise.com.*

Similarly, companies can choose strictly to adhere to their warranty limitations or, alternatively, they may adopt policies of avoiding customer dissatisfaction by covering repairs arguably no longer covered under warranty, either because they may not fall within the terms of the warranty or because they fall outside their time or mileage parameters. As pointed out in the comments, the disclosure of early warning warranty data may deter ''good will,'' customer satisfaction, and early dispute resolution efforts since such efforts will increase the number of warranty claims.[18] If these data were made public, it could lead consumers to assume that the product was of poorer quality than a similar competing product made by a manufacturer with a stricter approach to allowing warranty or ''good will'' claims.

The disclosure of early warning warranty information could lead to contraction of current warranty policies, and discourage their expansion, resulting in substantially less information available to NHTSA to screen for signs of early field problems. Thus, the disclosure of the comprehensive compendium of warranty data will likely impair the agency's defect detection program. Because disclosure of the early warning reporting warranty information is likely to cause substantial competitive harm and will likely impair the ability of the agency to obtain comprehensive warranty information in the future, we have decided to create a class determination covering this information.

4. Field Reports

Larger vehicle manufacturers and manufacturers of child restraint systems must report on a quarterly basis the total number of field reports they receive from the manufacturer's employees, representatives, and dealers, and from fleets, that are related to problems with certain specified components and systems, with respect to vehicles and restraints offered for sale, sold or leased in the United States. In addition, these manufacturers must provide copies of certain field reports received from their employees, representatives, and fleets, but are not required to provide copies of reports received from dealers. Like information relating to warranty claims, the agency is requiring the submission of historical field report information from these manufacturers to provide it with a seeding of data it can use immediately to detect any trends within the manufacturers' product lines.

The nature, quality and quantity of field reports vary significantly from company to company. Some companies actively pursue field feedback, whether directly from customers or through dealers and manufacturer representatives. Our experience in conducting defect investigations, in which we routinely receive field reports about the specific problem under investigation, shows that companies obtain information from the field in differing ways and with differing degrees of specificity and technical evaluation. Some manufacturers collect field reports that are little more than customer complaints, collected through dealers and field personnel. For others, a field report is more akin to technical investigation into a problem detected through warranty, consumer complaint or other data available to the company.

Field reports reflect the in-use experience of a manufacturer's product, collected by the company at its expense and with the intent of identifying problems associated with its products in the field. Such information would be of substantial value to competitors, who could—if this information were to be made public—avert similar issues or improve their products without the need to invest in market research, engineering development or actual

[17] In its comments, the Alliance pointed out the competitive value of warranty information by identifying publications available through sale, including one called the Automotive Industry Status Report. Public Citizen, in turn, points out that the Alliance both claims that warranty claim data are competitively protected and that they are generally available for sale. Having reviewed the website on which that publication is sold, we believe that the report provides certain summary information relating to aftermarket equipment, but that it is not comparable to the compendium of more specific data required to be submitted under the early warning reporting regulation.

[18] We recognize that this is not a matter of corporate generosity. Some companies may choose as a matter of marketing or customer relations to apply their warranty policies liberally, thus generating additional numbers of warranty claims. Other companies may make decisions aimed primarily at avoiding potential warranty liability in the context of real or potential disputes. In either event, disclosing early warning warranty claims data may discourage customer satisfaction and early dispute resolution efforts.

market experience. Competitors (and others) may also use the field report information competitively, just as with warranty data, to suggest comparisons that may merely result from differing policies and practices.

Public Citizen maintains that, because field reports are often disclosed as part of individual defect investigations, field reports and/or field report information should also be disclosed in a wholesale fashion when submitted as part of early warning data. On the other hand, manufacturers such as Utilimaster and Enterprise Fleet Services described the harmful competitive effects of disclosing the confidential field reports relating to the performance of their products. As stated by Utilimaster, ''public and private parcel delivery operations do not under any circumstances want their competitors (or competitors of their respective customers) to be aware of and exploit delivery vehicle fleet performance, maintenance or durability issues which might impact on the operational capability of the delivery company in a particular region/trading area, or on the operations of particular customer accounts.''

The same is true for other manufacturers, who collect equally proprietary information about their products that allows them to conform future design and production to field experience. Because they would have access to comprehensive data covering all products, competitors would obtain data revealing which product features, components and systems have met with consumer acceptance (and which have not), as well as what problems may be associated with particular components and systems. The information may also reveal which aspects of a vehicle's performance (whether potentially safety related or not) a manufacturer deems important in its commercial efforts. As a result, and as commenters have illustrated, the disclosure both of the hard copies of field reports and information about the number of reports associated with the components and systems specified is likely to cause substantial competitive harm. This is true both for the quarterly reports and with regard to the historical seeding field report information.

The field report data are also entitled to protection because their disclosure is likely to lead to fewer and less reliable field reports available to the agency in its efforts to identify potential safety defects promptly. The agency has required the submission of hard copies of certain field reports, as well as the numbers of all field reports, because the agency believes that this information will be especially helpful in identifying the existence of possible safety-related problems. We recognize that we cannot compel the preparation of field reports, but rather only require that manufacturers submit to the agency information about, and copies of, those field reports that companies choose to prepare and/or obtain. *See* 49 U.S.C. 30166(m)(4)(B). Therefore, we do not want to do anything to discourage manufacturers from preparing accurate and comprehensive field reports about problems with their products. Nor do we want to detract from the candor and specificity with which field reports are written.

As made clear throughout the comments, disclosure of field reports is likely to discourage candor on the part of field personnel and could adversely affect corporate policies and practices with respect to their preparation. The available evidence shows that the disclosure of the field reports and the field report data would likely inhibit a significant feature of the agency's program to encourage the collection and reporting of information and to identify the potential existence of safety defects as soon as they begin to manifest themselves in the field. It would also reduce the amount of valuable information available to the agency during our defect investigations.

Because disclosure of the field report information required by the early warning reporting rule is likely to cause substantial competitive harm and will likely impair the ability of the agency to obtain comprehensive field report information in the future, we have decided to create a class determination applicable to these data.

5. Consumer Complaints

The early warning reporting regulation also requires larger vehicle manufacturers and child restraint manufacturers to submit complaints received each quarter relating to specified components and systems.[19] Consumer complaints are defined by the regulation as:

> [A] communication of any kind made by a consumer (or other person) to or with a manufacturer addressed to the company, an officer thereof or an entity thereof that handles consumer matters, a manufacturer website that receives consumer complaints, a manufacturer electronic mail system that receives such information at the corporate level, or that are otherwise received by a unit within the manufacturer that receives consumer inquiries or complaints, including telephonic complaints, expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product, but not including a claim of any kind or a notice involving a fatality or injury.[20]

The definition recognizes that companies may receive customer input in a variety of ways and may establish differing practices for the receipt of customer complaints. Companies may enhance their ability to receive consumer complaints, for example, by increasing the staff at their toll free telephone numbers or by creating web-based systems through which consumers can make complaints instantly by email. The more consumer inputs a company receives, the more reliable the information available to it, and the agency, to assess its products' performance in the hands of consumers.

We are concerned that release of the consumer complaint information will discourage companies from actively pursuing or will restrict their ability to receive consumer feedback.[21] Consumer complaint information is a critical aspect of the data the agency intends to use to identify potential vehicle problems. Like warranty data and field reports, the aggregate information is likely to be a useful pointer to areas that, after appropriate inquiry, may lead to defect investigations and ultimately to the remedy of safety defects.

Our experience in defect investigations has been that companies generally receive considerably more consumer inputs than does the agency on any given vehicle problem. Indeed, the importance of this material increases as warranties expire and the availability of warranty claims information correspondingly diminishes. The early warning reporting regulation will make available to the agency information about the volume of complaints received by manufacturers as to each of the specified components or systems, thus considerably enhancing the agency's ability to review field experience as it arises. The disclosure of this information is likely to discourage manufacturers' proactive efforts to obtain the data or to expend sums to establish systems to receive more information or to use it more effectively.

[19] Child restraint system manufacturers will report consumer complaints and warranty data together. As to those manufacturers, the data are considered warranty data for purposes of this rule.

[20] 49 CFR 579.4(c).

[21] Harley-Davidson noted its proactive efforts to pursue consumer feedback that might not otherwise be brought to the company's attention. Efforts such as those of Harley-Davidson show that consumer complaint data may be developed by manufacturers at their own expense and for their own proprietary purposes. The record, however, does not indicate that efforts like those described by Harley-Davidson are prevalent among all manufacturers.

Consequently, such disclosure could impair the effective and efficient implementation of the agency's early warning process.

Manufacturers argued that release of consumer complaint information is likely to cause substantial competitive harm because it will be used by competing manufacturers and potentially others in the public to make cross-company comparisons. If misinterpreted, the information may result in unwarranted product disparagement, leading to substantial competitive harm. As many of the comments pointed out, consumer complaints reveal the raw, unverified perceptions of vehicle owners. They neither reflect a repair that was conducted (which is revealed by warranty claims) nor an evaluation of an event by a manufacturer's employee or dealer (which is often the source of field reports). Furthermore, the consumer complaint information is not subject to any controls or analytic rigor that we believe are imbedded into the development of public acceptance surveys.

Competitors with access to complaint data would obtain, to a certain extent, information revealing which product features, components and systems have met with consumer acceptance (and which have not) and what perceived problems may be associated with particular components and systems. The information may also reveal which aspects of a vehicle's performance (whether potentially safety related or not) a manufacturer deems important in its commercial efforts. Thus, the public disclosure of complaint data is likely to cause substantial competitive harm.

Because we have determined that the disclosure of the consumer complaint data required by the early warning reporting rule will likely impair the ability of the agency to obtain comprehensive consumer complaint information in the future and is likely to cause substantial competitive harm, we have decided to create a class determination covering these data.

## VII. Appendix A—FOIA Exemption 3 and the TREAD Act Disclosure Provision

Exemption 3 of the Freedom of Information Act prevents the disclosure of information provided to the government when Congress evidences a clear intent through a statutory scheme that prohibits disclosure. The RMA argued that Congress referred specifically to all of the information submitted under the regulations issued to implement Section 30166(m)(1), and therefore all such information must be withheld from disclosure under Exemption 3.

Exemption 3 is designed to incorporate into the FOIA exemptions other statutes that, on their face, clearly exempt information from FOIA's disclosure requirements. *See, e.g., Reporters Comm'n for Freedom of the Press* v. *Department of Justice*, 816 F.2d 730, 735 (D.C. Cir.), *modified on other grounds*, 831 F.2d 1124 (D.C. Cir. 1987), *rev'd on other grounds*, 489 U.S. 749 (1989) (providing that ''a statute that is claimed to qualify as an Exemption 3 withholding statute must, on its face, exempt matters from disclosure''), *and Irons & Sears* v. *Dann*, 606 F.2d 1215, 1220 (D.C. Cir. 1979) (stating that ''[o]nly explicit nondisclosure statutes that evidence a congressional determination that certain materials ought to be kept in confidence will be sufficient to qualify under the exemption.''). An Exemption 3 statute must either make clear that the agency has no discretion on whether to disclose the information or must clearly circumscribe the determination by setting forth particular criteria or specifically identifying the information to be withheld from disclosure. The RMA claims that the TREAD Act's disclosure provision does the latter.

We disagree. Had Section 30166(m)(4)(C) stated only that ''none of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed,'' then the provision would have provided unambiguous direction to the agency and clearly identified the information to be withheld. But that is not what the disclosure provision states. Instead, the provision makes reference to Section 30167(b) and states that ''[n]one of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.'' By making reference to preexisting Section 30167(b), the provision suggests that Congress intended the Secretary to determine initially which of the early warning reporting information is entitled to confidential treatment as confidential business information, and, if so and only then, would consider whether disclosure was nonetheless necessary for the agency to fulfill its responsibilities.

The colloquy between Congressmen Markey and Tauzin during the TREAD Act hearings suggests that Congress intended the agency to consider the confidentiality of the early warning reporting information by applying the same legal standards otherwise applicable to information the agency requires to be submitted:

> Mr. MARKEY: First, under the section entitled ''early warning requirements,'' we provide for the reporting of new information to NHTSA generally at an earlier stage than the stage when an actual recall takes place based on the finding of a defect. To protect the confidentiality of this new early stage information, the bill provides in Section 2(b) in the subsection titled ''disclosure'' that such information shall be treated as confidential unless the Secretary makes a finding that its disclosure would assist in ensuring public safety, but with respect to information that NHTSA currently requires be disclosed to the public *it is my understanding of the committee's intention that we not provide manufacturers with the ability to hide from public disclosure information which under current law must be disclosed. Would the gentleman from Louisiana (Mr. Tauzin) agree that this special disclosure provision for new early stage information is not intended to protect from disclosure [information] that is currently disclosed under existing law* such as information about actual defects or recalls?
>
> * * * * *
>
> Mr. TAUZIN: Mr. Speaker, the gentleman is correct.[22]

The RMA and other commenters, however, pointed to other statutory schemes in which Congress' intent to ensure the confidentiality of submitted information was made clear. The AIAM, citing the practices of several State and Federal agencies, noted that these ''regulatory agencies receive product quality-related information from regulated parties for compliance evaluation purposes'' and have ''consistently follow[ed] policies of withholding such information from public disclosure.'' AIAM admitted, however, that the statutory provisions for these agencies ''differ from those affecting NHTSA'' and ''do not * * * provide controlling legal authority for NHTSA's handling of the early warning report information.''

For example, the Supreme Court has held that the statute governing the activities of the Consumer Product Safety Commission (CPSC) contains a provision constituting an Exemption 3 statute. *CPSC* v. *GTE Sylvania*, 447 U.S. 102 (1980). The Court noted that Section 6(b) of the Consumer Product Safety Act, 15 U.S.C. 2055, sets forth specific procedures that CPSC must follow prior to the release of information to the public. *Id.* at 105. Under that provision, the CPSC must ensure the accuracy of the information it plans to release, notify the manufacturer and provide it

[22] 146 Cong. Rec. H9629 (daily ed. Oct. 10, 2000) (emphasis added).

with a summary of the information that the CPSC intends to release if the summary would enable one to readily ascertain the identity of that manufacturer. *Id.* The manufacturer is also afforded an opportunity to comment on the CPSC's summary. *Id.*

Similarly, some of the statutory provisions regarding the disclosure of information the Federal Aviation Administration (FAA) receives involve very specific instances or types of information. For example, in *Public Citizen* v. *FAA*, 988 F.2d 186 (D.C. Cir. 1993), the court determined that information concerning air transportation security could be withheld under the agency's Air Security Improvement Act of 1990. Under the provisions of that Act, the court determined that ''Congress's intent was to *broaden* the FAA's power to withhold sensitive information'' held by the agency. *Id.* at 195 (emphasis in original).

Indeed, the extent of protection afforded to submitters of information under federal programs varies.[23] For example, while the Food and Drug Administration (FDA) must adhere to a statutory scheme that governs the public disclosure of information (21 U.S.C. 360j), the D.C. Circuit noted that a lower court's reading of the FDA statute as an Exemption 3 provision was ''contradicted by the language of Section 360j(h), its legislative history, and its interrelation with other provisions of the Medical Device Amendments.'' *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1284 (D.C. Cir. 1983). Under the FDA's statutory provisions, the agency must release a summary of information relating to the safety of medical devices. The court noted that the statutory provision's ''legislative history repudiates the proposition that Section 360j(h) specifically prohibits the disclosure of health and safety data that do not qualify for protection under Exemption 4 to the FOIA or [Trade Secrets Act].'' *Id.* at 1285.

The Tenth Circuit Court of Appeals considered whether another provision of the FDA statute, 21 U.S.C. 331(j), qualifies as an Exemption 3 statute. *See Anderson* v. *HHS*, 907 F.2d 936, 950 (D.C. Cir. 1990). Section 331(j) provides that any information acquired under the FDA's various information-collection statutes must not be disclosed if the information ''concern[s] any method or process which as a trade secret is entitled to protection.'' *Id.* While the court indicated that Section 331(j) qualified as an Exemption 3 statute, it held that the scope of the statute is not broader than Exemption 4 and ''cannot provide any independent justification for nondisclosure.'' *Id.*

The colloquy between Congressmen Markey and Tauzin suggests no intent to create a statutory scheme like that governing the disclosure of information from the CPSC or other provisions prohibiting disclosure. Rather, the limited legislative history of Section 30166(m)(4)(C), and the reference to Section 30167(b) in that provision, shows that Congress intended the agency to determine the confidentiality of the early warning reporting information in accordance with its long standing practice of considering whether the data constitutes confidential business information. Congress is presumed to be aware of agency practice when promulgating statutes and, therefore, is presumed to have been aware of NHTSA's practice of analyzing confidentiality claims pursuant to Exemption 4 of the FOIA. See *e.g.*, *U.S.* v. *Wilson,* 290 F.3d 347, 356 (D.C. Cir. 2002) (''Congress is presumed to preserve, not abrogate, the background understandings against which it legislates'').[24]

## VIII. Appendix B—Confidential Business Information Case Law Analysis

In assessing whether Exemption 4 applies to required submissions the Government must examine whether the disclosure is likely to impair the Government's ability to obtain necessary information in the future or is likely to cause substantial competitive harm to the submitter. Substantial competitive harm can arise when the information has significant commercial value to competitors, such as: from revealing fundamental data (such as price, cost or other proprietary business structure); from revealing information that would otherwise require investment, through reverse engineering or other means, to obtain; or from revealing business strategies by making information that otherwise would be unobtainable available to competitors.

The *National Parks* test also recognizes that the Government requires the submission of certain information because it is needed to serve an important government function. In describing this aspect of Exemption 4, the court in *National Parks* noted that:

> The ''financial information'' exemption recognizes the need of government policymakers to have access to commercial and financial data. Unless persons having necessary information can be assured that it will remain confidential, they may decline to cooperate with officials and the ability of the Government to make intelligent, well-informed decisions will be impaired. *Id.* at 767.

The DC Circuit nonetheless decided that the information at issue—financial information of concessionaires in national parks—did not qualify as confidential under the impairment prong because it was required by government regulation and therefore the government's ability to obtain it in the future would not be impaired by its disclosure. The court remanded the case to the district court for a determination of whether the data would cause competitive harm if released.

That the *National Parks* test was intended in part to ensure the proper functioning of government business was further made clear in *Washington Post Co.* v. *HHS*, 865 F.2d 320 (D.C. Cir. 1989). In remanding the case for the development of a more complete record, the court emphasized that it had no intention of undermining the impairment prong of *National Parks*. Instead, the *Washington Post* court prognosticated that the impairment prong would tend to focus on protecting the reliability of data, rather than the availability of data. *Id.* at 328. Thus, the court reiterated the fundamental concept that the receipt of valid information on which the government can rely in performing its programmatic functions is a critical component of considering Exemption 4 claims.

The DC Circuit once again considered its policy of encouraging the submission of information to the government in *Critical Mass Energy Project* v. *Nuclear Regulatory Commission,* 975 F.2d 871 (D.C. Cir. 1992) (en banc). In *Critical Mass,* the court distinguished between information the government compels and that which is voluntarily submitted to help further governmental functions, such as rulemakings. The court held that information voluntarily submitted to the government should be treated as confidential under Exemption 4 as long as the submitter can show that it is not customarily released to the public. *Id.* at

[23] We note that the U.S. District Court for the District of Columbia has rejected the notion that the Vehicle Safety Act generally provides Exemption 3 protection for information the agency requires be submitted. *Ditlow* v. *Volpe*, 362 F. Supp. 1321, 1324 (D.D.C. 1973) (specifically rejecting application of Exemption 3 to the Motor Vehicle Safety Act), *rev'd on other grounds, Ditlow* v. *Brinegar*, 494 F.2d 1073 (D.C. Cir. 1974).

[24] The Alliance suggests that Exemption 7 may also be applicable. Exemption 7 protects records from disclosure relating to law enforcement purposes when disclosure could reasonably be expected to interfere with the enforcement proceedings. NHTSA has historically not invoked Exemption 7 to withhold information received from manufacturers during the course of defect investigations. *See CNA* v. *Donovan*, 830 F.2d 1132, 1139 (D.C. Cir. 1987).

880. In contrast, information compelled by the government would continue to be considered under the two prongs enunciated in *National Parks.*

The Exemption 4 jurisprudence in the aftermath of *Critical Mass* makes clear that the determination of whether information should be protected under Exemption 4 may include additional considerations, but only to the extent that those considerations relate to the government functions for which the information is sought. Underpinning the jurisprudence surrounding Exemption 4 has been the acknowledgement that ''it is intended to protect the interests of both the Government and the individual,'' including advancing the efficiency of government operations. *National Parks,* 498 F.2d at 767. The concern that disclosure policy should not impair government programs remains strong whether the information is compelled (and its disclosure governed by the two prongs of *National Parks*) or voluntarily submitted (and its disclosure governed by the *Critical Mass* test). *See CAS* v. *NHTSA,* 244 F.3d at 148 (D.C. Cir. 2001) (explaining that ''[w]hen the Government obtains the information as part of a mandatory submission, the Government's access to the information *normally* is not seriously threatened by disclosure; the private interest is the principal factor tending against disclosure, and the harm to the private interest must be significant to prevent public access to information'') (emphasis added).

For example, the government may withhold information that, if disclosed, would diminish the effectiveness of a licensing program even when the basis for disclosure would arguably advance an underlying public interest. *See Public Citizen Health Research Group* v. *National Institutes of Health (PCHRG* v. *NIH*), 209 F. Supp. 2d 37, 46 (D.D.C. 2002) (finding certain royalty information confidential under Exemption 4 because ''disclosure of the royalty information would impair the efficient and effective performance of [the government's] licensing program'').

It is not sufficient, therefore, to argue that some public need unrelated to the government's function warrants the disclosure of information under Exemption 4. *Public Citizen Health Research Group* v. *Food & Drug Administration (PCHRG* v. *FDA*), 185 F.3d 898 (D.C. Cir. 1999) (rejecting the argument that a company's clinical studies, which were required to be submitted to the FDA, should be disclosed because disclosure would allow the public to learn from the company's experience). As the D.C. Circuit stated in *PCHRG* v. *FDA:*

> It is not open to Public Citizen, however, to bolster the case for disclosure by claiming an additional public benefit in that, if the information is disclosed, then other drug companies will not conduct risky clinical trials of the drugs that Schering has abandoned. That is not related to ''what the [ ] government is up to'' and the Court has clearly stated ''whether disclosure of a * * * document * * * is warranted must turn on the nature of the requested document and its relationship to the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny * * * rather than on the particular purpose for which the document is being requested. In other words, the public interest side of the balance is not a function of the identity of the requester * * * or of any potential negative consequences disclosure may have for the public * * * nor likewise of any collateral benefits of disclosure. *Id.* at 904 (citations omitted).

In most of the cases discussing the *National Parks* test, the courts were considering the kind of commercial information that would be created independent of any government mandate, and thus the courts have generally considered the inquiry under the impairment prong to focus on the reliability, rather than the availability, of the data. Yet, the courts have carefully maintained the vitality of the impairment prong as applied to compelled submissions and, in doing so, have maintained an analytic framework within which to ensure that the disclosure of information does not unduly impair the government's functions by reducing both qualitatively and quantitatively the data available to the government. Thus, as in *CAS* v. *NHTSA,* the Court was careful to state that ''when the Government obtains the information as part of a mandatory submission, the Government's access to information normally is not seriously threatened by disclosure,'' and in *PCHRG* v. *NIH,* the impairment of the government's program served as an independent basis for the court's refusal to require disclosure.

## IX. Regulatory Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document is not economically significant. It was, however, reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has been determined to be significant under the Department's regulatory policies and procedures, given the degree of public interest in the treatment of the early warning reporting information.

This final rule simplifies and clarifies the agency's regulation on confidential information and updates specific sections of the regulation to reflect legal developments. In addition, this final rule creates a series of class determinations applicable to those portions of the data to be submitted pursuant to the early warning reporting regulation that are determined to be entitled to confidential treatment under the procedures set forth in this final rule.

The procedural aspects of this final rule impose no new, significant burdens on submitters of information. The treatment of the early warning reporting information addresses the manner in which the agency will handle the data, and also imposes no new, significant burdens on submitters of information. Because no additional burdens are imposed, there are no costs requiring the development of a full cost/benefit evaluation.

### *B. Regulatory Flexibility Act*

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule does not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. This final rule imposes no additional obligations on the submitters of information to NHTSA beyond those otherwise required by the Vehicle Safety Act and the early warning reporting regulation. This final rule addresses the agency's treatment of early warning reporting data and simplifies procedures for all submitters, including small entities, when submitting information to the agency. The rule protects from disclosure early warning reporting information found likely to cause competitive harm. It permits the disclosure of that early warning information determined neither to cause competitive harm if released nor to impair the ability of the government to obtain the information in the future.

### *C. National Environmental Policy Act*

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act and determined that it does not have any significant impact on the quality of the human environment.

### *D. Executive Order 13132 (Federalism)*

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has

determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule has no substantial effects on the States, or on the current Federalism-State relationship, or on the current distribution of power and responsibilities among the various local officials.

*E. Unfunded Mandate Reform Act*

The Unfunded Mandate Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

*F. Executive Order 12778 (Civil Justice Reform)*

This rule will not have any preemptive or retroactive effect. This action 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. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

*G. Paperwork Reduction Act*

The existing requirements of part 512 are considered to be information collection requirements as that term is defined by the Office of Budget and Management (OMB) in 5 CFR part 1320. Accordingly, the existing part 512 regulation was submitted to and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements were approved in February, 2002 through February 28, 2005. This final rule does not revise the existing currently approved information collection under Part 512.

Commenters to the Notice of Proposed Rulemaking objected to the submission of a ''third version'' of information for review, a request for submitters to redact personal identifiers and certain other features of the form with which the agency had proposed the submission of information claimed to be confidential. This agency has considered and addressed these concerns, including the number of copies to be submitted. These proposals, whether intended or otherwise interpreted, were not adopted.

*H. Executive Order 13045*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This regulatory action does not meet either of these criteria.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [25] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. This requirement is not relevant to this rulemaking action.

*J. Data Quality Act*

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (the ''Data Quality Act'') requires agencies to take certain affirmative steps to maximize the utility, objectivity, and integrity of data agencies disseminate to the public. This final rule establishes a series of class determinations applicable to those portions of the early warning reporting information determined likely, if released, to cause substantial competitive harm and to impair the government's ability to obtain data necessary to the operation of the agency's defect detection and remediation program. Such submissions are entitled to confidential treatment under Exemption 4 of the Freedom of Information Act.

The early warning reporting information determined not to be entitled to confidential treatment—reports of claims and notices of deaths, personal injury and property damage and some production numbers—involves factual matter and does not constitute data relied on or developed as part of a determination by the agency. The remainder of the early warning information is similarly factual, but will not be disclosed to the public. This rule does not implicate Data Quality Act concerns.

*K. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

**List of Subjects in 49 CFR Part 512**

Administrative procedure and practice, Confidential Business Information, Freedom of Information, Motor Vehicle Safety, Reporting and Record Keeping Requirements.

■ In consideration of the foregoing, the National Highway Traffic Safety Administration amends title 49, Code of Federal Regulations, by revising Part 512 as set forth below.

**Subpart A—General Provisions**

Sec.
512.1 Purpose and scope.
512.2 Applicability.
512.3 Definitions.

**Subpart B—Submission Requirements**

512.4 When requesting confidentiality, what should I submit?
512.5 How many copies should I submit?
512.6 How should I prepare documents when submitting a claim for confidentiality?
512.7 Where should I send the information for which I am requesting confidentiality?
512.8 What supporting information should I submit with my request?

**Subpart C—Additional Requirements**

512.9 What are the requirements if the information comes from a third party?
512.10 Duty to amend.
512.11 What if I need an extension of time?
512.12 What if I am submitting multiple items of information?
512.13 What are the consequences for noncompliance with this part?

**Subpart D—Agency Determination**

512.14 Who makes the confidentiality determination?
512.15 How will confidentiality determinations be made?
512.16 Class determinations.
512.17 How long should it take to determine whether information is entitled to confidential treatment?
512.18 How will I be notified of the confidentiality determination?
512.19 What can I do if I disagree with the determination?

[25] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size strength, or technical performance of a product, process or material.''

**Subpart E—Agency Treatment of Information Claimed To Be Confidential**

512.20 How does the agency treat information submitted pursuant to this part before a confidentiality determination is made?
512.21 How is information submitted pursuant to this part treated once a confidentiality determination is made?
512.22 Under what circumstances may NHTSA modify a grant of confidentiality?
512.23 Under what circumstances may NHTSA publicly release confidential information?
Appendix A—Certificate in Support of Request for Confidentiality
Appendix B—General Class Determinations
Appendix C—Early Warning Reporting Class Determinations
Appendix D—OMB Clearance

**Authority:** 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166; 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.50.

## Subpart A—General Provisions

### § 512.1 Purpose and scope.

The purpose of this part is to establish the procedures and standards by which NHTSA will consider claims that information submitted to the agency is entitled to confidential treatment under 5 U.S.C. 552(b), most often because it constitutes confidential business information as described in 5 U.S.C. 552(b)(4), and to address the treatment of information determined to be entitled to confidential treatment.

### § 512.2 Applicability.

(a) This part applies to all information submitted to NHTSA, except as provided in paragraph (b) of this section, for which a determination is sought that the material is entitled to confidential treatment under 5 U.S.C. 552(b), most often because it constitutes confidential business information as described in 5 U.S.C. 552(b)(4), and should be withheld from public disclosure.

(b) Information received as part of the procurement process is subject to the Federal Acquisition Regulation, 48 CFR Chapter 1, as well as this part. In any case of conflict between the Federal Acquisition Regulation and this part, the provisions of the Federal Acquisition Regulation prevail.

### § 512.3 Definitions.

Whenever used in this part:

(a) *Administrator* means the Administrator of the National Highway Traffic Safety Administration.

(b) *Chief Counsel* means the Chief Counsel of the National Highway Traffic Safety Administration.

(c) *Confidential business* information means trade secrets or commercial or financial information that is privileged or confidential, as described in 5 U.S.C. 552(b)(4).

(1) A *trade secret* is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.

(2) Commercial or financial information is considered confidential if it has not been publicly disclosed and:

(i) If the information was required to be submitted and its release is likely to impair the Government's ability to obtain necessary information in the future, or is likely to cause substantial harm to the competitive position of the person from whom the information was obtained; or

(ii) if the information was voluntarily submitted and is the kind of information that is customarily not released to the public by the person from whom it was obtained.

(d) NHTSA means the National Highway Traffic Safety Administration.

(e) ''*Substantial competitive harm*'' includes ''*significant competitive damage*'' under Chapter 329 of Title 49 of the United States Code, Automobile Fuel Economy, 49 U.S.C. 32910(c).

## Subpart B—Submission Requirements

### § 512.4 When requesting confidentiality, what should I submit?

Any person submitting information to NHTSA, other than information in a class identified in Appendix C of this Part, and requesting that the information be withheld from public disclosure pursuant to 5 U.S.C. 552(b) shall submit the following:

(a) The materials for which confidentiality is being requested, in conformance with §§ 512.5, 512.6, and 512.7 of this part;

(b) The Certificate, in the form set out in Appendix A to this part;

(c) Supporting information, in conformance with § 512.8; and

(d) Any request for an extension of time, made in accordance with § 512.11.

### § 512.5 How many copies should I submit?

(a) Except as provided for in subsection (c), a person must send the following in hard copy or electronic format to the Chief Counsel when making a claim for confidential treatment covering submitted material:

(1) A complete copy of the submission, and

(2) A copy of the submission containing only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted, and

(3) Either a second complete copy of the submission or, alternatively, those portions of the submission containing the material for which confidential treatment is claimed and any additional information the submitter deems important to the Chief Counsel's consideration of the claim.

(4) If submitted in electronic format, a copy of any special software required to review materials for which confidential treatment is requested and user instructions must also be provided.

(b) A person filing comments to a rulemaking action must additionally submit to the rulemaking docket a copy of the submission containing only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted.

(c) Any person submitting blueprints or engineering drawings need only provide an original version with their submission.

### § 512.6 How should I prepare documents when submitting a claim for confidentiality?

(a) Information claimed to be confidential must be clearly identified to enable the agency to distinguish between those portions of the submission claimed to constitute confidential business information and those portions for which no such claim is made.

(b) The word ''CONFIDENTIAL'' must appear on the top of each page containing information claimed to be confidential.

(1) If an entire page is claimed to be confidential, the submitter must indicate clearly that the entire page is claimed to be confidential.

(2) If the information for which confidentiality is being requested is contained within a page, the submitter shall enclose each item of information that is claimed to be confidential within brackets: ''[ ].''

(3) If submitted in electronic format, a comparable method to of identifying the information claimed to be confidential may be used. If submitted on CD–ROM or other format, the item containing the information shall be labeled as containing confidential information.

### § 512.7 Where should I send the information for which I am requesting confidentiality?

A claim for confidential treatment must be submitted in accordance with

the provisions of this regulation to the Chief Counsel of the National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590.

### § 512.8 What supporting information should I submit with my request?

When requesting confidentiality, the submitter shall:

(a) Describe the information for which confidentiality is being requested;

(b) Identify the confidentiality standard(s) under which the confidentiality request should be evaluated, in accordance with § 512.15;

(c) Justify the basis for the claim of confidentiality under the confidentiality standard(s) identified pursuant to paragraph (b) of this section by describing:

(1) Why the information qualifies as a trade secret, if the basis for confidentiality is that the information is a trade secret;

(2) What the harmful effects of disclosure would be and why the effects should be viewed as substantial, if the claim for confidentiality is based upon substantial competitive harm;

(3) What significant NHTSA interests will be impaired by disclosure of the information and why disclosure is likely to impair such interests, if the claim for confidentiality is based upon impairment to government interests;

(4) What measures have been taken by the submitter to ensure that the information is not customarily disclosed or otherwise made available to the public, if the basis for confidentiality is that the information is voluntarily submitted; and

(5) The information is otherwise entitled to protection, pursuant to 5 U.S.C. 552(b).

(d) Indicate if any items of information fall within any of the class determinations included in Appendix B to this Part;

(e) Indicate the time period during which confidential treatment is sought; and

(f) State the name, address, and telephone number of the person to whom NHTSA's response and any inquiries should be directed.

## Subpart C—Additional Requirements

### § 512.9 What are the requirements if the information comes from a third party?

Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter is responsible for obtaining from the third party the information that is necessary to comply with § 512.4 of this part, including a certificate in the form set out in Appendix A to this Part.

### § 512.10 Duty to amend.

The submitter shall promptly amend any supporting information provided under § 512.4 if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided to the agency, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

### § 512.11 What if I need an extension of time?

If a person is unable to submit the necessary information required under § 512.4 at the time the claimed confidential information is submitted to NHTSA, then that person may request an extension of time. Any request for an extension shall explain the reason for the extension of time and the length of time requested.

### § 512.12 What if I am submitting multiple items of information?

Any certificate provided under § 512.4(b) of this part, and any supporting information provided under § 512.4(c) of this part, may be used to support a claim for confidential treatment of more than one item of information. However, general or nonspecific assertions or analysis may be insufficient to form an adequate basis for the agency to find that the information is entitled to confidential treatment, and may result in the denial of the claim.

### § 512.13 What are the consequences for noncompliance with this part?

(a) If the submitter fails to comply with § 512.4 of this part at the time the information is submitted to NHTSA or does not request an extension of time under § 512.11, the claim for confidentiality may be waived, unless the agency is notified or otherwise becomes aware of the claim before the information is disclosed to the public. If the information is placed in a public docket or file, such placement is disclosure to the public within the meaning of this part and may preclude any claim for confidential treatment. The Chief Counsel may notify a submitter of information or, if applicable, a third party from whom the information was obtained, of inadequacies regarding a claim for confidential treatment and may allow the submitter or third party additional time to supplement the submission, but has no obligation to provide either notice or additional time.

(b) If the submitter does not provide the certificate required under § 512.4(b) of this part or any supporting information required under § 512.4(c) of this part, or if the information is insufficient to establish that the information should be afforded confidential treatment under the confidentiality standards set out in § 512.15 of this part, a request that such information be treated confidentially may be denied. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information and may allow the submitter additional time to supplement the showing, but has no obligation to provide either notice or additional time.

## Subpart D—Agency Determination

### § 512.14 Who makes the confidentiality determination?

The Chief Counsel will determine whether an item of information will be afforded confidential treatment under this part.

### § 512.15 How will confidentiality determinations be made?

Information may be afforded confidential treatment if the Chief Counsel determines that:

(a) The information is a trade secret;

(b) Public disclosure of the information would be likely to cause substantial harm to the competitive position of the submitter;

(c) Public disclosure of the information would be likely to impair NHTSA's ability to obtain necessary information in the future;

(d) The information was provided to NHTSA voluntarily and was not customarily released to the public by the person from whom it was obtained; or

(e) The information is otherwise entitled to protection, pursuant to 5 U.S.C. 552(b).

### § 512.16 Class determinations.

(a) The Chief Counsel may issue class determinations of categories of information to be entitled to confidential treatment if the Chief Counsel determines that one or more characteristics common to each item of information in that class, will, in most cases, result in identical treatment, and further that it is appropriate to treat all such items as a class for one or more purposes under this part. Once a class determination is made, the Chief Counsel will publish the new class determination in the **Federal Register**.

(b) The Chief Counsel may amend, modify, or terminate any class

determination established under this section. These changes will be published in the **Federal Register**.

(c) Class determinations made by the Chief Counsel are listed in Appendices B and C to this Part.

(d) A class determination may state that all of the information in the class:

(1) Is or is not governed by a particular section of this part or by a particular set of substantive criteria of this part;

(2) Satisfies one or more of the applicable substantive criteria; or

(3) Satisfies one or more of the substantive criteria, but only for a certain period of time.

### § 512.17 How long should it take to determine whether information is entitled to confidential treatment?

(a) When information claimed to be confidential is requested under the Freedom of Information Act, the determination will be made within twenty (20) working days after NHTSA receives such a request or within thirty (30) working days in unusual circumstances as provided under 5 U.S.C. 552(a)(6)(A). However, these time periods may be extended by the Chief Counsel for good cause shown or on request from any person. An extension will be made in accordance with 5 U.S.C. 552(a)(6)(A), and will be accompanied by a written statement setting out the reasons for the extension.

(b) When information claimed to be confidential is not requested under the Freedom of Information Act, the determination of confidentiality will be made within a reasonable period of time, at the discretion of the Chief Counsel.

### § 512.18 How will I be notified of the confidentiality determination?

(a) If a request for confidential treatment is granted, the submitter of the information will be notified in writing of the determination and of any appropriate limitations.

(b) If a request for confidential treatment is denied in whole or in part, the submitter of the information will be notified in writing of the determination, and the reasons for the denial, by certified mail, return receipt requested. The information may be made available to the public twenty (20) working days after the submitter of the information has received notice of the denial, unless a request for reconsideration is filed. The information may be released publicly on an earlier date, if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such date.

### § 512.19 What can I do if I disagree with the determination?

(a) A submitter of information whose request for confidential treatment is denied in whole or in part, may petition for reconsideration of that decision. Petitions for reconsideration shall be addressed to and received by the Chief Counsel prior to the date on which the information would otherwise be made available to the public. The determination by the Chief Counsel upon such petition for reconsideration shall be administratively final.

(b) If a person is unable to submit a petition for reconsideration within twenty (20) working days of receiving notice that a claim for confidential treatment was denied, that person may submit a request for an extension of time. The Chief Counsel must receive any request for an extension of time before the date on which the information would be made available to the public, and the request must be accompanied by an explanation describing the reason for the request and the length of time requested. The Chief Counsel will determine whether to grant or deny the extension and the length of the extension.

(c) If a petition for reconsideration is granted, the petitioner will be notified in writing of the determination and of any appropriate limitations.

(d) If a petition for reconsideration is denied in whole or in part, or if a request for an extension is denied, the petitioner will be notified in writing of the denial, and the reasons for the denial, and will be informed that the information will be made available to the public not less than twenty (20) working days after the petitioner has received notice of the denial. The information may be released publicly on an earlier date, if the Administrator determines in writing that the public interest requires that the information be made available to the public on such date.

## Subpart E—Agency Treatment of Information Claimed To Be Confidential

### § 512.20 How does the agency treat information submitted pursuant to this part before a confidentiality determination is made?

(a) Information received by NHTSA, for which a properly filed confidentiality request is submitted, will be kept confidential until the Chief Counsel makes a determination regarding its confidentiality. Such information will not be disclosed publicly, except in accordance with this part.

(b) Redacted copies of documents submitted to NHTSA under this part will be disclosed to the public.

### § 512.21 How is information submitted pursuant to this part treated once a confidentiality determination is made?

(a) Once the Chief Counsel makes a determination regarding the confidentiality of the submitted information, all materials determined not to be entitled to confidential protection will be disclosed to the public in accordance with the determination, unless a timely petition for reconsideration is received by the agency.

(b) Upon receipt of a timely petition for reconsideration under § 512.19 of this part, the submitted information will remain confidential, pending a determination regarding the petition.

(c) Should the Chief Counsel, after considering a petition for reconsideration, decide that information is not entitled to confidential treatment, the information may make the information available after twenty (20) working days after the submitter has received notice of that decision from the Chief Counsel unless the agency receives direction from a court not to release the information.

### § 512.22 Under what circumstances may NHTSA modify a grant of confidentiality?

(a) The Chief Counsel may modify a grant of confidentiality based upon:

(1) Newly discovered or changed facts;

(2) A change in the applicable law;

(3) A change in class determination, pursuant to § 512.16;

(4) The passage of time; or

(5) A finding that the prior determination is erroneous.

(b) If the Chief Counsel believes that an earlier determination of confidentiality should be modified based on one or more of the factors listed in paragraph (a) of this section, the submitter of the information will be notified in writing that the Chief Counsel has modified its earlier determination and of the reasons for the modification, and will be informed that the information will be made available to the public in not less than twenty (20) working days from the date of receipt of the notice of modification. The information may be released publicly on an earlier date, if the Administrator determines in writing that the public interest requires that the information be made available to the public on such date. The submitter may seek reconsideration of the modification, pursuant to § 512.19.

**§ 512.23 Under what circumstances may NHTSA publicly release confidential information?**

(a) Information that has been claimed or determined to be confidential under this part may be disclosed to the public by the Administrator notwithstanding such claim or determination, if disclosure would be in the public interest as follows:

(1) Information obtained under chapter 325, 327, 329 or 331 of title 49 of the United States Code (formerly under the Motor Vehicle Information and Cost Savings Act) may be disclosed when that information is relevant to a proceeding under the chapter under which the information was obtained.

(2) Information obtained under chapter 301 of title 49 of the United States Code (49 U.S.C. § 30101 *et seq.*), relating to the establishment, amendment, or modification of Federal motor vehicle safety standards, may be disclosed when relevant to a proceeding under the chapter.

(3) Except as specified in the next sentence, information obtained under Chapter 301 of title 49 of the United States Code (49 U.S.C. 30101 *et seq.*), related to a possible defect or noncompliance, shall be disclosed when the Administrator decides the information will assist in carrying out sections 30117(b) and 30118 through 30121 of title 49 or is required to be disclosed under 30118(a) of title 49, except as provided in paragraph (a)(4) of this section.

(4) No information will be disclosed under paragraph (a) of this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice will be given at least twenty (20) working days before the day of release, unless the Administrator finds that shorter notice is in the public interest. The notice under this paragraph will include a statement of the Administrator's reasons for deciding to disclose the information, and will afford the submitter of the information an opportunity to comment on the contemplated release of the information. The Administrator may also give notice of the contemplated release of information to other persons and may allow these persons the opportunity to comment. In making the determination to release information pursuant to this section, the Administrator will consider ways to release the information that will cause the least possible adverse effects to the submitter.

(b) Notwithstanding any other provision of this part, information that has been determined or claimed to be confidential may be released:

(1) To a committee of Congress;

(2) Pursuant to an order of a court of competent jurisdiction;

(3) To the Office of the Secretary, U.S. Department of Transportation and other Executive branch offices or other Federal agencies in accordance with applicable laws;

(4) With the consent of the submitter of the information; and

(5) To contractors, if necessary for the performance of a contract with the agency or any Federal agency, with specific prohibitions on further release of the information.

## Appendix A—Certificate in Support of Request for Confidentiality

*Certificate in Support of Request for Confidentiality*

I _____, pursuant to the provisions of 49 CFR part 512, state as follows:

(1) I am (official's name, title) and I am authorized by (company) to execute this certificate on its behalf;

(2) I certify that the information contained in (pertinent document(s)) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted);

(3) I hereby request that the information contained in (pertinent document(s)) be protected for (requested period of time);

(4) This certification is based on the information provided by the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (company);

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which (company) has claimed confidential treatment has never been released or become available outside (company); (except as hereinafter specified);

(6) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside (company) because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and

(7) I certify under penalty of perjury that the foregoing is true and correct. Executed on this the _____ day of _____, _____. (If executed outside of the United States of America: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct). (signature of official)

## Appendix B—General Class Determinations

The Chief Counsel has determined that the following classes of information will cause substantial competitive harm if released:

(1) Blueprints and engineering drawings containing process and production data where the subject could not be manufactured without the blueprints or engineering drawings except after significant reverse engineering;

(2) Future specific model plans (to be protected only until the date on which the specific model to which the plan pertains is first offered for sale); and

(3) Future vehicle production or sales figures for specific models (to be protected only until the termination of the production period for the model year vehicle to which the information pertains).

## Appendix C—Early Warning Reporting Class Determinations

(a) The Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579, subpart C, will cause substantial competitive harm and will impair the government's ability to obtain this information in the future if released:

(1) Reports and data relating to warranty claim information;

(2) Reports and data relating to field reports, including dealer reports and hard copy reports; and

(3) Reports and data relating to consumer complaints.

(b) In addition, the Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579, subpart C, will cause substantial competitive harm if released: Reports of production numbers for child restraint systems, tires, and vehicles other than light vehicles, as defined in 49 CFR 579.4(c).

## Appendix D—OMB Clearance

The OMB clearance number for this regulation is 2127–0025.

Issued on: July 21, 2003.

**Jeffrey W. Runge,**

*Administrator.*

[FR Doc. 03–19069 Filed 7–24–03; 11:00 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 030509120–3171–02; I.D. 033103D]**

**RIN 0648–AQ32**

## Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2003

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement recreational measures for the 2003 summer flounder, scup, and black sea bass fisheries. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Effective July 28, 2003.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee and of the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is also accessible via the Internet at *http:/ www.nero.nmfs.gov*.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational measures. Final quota specifications for the 2003 summer flounder, scup, and black sea bass fisheries were published on January 2, 2003 (68 FR 60); a correction notice was published on March 3, 2003 (68 FR 9905). These specifications were determined to be consistent with the 2003 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass. The 2003 coastwide recreational harvest limits are 9.28 million lb (4,209 mt) for summer flounder, 4.01 million lb (1,819 mt) for scup, and 3.43 million lb (1,557 mt) for black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2003 summer flounder, scup, and black sea bass fisheries was published on May 21, 2003 (68 FR 27768), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. A complete discussion of the development of the recreational measures appeared in the preamble of the proposed rule and is not repeated here.

The recreational measures for scup and black sea bass contained in this final rule are unchanged from those published in the proposed rule. Table 1 contains the coastwide Federal measures for scup and black sea bass that are being implemented. For summer flounder, this final rule implements conservation equivalency, as the process was described in the proposed rule. The management measures will vary according to the state of landing (see Table 2). All minimum fish sizes discussed below are total length (TL) measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side.

TABLE 1 - 2003 RECREATIONAL MEASURES

| Species | Minimum Size (total length) | Possession Limit | Open Season |
|---|---|---|---|
| Summer Flounder | ..... | Varies according to state of landing ..... | |
| Scup | 10 inches (25.4 cm) ..... | 50 fish ..... | January 1 through February 28, and July 1 through November 30 |
| Black Sea Bass | 12 inches (30.5 cm) ..... | 25 fish ..... | January 1 through September 1, and September 16 through November 30 |

TABLE 2 - 2003 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

| State | Minimum Size (inches) | Minimum size (cm) | Possession Limit | Open Seasons |
|---|---|---|---|---|
| MA | 16.5 | 41.9 | 7 fish | Year-Round |
| RI | 17.5 | 44.5 | 5 fish | May 1 through September 20 |
| CT | 17 | 43.2 | 6 fish | Year-Round |
| NY | 17 | 43.2 | 7 fish | Year-Round |
| NJ | 16.5 | 41.9 | 8 fish | May 3 through October 13 |
| DE | 17.5 | 44.5 | 4 fish | Year-Round |
| MD | 17 | 43.2 | 8 fish | Year-Round |
| VA | 17.5 | 44.5 | 8 fish | March 29 through December 31 |
| NC | 15 | 38.1 | 8 fish | Year-Round |

## Changes from the Proposed Rule

Section 648.107(a) is corrected to clarify that the recreational measures proposed to be implemented by the states of Maine through North Carolina for 2003 are the conservation equivalent of the non-preferred (i.e., to be implemented in the Exclusive Economic Zone if conservation equivalency is not implemented) coastwide season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), as identified in the proposed rule.

There were no public comments received on the proposed rule.

## Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This action establishes recreational management measures for federally permitted vessels participating in the recreational fishery, specifically party/charter vessels. The recreational

summer flounder, scup, and black sea bass fisheries are fully underway. In 2002, recreational black sea bass landings exceeded the recreational harvest limit by approximately 30 percent. This information was not available until development of this rule was begun. Immediate action to impose a more stringent minimum fish size in the black sea bass fishery must be taken to slow the recreational harvest of black sea bass and enhance the probability that the black sea bass harvest limit will not be exceeded in 2003. For summer flounder, this action is necessary to achieve consistency between state and Federal measures. Recreational summer flounder landings have exceeded the recreational harvest limits by an average of 50 percent over the 1996–2002 period. Failure to implement these provisions immediately could result in similar overharvest in 2003. Furthermore, because the Federal fishery is currently operating under status quo measures and the states have already implemented measures for state waters, inconsistencies between state and Federal regulations also can lead to confusion for operators of federally-permitted vessels. The Assistant Administrator for Fisheries, NOAA (AA), therefore finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effectiveness of the 2003 summer flounder and black sea bass recreational measures.

For the scup fishery, the recreational sector is currently fishing under the Federal EEZ measures, which allow for a possession limit of only 20 fish. This final rule will increase the possession limit to 50 fish, thereby relieving the possession limit restriction. This increase is being implemented to allow the recreational fishing sector to achieve the recreational harvest limit. The improving status of these fisheries has allowed NOAA Fisheries to implement these regulations, which provide some relief to the recreational sector from the current, more restrictive, measures. Implementation of the revised possession limit as soon as possible is important to allow for the increased scup fishing opportunities intended by the Council in amending this regulation. Because the increase to the possession limit relieves a restriction on the recreational fishing industry, the AA finds that the 30–day delayed effectiveness period of the scup regulations contained within this final rule does not apply, pursuant to 5 U.S.C. 553(d)(1).

Included in this final rule is the Final Regulatory Flexibility Analysis prepared pursuant to 5 U.S.C. 604(a). The FRFA is composed of the IRFA, the comments (and responses) on the proposed rule, and the analyses completed in support of this action.

*Final Regulatory Flexibility Analysis*

Statement of Objective and Need

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

*Summary of Significant Issues Raised in Public Comments*

No comments were received on the economic impacts of the measures contained in the proposed rule.

*Description and Estimate of Number of Small Entities to which Rule Will Apply*

The Mid-Atlantic Fishery Management Council (Council) estimated that the proposed action could affect any of the 760 vessels possessing a Federal party/charter permit for summer flounder, scup, and/or black sea bass in 2001, the most recent year for which complete permit data are available. Only 368 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2001.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

*Description of the Steps Taken to Minimize Economic Impact on Small Entities*

It is not possible to further mitigate economic impacts on small entities because the Council selected the alternative with least significant impacts relative to the other alternatives determined to achieve the biological objectives. Specifications of recreational fish size limits, possession limits, and open fishing seasons is constrained by the conservation objectives of the FMP, and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The economic analysis assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures implemented for the 2002 fishing season. The Council did not analyze an alternative combining the status quo measures in place for all three species. In consideration of the Council-recommended recreational harvest limits established for the 2003 fishing year, implementation of the same recreational measures established for the 2002 fishing year would be inconsistent with the goals and objectives of the FMP and its implementing regulations, and, because it could result in overfishing of the black sea bass fishery, it also would be inconsistent with National Standard 1 of the Magnuson-Stevens Act. Therefore, the no action alternative was not considered to be a reasonable alternative to the preferred action and its collective impacts were not analyzed in the EA/RIR/IRFA. The no action measure for summer flounder was analyzed in Alternative 1, in combination with preferred measures for scup and black sea bass. The no action measures for scup and black sea bass were considered as part of Alternative 2, in combination with the non-preferred coastwide measures for summer flounder, i.e., the measures that would be implemented if conservation equivalency were not implemented in the final rule. A summary of the economic impacts of the measures to be implemented follow.

**Impacts of Summer Flounder Alternatives**

Landings projections for 2002 indicate that Virginia (VA) is the only state required to reduce summer flounder landings (by 11 percent) in 2003. States other than VA do not require any reductions in recreational summer flounder landings, if their current regulations are maintained. At this time, it is not possible to determine the economic impact of conservation equivalency for Virginia. However, it may be proportional to the level of landings reductions required. If the preferred conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice of specific measures to implement, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts than to adopt the much more restrictive measures contained in the precautionary default alternative.

The impacts of the non-preferred summer flounder coastwide alternative (in Alternative 2), which proposes a 17–inch (43.2–cm) minimum fish size, a possession limit of four fish per person, and no closed season, were evaluated. Impacted trips were defined as

individual angler trips taken aboard party/charter vessels in 2002 that landed at least one summer flounder smaller than 17 inches (43.2 cm), or that landed more than four summer flounder. The analysis concluded that the measures would affect 1 percent or less of the party/charter trips in most states, with state revenue losses identified for Massachusetts (MA) ($927), Rhode Island (RI) ($15,850), New York (NY) ($155,636), New Jersey (NJ) ($22,208), Delaware (DE) ($570), Maryland (MD) ($570), VA ($7,362), and North Carolina (NC) ($161). (These figures are for all vessels operating in each state, rather than for each vessel). No state revenue losses were identified for Maine (ME), New Hampshire (NH), or Connecticut (CT).

The average maximum gross revenue loss per party/charter vessel was estimated to be $9 in MA, $634 in RI, $2,993 in NY, $347 in NJ, $285 in DE, $190 in MD, $409 in VA, and $23 in NC. As discussed in the proposed rule, it is very likely that the Council's analysis of economic impacts overestimates potential revenue impacts of the proposed measures, since some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings, because they participate in catch and release fishing or target other species.

Precautionary default measures are defined as measures that would achieve at least the overall required reduction in landings for each state. The precautionary default measures specified by the Council and the Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (in Alternative 3) consists of an 18–inch (45.7–cm) minimum fish size, a possession limit of one fish per person, and no closed season.

The precautionary default measures would reduce state specific landings by a range of 41 percent (DE) to 88 percent (NC). As specified by Framework 2 to the FMP, states that fail to implement conservation equivalent measures would be required to implement precautionary default measures. The state-specific landings reductions associated with the precautionary default measures are substantially higher than the reductions that would be implemented using conservation equivalency. As such, it is expected that states will avoid the impacts of precautionary approach measures by establishing conservation equivalent management measures. Therefore, the precautionary default provision that is included in the conservation equivalency proposal was not analyzed as a separate provision.

**Impacts of Scup Alternatives**

The proposed action for scup would limit coastwide landings to 4.01 million lb (1,819 mt) and reduce landings by at least 27 percent compared to 2001. The overall estimated economic impacts of the proposed action are less than the impacts that would result from implementation of either of the other scup alternatives analyzed.

For the preferred scup alternative (in Alternative 1), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least one scup during the proposed closed seasons of March 1 through June 30, and December 1 through December 31. The analysis concluded that the measures would affect 10 percent of the party/charter trips in MA and 1 percent or less of the party/charter trips in five states, with statewide revenue losses identified for MA ($421,057), RI ($2,324), NY ($1,829), NJ ($6,475), MD ($25,450), and NC ($8,064).

The average maximum gross revenue loss per party/charter vessel associated with the preferred scup alternative was estimated to be $8,593 in MA, $166 in RI, $59 in NY, $185 in NJ, $25,450 in MD, and $2,688 in NC.

For the scup no action alternative (in Alternative 2), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one scup smaller than 10 inches (25.4 cm), that landed more than 20 scup, or that landed at least one scup during the periods of March 1 through June 30, and October 3 through December 31. The analysis concluded that the measures would affect 11 percent of angler trips taken aboard party/charter boats in MA, 4 percent in RI, 5 percent in NY, and less than 1 percent in NJ, DE, MD, and NC, with statewide revenue losses identified for MA ($486,423), RI ($55,664), NY ($702,429), NJ ($67,060), MD ($25,450), and NC ($8,064). No state revenue losses were identified for ME, NH, CT, DE, or VA.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $9,927 in MA, $3,976 in RI, $22,659 in NY, $1,916 in NJ, $25,450 in MD, and $2,688 in NC.

For the scup measures considered in Alternative 3, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least one scup during the period March 1 through July 13. The analysis concluded that the measures in this alternative would affect 11 percent of the party/charter trips in MA and 1 percent or less of the party/charter trips in most states, with statewide revenue losses identified for MA ($469,518), RI ($9,576), NY ($81,902), NJ ($19,880), MD ($25,450), and NC ($8,064). No state revenue losses were identified for ME, NH, CT, DE, or VA.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $9,582 in MA, $684 in RI, $2,642 in NY, $568 in NJ, $25,450 in MD, and $2,688 in NC.

**Impacts of Black Sea Bass Alternatives**

The proposed action for black sea bass would limit coastwide landings to 3.43 million lb (1,557 mt) and reduce landings by at least 27 percent compared to 2002. Although the economic impacts of the preferred alternative (in Alternative 1) are greater than for the status quo measures (in Alternative 2), Alternative 1 was selected for implementation because it is expected to achieve the necessary reduction in landings relative to 2002, consistent with the goals and objectives of the FMP, while resulting in less economic impact than would the measures in Alternative 3.

For the preferred black sea bass alternative, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one black sea bass smaller than 12 inches (30.5 cm), that landed more than 25 black sea bass, or that landed at least one black sea bass during the proposed closed seasons of September 2 through September 15, and December 1 through December 31. The analysis concluded that the measures would affect 3 percent of the party/charter trips in NJ, 4 percent in DE, and 1 percent or less in most states, with statewide revenue losses identified for MA ($1,805), RI ($5,404), CT ($368), NY ($20,332), NJ ($441,702), DE ($89,544), MD ($41,331), VA ($19,418), and NC ($364). No state revenue losses were identified for ME or NH.

The average maximum gross revenue loss per party/charter vessel associated with the proposed black sea bass alternative was estimated to be $19 in MA, $193 in RI, $46 in CT, $442 in NY, $8,334 in NJ, $44,772 in DE, $13,777 in MD, $1,022 in VA, and $52 in NC.

For the non-preferred black sea bass measures considered in Alternative 2, impacted trips were defined as

individual angler trips taken aboard party/charter vessels in 2002 that landed at least one black sea bass smaller than 11.5 inches (29.2 cm), or that landed more than 25 black sea bass. The analysis concluded that the measures would affect 3 percent of the party/charter trips in DE, 2 percent in NJ, and 1 percent or less in most states, with statewide revenue losses identified for RI ($1,960), CT ($368), NJ ($248,570), DE ($82,988), MD ($16,329), VA ($21,261), and NC ($119). No state revenue losses were identified for ME, NH, MA, or NY.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $70 in RI, $46 in CT, $4,690 in NJ, $41,494 in DE, $5,443 in MD, $1,119 in VA, and $17 in NC.

For the non-preferred black sea bass measures considered in Alternative 3, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one black sea bass smaller than 12.5 inches (31.8 cm) or that landed more than 25 black sea bass. The analysis concluded that the measures would affect approximately 5 percent of the party/charter trips in DE, 3 percent in NJ, and 1 percent or less in most states, with statewide revenue losses identified for RI ($1,960), CT ($368), NY ($3,220), NJ ($483,095), DE ($125,132), MD ($40,395), VA ($29,602), and NC ($364). No state revenue losses were identified for ME, NH, or MA.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $70 in RI, $46 in CT, $70 in NY, $9,115 in NJ, $62,566 in DE, $13,465 in MD, $1,558 in VA, and $52 in NC.

### Combined Impacts of Summer Flounder, Scup, and Black Sea Bass Alternatives

Potential revenue losses in 2003 could differ for party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. In RI, for example, revenue losses could reach $993 for vessels that land all three species in 2003, compared to expected revenues for 2002. However, in MD, where the contribution of black sea bass to the total catch by party/charter vessels is nearly twice as high as it is for other states, a vessel that lands all three species could potentially lose up to a maximum of $39,417 in 2003. On average, the largest potential losses were projected for party/charter vessels operating out of MA, NJ, DE, and MD in 2003.

### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ≥small entity compliance guides.≥ The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. The guide will be available on the Internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 22, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

**§ 648.105 Possession restrictions.**

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. * * *

* * * * *

■ 3. In § 648.107, the first sentence of the introductory text is revised to read as follows:

**§ 648.107 Conservation equivalent measures for the summer flounder fishery.**

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2003 are the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103 and 648.105(a), respectively.* * *

* * * * *

■ 4. In § 648.122, paragraph (g) is revised to read as follows:

**§ 648.122 Time and area restrictions.**

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through February 28 and from July 1 through November 30. This time period may be adjusted pursuant to the procedures in § 648.120.

■ 5. In § 648.125, the first sentence of paragraph (a) is revised to read as follows:

**§ 648.125 Possession limit.**

(a) No person shall possess more than 50 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit.* * *

* * * * *

■ 6. Section 648.142 is revised to read as follows:

**§ 648.142 Time restrictions.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit, may not possess black sea bass, except from January 1 through September 1 and September 16 through November 30. This time period may be adjusted pursuant to the procedures in § 648.140.

■ 7. In § 648.143, paragraph (b) is revised to read as follows:

**§ 648.143 Minimum sizes.**

* * * * *

(b) The minimum size for black sea bass is 12 inches (30.5 cm) TL for all vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members. The minimum size may be adjusted for recreational vessels pursuant to the procedures in § 648.140.

* * * * *

[FR Doc. 03–19133 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 68, No. 144
Monday, July 28, 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 AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 905

**[Docket No. FV03–905–4 PR]**

### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Citrus Administrative Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.005 to $0.006 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos handled. The Committee locally administers the marketing order, which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Authorization to assess Florida citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by August 27, 2003.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable oranges, grapefruit, tangerines, and tangelos grown in Florida, beginning August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would increase the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $0.005 per 4/5 bushel carton to $0.006 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos grown in Florida.

The Florida citrus marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of oranges, grapefruit, tangerines, and tangelos. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 1, 2003, and unanimously recommended 2003–04 expenditures of $247,000 and an assessment rate of $0.006 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos grown in Florida based on a crop estimate of 45 million 4/5 bushels.

In comparison, last year's budgeted expenditures were $250,700. The assessment rate of $0.006 is $0.001 higher than the $0.005 rate currently in effect. This increase reflects the Committee's expectation of lower shipments in the coming year resulting in less assessment income to cover expenses. In addition, the Committee would like to increase the monies available in their reserve fund.

The major expenditures recommended by the Committee for the 2003–04 fiscal year include $126,000 for salaries, $25,000 for Manifests-USDA–FDACS, $21,000 for insurance and bonds, $19,500 for retirement plan, and $10,100 for payroll taxes. Budgeted expenses for these items in 2002–03 were $126,000, $25,000, $21,000, $19,500, and $10,100, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of oranges, grapefruit, tangerines, and tangelos. As mentioned earlier, Florida citrus shipments for the year are estimated at 45 million 4/5 bushels, which should provide $270,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve currently total approximately $23,091 and are within the maximum permitted by the order of not to exceed one half of one fiscal period's expenses as stated in § 905.42(a).

The assessment rate established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of oranges, grapefruit, tangerines, and tangelos in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida oranges, grapefruit, tangerines, and tangelos during the 2002–03 season was approximately $8.55 per 4/5 bushel carton, and total fresh shipments for the 2003–04 season are estimated at 45 million cartons of oranges, grapefruit, tangerines, and tangelos. Approximately 20 handlers handled 65 percent of Florida's citrus shipments in 2002–03. Considering the average f.o.b. price, at least 55 percent of the oranges, grapefruit, tangerine, and tangelo handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida citrus handlers may be classified as small entities. The majority of Florida citrus producers may also be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.005 to $0.006 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos. The Committee unanimously recommended 2003–04 expenditures of $247,000 and an assessment rate of $0.006 per 4/5 bushel carton. The assessment rate of $0.006 is $0.001 higher than the rate now in effect. The quantity of assessable oranges, grapefruit, tangerines, and tangelos for the 2003–04 season is estimated at 45 million 4/5 bushel cartons. Thus, the $0.006 rate should provide $270,000 in assessment income and would be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2003–04 year include $126,000 for salaries, $25,000 for Manifests-USDA–FDACS, $21,000 for insurance and bonds, $19,500 for retirement plan, and $10,100 for payroll taxes. Budgeted expenses for these items in 2002–03 were $126,000, $25,000, $21,000, $19,500, and $10,100 respectively.

The proposed increase in the assessment rate is due to the Committee's expectation that shipments in the coming year will be lower affecting assessment income. The Committee would also like to replenish its reserve fund.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $247,000. Prior to arriving at this budget, the Committee considered information from various sources including the Committee's Budget Subcommittee. Alternative assessment rates were discussed based on different estimates of assessable cartons and budget expenses. The assessment rate of $0.006 per 4/5 bushel carton of assessable oranges, grapefruit, tangerines, and tangelos was then determined by dividing the total recommended budget by the quantity of assessable commodity, estimated at 45 million 4/5 bushel cartons for the 2003–04 season taking into consideration the need for additional funds to increase reserves. This assessment rate would yield approximately $23,000 over anticipated budgeted expenses with the excess funds to be earmarked for the reserve fund.

A review of historical information and preliminary information pertaining to the upcoming 2003–04 fiscal period indicates that the grower price for the 2003–04 season could range between $1.80 and $20.40 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2003–04 fiscal period as a percentage of total grower revenue could range between .03 and .33 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2003–04 fiscal period began August 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable citrus fruit handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

### List of Subjects in 7 CFR Part 905

Grapefruit, Oranges, Tangelos, Tangerines, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 905.235 is revised to read as follows:

**§ 905.235 Assessment rate.**

On and after August 1, 2003, an assessment rate of $0.006 per 4/5 bushel carton or equivalent is established for assessable Florida citrus covered under the order.

Dated: July 23, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 03–19129 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 948

**[Docket No. FV03–948–2 PR]**

## Irish Potatoes Grown in Colorado; Reinstatement of the Continuing Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would reinstate the continuing assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2003–2004 and subsequent fiscal periods at $0.03 per hundredweight of potatoes handled. The Committee locally administers the marketing order regulating the handling of potatoes grown in northern Colorado. The continuing assessment rate was suspended for the 2001–2002 and subsequent fiscal periods to bring the monetary reserve within the program limit of two fiscal periods' operating expenses. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by August 12, 2003.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable potatoes beginning on July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any

obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would reinstate § 948.215 of the order's rules and regulations and establish a continuing assessment rate for the Committee for the 2003–2004 and subsequent fiscal periods at $0.03 per hundredweight of potatoes handled.

The Colorado potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–2002 and subsequent fiscal periods, the Committee recommended, and USDA approved, a suspension of the continuing assessment rate that would remain suspended until reinstated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 8, 2003, and unanimously recommended 2003–2004 expenditures of $19,737 and an assessment rate of $0.03 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were also $19,737. For the 2001–2002 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (§ 948.78). At that time, the reserve fund contained about $60,000. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about $24,077. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate at $0.03 per hundredweight is needed.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $8,200 for salaries, $3,000 for rent expense, and $1,750 for office expenses. Budgeted expenses for these items in 2002–2003 were also $8,200, $3,000, and $1,750, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado potatoes. Colorado potato shipments for the year are estimated at 632,500 hundredweight which should provide $18,975 in assessment income. Income derived from handler assessments along with interest and rent income should be adequate to cover budgeted expenses. Funds in the reserve (estimated at $24,077 as of June 30, 2003) would be kept within the maximum permitted by the order (approximately two fiscal period's expenses; § 948.78).

The reinstated assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Based on Committee data, there are 12 producers, (9 of whom are also handlers) and 10 handlers (9 of whom are also producers) in the production area subject to regulation under the order. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Based on Committee data, the production of Area No. 3 Colorado potatoes for the 2001–2002 marketing year was 773,053 hundredweight. Based on National Agricultural Statistics Service data, the average producer price for Colorado summer potatoes for the 2001–2002 marketing year was $6.70 per hundredweight. The average annual producer revenue for the 12 Colorado Area No. 3 potato producers is therefore calculated to be approximately $431,621. Using Committee data regarding each individual handler's total shipments during the 2001–2002 marketing year and a Committee estimated average f.o.b. price during the 2001–2002 marketing year of $8.80 per hundredweight ($6.70 per hundredweight plus estimated packing and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $5,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule would reinstate § 948.215 of the order's rules and regulations and establish a continuing assessment rate for the Committee, to be collected from handlers for the 2003–2004 and subsequent fiscal periods, at $0.03 per hundredweight of potatoes. The Committee recommended 2003–2004 expenditures of $19,727 and an assessment rate of $0.03 per hundredweight. The quantity of Area No. 3 Colorado potatoes for the 2003–2004 fiscal period is estimated at 632,500 hundredweight. Thus, the $0.03 rate should provide $18,975 in assessment income. This together with interest and rent income should be

adequate to meet this fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $8,200 for salaries, $3,000 for rent expense, and $1,750 for office expenses. Budgeted expenses for these items in 2002–2003 were also $8,200, $3,000, and $1,750, respectively.

For the 2001–2002 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (§ 948.78). At that time, the reserve fund contained about $60,000. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about $24,000. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate is needed.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with adequate reserves.

The assessment rate of $0.03 per hundredweight of assessable potatoes was determined by dividing the total recommended budget by the quantity of assessable potatoes, estimated at 632,500 hundredweight for the 2003–2004 fiscal period. This is approximately $1,402 above the anticipated expenses when combined with interest and rent income, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–2004 fiscal period could range between $5.10 and $6.70 per hundredweight of Colorado summer potatoes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.45 and 0.59 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Area No. 3 Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 8, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 3 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2003–2004 fiscal period began on July 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

### List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

## PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 948.215 is reinstated and revised to read as follows:

**§ 948.215 Assessment rate.**

On and after July 1, 2003, an assessment rate of $0.03 per hundredweight is established for Colorado No. 3 potatoes.

Dated: July 23, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 03–19130 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 987

**[Docket No. FV03–987–1 PR]**

## Domestic Dates Produced or Packed in Riverside County, CA; Decreased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would decrease the assessment rate established for the California Date Administrative Committee (Committee) for the 2003–04 and subsequent crop years from $0.90 to $0.75 per hundredweight of dates handled. The Committee locally administers the marketing order that regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins October 1 and ends September 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by August 27, 2003.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular

business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

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

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable dates beginning on October 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would decrease the assessment rate established for the Committee for the 2003–04 and subsequent crop years from $0.90 to $0.75 per hundredweight of assessable dates handled.

The California date marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and producer-handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–03 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 20, 2003, and unanimously recommended 2003–04 expenditures of $225,365 and an assessment rate of $0.75 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were $273,450. The recommended assessment rate of $0.75 is $0.15 lower than the rate currently in effect. The decrease in the assessment rate and budget is primarily due to a lower marketing and promotion budget.

Proceeds from the sales of cull dates are usually deposited in a surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets.

Last year, the Committee applied $5,000 of surplus account monies to cover surplus pool expenses. Based on a recent trend of declining sales of cull dates over the past few years and reduced surplus pool costs, the Committee decided not to apply any of the surplus pool funds toward the 2003–04 Committee budget. The Committee, instead, recommended assessing handlers $0.75 per hundredweight and use $30,365 from the administrative reserves to fund the reduced Committee budget of $225,365.

The budgeted administrative expenses for the 2003–04 crop year include $123,710 for labor and office expenses. This compares to $123,450 in budgeted expenses in 2002–03. In addition, $101,655 has been budgeted for marketing and promotion under the program for the 2003–04 crop year. This compares to $150,000 in budgeted marketing and promotion expenses for the 2002–03 crop year.

The assessment rate of $0.75 per hundredweight of assessable dates was derived by applying the following formula where:

A = Administrative Reserve ($30,365 of the anticipated $40,000 Administrative Reserve)
B = 2003–04 expected shipments (260,000 hundredweight)
C = 2003–04 expenses ($225,365);
$(C - A) \div B$ = $0.75 per hundredweight.

Estimated shipments should provide $195,000 in assessment income. Income derived from handler assessments and the administrative reserves would be adequate to cover budgeted expenses. Funds in the reserve are expected to total about $23,553 by September 30, 2004, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings.

USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

*Initial Regulatory Flexibility Analysis*

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of dates in the production area and approximately 10 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. Five of the 10 handlers (50 percent) shipped over $5,000,000 of dates and could be considered large handlers by the Small Business Administration. Five of the 10 handlers (50 percent) shipped under $5,000,000 of dates and could be considered small handlers. The majority of California date producers may be classified as small entities.

This rule would decrease the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent crop years from $0.90 to $0.75 per hundredweight of assessable dates handled. The Committee unanimously recommended 2003–04 expenditures of $225,365 and the $0.75 per hundredweight assessment rate. The proposed assessment rate of $0.75 is $0.15 lower than the rate currently in effect. The quantity of assessable dates for the 2003–04 crop year is estimated at 260,000 hundredweight. Thus, the $0.75 per hundredweight rate should provide $195,000 in assessment income. This along with administrative reserve funds would be adequate to meet the Committee's 2003–04 crop year expenses.

The budgeted administrative expenses for the 2003–04 crop year include $123,710 for labor and office expenses. This compares to $123,450 in budgeted expenses in 2002–03. In addition, $101,655 has been budgeted for marketing and promotion under the marketing order for the 2003–04 crop year. This compares to $150,000 in budgeted marketing and promotion expenses for the 2002–03 crop year.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $225,365 which include marketing and promotion programs. Prior to arriving at this budget, the Committee considered alternative expenditure levels, including a proposal to not have a budget. The assessment rate of $0.75 per hundredweight of assessable dates was then determined by applying the following formula where:

A = Administrative Reserve ($30,365 of the anticipated $40,000 Administrative Reserve)
B = 2003–04 expected shipments (260,000 hundredweight)
C = 2003–04 expenses ($225,365);
$(C - A) \div B$ = $0.75 per hundredweight.

Estimated shipments should provide $195,000 in assessment income. Income derived from handler assessments and the administrative reserves would be adequate to cover budgeted expenses. Funds in the administrative reserve are expected to total about $23,553 by September 30, 2004, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2003–04 season could range between $40 and $120 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2003–04 crop year as a percentage of total grower revenue could range between .6 and 2 percent.

This action would decrease the assessment obligation imposed on handlers under the Federal marketing order. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate would reduce the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California date industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 20, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http//www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2003–04 crop year begins on October 1, 2003, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

**List of Subjects in 7 CFR Part 987**

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is proposed to be amended as follows:

## PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 987.339 is revised to read as follows:

**§ 987.339 Assessment rate.**

On and after October 1, 2003, an assessment rate of $0.75 per hundredweight is established for California dates.

Dated: July 23, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 03–19128 Filed 7–25–03; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 991

**[Docket No. AO–F&V–991–A3; FV03–991–01]**

## Hops Produced in Washington, Oregon, Idaho and California; Hearing on Proposed Marketing Agreement and Order No. 991

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

**ACTION:** Notice of Public Hearing on Proposed Marketing Agreement and Order.

**SUMMARY:** Notice is hereby given of a public hearing to consider a proposed marketing agreement and order under the Agricultural Marketing Agreement Act of 1937 to cover hops grown in Washington, Oregon, Idaho and California. The proposal was submitted by the Hop Marketing Order Proponent Committee (committee), a group of industry members who support a marketing order for hops. The proposed order would authorize volume control measures in the form of producer allotments to regulate the marketing of alpha acid in hops in the production area. Alpha acid is a bittering agent used in brewing that is the primary marketable component of hops. The proposed order would also allow for reserve pooling of excess production of alpha acid and would provide for production research, marketing research and development projects to promote the marketing, distribution and consumption or efficient production of hops. The program would be financed by assessments on hop handlers and would be administered by a committee of growers nominated by the industry and appointed by the Department of Agriculture (USDA).

**DATES:** The hearing will be held on August 14 and 15 in The Dalles, Oregon, on August 16 and 18 in Hood River, Oregon and continue, if necessary, on August 19, 20, 21 and 22 in Hood River, Oregon. The hearing will begin each day at 8:30 a.m. and end at 5 p.m.

**ADDRESSES:** The hearing locations are: August 14 and 15, 2003, Shilo Inn, 3223 Bret Clodfelter Way, The Dalles, Oregon 97058; August 16 and 18 (and August 19 through 22, if necessary) Best Western Hood River Inn, 1108 East Marina Way, Hood River, Oregon 97031.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204; telephone (503) 326–2724 or Fax (503) 326–7440; or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

**SUPPLEMENTARY INFORMATION:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposal on small businesses.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If issued, the proposed agreement and order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

This proposal is the result of more than two years of efforts undertaken by the committee. The committee was established as a result of renewed industry interest in a Federal marketing order. According to the committee, meetings for discussion of a hop marketing order involved all segments of the industry with varying views on establishment of an order and included growers, handlers, dealers and end users. In addition, meetings were held in each area of the production area to provide opportunities for all hop growers and other interested parties to provide input.

According to the committee, the hop industry is suffering from a chronic oversupply situation that is depressing prices to below economically viable levels. Technological advances have increased the efficiency of both the production of alpha acid from hops and the utilization of the alpha acid in brewing. Consequently, less hop acreage is needed to adequately supply the market and excess alpha inventories have resulted. Industry reductions in acreage have not kept pace with the declining demand for alpha acid. The proponent group contends that the proposed marketing order program would bring stability to the U.S. hop industry by balancing supplies with market needs, which would enhance producer returns.

There have been three previous marketing orders for hops. The most recent was for hop growers in the Northwest which was in effect from July 1966 to December 1985. The principal feature of that order was a producer allotment form of volume control. There was considerable controversy involved in the order during the 1980's, which included concerns over the grower base used in calculating the volume regulations. The base was limited to

industry production levels prior to establishment of the order and effectively restricted new growers from entering the industry. USDA terminated the order in 1985. According to the proponent committee, this proposal is different from the previous order as provisions have been included that allow for new base allotments in each year of expanding demand to both existing and new growers.

The proposal submitted by the committee has not received approval by USDA.

To assist in its review of the proposal, USDA issued a press release seeking comments from interested parties on the proposed order. Over 75 comments were received expressing a variety of views. There were no specific additional proposals or modifications to the committee's proposals submitted.

USDA was concerned that the methodology for establishing initial base quantities set forth in the proposal was inconsistent with the statutory requirement that the salable quantity be allocated equitably among all growers. USDA issued a press release requesting alternatives to the proposal before proceeding to hearing. The proponents submitted a modification to their proposal addressing USDA concerns. An alternative to the establishment of initial base quantities, as well as other alternatives to the proposal, were submitted by Lenseigne Farms, Inc. The alternatives submitted are being included in this notice. Eight other comments were received during the period for receiving alternatives. However, these comments did not set forth alternatives.

After reviewing the modified proposed program and all comments and alternatives received from the public, USDA has determined that the proposed marketing agreement and order potentially meets the objectives of the Act and has scheduled a public hearing.

Testimony is invited at the hearing on the proposed marketing agreement and order (hereinafter referred to as the order) and all of its provisions, as well as any appropriate modifications or alternatives.

The public hearing is held for the purpose of:

(a) Receiving evidence about the economic and marketing conditions that relate to the proposed order and to appropriate modifications thereof;

(b) Determining whether the handling of hops produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

(c) Determining whether there is a need for a marketing order for hops;

(d) Determining the economic impact of the proposed order on the industry in the proposed production area and on the public affected by such program; and

(e) Determining whether the proposed order or any appropriate modification thereof would tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex-parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. USDA modified the committee's proposed § 991.78(b) to be consistent with the authority of the Act. The Act specifies that the Secretary shall terminate any marketing order when termination is favored by a majority of the producers, provided they have produced more than 50 percent of the volume of the commodity. There is no authority under the Act to modify these criteria. Therefore, the proposed section has been changed to be consistent with the Act. USDA has also added three provisions to the committee's proposal that are common to and relate to marketing agreements now operating. These provisions are necessary to effectuate the provisions of the marketing agreement, if ratified. These sections are identified with an asterisk (*).

### List of Subjects in Proposed 7 CFR Part 991

Hops, Marketing agreements, Reporting and recordkeeping requirements.

### Proposal Number 1

The marketing agreement and order proposed by the Hop Marketing Order Proponent Committee would add a new part 991 to read as follows:

## PART 991—HOPS PRODUCED IN WASHINGTON, OREGON, IDAHO AND CALIFORNIA

### Subpart—Order Regulating Handling

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**Authority:** 7 U.S.C. 601–674.

## Subpart—Order Regulating Handling

### Definitions

**§ 991.01 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States, or any other officer or employee of the U.S. Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

**§ 991.02 Act.**

*Act* means Public Act No. 10, 73rd Congress, as amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*; 48 Stat. 31, as amended).

**§ 991.03 Person.**

*Person* means an individual, partnership, corporation, association, or any other business unit.

**§ 991.04 Hops and Hop Products.**

(a) *Hops* means and includes all kinds and varieties of Humulus lupulus or Humulus americanus grown and harvested in the United States, whether loose, packaged or baled and all pellets, powder, oils, extracts and/or lupulin derived therefrom.

(b) Alpha Acid hops are those varieties that are primarily used for their bittering value. Aroma hops are those varieties primarily used for their aroma characteristics.

**§ 991.05 Production Area.**

*Production area* means all States with commercial production of hops and shall be divided into the following districts:

(a) District 1—Washington
(b) District 2—Oregon
(c) District 3—Idaho and California

**§ 991.06 Producer.**

*Producer* is synonymous with *grower* and means any person engaged in a proprietary capacity in the commercial production of hops. Any producer with multiple legal entities under his/her control (*e.g.* common Board of directors, common ownership, common banking, etc.* * *), shall be, for voting purposes only, included under the primary entity and shall be entitled to one vote.

**§ 991.07 Handler.**

*Handler* means any person who handles hops.

**§ 991.08 Handle.**

*Handle* means to prepare hops for market, acquire hops from a producer, use hops commercially of one's own production, sell, transport or ship (except as a common or contract carrier of hops owned by another) or otherwise place hops into the current of commerce within the production area or from the area to points outside thereof, except that:

(a) The preparation for market of hops by producers, not dealers or users of the product, or;

(b) The sale, transportation or shipment of such hops by a producer to a handler of record within the production area, and;

(c) The transfer of excess hops by the producer to another producer to enable that producer to fill a deficiency in an annual allotment, shall not be construed as handling.

**§ 991.09 Marketing Year.**

*Marketing year* means the 12 months from August 1 to the following July 31, inclusive.

**§ 991.10 Crop.**

*Crop* means hops produced by a producer during the marketing year.

**§ 991.11 Salable Quantity.**

*Salable Quantity* means the total quantity of hops that handlers may purchase from, or handle on behalf of, producers during the marketing year.

**§ 991.12 Annual Allotment.**

*Annual Allotment* means that portion of the Salable Quantity prorated to a producer.

**§ 991.13 New Producer.**

The term *New Producer* means a person who has not grown hops prior to 2003. The term *New Producer* specifically excludes any person who has previously been granted Hop Commission grower number or an allotment base in any capacity, either as an individual, or as an owner, officer or operator of any business entity.

### Administrative Committee

**§ 991.15 Establishment and Membership.**

(a) A Hop Administrative Committee consisting of eight members, each of whom shall have an alternate, is hereby established to administer the terms and provisions of this part. Five of the members and their alternates shall be producers in District 1, Two members and their alternates shall be producers in District 2; and One member and his/her alternate shall be producers in District 3. An additional member and his/her alternate shall represent the public and shall be an ex-officio member of the Committee without a vote.

(b) Representation on the Committee shall be by independent producers as follows:

(1) Position 1 for District 1, Sub District 1 shall be all that portion of the State of Washington lying north of the south line of Township 12 N.

(2) Position 2 for District 1, Sub District 2 shall be all that portion of the State of Washington lying south of the south line of Township 12 N. and west of the east line of Range 20 E.

(3) Position 3 for District 1, Sub District 3 shall be all areas of the state of Washington not included in Sub District 1 or Sub District 2.

(4) Position 4 is an at large position and shall be all of District 1.

(5) Position 5 is an at large position and shall be all of District 1.

(6) Position 6 shall be all of District 2.

(7) Position 7 shall be all of District 2.

(8) Position 8 shall be all of District 3.

(c) The committee may change sub-district boundaries in District 1 to reflect significant changes in numbers of producers.

(d) Each Committee shall select officers consisting of a Chairman, Vice Chairman, Secretary and Treasurer and these officers shall constitute the Executive Sub Committee.

**§ 991.16 Eligibility.**

Each member and alternate of the Committee shall be, at the time of his/her selection and during his/her term of office, a producer or an officer or employee of a producer, in the district or sub district for which selected: *Provided,* That these requirements shall not apply to the public member and the alternate public member.

**§ 991.17 Term of Office.**

The term of office of each member and alternate member of the Committee shall be for a period of 3 years: *Provided,* that the members initially selected for Positions 1, 2 and 5 shall serve for terms ending on December 31, 2006, and the members initially selected for Positions 3, 7 and 8 shall serve for terms ending on December 31, 2007, and the members initially selected for Positions 4 and 6 shall serve for terms ending on December 31, 2008. Committee members shall serve in such capacity and for the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. No member shall serve more then two consecutive terms as member and no alternate shall serve more then two consecutive terms as alternate.

**§ 991.18 Nominations.**

(a) Nominations for producer members of the Committee and their

alternates shall be made at nomination meetings of producers in each District or Sub-District. Such meetings shall be held at such times (on or before November 1 of each year) and places as the Committee shall designate. One nominee shall be elected for each position to be filled. The names and addresses of each nominee shall be submitted to the Secretary not later than December 1 of each year.

(b) Only producers, including duly authorized officers or employees of producers present and eligible to serve as producer members of the Committee, shall participate in the nomination. If a producer produces hops in more than one district, the producer shall select the district in which that producer will participate and notify the Committee of the choice.

(c) Should the Committee find it impractical to hold nomination meetings, nominations may be submitted to the Secretary based on the results of balloting by mail. Ballots to be used may contain the names of candidates and a blank space for write-in candidates for each position, together with voting instructions. The eligible person receiving the highest number of votes for a member or alternate position shall be the nominee for that position.

(d) The producer members of the Committee shall nominate the ex-officio public member and alternate public member at the first meeting following the selection of members for a new term of office.

(e) Initial members. As soon as practicable following the effective date of this part, the Secretary shall hold, or cause to be held, nomination meetings of producers in each district to nominate the initial members of the Committee.

(f) The Committee shall issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

**§ 991.19 Selection.**

Committee members shall be selected by the Secretary from nominees submitted by the Committee or from among other eligible persons. Each person so selected shall qualify by filing a written acceptance with the Secretary prior to assuming the duties of the position.

**§ 991.20 Alternate members.**

An alternate for a member shall act in the place of such member:

(a) In the member's absence,

(b) In the event of the member's death, removal, resignation, or disqualification, until a successor for the member's unexpired term has been selected and has qualified, or

(c) When requested and designated by the member.

**§ 991.21 Vacancies.**

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Committee, a successor to fill the unexpired term shall be nominated and appointed in the manner specified in §§ 991.18 and 991.19. If the names of the nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which appointment shall be made on the basis of representation provided for in § 991.15.

**§ 991.22 Powers.**

The Committee shall have the following powers:

(a) To administer this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

**§ 991.23 Duties.**

The Committee shall have, among others, the following duties;

(a) To select from among its membership such officers and adopt such rules or bylaws for the conduct of its meetings as it deems necessary;

(b) To appoint such employees as it may deem necessary, and to determine the compensation and to define the duties of each employee;

(c) To appoint such subcommittees and consultants as it may deem necessary;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the Committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the Committee and to make copies of each such statement available to producers and handlers for examination at the office of the Committee;

(f) To cause the books of the Committee to be audited by a certified public accountant at such times as the Committee may deem necessary, or as the Secretary may request, to submit copies of each audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(g) To act as intermediary between the Secretary and any producer or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to hops and hop products;

(i) To submit to the Secretary such available information as may be requested or that the Committee may deem desirable and pertinent;

(j) To notify producers and handlers of all meetings of the Committee to consider recommendations for regulations and of all regulatory actions taken affecting producers and handlers;

(k) To give the Secretary the same notice of meetings of the Committee and its subcommittees as is given to its members;

(l) To investigate compliance and use means available to prevent violations of the provisions of this part;

(m) To redefine, with the approval of the Secretary, the districts into which the production area is divided and to reapportion the representation of any district on the Committee: *Provided,* That such changes shall reflect, insofar as practical, shifts in hop production within the production area and numbers of producers; and

(n) To establish such rules and regulations as are necessary or incidental to administration of this part, as are consistent with its provisions, and as would tend to accomplish the purposes of this part and the act.

**§ 991.24 Committee Expenses and Compensation.**

Members and Alternates of the Committee shall serve without compensation but shall receive such allowances for necessary expenses incurred in connection with their duties as may be approved by the Committee.

**§ 991.25 Procedure.**

(a) At an assembled meeting, all votes shall be cast in person and seven members of the Committee shall constitute a quorum. Decisions of the Committee shall require the concurring vote of at least six members. If both a Committee member and appropriate alternate are unable to attend a Committee meeting, the Committee may designate any other alternate from the same district who is present at the meeting to serve in the member's place.

(b) The Committee may vote by mail, telephone, or other means of communication: *Provided,* That each

proposition is explained accurately, fully, and identically to each member. All votes shall be confirmed promptly in writing. Seven concurring votes and no dissenting votes shall be required for approval of a Committee action by such method.

**§ 991.26 Research and Development Projects.**

The Committee may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution and consumption or efficient production of hops. The expense of such projects shall be paid from funds collected pursuant to § 991.31.

**Expenses and Assessments**

**§ 991.30 Expenses.**

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it for such purposes as the Secretary may, pursuant to this part, determine to be appropriate, and for the maintenance and functioning of the Committee during each marketing year. The Committee shall submit to the Secretary a budget for each marketing year, including an explanation of the items appearing therein, and a recommendation as to the rate of assessment for such year.

**§ 991.31 Assessments.**

(a) Requirements for payment. Each person who first handles hops shall pay to the Committee, upon demand, that handler's prorata share of the expenses authorized by the Secretary for each marketing year. Each handler's prorata share for each variety of hops sold shall be the rate of assessment fixed by the Secretary times the number of pounds of that variety of hops sold, times the alpha acid factor for that variety of hops which the handler handles as the first handler thereof. The payment of assessments for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to this part, determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) Rate of assessment. The Secretary shall fix the rate of assessment to be paid by each handler. In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the Committee may accept advance assessments and may also borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against the handler during the marketing year.

(c) Assessments not paid within a time prescribed by the Committee may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the Committee: *Provided,* That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

(d) Excess funds. At the end of a marketing year, funds in excess of the year's expenses may be placed in an operating reserve not to exceed approximately one marketing year's operational expenses or such lower limits as the Committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Committee for expenses authorized pursuant to § 991.30. Funds in excess of those placed in the operating reserve shall be refunded to handlers: *Provided,* That any sum paid by a first handler in excess of that handler's prorata share of the expenses during any marketing year may be applied by the Committee at the end of such marketing year to any outstanding obligations due the Committee from such person. Each handler's share of such excess funds shall be the amount of assessments paid in excess of that handler's prorata share.

(e) Disposition of funds upon termination of order. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practicable, such funds will be returned prorata to the first handler from whom such funds were collected.

(f) The Committee may establish rules and regulations necessary and incidental to the administration of this section.

**Volume Limitations**

**§ 991.50 Marketing Policy.**

(a) The Committee shall meet on or before November 15 of each year to adopt a marketing policy for the ensuing marketing year or years. As soon as is practical following the meeting or meetings, the Committee shall submit to the Secretary recommendations for volume regulations deemed necessary to meet market requirements and establish orderly marketing conditions. Additional reports shall be submitted to the Secretary if the Committee, subsequently adopts a new or revised policy because of changes in the demand and supply situation with respect to Alpha Acid.

(b) In determining such marketing policy, Committee consideration *shall include* but not be limited to:

(1) The estimated quantity of salable Alpha Acid held by producers and handlers;

(2) The estimated demand for Alpha Acid;

(3) Prospective production of Alpha Acid;

(4) Total of allotment bases for the current marketing year and the estimated total of allotment bases for the ensuing marketing year;

(5) The quantity of reserve Alpha Acid in storage;

(6) Producer prices of Alpha Acid;

(c) Notice of the marketing policy recommendations for a marketing year and any later changes shall be announced publicly by the Committee, and be submitted promptly to the Secretary and all producers and handlers. The Committee shall publicly announce its marketing policy or revision thereof and notice and contents thereof shall be submitted to producers and handlers by bulletins or through appropriate media.

(d) As soon as practical following the effective date of this part and the organization of the Committee, the Committee may adopt a marketing policy.

**§ 991.51 Recommendations for Volume Regulation.**

(a) If the Committee's marketing policy considerations indicate a need for limiting the quantity of Alpha Acid, the Committee shall recommend to the Secretary a salable quantity and allotment percentage for the ensuing marketing year. Such recommendations shall be made prior to November 15, or such other date as the Committee may establish.

(b) At any time during the marketing year for which the Secretary, pursuant to § 991.52(a), has established a salable quantity and an allotment percentage, the Committee may recommend to the Secretary that such quantity be increased with an appropriate increase in the allotment percentage. Each such recommendation, together with the Committee's reason for such recommendation, shall be submitted promptly to the Secretary.

(c) As soon as practical following the effective date of this part and the organization of the Committee, the Committee may recommend a salable quantity.

**§ 991.52 Issuance of Volume Regulation.**

(a) Whenever the Secretary finds, on the basis of the Committee's recommendation or other information, that limiting the total quantity of Alpha Acid of any crop that handlers may purchase from producers during a marketing year, would tend to effectuate the declared policy of the act, the Secretary shall establish the salable quantity for that crop. The salable quantity shall be prorated among producers by applying an allotment percentage to each producer's allotment base. The allotment percentage shall be established by dividing the salable quantity by the total of all producers' allotment bases.

(b) When an allotment percentage is established for any marketing year, no handler shall purchase from producers any Alpha Acid during such year unless:

(1) It is, at the time of handling, within the unused portion of a producer's annual allotment, and

(2) Such handler notifies the Committee of the handling in such manner as the Committee may prescribe.

(c) An Alpha Acid Factor shall be established for the ensuing marketing year for each variety of hops and shall be equal to the most recent three year average of the Alpha Acid for each variety. If there is not a 3 year average for a variety the Committee shall determine the Alpha Acid Factor for that variety until a three year average is available. The Alpha Acid Factor for each variety shall be determined in accordance with rules and regulations established by the Committee. The Alpha Acid Factor shall be established no later than November 15 of each year. A producer may forward sell any variety of hops in an amount equal to that variety's production times the Alpha Acid Factor for that variety for the year for which the Alpha Acid Factor has been established, or the producer may sell any combination of varieties, provided that, in any case, the total quantity sold is within the producer's salable quantity for that year.

**§ 991.53 Allotment Base.**

(a) The Representative Base Period shall be the marketing years 1997, 1998, 1999, 2000, 2001 and 2002; *Provided* that, a producer must have produced hops in the 2001 and/or 2002 crop year to be eligible to apply for initial allotment base.

(b) Initial Issuance: Each eligible producer desiring an allotment base for hops shall register with the Committee and furnish to it, on forms provided by the Committee, the following:

(1) The Actual Production (in number of pounds) of each variety of hops produced during the highest production year of the Representative Base Period and the name of the handler(s) each variety of hops was sold to during that year.

(2) The Alpha Acid Percentage for each variety of hops with an Alpha Acid percentage of 10% or more produced during the year selected pursuant to § 991.53(b)(1).

(3) The County and State where the production of each variety of hops occurred during the year selected pursuant to § 991.53(b)(1).

(4) As verification for the information submitted to the Committee, the producer shall also submit a copy of the appropriate state certification documents, or, if such documentation is unavailable, a copy of the handler ultra violet spectral analysis documentation relative to the submissions pursuant to this section.

(5) The Executive Sub Committee shall act as a Hardship Committee for establishment of initial allotment base. Any producer has the right to petition the Hardship Committee for special consideration for their initial allotment base, provided that, such petition is in writing, and that it is based solely on hardships brought about by acts of God. The Hardship Committee may elect to defer their decision to the Administrative Committee.

(6) The Committee shall not be required to accept applications for initial allotment base after one year from the effective date of this part.

(7) A producer who has changed or changes identity from an individual producer to a partnership or corporate producer, or from a partnership to a corporate or individual producer, or from a corporate to a partnership or individual producer, may for the purpose of establishing the initial and subsequent allotment base, register with the Committee as one and the same person.

(c) The Initial Allotment Base shall be established by the Committee for each registered producer based on the information submitted by the producer pursuant to 991.53(b), as follows:

(1) For each variety over 10% Alpha Acid Percentage, that ''Variety Alpha Acid Base'' contribution to the total Alpha Acid Allotment Base shall be determined by multiplying the Actual Production by the Actual Alpha Acid Percentage of that variety for the chosen year.

(2) For each variety equal to or less than 10% Alpha Acid Percentage, that ''Variety Alpha Acid Base'' contribution to the total Alpha Acid Allotment Base shall be determined by multiplying the Actual Production of that variety for the chosen year by a flat rate of 10%. The sum of all of the ''Variety Alpha Acid Bases'' as calculated above shall be the producer's ''Initial Allotment Base.''

(d) Adjustment to allotment base. Periodically, but at least once every five years, the Committee shall review and may adjust each producer's allotment base to recognize changes and trends in production and demand. Any such adjustment shall be made in accordance with a formula prescribed by the Committee with the approval of the Secretary.

(e) Additional allotment base. (1) The Committee annually shall make additional allotment bases available in the amount of no more than 1 percent of the total allotment base. Fifty percent of these additional allotment bases shall be made available for new producers and 50 percent made available for existing producers; *Provided that*, in any year in which the current salable percentage is equal to or less than the previous year's salable percentage, the Committee shall not be required to make additional base available for the ensuing marketing year.

(2) Any person may apply for an additional allotment base by filing an application with the Committee on or before December 1 of the marketing year preceding the marketing year for which the additional allotment bases will be made available.

(3) The Committee shall, with the approval of the Secretary, establish rules and regulations to be used for determining the distribution of additional allotment bases.

In establishing such rules, the Committee shall take into account, among other things, the minimum economic enterprise requirements for hop production, the applicant's ability to produce hops, the area where the hops will be produced and other economic and marketing factors.

(f) Bona Fide Effort Requirement: The right of each producer receiving an allotment base, or any legal successor in interest, to retain all or part of an allotment base, shall be dependent on continuance to make a bona fide effort to produce the annual allotment referable thereto and failing to do so, such allotment base shall be reduced by an amount equivalent to such unproduced portions: *Provided*, that a producer's reserve pool shall be included in the bona fide effort requirement. The Committee shall develop the bona fide effort requirement.

(g) Notwithstanding the foregoing, any person or entity who has entered the

hop industry as a *New Producer* for the 2003 crop year, shall be entitled to an allotment base as a matter of right. Such allotment base shall be calculated in the same manner as with any other producer; *Provided:* However that the *New Producer*'s representative base period and initial allotment base shall be limited exclusively to the 2003 crop year, and any such allotment shall be determined by the *New Producer*'s actual production in 2003.

**§ 991.54 Issuance of Annual Allotments.**

(a) Whenever the Secretary establishes a salable quantity and allotment percentage that may be marketed during a marketing year, the Committee shall issue an annual allotment to each producer holding an allotment base. Each producer's annual allotment shall be determined by multiplying the producer's allotment base by the allotment percentage.

(b) On or before February 1, the Committee shall furnish each registered holder of an allotment base a form for the producer to apply for an annual allotment for the ensuing marketing year. The Committee, shall establish rules and regulations prescribing the information to be submitted on this form. The Committee shall notify each producer of the producer's annual allotment within 10 days after the Secretary establishes the salable quantity and allotment percentage.

(c) Through 2003, a handler may acquire Alpha Acid of a producer's own production to fulfill a written contract entered into by these two persons prior to January 31, 2002. The terms of this contract shall require the producer to deliver to that handler a specified quantity of Alpha Acid from that producer's production at a specific price from a specified acreage and produced prior to 2003. The quantity of Alpha Acid acquired by the handler pursuant to that contract during the 2003–04 or 2004–05 marketing year may exceed the producer's annual allotment for the applicable marketing year, but shall be charged against the producer's annual allotment for that year.

**§ 991.55 Identification.**

(a) Each producer shall, under supervision of the Committee, identify each variety of Alpha Acid by October 15 of each year.

(b) Identification shall include the name of the producer, the variety of hops, the net weight, the lot number and such other information as may be required by the Committee.

(c) No handler shall handle as salable Alpha Acid that has not been identified as provided in this section, and no person shall alter or remove any identification.

**§ 991.56 Excess Hops and Hop Products.**

Alpha Acid that is in excess of an individual producer's annual allotment at the conclusion of his/her harvest shall be identified as excess Alpha Acid and shall be disposed of as follows:

(a) Before November 30, or such date as the Committee may establish, a producer, following notification of the Committee, may transfer excess alpha acid to another producer to enable that producer to fill a deficiency in that producer's annual allotment, or

(b) On December 1, or such other date as the Committee, with the approval of the Secretary, may establish, excess Alpha Acid shall be identified as Reserve Pool Alpha Acid.

(c) No handler shall handle Reserve Pool Alpha Acid.

(d) The Committee may establish such rules and regulations as it deems necessary for the administration of the Reserve Pool.

**§ 991.57 Reserve pool requirements.**

(a) General. The Committee shall pool Reserve Pool Alpha Acid in a manner to accurately account for its receipt, storage, and disposition. The Committee shall designate a Committee employee as Reserve Pool Manager. Administration of the provisions in this section shall be in accordance with such rules and regulation as the Committee may prescribe.

(b) Disposition. (1) When, in any marketing year, a producer has produced less than the annual allotment of Alpha Acid, the producer may, upon notification of the Committee, fill the deficiency with Alpha Acid from the producer's Reserve Pool.

(2) Under supervision of the Committee, a producer may exchange salable alpha acid for the same quantity of reserve alpha acid from own production so long as the alpha acid is properly identified.

**§ 991.58 Transfers.**

(a) Nothing contained in this part shall prevent a producer from transferring the location where that producer's annual allotment is produced to another location except that the producer shall report the transfer to the Committee within 30 days after the transfer.

(b) A producer may transfer all or part of an allotment base to another producer under rules and regulations established by the Committee: *Provided,* That the allotment base obtained by transfer from another producer or issued pursuant to § 991.53(e) shall not be transferred for at least 2 years following transfer or issuance, and that the person receiving the allotment base submit to the Committee, evidence of an ability to produce hops from such allotment base in the first marketing year following the transfer or issuance of the allotment base.

**Reports and Records**

**§ 991.60 Reports.**

(a) Inventory. Each handler shall file, with the Committee or its designee, a certified report showing such information as the Committee may specify with respect to any hops which were held by such handler on March 1 and September 1 or such other dates as the Committee may designate.

(b) Receipts. Each handler shall, upon request of the Committee, file with the Committee a certified report showing the quantity of hops handled.

(c) Other Reports. Upon the request of the Committee, each handler shall furnish to the Committee such other information as may be necessary to enable it to exercise its powers and perform its duties under this part.

**§ 991.61 Records.**

Each handler shall maintain such records pertaining to all hops handled as will substantiate the required reports. All such records shall be maintained for not less than 2 years after the termination of the marketing year to which such records relate.

**§ 991.62 Verification of reports & records.**

For the purpose of assuring compliance with record keeping requirements and verifying reports filed by handlers, the Secretary and the Committee through its duly authorized employees, shall have access to any premises where applicable records are maintained, where hops and or hop products are received or held, and at any time during reasonable business hours shall be permitted to inspect such handler premises, and any and all records of such handlers with respect to matters within the purview of this part.

**§ 991.63 Confidential information.**

All reports and records furnished or submitted by handlers to, or obtained by the employees of, the Committee which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall at all times be kept in the custody and under the control of one or more employees of the Committee who

shall disclose such information to no person other than the Secretary.

**Miscellaneous Provisions**

**§ 991.70 Compliance.**

No person shall handle hops and or hop products except in conformity with the provisions of this part.

**§ 991.71 Rights of the Secretary.**

Members of the Committee and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every decision, determination, and other act of the Committee shall be subject to the continuing right of disapproval by the Secretary at any time. Upon such disapproval, the disapproved action of the Committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

**§ 991.72 Derogation.**

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

**§ 991.73 Agents.**

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as his/her agent or representative in connection with any of the provisions of this part.

**§ 991.74 Personal Liability.**

No member or alternate member of the Committee and no employee or agent of the Committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

**§ 991.75 Duration of Immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

**§ 991.76 Separability.**

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this part of the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

**§ 991.77 Effective Time.**

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his/her signature and shall continue in force until terminated in one of the ways specified in 991.78.

**§ 991.78 Termination.**

(a) Failure to effectuate. The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever he/she finds that such provisions obstruct or do not tend to effectuate the declared policy of the act.

(b) Referendum. The Secretary shall terminate the provisions of this part at the end of any marketing year whenever he/she finds that such termination is favored by a majority of the producers who during the preceding marketing year produced for market more than 50 percent of the volume of Alpha Acid so produced: *Provided,* That termination shall be effective only if announced before May 31 of the then current marketing year.

(c) Termination of act. The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

**§ 991.79 Continuance.**

(a) Within 4 years of the effective date of this part, the Secretary shall conduct a continuance referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every 8 years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by producers who during a representative period determined by the Secretary, have been engaged in the production of hops for market in the production area.

(b) Termination of act. The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

**§ 991.80 Proceedings After Termination.**

Upon termination of the provisions of this part, the Committee shall, for the purpose of liquidating the affairs of the Committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination. The said trustees shall:

(a) Continue in such capacity until discharged by the Secretary;

(b) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Committee and of the trustees, to such persons as the Secretary may direct; and

(c) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Committee or the trustees pursuant thereto. Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the Committee and upon the trustees.

**§ 991.81 Effect of Termination or Amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this part or any regulation issued hereunder, or

(b) Release or extinguish any violation of this part or any regulation issued hereunder, or

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

**§ 991.92 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

**§ 991.93 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

**§ 991.94 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act,

an order providing for regulating the handling of hops in the same manner as is provided for in this agreement.

The following proposals were submitted by Lenseigne Farms, Inc.

*Proposal Number 2*

Establishment of initial allotment base would be based upon actual production for the most current season for which data is available. No specific regulatory text was submitted.

*Proposal Number 3*

Ensure that initial base quantities are only allocated to existing producers. No specific regulatory text was submitted.

*Proposal Number 4*

The representative period for purposes of voter eligibility would be the most current season for which data is available. No specific regulatory text was submitted.

*Proposal Number 5*

Establish a market allocation pool, using salable and reserve percentages, instead of a producer allotment program. No specific regulatory text was submitted.

*Proposal Number 6*

Provide a 3-year or more exemption from volume regulation for forward contracting agreements on hops. No specific regulatory text was submitted.

*Proposal Number 7*

Provide an exemption for ''aroma varieties'' from marketing order regulations. No specific regulatory text was submitted.

*Proposal Number 8*

If a producer allotment marketing order is established, allow a minimum of 10 percent of existing base quantities be made available to new and existing growers annually. No specific regulatory text was submitted.

*Proposal Number 9*

If a producer allotment marketing order is established, base quantities would be based on actual alpha acid content. No specific regulatory text was submitted.

*Proposal Number 10*

If a producer allotment marketing order is established, prohibit the sale, lease or transfer of base. No specific regulatory text was submitted.

Dated: July 23, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–19127 Filed 7–25–03; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–CE–23–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

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

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

**SUMMARY:** This document proposes to revise Airworthiness Directive (AD) 2002–22–17, which currently requires you to repetitively inspect the inboard forward flap bellcranks for cracks and eventually replace these bellcranks on all Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. AD 2002–22–17 resulted from Cessna re-evaluating the bellcrank life limit analysis and determining that the original estimate is too high. Since FAA issued AD 2002–22–17, Cessna has designed a new flap bellcrank with a life limit of 40,000 landings (instead of 7,000 landings). This proposed AD would retain the requirement that you repetitively inspect the inboard forward flap bellcranks for cracks and eventually replace these bellcranks and would provide the option of installing the new design flap bellcrank to increase the life limits and terminate the repetitive inspections. The actions specified by this proposed AD are intended to detect, correct, and prevent future cracks in the bellcrank, which could result in failure of this part. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before October 6, 2003.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–23–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–23–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on this proposed AD?* The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

*Are there any specific portions of this proposed AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

*How can I be sure FAA receives my comment?* If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–23–AD.'' We will date

stamp and mail the postcard back to you.

**Discussion**

*Has FAA taken any action to this point?* Ten cracked bellcrank incidents on Cessna Models 208 and 208B airplanes caused us to issue AD 2002–22–17, Amendment 39–12944 (67 FR 68508, November 12, 2002). AD 2002–22–17 currently requires the following on Cessna Models 208 and 208B airplanes:

—Inspecting, using eddy current inspection, the inboard forward flap bellcrank for cracks; and

—Replacing the inboard forward flap bellcrank.

*What has happened since AD 2002–22–17 to initiate this proposed action?* Since we issued AD 2002–22–17, Cessna has designed a new flap bellcrank, part number (P/N) 2622311–7, with a life limit of 40,000 landings (instead of 7,000 landings). The new flap bellcrank (P/N 2622311–7) may be substituted for the older flap bellcranks, either P/N 2622281–2, 2622281–12, or 2692001–2. Installation of this new flap bellcrank would eliminate the need for repetitive inspections.

*Is there service information that applies to this subject?* Cessna has issued the following service information:

—Cessna Caravan Service Bulletin No.: CAB02–1, dated February 11, 2002;

—Cessna Caravan Service Bulletin No.: CAB02–12, Revision 1, dated January 27, 2003; and

—Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003.

*What are the provisions of this service information?* The service information includes procedures for:

—Inspecting, using eddy current methods, the inboard forward flap bellcrank for cracks; and

—Replacing bellcranks.

**The FAA's Determination and an Explanation of the Provisions of This Proposed AD**

*What has FAA decided?* After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Cessna Models 208 and 208B airplanes of the same type design;

—The installation of either the 7,000 landings or 40,000 landings life limit bellcranks addresses the unsafe condition;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

*What would this proposed AD require?* This proposed action would revise AD 2002–22–17 by proposing a new AD that would:

—Retain the requirements of AD 2002–22–17; and

—Provide the option of installing the 40,000 landings life limit bellcranks.

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

**Cost Impact**

*How many airplanes would this proposed AD impact?* We estimate that this proposed AD affects 1,300 airplanes in the U.S. registry.

*What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the proposed inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 workhour × $60 per hour = $60 | No cost for parts | $60 | $60 × 1,300 = $78,000 |

We estimate the following costs to accomplish any necessary replacements using the same flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) that would be required based on the proposed inspection or the reduced life limits:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 3 workhours × $60 per hour = $180 | $1,793 | $180 + $1,793 = $1,973 | $1,973 × 1,300 = $2,564,900 |

We estimate the following costs to accomplish any necessary replacements using the name flap bellcrank (P/N 2622311–7 2692001–2, or FAA-approved equivalent P/N) that would be required based on the proposed inspection or the reduced life limits. We have no way of determining the number of airplanes that may need such replacement with the new flap bellcrank:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 3 workhours × $60 per hour = $180 | $1,845 | $180 + $1,845 = $2,025 |

*What is the difference between the cost impact of this proposed AD and the cost impact of AD 2002–22–17?* AD 2002–22–17 already established the life limit for the flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) on the affected airplanes. Therefore, the replacement is already required through that AD. The only difference in the cost impact upon the public of this proposed AD and AD 2002–22–17 is the

additional $52 cost difference for the new flap bellcrank.

## Regulatory Impact

*Would this proposed AD impact various entities?* The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–22–17, Amendment 39–12944 (67 FR 68508, November 12, 2002), and by adding a new AD to read as follows:

**Cessna Aircraft Company:** Docket No. 2002–CE–23–AD; Revises AD 2002–22–17, Amendment 39–*****.

(a) *What airplanes are affected by this AD?* This AD affects Models 208 and 208B 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, correct, and prevent cracks in the bellcrank, which could result in failure of this part. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or 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) *Repetitive Inspections:* Inspect, using eddy current method, any inboard forward flap bellcrank (part number (P/N) 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent (P/N) for cracks. | Initially inspect upon the accumulation of 4,000 landings on the bellcrank or within the next 250 landings after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at every 500 landings until 7,000 landings are accumulated at which time you must replace as required in paragraphs (d)(2) and (d)(3) of this AD. | In accordance with the Inspection Instructions of Cessna Caravan Service Bulletin No.: CAB02–1, dated February 11, 2002, and the applicable maintenance manual. |
| (2) *Initial Replacement:* Replace any inboard forward flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) with either:<br>(i) the same flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N); or<br>(ii) a new flap bellcrank (P/N 2622311–7 or FAA-approved equivalent P/N). | Must be replaced prior to further flight if cracks are found. If cracks are not found, initially replace at whichever occurs later; upon the accumulation of 7,000 landings on the bellcrank or within the next 75 landings after the effective date of this AD. | For flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N): In accordance with the Inspection Instructions of Cessna Caravan Service Bulletin No.: CAB02–1, dated February 11, 2002, and the applicable maintenance manual. For new flap bellcrank (P/N 2622311–7 or FAA-approved equivalent P/N): In accordance with the Accomplishment Instructions of Cessna Caravan Service Bulletin No.: CAB02–12, Revision 1, dated January 27, 2003, and the Accomplishment Instructions of Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003. |
| (3) *Life Limits (Repetitive Replacements):*<br>(i) The life limit for the inboard forward flap bellcranks (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) is 7,000 landings. Repetitive inspections every 500 landings begin at 4,000 landings (see paragraph (d)(1) of this AD.<br>(ii) The life limit for the inboard forward flap bellcranks (P/N 2622311–7 or FAA-approved equivalent P/N) is 40,000 landings. No repetitive inspections are required on these bellcranks. | Replace at the applicable referenced life limits. | Use the service information referenced in paragraph (d)(2) of this AD. |

**Note 1:** Inboard forward flap bellcranks (P/N 2622281–2, 2622281–12, or 2692001–2) with 7,000 landings or more do not have to be replaced until 75 landings after the effective date of this AD.

**Note 2:** The compliance times of this AD are presented in landings instead of hours TIS. If the number of landings is unknown, hours time-in-service (TIS) may be used by multiplying the number of hours TIS by 1.25.

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

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4407.

(2) Alternative methods of compliance approved in accordance with AD 2002–22–17, which is revised by this AD, are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment revises AD 2002–22–17, Amendment 39–12944.

Issued in Kansas City, Missouri, on July 21, 2003.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–19059 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15398; Airspace Docket No. 03–AGL–09]**

## Proposed Revocation of Class D Airspace; Chicago, IL

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to revoke Class D airspace at Chicago, IL. The City of Chicago has permanently closed Merrill C Meigs Airport, Chicago, IL, and therefore there is no longer a requirement for the existing Class D airspace. This action would revoke the area of the existing controlled airspace for Merrill C Meigs Airport, Chicago, IL.

**DATES:** Comments must be received on or before September 29, 2003.

**ADDRESSES:** Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the Docket Number FAA–2003–15398/ Airspace Docket No. 03–AGL–09, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15398/Airspace Docket No. 03–AGL–09.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to revoke Class D airspace at Chicago, IL, for Merrill C Meigs Airport. Controlled airspace extending upward from the surface of the earth is no longer needed to contain aircraft executing instrument approach procedures. Class D airspace areas extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D designations listed in this document would be removed subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(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) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

*Paragraph 5000 Class D airspace.*

**AGL IL D Chicago, IL [Revoked]**

Chicago, Merrill C Meigs Airport, IL
(Lat. 41°51′32″ N., long. 87°36′28″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL and within a 3.8-mile radius of the Merrill C Meigs Airport, excluding that airspace within the Chicago, IL, Class B airspace area and the Chicago Midway Airport, IL, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on July 9, 2003.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 03–19166 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD13–03–022]**

**RIN 1625–AA00**

## Security and Safety Zone; Protection of Large Passenger Vessels, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In order to maintain an increased maritime security posture, the Coast Guard proposes to establish regulations for the security and safety of large passenger vessels in the navigable waters of the Portland, OR Captain of the Port zone. This proposed security and safety zone, when enforced by the Captain of the Port Portland, will provide for the regulation of vessel traffic in the vicinity of large passenger vessels in the navigable waters of the United States.

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

**ADDRESSES:** You may mail comments and related material to Commanding Officer, Marine Safety Office Portland, 6767 N. Basin Ave, Portland, OR 97217. Marine Safety Office Portland maintains the public docket [CGD13–03–022] 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 Portland between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT(jg) Tad Drozdowski, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 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 (CGD13–03–022), 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 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.

### 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 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 separate notice in the **Federal Register**.

### Background and Purpose

Hostile entities continue to operate with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317, Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks), (67 FR 59447, Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215, Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations).

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. On May 2, 2003, the Captain of the Port Portland issued a temporary final rule (TFR) (68 FR 23390, CGD13–03–012, 33 CFR 165.T13–006) establishing a large passenger vessel security and safety zone, which expires on September 12, 2003. The Coast Guard, through this proposed rule, intends to continue to assist large passenger vessels by establishing a permanent security and safety zone that when enforced by the Captain of the Port would exclude persons and vessels from the immediate vicinity of all large passenger vessels. Entry into this zone will be prohibited unless authorized by the Captain of the

Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

**Discussion of Proposed Rule**

This proposed rule, for security and safety concerns, would control vessel movement in a regulated area surrounding large passenger vessels. The Coast Guard received one comment regarding the scope and impact of the TFR. Specifically, the commenter noted that it would be difficult for the average waterway user to distinguish a large passenger vessel which is subject to the rule from vessels of similar size and design that are not subject to the rule. We have considered this comment in adopting the proposed rule.

The intent of the proposed rule is to protect those passenger vessels readily apparent to a reasonable waterway user as carrying passengers such as cruise ships, ferries, and excursion vessels. These vessels have been determined to be most at risk from possible hostile activities. Additionally, the master of such vessels, Coast Guard or the designated official patrol must provide verbal notification to the waterway user if they are in the vicinity of the exclusionary zone. This would eliminate confusion for waterway users.

The other idea offered by the commenter suggested establishing national standards of identifying vessels around which security zones have been established. COTP Portland has the authority to publish and enforce security zones solely in his area of responsibility. The Commandant of the Coast Guard has authority to implement national standards. Therefore, this proposal will be forwarded to our headquarters for consideration. However, the need to enforce this security zone in the COTP Portland zone is important and cannot be delayed while this proposal is under consideration.

This proposed rule would be enforced from time to time by the Captain of the Port Portland for such time as he deems necessary to prevent damage or injury to any vessel or waterfront facility, to safeguard ports, harbors, territories, or waters of the United States or to secure the observance of the rights and obligations of the United States. The Captain of the Port Portland will cause notice of the activation of this security and safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including Marine Safety Office Portland's internet web page located at *http://www.uscg.mil/d13/units/msoportland.* In addition, Marine Safety Office Portland maintains a telephone line that is staffed 24 hours a day, 7 days a week. The public can contact Marine Safety Office Puget Sound at (503) 240–9311 to obtain information concerning enforcement of this rule. For the purpose of this regulation, a large passenger vessel means any vessel over 100 feet in length (33 meters) carrying passengers for hire including, but not limited to, cruise ships, auto ferries, passenger ferries, and excursion vessels.

All vessels within 500 yards of a large passenger vessel shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the official patrol. No vessel, except a public vessel as defined in paragraph (b), is allowed within 100 yards of a large passenger vessel that is underway or at anchor, unless authorized by the official patrol or large passenger vessel master. Vessels requesting to pass within 100 yards of a large passenger vessel that is underway or at anchor shall contact the official patrol on VHF–FM channel 16 or 13. The on-scene official patrol or large passenger vessel master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of a large passenger vessel that is underway or at anchor in order to ensure a safe passage in accordance with the Navigation Rules. Similarly, vessels at anchor may be permitted to remain at anchor within 100 yards of passing large passenger vessel. Public vessels for the purpose of this proposed rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

**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 (DHS).

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.

Although this proposed rule would restrict access to the regulated area, the effect of this proposed rule will not be significant because: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the official on-scene patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

**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.

This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of large passenger vessels in the navigable waters of the United States.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the official on-scene patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR INFORMATION CONTACT**.

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

**Collection of Information**

This proposed rule would call 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 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 proposed 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**

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of this proposed rule to accommodate the special needs of mariners in the vicinity of large passenger vessels and the Coast Guard's commitment to working with the Tribes, we have determined that passenger vessel security and fishing rights protection need not be incompatible and therefore have determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

**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**

The Coast Guard's preliminary review indicates this proposed rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D. The environmental analysis and Categorical Exclusion Determination will be prepared and be available in the docket for inspection and copying where indicated under **ADDRESSES.** All standard environmental measures remain in effect.

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

2. Add § 165.1318 to read as follows:

### § 165.1318 Security and Safety Zone Regulations, Large Passenger Vessel Protection, Portland, OR Captain of the Port Zone

(a) *Notice of enforcement or suspension of enforcement.*

The large passenger vessel security and safety zone established by this section will be enforced only upon notice by the Captain of the Port Portland. Captain of the Port Portland will cause notice of the enforcement of the large passenger vessel security and safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Portland will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the large passenger vessel security and safety zone is suspended.

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

*Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

*Large Passenger Vessel* means any vessel over 100 feet in length (33 meters) carrying passengers for hire including, but not limited to, cruise ships, auto ferries, passenger ferries, and excursion vessels.

*Large Passenger Vessel Security and Safety Zone* is a regulated area of water, established by this section, surrounding large passenger vessels for a 500-yard radius that is necessary to provide for the security and safety of these vessels.

*Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

*Navigation Rules* means the Navigation Rules, International-Inland.

*Official Patrol* means those persons designated by the Captain of the Port to monitor a large passenger vessel security and safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Persons authorized as Federal Law Enforcement Officers to enforce this section will be designated as the Official Patrol.

*Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

*Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

*Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(c) *Security and safety zone.* There is established a large passenger vessel security and safety zone extending for a 500-yard radius around all large passenger vessels in the navigable waters of the United States, in Portland, OR starting at the Columbia River Bar ''C'' buoy and extending eastward on the Columbia River to Kennewick, WA and upriver through Lewiston, ID on the Snake River.

(d) *Compliance.* The large passenger vessel security and safety zone established by this section remains in effect around large passenger vessels at all times, whether the large passenger vessel is underway, anchored, or moored. Upon notice of enforcement by the Captain of the Port Portland, the Coast Guard will enforce the large passenger vessel security and safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Portland, all persons and vessels are authorized to enter, transit, and exit the large passenger vessel security and safety zone, consistent with the Navigation Rules.

(e) *Navigation Rules.* The Navigation Rules shall apply at all times within a large passenger vessel security and safety zone.

(f) *Restrictions based on distance from large passenger vessel.* When within a large passenger vessel security and safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 100 yards of a large passenger vessel that is underway or at anchor, unless authorized by the on-scene official patrol or large passenger vessel master.

(g) *Requesting authorization to operate within 100 yards of large passenger vessel.* To request authorization to operate within 100 yards of a large passenger vessel that is underway or at anchor, contact the on-scene official patrol or large passenger vessel master on VHF–FM channel 16 or 13.

(h) *Maneuver-restricted vessels.* When conditions permit, the on-scene official patrol or large passenger vessel master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large passenger vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of a passing large passenger vessel; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of an anchored large passenger vessel.

(i) *Stationary vessels.* When a large passenger vessel approaches within 100 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains with in the large passenger vessel's security and safety zone unless it is either ordered by, or given permission by the Captain of the Port Portland, his designated representative or the on-scene official patrol to do otherwise.

(j) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from complying with paragraphs (c), (d), (f), (g), (h), and (i), of this section.

(k) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a large passenger vessel, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(l) *Waiver.* The Captain of the Port Portland may waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions, or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: July 15, 2003.

**Paul D. Jewell,**

*Captain, Coast Guard, Captain of the Port, Portland, Oregon.*

[FR Doc. 03–19145 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–7534–6]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the Selected Perimeter Area (SPA), encompassing 4,930 acres, of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes

Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the SPA of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare and the environment and that no further response action by responsible parties is appropriate.

This partial deletion pertains to the surface (soil, surface water, sediment), structures, and groundwater media of the Selected Perimeter Area of the On-Post OU of the RMA/NPL Site. The Surface Deletion Area of the On-Post OU RMA/NPL Site, composed of the surface and structures media only within an additional 123 acres, also is being proposed as a separate partial deletion during the same public comment period. The rest of the On-Post OU and the Off-Post OU will remain on the NPL and response activities will continue at those OUs.

**DATES:** Comments concerning this proposed partial deletion may be submitted on or before August 26, 2003.

**ADDRESSES:** Comments may be mailed to: Catherine Roberts, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, 1–800–227–8917 or (303) 312–6025.

Comprehensive information on the RMA/NPL Site, as well as information specific to this proposed partial deletion, is available through EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays, by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site and the Deletion Docket for this partial deletion are maintained at the Joint Administrative Records Document Facility, Rocky Mountain Arsenal, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday, or by appointment.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver Colorado, 80202–2466, (303) 312–6660.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

## I. Introduction

The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the Selected Perimeter Area (SPA) of the Rocky Mountain Arsenal/National Priorities List (RMA/NPL) Site, Commerce City, Colorado, from the National Priorities List (NPL) and requests comment on this proposed action. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (Nov. 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for partial deletion of the RMA/NPL Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this proposed partial deletion. Section IV discusses the Selected Perimeter Area of the RMA/NPL Site and explains how it meets the deletion criteria.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to section 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the area deleted if future site conditions warrant such actions.

## III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for this proposed deletion of the SPA of the RMA/NPL Site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, has concurred with publication of this notice of intent for partial deletion.

(3) Concurrent with this national Notice of Intent for Partial Deletion, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which ends on August 26, 2003, based upon publication of this notice in the **Federal Register** and a local newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty calendar day public comment period, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletion. EPA will prepare a responsiveness summary for each significant comment and any significant new data received during the public

comment period and will address concerns presented in such comments and data. The responsiveness summary will be made available to the public at the EPA Region 8 office and the information repository listed above and will be included in the final deletion package. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summary. If, after review of all such comments and data, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the Selected Perimeter Area of the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of the final partial deletion package will be placed at the EPA Region 8 office and the information repository listed above after a final document has been published in the **Federal Register**.

**IV. Basis for Intended Partial Deletion**

The following information provides EPA's rationale for deletion of the SPA of the RMA/NPL Site from the NPL and EPA's finding that the proposed final deletion satisfies 40 CFR 300.425(e) requirements:

*RMA/NPL Site Background*

The Rocky Mountain Arsenal was established in 1942 by the U.S. Army, and was used to manufacture chemical warfare agents and incendiary munitions for use in World War II. Prior to this, the area was largely undeveloped ranch and farmland. Following the war and through the early 1980s, the facilities continued to be used by the Army. Beginning in 1946, some facilities were leased to private companies to manufacture industrial and agricultural chemicals. Shell Oil Company, the principal lessee, primarily manufactured pesticides from 1952 to 1982. After 1982, the only activities at the Arsenal involved remediation.

Complaints of groundwater pollution north of the RMA/NPL Site began to surface in 1954. Common industrial and waste disposal practices used during these years resulted in contamination of structures, soil, surface water, and groundwater. As a result of this contamination, the RMA was proposed for inclusion on the NPL on October 15, 1984. The listing of RMA on the NPL, excluding Basin F, was finalized on July 22, 1987. Basin F was added to the RMA/NPL Site listing on March 13, 1989. On February 17, 1989, an interagency agreement—referred to as a Federal Facility Agreement (FFA)—formalizing the process framework for selection and implementation of cleanup remedies at the RMA/NPL Site, became effective. The FFA was signed by the Army, Shell Oil Company, EPA, U.S. Department of the Interior, U.S. Department of Justice, and the Agency for Toxic Substances and Disease Registry.

Prior to the selection of remedial alternatives, a remedial investigation/endangerment assessment/feasibility study (RI/EA/FS) was conducted for the On-Post OU to provide information on the type and extent of contamination, human and ecological risks, and feasibility of remedial actions suitable for application at RMA. The remedial investigation (RI) completed in January 1992 studied each of the five environmental media at the RMA/NPL Site, including soils, water, structures, air, and biota. The feasibility study (FS) was finalized in October 1995, and a proposed remedial action plan was prepared and presented to the public in October 1995.

On June 11, 1996, the Army, EPA, and the State of Colorado signed the Record of Decision (ROD) for the On-Post Operable Unit. The ROD, which formally establishes the cleanup approach to be taken for the On-Post OU, specified the remedial actions to be implemented for soil, structures, and groundwater for the On-Post OU of RMA.

The On-Post OU of the RMA/NPL Site (*see* map, RMA Selected Perimeter Area) encompasses 25.5 square miles in southern Adams County, Colorado, approximately 8 miles northeast of downtown Denver.

*Selected Perimeter Area of the On-Post OU*

The SPA is an area of approximately 4,930 acres (7.7 square miles) on the perimeter of RMA. The proposed deletion of the SPA includes the surface, structures, and groundwater media of portions of Sections 1, 2, 3, 4, 10, 19, 20, 22, 27, 28, 29, 32, and 33; and all of Sections 5, 7, 8, 11, and 12 (*see* map).

A remedial investigation (RI) for the On-Post OU completed in January 1992 studied each of the environmental media at the RMA/NPL Site including soil, sediment, structures, water, air, and biota. Based upon evidence gathered during the RI, areas with similar soil contamination were combined into individual projects. This resulted in four separate soil cleanup projects within the SPA. These include the Toxic Storage Yards project located in the southeastern area of the SPA; the Miscellaneous Southern Tier Soil project located in the south-central portion of the SPA near the south lakes; the Existing (Sanitary) Landfill—Section 4 project located in the southwestern portion of the SPA; and the Burial Trenches—Part I project located in the southwestern portion of the SPA and east of the Sanitary Landfill project.

The Toxic Storage Yards project incorporated three contamination areas, one located within the SPA, considered to potentially contain chemical warfare agent based on use histories and detections of agent breakdown products. The Miscellaneous Southern Tier Soil project included eight contamination areas, four located within the SPA, contaminated with pesticides (aldrin and dieldrin), and heavy metals. The Existing (Sanitary) Landfill project incorporated five contamination areas, all within the SPA, which contained trash and debris, asbestos-containing material, and drums with high concentrations of styrene. The Burial Trenches—Part I project included 35 contamination areas, five within the SPA, considered to potentially contain ordnance or explosives, unexploded ordnance, and munition debris as well as general construction-related debris and trash.

A structures survey identified seventeen structures within the SPA. Four of these structures have no history of contamination and were designated to be retained for future use. The contaminants identified within the other thirteen structures include asbestos, polychlorinated biphenyls (PCBs), pesticides, herbicides and heavy metals.

Two groundwater plumes below the western portion of the SPA contain 1,1-dichloroethylene, 1,1,1-trichloroethane, and TCE but are not attributable to the RMA/NPL Site. Because the groundwater does not meet drinking water standards, the Klein Water Treatment Facility—built in 1989, prior to completion of the RI—treats the groundwater contamination that is now known to originate from non-RMA/NPL sources.

The Irondale Containment System (ICS) was constructed during development of the RI/FS as an interim response action (IRA). The ICS was mostly located on the SPA and installed to extract and treat groundwater emanating from the Rail Yard—which is primarily contaminated with dibromochloropropane, and the Motor Pool—which is primarily contaminated with trichloroethylene. Both of these areas in the RMA/NPL Site are in close proximity to the SPA. Two additional groundwater plumes were identified beneath the northwest portion of the

SPA along the Colorado Highway 2 border. These plumes originate in the South Plants manufacturing area—which is primarily contaminated with benzene, chloroform, carbon tetrachloride, and trichloroethylene; and the historic basins located in the northwest area of the RMA/NPL Site—which is primarily contaminated with dieldrin, chloroform, and DIMP (a byproduct of nerve agent production).

A feasibility study (FS) was finalized in October 1995, and a proposed plan prepared and presented to the public in October 1995. On June 11, 1996, the On-Post Record of Decision (ROD) was signed by the Army, EPA, and the State of Colorado. The ROD required the excavation and consolidation of soil presenting a risk to human health, as well as munition debris, in a state-of-the-art hazardous waste landfill to be built within the On-Post OU; and excavation of debris and soil presenting a risk to biota and placement of those soils in the Basin A consolidation area which is located in the central portion of the RMA/NPL Site. The excavated human health exceedence areas were backfilled with on-post borrow material and revegetated. Unexploded ordnance was to be transported off-site for detonation or other demilitarization process, unless the unexploded ordnance was unstable and must be detonated on-site.

The remedy for structures included the demolition of thirteen of the seventeen structures identified in the SPA. Four of the seventeen structures had no contamination history and were not identified for demolition by the ROD.

The selected groundwater remedy consisted of continued operation of the groundwater treatment systems, including the ICS to treat the Motor Pool and Rail Yard plumes and the Northwest Boundary Containment System to treat the South Plants plumes. Additionally, wells which had the potential to provide a cross-contamination pathway from the contaminated, upper groundwater aquifer to the deeper, confined aquifer were to be closed. The ROD also required continued use restrictions for the property.

*Community Involvement*

Since 1988, each of the parties involved with the Arsenal cleanup has made extensive efforts to ensure that the public is kept informed on all aspects of the cleanup program. More than 100 fact sheets about topics ranging from historical information to site remediation have been developed and made available to the public. Following the release and distribution of the draft Detailed Analysis of Alternatives report (a second phase of the FS), the Army held an open house for about 1,000 community members. The open house provided opportunity for individual discussion and understanding of the various technologies being evaluated for cleanup of the RMA/NPL Site.

The Proposed Plan for the On-Post OU was released for public review on October 16, 1995. On November 18, 1995, a public meeting was held, attended by approximately 50 members of the public, to obtain public comment of the Proposed Plan. As a result of requests at this meeting, the period for submitting written comments on the plan was extended one month, concluding on January 19, 1996. Minimal comments were received on the alternatives presented for the projects in the SPA of the On-Post OU. Specifically, the comments requested that excavation of the western tier landfills be ''complete,'' that the health and safety of nearby communities be protected from air emissions during excavation and demolition activities, that additional treatment capabilities or modification of the existing water treatment systems be considered, and that potential dioxin contamination of the entire RMA/NPL Site be evaluated.

The designs for the Miscellaneous Structures, Confined Flow System Well Closure, and each of the soil projects were provided to the public for a thirty calendar day review and comment period at both the 30 percent and 95 percent design completion stages (twelve separate public comment periods). Each design was also presented at the monthly meeting of the RMA Restoration Advisory Board, composed of community stakeholders, regulatory agencies, the Army, Shell Oil Company, and the USFWS. No comments regarding the excavation/demolition approach or the proposed health and safety controls for each project were received.

Upon completion of the thirty calendar day public comment period for this NOIDp, EPA Region 8 in consultation with the State and the Army, will evaluate each comment and any significant new data received before issuing a final decision concerning the proposed partial deletion.

*Current Status*

The Toxic Storage Yards Soil project, completed in 2000, consisted of three separate cleanup areas including one in the SPA. A total of 4,400 bank cubic yards (bcy) of soils presenting a risk to human health was removed from this SPA area and disposed in the on-site hazardous waste landfill. Chemical agent screening was conducted during the soil excavation and soil ripping activities and three groundwater monitoring wells were closed. The Miscellaneous Southern Tier Soil project, completed in 2000, remediated eight areas including three in the SPA. A total of 12,649 bcy of soil presenting a risk to human health and 8 bcy of debris were excavated from the three areas within the SPA and disposed in the hazardous waste landfill. Another 3,325 bcy of soil presenting a risk to biota was disposed in Basin A. This project also included the demolition of one structure, Building 863, which was also disposed in Basin A.

The Existing (Sanitary) Landfill—Section 4 project, completed in 2000, consisted of five separate areas which are all in the SPA. A small amount of asbestos containing material and 11,975 bcy of soil presenting a human health risk was disposed in the hazardous waste landfill. A total of 40,260 bcy of trash and debris was disposed in Basin A. Ten intact drums containing high concentrations of styrene were sent to an offsite facility for disposal in accordance with hazardous waste regulatory requirements. The Burial Trenches Soil Remediation project, completed in 2002, remediated thirty-five areas including five in Section 4 of the SPA. All soil presenting a risk to human health, munition debris and related soil, and asbestos containing material was disposed in the on-site hazardous waste landfill. All other material with lesser degrees of contamination, *e.g.*, asphalt pavement, general construction debris and trash, was disposed in the Basin A consolidation area.

Demolition and removal of nine of the thirteen structures slated for removal was completed as part of the Miscellaneous RMA Structure Demolition and Removal—Phase I project completed in 2002. This project consisted of the demolition of the structures and foundations; removal and disposal of structures and foundations, substations, debris piles, roads and parking areas; removal and disposal or recycling of underground storage tanks, structural steel and other metal components; backfilling and grading; and revegetation of the excavated areas. Of the four remaining structures, one was demolished as part of the Miscellaneous Southern Tier Soil project, two had been demolished prior to remedial action, and one structure has been retained for continued operations of the RMA/NPL Site.

The Northwest Boundary Containment System will continue to

operate long-term to prevent migration of groundwater plumes offsite. However, monitoring of the groundwater below the SPA indicates that contamination in the groundwater has been below all regulatory standards since 1993. The ICS extraction wells have met the ROD shut-off criteria and were shut down on October 1, 1997. Extraction wells for the Motor Pool IRA also met shut-off criteria in March 1998; therefore, the ICS facility was demolished and removed as part of the Miscellaneous Structures project on May 7, 2002. A treatment system was constructed at the Rail Yard to more directly treat the contaminated groundwater associated with the Rail Yard. The Rail Yard IRA and Treatment System, and Motor Pool IRA are not associated with the SPA. Monitoring of the groundwater aquifer for the Northwest Boundary Containment System and that previously treated through the ICS extraction wells has been incorporated into the sitewide monitoring program, as required by the ROD.

The Confined Flow System Well Closure project was completed in 2000. A total of 51 wells, six in the SPA, which extended into the deeper, confined flow aquifer were closed. Closure was accomplished by overdrilling the well casing and installing a grout plug. An additional 134 monitoring wells within the SPA are part of the long-term, site-wide monitoring plan.

Use of the groundwater below the SPA and surface water for potable drinking purposes is prohibited by the FFA, Public Law 102–402, and the ROD; and will continue to be prohibited even after the SPA is transferred to the U.S. Department of Interior or units of local government. Additional prohibitions imposed by the FFA, Public Law 102–402, and the ROD include the use of the SPA for residential, industrial, and agricultural purposes, and for hunting or fishing for consumptive purposes.

The Army is responsible for ongoing monitoring and maintenance associated with groundwater wells located on land to be transferred to the Department of Interior within the SPA. The conduct of long-term groundwater monitoring required by the ROD is delineated in the Final Interim Rocky Mountain Arsenal Institutional Control Plan.

*Post-ROD Investigations*

Since the signing of the ROD on June 11, 1996, three studies have been conducted that are relevant to the deletion of the SPA. The Summary and Evaluation of Potential Ordnance/Explosives and Recovered Chemical Warfare Materiel Hazards at the Rocky Mountain Arsenal (2002) was conducted in response to the unexpected discovery of six M139 bomblets as part of the Miscellaneous Structures—Phase I project in the Section 36 Boneyard (central portion of the RMA/NPL Site). Using state-of-the-art computer imaging, mapping technology, and software capability which had not existed previously, a comprehensive RMA-wide evaluation for the potential presence of ordnance and explosives as well as recovered chemical warfare materiel hazards was completed. The evaluation identified six additional areas for remedial action (none in the SPA) and concluded that the future discovery of additional sites with ordnance/explosives or recovered chemical warfare materiel hazards is highly unlikely.

In 2001, EPA conducted a four-part Denver Front Range Dioxin Study which determined that the concentration of dioxins at most of the RMA/NPL Site, including the SPA, is not statistically different from values observed in open space and agricultural areas within the Denver Front Range area. Therefore there is no significant health risk from dioxin in soils to future Refuge workers, volunteers, or visitors.

As required by the ROD, a Terrestrial Residual Ecological Risk Assessment was completed in 2002. This report concluded that no significant excess terrestrial residual risks will remain after the ROD-required cleanup actions for soil, including additional areas of excavation and tilling identified as part of remedial design refinement as required by the ROD, are completed.

Based on the extensive investigations and risk assessment performed for the SPA of the RMA/NPL Site, there are no further response actions planned or scheduled for this area. Currently, no hazardous substances remain at the SPA above health-based levels with respect to anticipated uses of and access to the site, which are limited under the FFA, Public Law 102–402, and the ROD. Because the SPA is subject to these restrictions on land and water use, it will be included in the RMA-wide five-year reviews. There are no operation and maintenance requirements for the remedies implemented at the SPA. All completion requirements for the SPA of the On-Post OU have been achieved as outlined in OSWER Directive 9320.2–09A–P.

EPA, with concurrence from the State of Colorado, has determined that all appropriate CERCLA response actions have been completed within the SPA of the RMA/NPL Site to protect public health and the environment and that no further response action by responsible parties is required. Therefore, EPA proposes to delete the SPA of the On-Post OU of the RMA/NPL Site from the NPL.

Dated: July 16, 2003.

**Kerrigan G. Clough,**

*Acting Regional Administrator, Region 8.*

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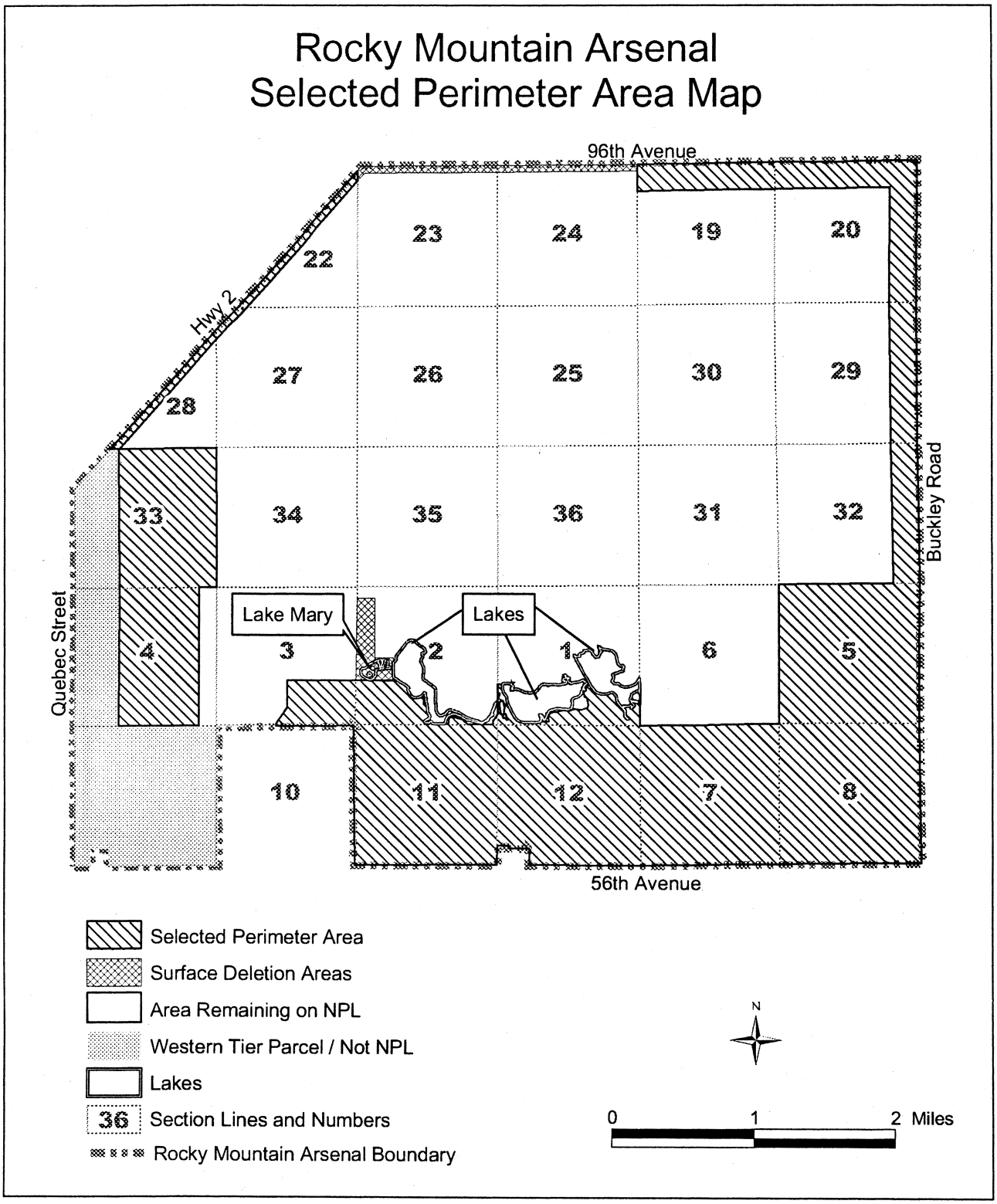


[FR Doc. 03–18741 Filed 7–25–03; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL–7534–7]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the Surface Deletion Area (SDA), which includes the surface and structures media only within 123 acres of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU), from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the SDA of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare and the environment and that no further response action by responsible parties is appropriate.

This partial deletion pertains to the surface (soil, surface water, sediment) and structures media only and excludes the groundwater media of the Surface Deletion Area of the On-Post OU of the RMA/NPL Site. The Selected Perimeter Area of the On-Post OU RMA/NPL Site, composed of the surface, structures, and groundwater media within an additional 4,930 acres, also is being proposed as a separate partial deletion during the same public comment period. The rest of the On-Post OU and the Off-Post OU will remain on the NPL and response activities will continue at those OUs.

**DATES:** Comments concerning this proposed partial deletion may be submitted on or before August 26, 2003.

**ADDRESSES:** Comments may be mailed to: Catherine Roberts, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, 1–800–227–8917 or (303) 312–6025.

Comprehensive information on the RMA/NPL Site, as well as information specific to this proposed partial deletion, is available through EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays, by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site and the Deletion Docket for this partial deletion are maintained at the Joint Administrative Records Document Facility, Rocky Mountain Arsenal, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday, or by appointment.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, (303) 312–6660.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Deletion

### I. Introduction

The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the Surface Deletion Area (SDA) of the Rocky Mountain Arsenal/National Priorities List (RMA/NPL) Site, Commerce City, Colorado, from the National Priorities List (NPL) and requests comment on this proposed action. The NPL constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (Nov. 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for partial deletion of the RMA/NPL Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this proposed partial deletion. Section IV discusses the Surface Deletion Area of the RMA/NPL Site and explains how it meets the deletion criteria.

### II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to section 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the area deleted if future site conditions warrant such actions.

### III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for this proposed deletion of the SDA of the RMA/NPL Site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, has concurred with publication of this notice of intent for partial deletion.

(3) Concurrent with this national Notice of Intent for Partial Deletion, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which ends on August 26, 2003, based upon publication of this notice in the **Federal Register** and a local newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty calendar day public comment period, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletion. EPA will prepare a responsiveness summary for each significant comment and any significant new data received during the public comment period and will address concerns presented in such comments and data. The responsiveness summary will be made available to the public at the EPA Region 8 office and the information repository listed above and will be included in the final deletion package. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summary. If, after review of all such comments and data, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the Surface Deletion Area of the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of the final partial deletion package will be placed at the EPA Region 8 office and the information repository listed above after a final document has been published in the **Federal Register**.

## IV. Basis for Intended Partial Deletion

The following information provides EPA's rationale for deletion of the SDA of the RMA/NPL Site from the NPL and EPA's finding that the proposed final deletion satisfies 40 CFR 300.425(e) requirements:

*RMA/NPL Site Background*

The Rocky Mountain Arsenal was established in 1942 by the U.S. Army, and was used to manufacture chemical warfare agents and incendiary munitions for use in World War II. Prior to this, the area was largely undeveloped ranch and farmland. Following the war and through the early 1980s, the facilities continued to be used by the Army. Beginning in 1946, some facilities were leased to private companies to manufacture industrial and agricultural chemicals. Shell Oil Company, the principal lessee, primarily manufactured pesticides from 1952 to 1982. After 1982, the only activities at the Arsenal involved remediation.

Complaints of groundwater pollution north of the RMA/NPL Site began to surface in 1954. Common industrial and waste disposal practices used during these years resulted in contamination of structures, soil, surface water, and groundwater. As a result of this contamination, the RMA was proposed for inclusion on the NPL on October 15, 1984. The listing of RMA on the NPL, excluding Basin F, was finalized on July 22, 1987. Basin F was added to the RMA/NPL Site listing on March 13, 1989. On February 17, 1989, an interagency agreement—referred to as a Federal Facility Agreement (FFA)—formalizing the process framework for selection and implementation of cleanup remedies at the RMA/NPL Site, became effective. The FFA was signed by the Army, Shell Oil Company, EPA, U.S. Department of the Interior, U.S. Department of Justice, and the Agency for Toxic Substances and Disease Registry.

Prior to the selection of remedial alternatives, a remedial investigation/endangerment assessment/feasibility study (RI/EA/FS) was conducted for the On-Post OU to provide information on the type and extent of contamination, human and ecological risks, and feasibility of remedial actions suitable for application at RMA. The remedial investigation (RI) completed in January 1992 studied each of the five environmental media at the RMA/NPL Site, including soils, water, structures, air, and biota. The feasibility study (FS) was finalized in October 1995, and a proposed remedial action plan was prepared and presented to the public in October 1995.

On June 11, 1996, the Army, EPA, and the State of Colorado signed the Record of Decision (ROD) for the On-Post Operable Unit. The ROD, which formally establishes the cleanup approach to be taken for the On-Post OU, specified the remedial actions to be implemented for soil, structures, and groundwater for the On-Post OU of RMA.

The On-Post OU of the RMA/NPL Site (see map, RMA Surface Deletion Area) encompasses 25.5 square miles in southern Adams County, Colorado, approximately 8 miles northeast of downtown Denver.

*Surface Deletion Area of the On-Post OU*

The SDA is an area of approximately 123 acres ( 0.2 square miles) on the northern and southern perimeter of the RMA/NPL Site. The SDA consists of a 250-foot-wide strip along the northern RMA boundary in Sections 23 and 24, and 62.6 acres adjacent to Lake Ladora and including Lake Mary in Section 2 (see map). Below the SDA area, the groundwater contaminant concentrations remain above remedial action levels. Therefore, only the surface and structures media are included as part of the SDA. The groundwater media below the SDA will remain as part of the RMA/NPL Site.

A remedial investigation (RI) for the On-Post OU, completed in January 1992, studied each of the environmental media at the RMA/NPL Site including soil, sediment, structures, water, air, and biota. Based upon evidence gathered during the RI, one soil project was identified within the SDA. The Miscellaneous Southern Tier Soil project located near the south lakes included eight contamination areas; one located partially within the SDA in Section 2, contaminated with pesticides (aldrin and dieldrin) which presented a risk to human health and biota. A structures survey identified three structures within the SDA. One of these structures has no history of contamination and is designated for future use. The contaminants identified within the other two structures include asbestos, polychlorinated biphenyls (PCBs), pesticides, herbicides and heavy metals.

One groundwater plume below the northern portion of the SDA primarily contains chloroform, benzene, atrazine, dieldrin, DIMP (a byproduct of nerve agent production), trichloroethylene, dibromochloropropane, and DDT. A second groundwater plume flows beneath the southern portion of the SDA and primarily contains dieldrin and chloroform.

A feasibility study (FS) was finalized in October 1995, and a proposed plan prepared and presented to the public in October 1995. On June 11, 1996, the On-Post Record of Decision (ROD) was signed by the Army, EPA, and the State of Colorado. The ROD required the excavation and consolidation of soil presenting a risk to human health, as well as munition debris, in a state-of-the-art hazardous waste landfill to be built within the On-Post OU; and

excavation of debris and soil presenting a risk to biota and placement of those soils in the Basin A consolidation area which is located in the central portion of the RMA/NPL Site. The excavated human health exceedence areas were to be backfilled with on-post borrow material and revegetated. Unexploded ordnance was to be transported off-site for detonation or other demilitarization process, unless the unexploded ordnance was unstable and must be detonated on-site.

The remedy for structures included the demolition of two of the three structures identified in the SDA. The selected groundwater remedy consisted of continued operation of the groundwater treatment systems, including the North Boundary Containment System to treat the groundwater plume in the northern portion of the SDA and the Northwest Boundary Containment System to treat the groundwater plume originating in the southern portion of the SDA. Lake levels were to be maintained to prevent the groundwater plume from entering the South Lakes, including Lake Mary. Additionally, wells which had the potential to provide a cross-contamination pathway from the contaminated, upper groundwater aquifer to the deeper, confined aquifer were to be closed. The ROD also required continued use restrictions for the property.

*Community Involvement*

Since 1988, each of the parties involved with the Arsenal cleanup has made extensive efforts to ensure that the public is kept informed on all aspects of the cleanup program. More than 100 fact sheets about topics ranging from historical information to site remediation have been developed and made available to the public. Following the release and distribution of the draft Detailed Analysis of Alternatives report (a second phase of the FS), the Army held an open house for about 1,000 community members. The open house provided opportunity for individual discussion and understanding of the various technologies being evaluated for cleanup of the RMA/NPL Site.

The Proposed Plan for the On-Post OU was released for public review on October 16, 1995. On November 18, 1995, a public meeting was held, attended by approximately 50 members of the public, to obtain public comment of the Proposed Plan. As a result of requests at this meeting, the period for submitting written comments on the plan was extended one month, concluding on January 19, 1996. Minimal comments were received on the alternatives presented for the projects in the SDA of the On-Post OU. Specifically, the comments requested that the health and safety of nearby communities be protected from air emissions during excavation and demolition activities, that additional treatment capabilities or modification of the existing water treatment systems be considered, and that potential dioxin contamination of the entire RMA/NPL Site be evaluated.

The design for the Miscellaneous Southern Tier Soils, Miscellaneous RMA Structure Demolition, Phase I, and Confined Flow System Well Closure projects were provided to the public for a thirty calendar day review and comment period at both the 30 percent and 95 percent design completion stages (six separate public comment periods). Each design was also presented at the monthly meeting of the RMA Restoration Advisory Board, composed of community stakeholders, regulatory agencies, the Army, Shell Oil Company, and USFWS. No comments regarding the excavation/demolition approach or the proposed health and safety controls for each project were received.

Upon completion of the thirty calendar day public comment period for this NOIDp, EPA Region 8 in consultation with the State and the Army, will evaluate each comment and any significant new data received before issuing a final decision concerning the proposed partial deletion.

*Current Status*

The Miscellaneous Southern Tier Soil project, completed in 2000, remediated eight areas including one partially located in the SDA. A total of 1,054 bank cubic yards (bcy) of soil presenting a risk to human health was disposed in the hazardous waste landfill. Another 134 bcy of soil presenting a risk to biota was disposed in the Basin A consolidation area. The Miscellaneous Structures Demolition and Removal Project Design, Phase I required the demolition of the structures and foundations; removal and disposal of the structures and foundations, substations, debris piles, roads and parking areas; removal and disposal or recycling of underground storage tanks, structural steel and other metal components; backfilling and grading; and revegetation of the excavated areas. During the design process, the two structures in the SDA slated for demolition were determined to have been previously demolished.

The North and Northwest Boundary Containment Systems will continue to operate long-term to treat the groundwater below the SDA which continues to have contaminants above regulatory standards. Monitoring of the groundwater aquifer for the North and Northwest Boundary Containment Systems has been incorporated into the sitewide monitoring program, as required by the ROD.

The Confined Flow System Well Closure project was completed in 2000. A total of 51 wells, one in the SDA, which extended into the deeper, confined flow aquifer were closed. Closure was accomplished by overdrilling the well casing and installing a grout plug. An additional 32 monitoring wells within the SDA are part of the long-term, site-wide monitoring plan. Four wells located within a 100-foot strip of land in the northern part of the SDA to be transferred to local government will be closed. Substitute wells will be used to monitor inside the new RMA boundary.

In 2001, an evaluation of existing water quality data below Lake Mary identified naturally occurring conditions that have prevented the South Plants contaminated groundwater plume from entering the lake. Therefore, there is no need to artificially maintain the water level in Lake Mary. This minor change to the ROD was documented in the Lake Mary Fact Sheet (2003).

Use of the groundwater below the SDA and surface water for potable drinking purposes is prohibited by the FFA, Public Law 102–402, and the ROD; and will continue to be prohibited even after the SDA is transferred to the U.S. Department of Interior or units of local government. Additional prohibitions imposed by the FFA, Public Law 102–402, and the ROD include the use of the SDA for residential, industrial, and agricultural purposes, and for hunting or fishing for consumptive purposes.

The Army is responsible for ongoing monitoring and maintenance associated with groundwater wells located on land to be transferred to the Department of Interior within the SPA. The conduct of long-term groundwater monitoring required by the ROD is delineated in the Final Interim Rocky Mountain Arsenal Institutional Control Plan.

*Post-ROD Investigations*

In addition to the 2001 evaluation for Lake Mary, four studies have been conducted since the signing of the ROD on June 11, 1996, that are relevant to the deletion of the SDA. The Summary and Evaluation of Potential Ordnance/Explosives and Recovered Chemical Warfare Materiel Hazards at the Rocky Mountain Arsenal (2002) was conducted in response to the unexpected discovery of six M139 bomblets as part of the

Miscellaneous Structure Demolition and Removal, Phase I project in the Section 36 Boneyard (central portion of the RMA/NPL Site). Using state-of-the-art computer imaging, mapping technology, and software capability which had not existed previously, a comprehensive RMA-wide evaluation for the potential presence of ordnance and explosives as well as recovered chemical warfare materiel hazards was completed. The evaluation identified six additional areas for remedial action (none in the SDA) and concluded that the future discovery of additional sites with ordnance/explosives or recovered chemical warfare materiel hazards is highly unlikely.

In 2001, EPA conducted a four-part Denver Front Range Dioxin Study which determined that the concentration of dioxins at most of the RMA/NPL Site, including the SDA, is not statistically different from values observed in open space and agricultural areas within the Denver Front Range area. Therefore there is no significant health risk from dioxin in soil to future Refuge workers, volunteers, or visitors.

As required by the ROD, a Terrestrial Residual Ecological Risk Assessment was completed in 2002. This report concluded that no significant excess terrestrial residual risks will remain after the ROD-required cleanup actions for soil, including additional areas of excavation and tilling identified as part of remedial design refinement as required by the ROD, are completed. In addition, an aquatic residual risk assessment was conducted for the South Lakes, including Lake Mary. This report estimated risks for the great blue heron, shorebird, and waterbird and concluded that no remediation of lake sediments is required to protect aquatic receptors. Long-term terrestrial and aquatic biomonitoring will be conducted as part of the USFWS Biomonitoring Program.

Based on the extensive investigations and risk assessment performed for the SDA of the RMA/NPL Site, there are no further response actions planned or scheduled for this area. Currently, no hazardous substances remain at the SDA above health-based levels with respect to anticipated uses of and access to the site, which are limited under the FFA, Public Law 102–402, and the ROD. Because the SDA is subject to these restrictions on land and water use, it will be included in the RMA-wide five-year reviews. There are no operation and maintenance requirements for the remedies implemented at the SDA. All completion requirements for the SDA of the On-Post OU have been achieved as outlined in OSWER Directive 9320.2–09A–P.

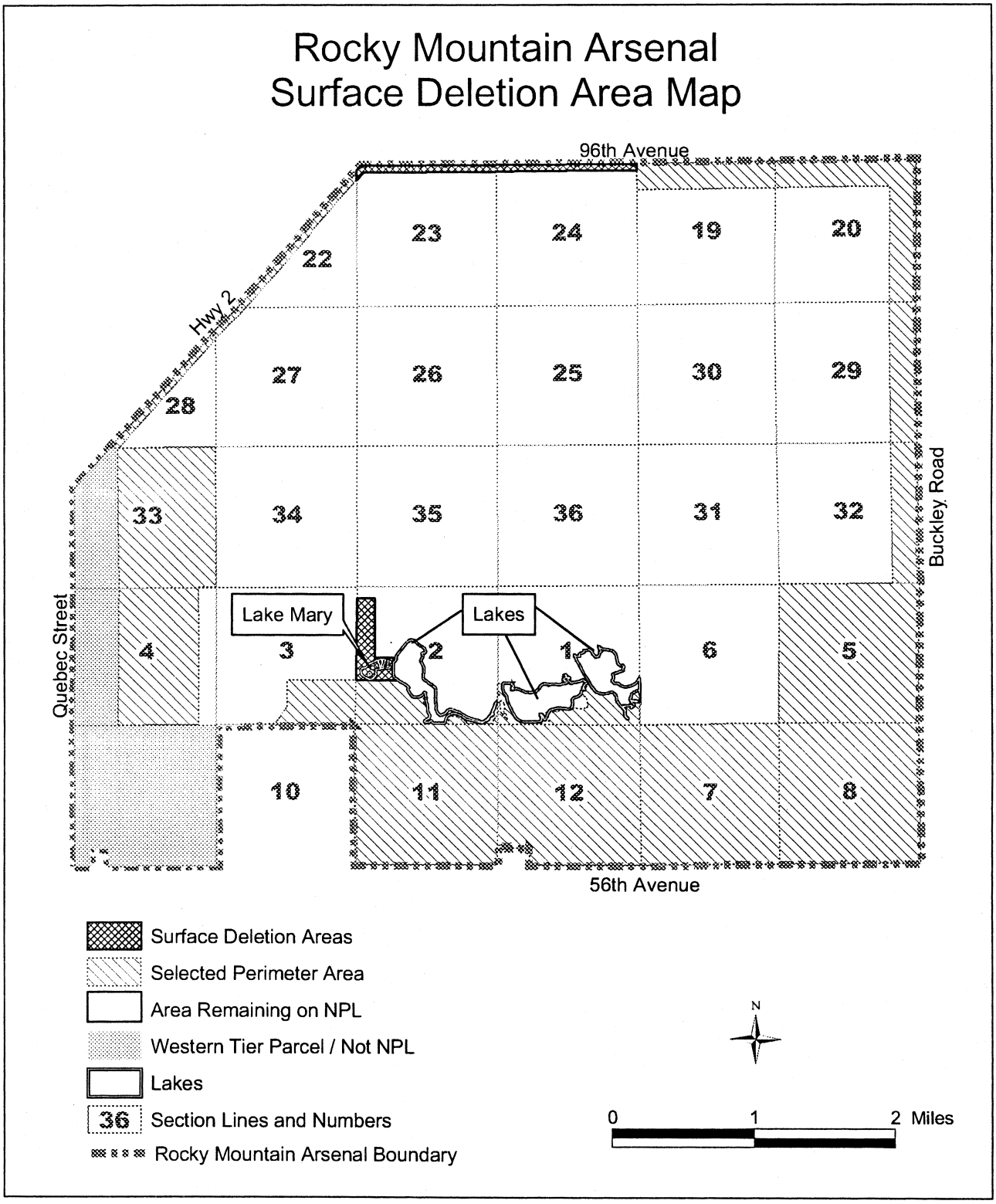
EPA, with concurrence from the State of Colorado, has determined that all appropriate CERCLA response actions have been completed within the SDA of the RMA/NPL Site to protect public health and the environment and that no further response action by responsible parties is required. Therefore, EPA proposes to delete the SDA of the On-Post OU of the RMA/NPL Site from the NPL.

Dated: July 16, 2003.

**Kerrigan G. Clough,**

*Acting Regional Administrator, Region 8.*

BILLING CODE 6560–50–P




[FR Doc. 03–18740 Filed 7–25–03; 8:45 am]
BILLING CODE 6560–C

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL–7535–8]**

## National Oil and Hazardous Substances Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Gurley Pit Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Gurley Pit Superfund Site (Site) from the National Priorities List (NPL) and requests public comments on this proposed deletion. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA and the Arkansas Department of Environmental Quality (ADEQ) have determined that the remedial actions for the Site have been successfully executed, that all appropriate Fund-financed responses under CERCLA have been implemented, and that no further response action by responsible parties is appropriate.

**DATES:** Written public comments concerning this proposed deletion must be received by EPA by August 27, 2003.

**ADDRESSES:** Comments may be mailed to: Mr. Donn R. Walters, Community Involvement Coordinator (6SF–P), U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6483 or 1–800–533–3508.

Comprehensive information on this Site has been compiled in a public docket which is available for viewing at the Site information repositories:

U.S. EPA Region 6 Library (6MD–II), 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424 or 665–6427; Hours of Operation: 7:30 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

Arkansas Department of Environmental Quality, Attn: Mr. Kim Siew, 8001 National Drive, Little Rock, Arkansas 72219, (501) 682–0855; Hours of Operation: 8 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest R. Franke, P.E., Remedial Project Manager (6SF–AP), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8521 or 1–800–533–3508.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis For Intended Site Deletion

### I. Introduction

The U. S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Gurley Pit Superfund Site (Site), Edmondson, Crittenden County, Arkansas, from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). The EPA and the Arkansas Department of Environmental Quality (ADEQ) have determined that the remedial actions for the Gurley Pit Site have been successfully completed. Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if future conditions at the deleted site warrant such action.

The EPA will accept comments on the proposal to delete this Site for thirty (30) days after the publication of this document in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Site and explains how the Site meets the deletion criteria.

### II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with NCP § 300.425(e)(1), sites may be deleted from or recategorized on the NPL where no further response is appropriate. In determining whether to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future site conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the deleted site shall be restored to the NPL without application of the Hazard Ranking System.

The NPL is designed primarily for information purposes and to assist EPA management. Deletion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations.

### III. Deletion Procedures

The following procedures were used for the proposed deletion of this Site:

(1) All appropriate response actions for the Site under CERCLA have been implemented, and no further action by EPA is appropriate.

(2) The EPA Region 6 has recommended deletion and has prepared the relevant documents.

(3) The State of Arkansas, Arkansas Department of Environmental Quality (ADEQ), has concurred by letter dated October 11, 1999, with the proposed deletion.

(4) Concurrently with this Notice of Intent to Delete, a notice is being published in a local newspaper and is being distributed to appropriate federal, state, and local officials and other interested parties. The local notice announces the 30-day public comment period and the availability of this Notice of Intent to Delete for review.

(5) The EPA has made all relevant documents available in the Site information repositories.

The EPA will consider comments received during the 30-day public comment period before making a final decision concerning the proposed deletion. If necessary, EPA will prepare a Responsiveness Summary to address concerns raised by the comments received during the public comment period. EPA responds to each significant comment and any significant new data submitted during a public comment period. If it is necessary to prepare a Responsiveness Summary, it will be made available to the public at the information repositories, and members of the public may contact EPA Region

6 to obtain a copy of the Responsiveness Summary, when available.

Deletion of a site from the NPL occurs when the Regional Administrator of an EPA region publishes a final notice of deletion in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice.

**IV. Basis for Intended Site Deletion**

The following summary provides EPA's rationale for the proposal to delete the Gurley Pit Superfund Site from the NPL.

*Site History and Background*

The Gurley Pit Site is located 1.2 miles north of the community of Edmondson, Arkansas, which has a population of 286 residents. It is surrounded on one side by a small residential community and on three sides by farmland. The Site is in Crittenden County, northwest of the intersection of County Road 14, County Road 175, and State Highway 131. The facility is situated in the flood plain of Fifteen Mile Bayou, which is approximately 400 feet south of the Site, and has five residences within a half-mile circular radius.

There are three major ground water aquifers within Crittenden County, which are found at depths of 40 to 200 feet, 300 to 1125 feet, and 1400 to 1700 feet. The deepest aquifer is used for all municipal wells. The middle aquifer is comparatively undeveloped, and the shallow aquifer is used for domestic wells. Due to the water quality, most of the domestic wells found in the shallow aquifer are used for agricultural irrigation purposes. The residences surrounding the Gurley Pit Site obtain their drinking water from the Midway Water Association well located in the deep (1,585 feet) aquifer, which is 2.2 miles southeast of the Site.

The Site originally consisted of one large pit which was excavated for the clay material found in this area. Gurley Refining Co., Inc., subsequently leased the property in 1970 from Robert Caldwell for use as a disposal area. The Site pit was divided into three cells for disposal of sludges from the refining of used oil, with major contaminants including lead, barium, zinc, and polychlorinated biphenyls (PCBs). Waste disposal operations were permitted under specified conditions by the ADPC&E, now known as ADEQ, from 1970 until 1975, when Gurley Refining Co., Inc., notified the State that disposal at the Site had stopped.

There were two releases from the pit in 1978 and 1979 requiring response actions by EPA. It is estimated that as much as 500,000 gallons of oil were released during the second event. The Site was proposed for inclusion on the NPL in December 1982 and was listed in August 1983. Several attempts were made by EPA to get the potentially responsible parties (PRPs) to conduct the Remedial Investigation, Feasibility Study, Remedial Design, and Remedial Action. However, the PRPs failed to take any action, and Superfund monies were used to perform the needed actions. In 1992, the United States was awarded a judgment against Mr. William Gurley and Mr. Larry Gurley for past response costs associated with the Site and a declaratory judgment for all future costs. The United States is continuing efforts to recover all Site response costs.

*Response Actions*

After reviewing the results of the Remedial Investigations and Feasibility Studies, EPA issued two decision documents for the Site. The project was divided into source control and ground water operable units. The Enforcement Decision Document, which was signed October 6, 1986, addressed source control and included the following major components:

- Solidification of contaminated sludge, sediments, and soil, and placement of the solidified material in a Resource Conservation and Recovery Act (RCRA) compliant vault located in the north cell, and
- Placement of appropriate monitoring wells, and long-term operation and maintenance (O&M) of the RCRA vault and the monitoring wells.

The ground water operable unit investigation culminated in a Record of Decision (ROD) dated September 26, 1988, and concluded that no further action was necessary provided the source control measures in the Enforcement Decision Document were implemented.

During the Remedial Design of the source control operable unit, it was determined that an insignificant change to the Enforcement Decision Document was desirable from a cost and construction standpoint. The location of the RCRA vault was moved from the north cell toward the south; this was more cost effective because the north cell had approximately 85 percent of the contaminated materials. Using the north cell as a temporary holding cell for all the contaminated material during construction reduced the volume of contaminated material which had to be handled prior to construction of the RCRA vault. This saved EPA and ADEQ the costs of unnecessary handling and reduced the potential for spillage during handling operations. In addition, this approach allowed EPA to address concerns of ADEQ about the overall height of the RCRA vault by allowing the vault to be spread out over a larger surface area.

In 1992, the EPA began implementation of the Remedial Action pursuant to a Superfund State Contract with ADEQ. EPA Region 6 determined during the Remedial Design phase that this Site represented a potential opportunity for implementation of an affirmative action approach wherein a woman-owned or minority business could conduct the work. Through the direction of EPA, the U.S. Army Corps of Engineers (USACE) entered into negotiations with the Small Business Administration, and a contract was awarded to a minority business, Mobley Contractors, Inc., on July 31, 1992. The Notice to Proceed was issued on September 9, 1992. Mobilization was on October 26, 1992, and full-scale construction commenced on November 13, 1992.

Remedial construction activities were conducted as planned, and no additional areas of contamination were identified. EPA, ADEQ, and USACE conducted a pre-final inspection of the construction at the Site on August 12, 1994, and conducted a final inspection on August 31, 1994. A September 12, 1994, letter from EPA to USACE certified that the Remedial Action construction activities were performed according to the Remedial Design, with only minor modifications.

The Enforcement Decision Document and the ROD also called for monitoring of the ground water; leachate sampling and analysis and removal; and maintenance of the sumps and the perimeter fencing. Six new monitoring wells (MW–A through MW–F) were installed and developed on-site during the Remedial Action, and two existing off-site monitoring wells (MW–30 & MW–31) also were monitored in each of the sampling events. The source control Remedial Action has protected the ground water and human health through containment of the source. Ground water monitoring data for the Site indicates that contaminants from the pit have not migrated through the subsurface into the ground water, supporting EPA's decision not to conduct any separate remediation of the ground water.

After the construction of the RCRA vault, the Site entered the operational and functional phase of the Remedial Action. In September 1995, there was a significant volume of liquid in the detection and collection systems. The ADEQ was concerned that this water indicated the liner was damaged during

landfill construction. Measurements were made which indicated that the water was approximately eight feet in depth, but the total volume of water within the cell was unknown. Due to the fact that pumping activity was principally from the secondary leak detection sump and given the existence of water from construction activities, it was decided that the Site could not be considered to be operational and functional.

Operational and functional is defined in NCP § 300.435(f)(2) as follows:

> A remedy becomes ''operational and functional'' either one year after construction is complete, or when the remedy is determined concurrently by EPA and the State to be functioning properly and is performing as designed, whichever is earlier. EPA may grant extensions to the one-year period, as appropriate.

Based on the measurements of water described above, and in accordance with NCP Section 300.435(f)(2), the one-year operational and functional period was extended by the EPA. By means of an interagency agreement with EPA, USACE continued remedial activities at the Site. The USACE secured a contractor and installed a permanent electrical supply box, flow meter, high and low pump limit switches, circuit and wiring modifications for automated water pumping activities, and project signs; USACE also arranged for Site mowing and other related activities. In October of 1995, Halliburton Services was contracted to cut additional slots into the sump pipes using a hydrojet. After the slots were cut, the recharge of the water into the sump pipes increased appreciably.

Pumping operations began May 20, 1996. A contractor, Griffin Electric of West Memphis, Arkansas, installed a control system on one of the pumps in March that would turn the pumps on and off automatically according to the water levels in the sump pipe. A flow totalizer was installed to record the amount of water removed from the landfill. Operational shakedown and verification of system performance were completed on July 11, 1997, and the system ran fully automatically. As of July 29, 1998, the automated system had pumped an additional 16,708 gallons. Pumping by the USACE continued until January 1999, with a decrease in the average pump rate over the course of the USACE-conducted pumping.

The Quality Assurance/Quality Control (QA/QC) program utilized throughout the Remedial Action was sufficient to enable EPA, ADEQ and USACE to determine that the testing results reported were accurate to assure satisfactory completion of the Remedial Action consistent with the Enforcement Decision Document. All previous sampling results from the Remedial Investigation, Feasibility Study, and Remedial Design are documented in the project files and also followed appropriate QA/QC procedures.

Several types of data were collected over the course of the USACE-conducted operational and functional activities, including recharge rates to the sumps, volumetric data, hydraulic characteristics, ground water elevations, and analytical data. Based upon this data, the final engineering report prepared by USACE concluded that the Gurley Pit landfill cell appears to be operational and functional as designed and constructed. The following items support this conclusion:

- Pumping data demonstrates that the collection system is capable of maintaining less than one foot of head above the bottom liner system.
- Recharge rates into the detection and collection sumps continued to decrease throughout the USACE pumping period, refuting the possibility of a major influx of water table flow and/or recurring rainwater into the cell during or between the pumping events.
- The volume of water pumped continued to decrease steadily with each pumping event or work period, further negating concerns of major infiltration of ground water and bearing evidence of minimum rainfall permeability of the cell.
- The comparison of elevation data collected over the course of the USACE work period does not indicate hydraulic communication between the pumping water and the water bearing zone which is being monitored.
- Contaminant concentrations have remained consistently low and uniform in the ground water monitoring events.

Similarities in types of chemical constituents detected in the samples collected by USACE in both the primary and secondary leachate collection systems indicate that the two systems may be in hydraulic communication; a general trend in the data was that the majority of the water pumped was from the secondary containment system. However, while it appears that there may be a leak in the primary liner which allows water to move into the secondary containment system, there has been no evidence of detectable contamination in the tested ground water.

As documented in the Final Close-Out Report, dated July 31, 1998, EPA extensively reviewed applicable regulations and guidance to evaluate the severity of the leakage problem. EPA's review supports the determination that there is not a serious leak of the top or bottom liner systems at the Site and that the Site remedy is fully operational and functional, and this determination is also supported by the results of the second five-year review for the Site, conducted in September 2002. The presence of water in the detection and collection systems apparently resulted from heavy rainfall during construction of the cell, which evidently saturated the sand drainage system in the cell, but did not indicate any problems with the remedy or the integrity of the cell. It also should be noted that landfill covers of this design in similar climate conditions do leak to a limited extent. Moreover, the solidified cell waste serves to further minimize leachate and ensure a low-risk facility at the Site. Continued pumping of leachate from the vault will be required throughout the operation and maintenance (O&M) period to remove construction water and leachate as they accumulate, and continued monitoring of the ground water monitoring wells will also be needed. These activities are detailed in ADEQ's O&M plan for which ADEQ has secured EPA's approval; the final O&M and monitoring plan will be implemented by ADEQ.

CERCLA requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the site. A five-year review was required for this Site because the selected remedy does not allow for unlimited use and unrestricted exposure. The first five-year review was completed on January 9, 1997, and a second five-year review was completed in September 2002. Ground water sampling performed by EPA in 2002 confirmed EPA's determination that the Site remedy is fully operational and functional. Further five-year reviews will be conducted pursuant to OSWER Directive 9355.7–02A, ''Structure and Components of Five Year Reviews,'' and other applicable guidance.

On July 31, 1998, the final Close-Out Report was signed in which EPA, in consultation with ADEQ, concluded that all appropriate response actions required to ensure the protectiveness of human health and the environment at the Gurley Pit Superfund Site had been implemented. Long-term O&M of the ground water wells and the RCRA vault will be under the direction of ADEQ.

All the completion requirements for this Site have been met as specified in OSWER Directive 9320.2–09A, ''Close Out Procedures for National Priorities List Sites.'' Confirmatory sampling conducted during the second five-year review has verified that the ROD and Enforcement Decision Document

objectives have been achieved and that all actions specified have been implemented. Pursuant to the Superfund State Contract between EPA and ADEQ executed in March 1992, ADEQ agreed to assume full responsibility for performing Site O&M activities, and the State subsequently agreed to begin those O&M activities after the sampling performed by EPA in 2002. EPA will be providing oversight of all O&M activities.

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of Arkansas, believes that this criterion for deletion has been met. Accordingly, EPA is proposing deletion of this Site from the NPL.

Dated: June 23, 2003.

**Myron O. Knudson,**

*P.E., Director, Superfund Division (6SF).*

[FR Doc. 03–19006 Filed 7–25–03; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[MB Docket No. 03–151; FCC 03–160]**

## Amendment of the Commission's Rules Regarding AM Directional Antennas

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission issues this document in order to resolve an apparent conflict between §§ 73.62 and 73.1350(d)(2) of the Commission's rules. Both of these rules are invoked when an AM station's directional antenna monitor indications and/or monitoring point field strength measurements exceed the required operating tolerances. Each rule provides for different time periods for AM licensees to take action when their directional antenna operating parameters are found to be out of licensed tolerances. The inconsistent directive leaves AM licensees unclear as to the course of action they must take when they observe excessive monitor measurements. It is important that these rules be clarified because they affect termination of broadcast operation. This document begins a proceeding to harmonize these rules.

**DATES:** Comments are due August 29, 2003 and reply comments are due September 18, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Kosar, Media Bureau at (202) 418–1053 or via Internet at *kkosar@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making (NPRM), MB Docket No. 03–151, adopted July 1, 2003 and released July 7, 2003. The full text of this decision 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, and may be purchased from the Commission's copy 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* or may be viewed via Internet at *http://www.fcc.gov/mb/.*

1. This Notice of Proposed Rule Making (NPRM) proposes to resolve an apparent conflict between §§ 73.62 and 73.1350(d)(2) of the Commission's rules regarding the operation of AM stations with directional antennas. Both of these rules are invoked when an AM broadcast station's directional antenna operating parameters and/or monitoring point field strengths exceed operating tolerances. Section 73.62 of the rules, which specifically governs directional antenna system tolerances, provides that, whenever the operating parameters of a directional antenna cannot be maintained within the tolerances specified in the rule, an AM broadcast station has twenty-four hours within which to identify any excessive monitoring point field strengths followed by three hours to take corrective action. In contrast, § 73.1350(d)(2) of the rules, which addresses transmission system operation, requires that, in the event of any condition of antenna parameters or monitoring points out of tolerance, station operation be terminated within three minutes unless power is reduced sufficiently to eliminate any excess radiation. This inconsistent directive in our rules leaves AM licensees unclear as to the correct course of action they must take when they observe out-of-tolerance indications. Clarity in our rules is especially necessary when the rules may require that broadcast operations terminate within a matter of minutes. In such situations, termination of operations would be disruptive to programming and, in some cases, broadcast listeners may be deprived of information regarding hazardous weather or other emergency conditions. Moreover, broadcast stations may be faced with fines and forfeitures if found not to be in compliance with our rules.

2. The NPRM recognizes that almost all AM broadcast station directional antenna arrays experience some amount of instability. Unfavorable weather conditions or other environmental factors occasionally may affect monitoring systems to such an extent that these systems experience short-term out-of-tolerance operation. Such out-of-tolerance indications during heavy rain, snow or icing, or during abrupt and substantial changes in temperature or humidity, may not warrant immediate corrective action. Regardless of whether out-of-tolerance indications were caused by these conditions, § 73.1350(d)(2) arguably requires that stations shut down or reduce power within three minutes. In contrast, § 73.62 of the rules, which is narrowly aimed at directional antenna tolerances, provides a reasonable period of time for corrective action.

3. The NPRM tentatively concludes that § 73.1350(d)(2) is excessively stringent and was not intended to apply to instances of minor out-of-tolerance directional antenna operating parameters. The NPRM tentatively concludes that both §§ 73.62 and 73.1350 should be revised and restructured to delineate clearly those situations that require 24-hour, three-hour and/or three minute responses by AM licensees, as well as by FM and TV licensees. The NPRM tentatively concludes that a requirement to terminate operation within three minutes should apply only to catastrophic events that are likely to cause significant disruption to the operation of other stations or that pose a threat to life or property. The NPRM tentatively concludes that a requirement to terminate operation within three hours should apply to instances of out-of-tolerance operation which are likely to result in minor interference to other stations. The NPRM seeks comment on these tentative conclusions as well as comment on other ways to resolve the problem presented by these rules.

### I. Procedural Matters

*A. Initial Regulatory Flexibility Analysis*

4. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory

Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth below. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they should have a separate and distinct heading designating them as responses.

*B. Paperwork Reduction Act*

5. This NPRM contains no proposed or modified information collection.

*C. Ex Parte—Permit-But-Disclose Proceedings*

6. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).

*D. Filing of Comments and Reply Comments*

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 29, 2003 and reply comments on or before September 18, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

8. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

9. 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, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

## II. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 14 of the item. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

*A. Need for, and Objectives of, the Proposed Rules Changes*

11. The NPRM seeks comment on ways to remedy the apparent conflict between §§ 73.1350(d)(2) and 73.62 of the Commission's rules. Both rules are invoked when an AM station's directional operating parameters and/or monitoring point field strengths exceed the required operating tolerances. Section 73.62 of the rules provides that an AM broadcast station has 24 hours within which to identify any excessive monitoring point readings followed by three hours to take corrective action. By comparison, § 73.1350(d)(2) of the rules requires that station operation be terminated within three minutes unless power is reduced sufficiently to eliminate any excess radiation. It is important that this apparent conflict in our rules be addressed because these rules affect termination of broadcast operations, which may deprive listeners of necessary information regarding hazardous weather or other emergency conditions. In addition, if broadcasters are found not to be in compliance with these rules, they may face fines or have forfeiture action instituted against them.

*B. Legal Basis*

12. The authority for the action proposed in this NPRM is contained in sections 1, 4(i) and (j), 301, 303, 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 301, 303, and 403.

*C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Changes Will Apply*

13. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1997, there were approximately 87,453 governmental entities in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be approximately 84,098 or fewer.

14. The proposed rule amendments to §§ 73.1350 and 73.62 will primarily apply to certain AM directional radio broadcasting licensees and potential licensees. The proposed amendments to § 73.1350 would also affect FM broadcast stations in the event that any FM broadcast station operates in a manner that poses a threat to life or property or in a manner that is likely to cause significant disruption to the operation of other stations. The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenues of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations are included. Our estimate, therefore likely overstates the number of small businesses that might be affected by the proposed rules.

15.The proposed amendments to § 73.1350 would also affect television stations in the event that any television station operates in a manner that poses a threat to life or property or is likely to significantly disrupt the operation of other stations. The SBA defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimates, therefore, likely overstate the number of small entities that might be affected by the proposed rules because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

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

We do not expect that the proposed rule changes would impose any additional reporting or recordkeeping requirements.

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

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

18. As indicated above, the NPRM seeks comment on how to remedy an apparent conflict in the Commission's rules that affect AM broadcast stations that employ directional antennas. Amendment of one of the rules also may affect FM and television broadcast services. No alternatives to our proposal herein are mentioned because we anticipate no differential impact on smaller entities. However, we welcome comment on modifications of proposals if based on potential differential impact.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Commission's Proposals*

None.

**III. Ordering Clauses**

19. *It is ordered* that, pursuant to sections 1, 4(i) and (j), 301, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 301, 303, and 403, *comment is hereby sought* on the analysis, questions, discussions and statements of issues in the Notice of Proposed Rule Making.

20. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

**List of Subjects in 47 CFR Part 73**

Administrative practice and procedure and radio broadcast services.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.62 is revised to read as follows:

### § 73.62 Directional antenna system operation and tolerances.

(a) Each AM station operating a directional antenna must maintain the relative amplitudes of the antenna currents, as indicated by the antenna monitor, within 5% of the values specified on the instrument of authorization. Directional antenna relative phases must be maintained within 3 degrees of the values specified on the instrument of authorization.

(b) In the event of a failure of system components, improper pattern switching or any other event that results in operation substantially at variance from the radiation pattern specified in the instrument of authorization for the pertinent time of day, operation must be terminated within three minutes unless power can be reduced sufficiently to eliminate any excessive radiation. *See* § 73.1350(e).

(c) In the event of minor variations of directional antenna operating parameters from the tolerances specified in paragraph (a) of this section, the following procedures will apply:

(1) The licensee shall measure and log every monitoring point at least once for each mode of directional operation. Subsequent variations in operating parameters will require the remeasuring and logging of every monitoring point to assure that the authorized monitoring point limits are not being exceeded. The licensee will be permitted 24 hours to accomplish these actions; provided that, the date and time of the failure to maintain proper operating parameters has been recorded in the station log.

(2) Provided each monitoring point is within its specified limit, operation may continue for a period up to 30 days before a request for Special Temporary Authority (STA) must be filed, pursuant to paragraph (c)(4) of this section, to operate with parameters at variance from the provisions of paragraph (a) of this section.

(3) If any monitoring point exceeds its specified limit, the licensee must either terminate operation within three hours or reduce power in accordance with the applicable provisions of § 73.1350(d), in order to eliminate any possibility of interference or excessive radiation in any direction.

(4) If operation pursuant to paragraph (c)(3) of this section is necessary, or before the 30 day period specified in paragraph (c)(2) of this section expires, the licensee must request a Special Temporary Authority (STA) in accordance with § 73.1635 to continue operation with parameters at variance and/or with reduced power along with a statement certifying that all monitoring points will be continuously maintained within their specified limits.

(d) In any other situation in which it might reasonably be anticipated that the operating parameters might vary out of tolerance (such as planned array repairs or adjustment and proofing procedures), the licensee shall, before such activity is undertaken, obtain a Special Temporary Authority (STA) in accordance with § 73.1635 in order to operate with parameters at variance and/or with reduced power as required to maintain all monitoring points within their specified limits.

3. Section 73.1350 is amended by revising paragraphs (b)(2) and (d); by redesignating paragraphs (e) through (h) as paragraphs (f) through (i); and by adding a new paragraph (e) to read as follows:

**§ 73.1350 Transmission system operation.**

* * * * *

(b) * * *

(2) The transmitter control personnel must have the capability to turn the transmitter off at all times. If the personnel are at a remote location, the control system must provide this capability continuously or must include an alternate method of acquiring control that can satisfy the requirement of paragraph (e) of this section that operation be terminated within 3 minutes.

* * * * *

(d) In the event that a broadcast station is operating in a manner that is not in compliance with the applicable technical rules set forth elsewhere in this part or the terms of the station authorization, and the condition is not listed in paragraph (e) or (f) of this section, broadcast operation must be terminated within three hours unless antenna input power is reduced sufficiently to eliminate any excess radiation power. Examples of conditions that require termination of operation within three hours include excessive power, excessive modulation or the emission of spurious signals that do not result in harmful interference.

(e) If a broadcast station is operating in a manner that poses a threat to life or property or that is likely to significantly disrupt the operation of other stations, immediate corrective action is required. In such cases, operation must be terminated within three minutes unless antenna input power is reduced sufficiently to eliminate any excess radiation. Examples of conditions that require immediate corrective action include the emission of spurious signals that cause harmful interference, any mode of operation not specified by the station license for the pertinent time of day, or operation substantially at variance from the authorized radiation pattern.

* * * * *

[FR Doc. 03–19092 Filed 7–25–03; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 219

### Docket No. FRA 2001–11068, Notice No. 4

**RIN 2130–AB39**

## Application of FRA Alcohol and Drug Rules to Foreign Railroad Foreign-Based Employees Who Perform Train or Dispatching Service in the United States: Completion of Consultations with Canadian and Mexican Governments and Closure of Comment Period

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Proposed rule.

**SUMMARY:** Currently, employees of a foreign railroad (a railroad incorporated outside the United States) whose primary reporting point is outside the United States who enter into the United States to perform train or dispatching service (foreign railroad foreign-based employees or ''FRFB employees'') are subject only to the general conditions, prohibitions, post-accident testing and reasonable suspicion testing requirements in FRA's alcohol and drug regulations (49 CFR part 219). In a December 11, 2001 notice (NPRM) (66 FR 64000), FRA proposed to make FRFB employees, who are presently excepted from the requirements concerning employee assistance programs, random alcohol and drug testing and pre-employment drug testing, fully subject to part 219 requirements.

In this notice, FRA outlines the likely revisions to the NPRM based, in part, on consultations with the Canadian and Mexican Governments. FRA also announces the closure of the comment period on this rule.

**DATES:** *Written Comments:* Written comments must be received by August 27, 2003. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FRA 2001–11068, Notice No. 4] by any of the following methods:

- *Web site*: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone 202–493–6313). For legal issues, Patricia V. Sun, Trial Attorney, Office of the Chief

Counsel, RCC–11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

**SUPPLEMENTARY INFORMATION:**

## Public Participation

FRA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written documents.

We will file in the docket all written comments that we receive, as well as a report summarizing each substantive public contact with FRA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it's possible to do so without incurring expense or delay. We may change this proposal in light of the comments that we receive.

If you want FRA to acknowledge receipt of your comments on the proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

## Background

As stated above, in December 2001, FRA proposed to amend part 219 by making FRFB employees subject to the employee assistance program, random alcohol and drug testing, and pre-employment drug testing requirements. In May 2002, two months after FRA had held a public hearing and closed the comment period, the Canadian Embassy delivered a diplomatic note objecting to the proposed rule, while in July 2002 the Canadian Human Rights Commission issued a long-awaited policy (Policy) on the alcohol and drug testing of workers. In response to these developments, FRA published a notice (67 FR 75996, December 10, 2002) which asked for comment on the Policy and reopened the comment period until further notice to allow for additional consultations with Canada and Mexico. Since then, FRA has twice had the opportunity to discuss these issues: first, at the annual Transport Canada/FRA meeting in March 2003 and, more recently, at the Land Transportation Standards Subcommittee meeting in May 2003. At the latter meeting FRA also discussed the NPRM with representatives of the Mexican Government; the Mexican representatives indicated that Mexico would be issuing regulations in the near future that would be compatible with FRA's rules.

Based upon the considerations discussed among FRA and the representatives of the Canadian and Mexican governments, as well as other comments to the docket, FRA intends to issue a final rule that would revise the NPRM as outlined below. FRA believes that the final rule will reasonably address the concerns which Canadian and Mexican representatives expressed during the consultation process. FRA will, of course, carefully consider any comments that are filed when issuing the final rule.

1. The proposed rule will be made final, but with significant revisions.

2. FRA will include in the final rule an exclusion permitting foreign-based employees of foreign railroads to enter into the United States to perform train or dispatching service for a distance of up to 10 route miles under the present exceptions (which will have the effect of facilitating interchange with U.S. railroads at the majority of current gateways). FRA will work with Transport Canada to confirm the locations and mileage of existing Canadian gateways.

3. FRA will entertain and consider requests for waiver in other circumstances where consistent with railroad safety and in the public interest. Existing crew assignments will remain subject to the current exceptions until waiver requests can be considered on their merits, provided such requests are filed within 120 days of the publication of the final rule.

4. Obligations of foreign railroads with respect to testing may, at the election of the railroad, be conducted on U.S. soil. Any employee testing positive or refusing a test will be subject to removal from service only with respect to service in the U.S. Canadian and Mexican railroads will otherwise be free to handle such employees under applicable law in their home countries.

5. Even where no exception or waiver applies, FRA will except current employees from pre-employment drug testing requirements. Only employees entering train or dispatching service in the U.S. after the effective date of the final rule will be required to be pre-employment tested. (This is consistent with FRA's approach to U.S. workers as the pre-employment drug testing program was initiated.) Again, FRA is indifferent to whether specimens are collected in Canada (for Canadian railroads), Mexico (for Mexican railroads), or the U.S., so long as United States Department of Transportation workplace procedures (49 CFR part 40) are observed and records are maintained as required. Canadian and Mexican employers remain free to retain any employee testing positive or refusing a test, although these employees may not be used for service in the U.S.

6. The final rule will also allow FRA's Associate Administrator for Safety to recognize a foreign government's program as compatible to that of FRA. To be so recognized, the foreign government program must include the essential elements of part 219, including pre-employment testing and random testing, and adopt testing procedures, criteria and assays equivalent to those used in part 40. Once granted, program recognition remains valid so long as the program retains these elements and foreign-based railroads comply with the program's requirements.

FRA believes that the approach outlined above is the best compromise that can be fashioned to accommodate the concerns of some commenters while continuing to be responsible for control of alcohol and drug use in railroad operations within U.S. borders.

Issued in Washington, DC on July 22, 2003.

**Allan Rutter,**

*Federal Railroad Administrator.*

[FR Doc. 03–19042 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–06–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 600

**[I.D. 072103A]**

## Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the Groundfish Group Associated Fisheries of Maine (Associated Fisheries of Maine), in collaboration with Manomet Center for Conservation Sciences (Manomet). These EFPs would allow up to four vessels to fish for yellowtail flounder in NE multispecies year-round Closed Area II (CA II) during September and October 2003. The purpose of the study is to conduct supplementary sampling in relation to a currently ongoing experimental fishery for yellowtail flounder in CA II, which was approved by the Regional Administrator on September 10, 2002.

**DATES:** Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before August 12, 2003.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Yellowtail EFP Proposal.'' Comments may also be sent via fax to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Draft Environmental Assessment (EA) are available from the NE Regional Office at the same address.

**FOR FURTHER INFORMATION CONTACT:** Allison Ferreira, Fishery Policy Analyst, phone: 978–281–9103, fax: 978–281–9135, email: *allison.ferreira@noaa.gov*

**SUPPLEMENTARY INFORMATION:**

## Background

On September 10, 2002, in response to an EFP application submitted by Manomet and the Associated Fisheries of Maine, the Regional Administrator approved the issuance of 17 EFPs (12 vessels plus five alternate vessels) to conduct an experimental fishery for yellowtail flounder in CA II. The purpose of this experimental fishery is to collect observer-based data to determine whether seasonal access to portions of CA II for the purpose of harvesting Georges Bank (GB) yellowtail flounder is possible without significant bycatch and discard of other regulated NE multispecies, particularly cod and haddock. This information could then be used by the New England Fishery Management Council (Council) and NMFS to determine the feasibility of establishing a seasonal access program that would allow the harvest of GB yellowtail flounder in portions of CA II.

The study period proposed for the initial experimental fishery was July through December 2002. However, because the applicants were required to prepare an EA to assess the impacts of the proposed experimental fishery on the environment, the issuance of EFPs was delayed until September 2002. In order to accommodate the proposed study period, NMFS authorized the July and August 2002 portion of the study to take place during July and August 2003. Due to a change in the proposed study period, Manomet and the Associated Fisheries of Maine submitted an application for six EFPs (four vessels plus two alternate vessels) on June 20, 2003, to conduct additional sampling during September and October 2003. The objective of this additional sampling is to compare the survey data collected in September and October 2002 to the data collected in September and October 2003, in order to assess the similarity of data between the two calendar years. In addition, harsh weather conditions during October 2002 resulted in incomplete sampling of the survey area. Therefore, additional sampling of the survey area is being requested for October 2003.

The proposed supplemental experimental fishery would utilize up to four commercial vessels to complete four trips of 5 days in duration, for a total of 20 days-at-sea (DAS). Two trips would take place concurrently during September 2003, and two concurrent trips would take place during October 2003. The participating vessels would be exempt from NE multispecies DAS requirements, but would be prohibited from fishing in areas outside CA II during an experimental fishing trip.

The proposed supplemental experimental fishery would occur in the same area and follow the same scientific protocols established for the previously approved yellowtail experimental fishery in CA II (previously approved study). Therefore, the study would occur in the area south of 41°30′ N. lat. within CA II, participating vessels would use standard otter trawl gear having a 6.5–inch (16.5–cm) square mesh codend, and participating vessels would follow a pre-determined sampling design. In addition, the proposed supplemental experimental fishery would have 100–percent observer coverage provided by Manomet staff.

Participating vessels would be bound by the same permit conditions as the previously approved study. Bycatch of cod and haddock would be limited to 2,000 lb (907 kg) and 3,000 lb (1,361 kg) per DAS, respectively, and all fish landed would be required to meet minimum size requirements. In addition, due to concerns over skate bycatch, the applicants have agreed to identify and record all skates caught, by species, and return all skates caught to the sea immediately in order to minimize mortality. No skates would be retained for landing or sale.

The previously approved study is constrained to a yellowtail flounder total allowable catch (TAC) of 220 mt. This overall TAC would also apply to the proposed supplemental experimental fishery. According to the applicants and the preliminary data they have provided, only 17.1 mt of yellowtail flounder was harvested during the first 4 months of the previously approved study. Furthermore, the EFPs would contain a provision that the Regional Administrator has the authority to terminate the experimental fishery if the yellowtail flounder TAC of 220 mt is exceeded, or if excessive bycatch of cod, haddock and other species of concern (including, but not limited to, skates) occurs during any given trip.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the proposed activities to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to six vessels (four vessels plus two alternate vessels), exempting them from the DAS requirements and CA II restrictions of the FMP. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the

opportunity to comment on applications for proposed EFPs.

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

Dated: July 22, 2003.

**Bruce C. Morehead,**

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

[FR Doc. 03–19147 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 68, No. 144

Monday, July 28, 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

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request; Food Stamp Program Identification Cards

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection associated with Food Stamp Program Identification Cards.

**DATES:** Written comments must be submitted on or before September 26, 2003.

**ADDRESSES:** Send comments and requests for copies of this information collection to: Lizbeth Silbermann, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Lizbeth Silbermann, Chief, Electronic Benefits Transfer Branch, (703) 305–2517.

**SUPPLEMENTARY INFORMATION:**

*Title:* Food Stamp Program Identification Cards.

*OMB Number:* 0584–0124.

*Form Number:* None.

*Expiration Date:* 11/30/2003.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Section 11(e)(15) of the Food Stamp Act (the Act) (7 U.S.C. 2020 (e)(15)) requires State agencies to issue photographic identification to recipients in certain project areas if the Secretary and the Department's Inspector General find it useful and cost effective for program integrity. The Food Stamp Program (FSP) regulations at 7 CFR 274.10(a) require State agencies to issue an identification (ID) card to recipients as a proof of eligibility. FSP regulations at 7 CFR 274.10(b) require State agencies to issue photo ID cards in project areas with 100,000 or more recipients unless the area uses direct mail issuance or has implemented an Electronic Benefits Transfer (EBT) system. Because of EBT and direct mail issuance, there are no remaining areas where photo ID cards are now needed; therefore, this category of cards has been eliminated. Recipients in areas without EBT or direct mail issuance, however, must present ID cards to coupon issuers. Also, retailers that have been authorized to accept FSP benefits may ask recipients to show their ID when making a purchase.

The proposed revision to the information collection burden associated with FSP identification cards reflects a reduction because of the legislated requirement for State agencies to change from coupon to EBT systems in Section 7(i) of the Act (7 U.S.C. 2016 (i)). With EBT systems, the need to prove identity or eligibility with a paper document becomes obsolete. With EBT systems, benefits are not physically distributed but are posted electronically to accounts created for recipients by State agencies through their EBT vendors. As a result, coupon issuance agents are eliminated. The State agencies provide each recipient with a plastic card and Personal Identification Number (PIN) that serve to identify the recipient. Recipients are instructed to protect their card and PIN and as long as the PIN is secure, no one other than the recipient is able to use their benefits. The cards and PINs are used at authorized retailers who are guaranteed payment for the electronic purchases within two banking days. If EBT vouchers are necessary as a result of telecommunication or systems disruptions, retailers are guaranteed payment as long as they follow the procedures issued by the State agency. As a result, retailers are not concerned with other forms of ID.

*Estimate of Burden:* Currently, over 90 per cent of FSP benefits are delivered via EBT. Only one State agency (Guam) remains without EBT although three (California, Delaware, and Iowa) have not completed statewide implementation. Based on the schedules for these State agencies, there will be no coupon issuance by January 2005.

This information collection burden affects State agencies where there are still coupon issuance systems. In those areas each newly certified recipient must be issued an ID card and replacements must be provided if they are lost. There are only 609,973 recipient households being issued coupons as of March 2003. We estimate 38,034 new recipients will still be issued coupons and therefore ID cards annually. We also estimate that about 6,100 of the remaining recipients using coupons will lose their ID cards which the State agencies will have to replace. Therefore, the total State agency respondent estimate is 44,134 for the ID card burden; a reduction of 133,650 respondents from 177,784 respondents.

Although we expect the ID burden to end in January 2005, we will leave the estimate of the burden the same for all three of the renewal periods.

*Affected Public:* State agencies.

*Estimated Number of Respondents:* 44,134.

*Estimated Number of Responses per respondent:* 1.

*Estimated Time per Response:* 1 minute.

*Estimated Total Annual Burden:* 735.6 hours annually.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 03–19080 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF COMMERCE

**[I.D. 072103B]**

## Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration.

*Title*: Reporting Requirements for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

*Form Number(s)*: None.

*OMB Approval Number*: 0648-0292.

*Type of Request*: Regular submission.

*Burden Hours*: 30.

*Number of Respondents*: 200.

*Average Hours Per Response*: 9 minutes.

*Needs and Uses*: The reporting of injury and/or mortalities of marine mammals is mandated under Section 118 of the Marine Mammal Protection Act. This information is required to determine the impact of commercial fishing on marine mammals populations. The information is also used to categorize commercial fisheries: Category I (frequent), Category II (occasional), and Category III (remote chance) taking of a marine mammal. Participants in the first two categories have to be authorized to take marine mammals, while those in Category III are exempt from this requirement. All categories must report injuries or mortalities on a National Marine Fisheries Service form.

*Affected Public*: Business or other for-profit organizations, individuals or households.

*Frequency*: On occasion.

*Respondent's Obligation*: Mandatory.

*OMB Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 17, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–19038 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 35–2003]**

## Foreign-Trade Zone 33—Pittsburgh, PA, Application for Subzone Status, Mitsubishi Electric Power Products, Inc. (Circuit Breakers), Warrendale and Freedom, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, requesting special-purpose subzone status for the circuit breaker manufacturing facilities of Mitsubishi Electric Power Products, Inc. (MEPPI) (a subsidiary of Mitsubishi Electric Corporation, of Japan), located in Warrendale and Freedom, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 16, 2003.

The proposed subzone would be comprised of three separate facilities: *Site 1* (7 acres/76,000 sq. ft., manufacturing plant)—510–512 Keystone Drive, Warrendale (Allegheny County), Pennsylvania; *Site 2* (12 acres/50,000 sq. ft., manufacturing plant)—530 Keystone Drive, Warrendale, about 20 miles northwest of Pittsburgh; and, *Site 3* (5 acres/14,000 sq. ft., leased warehouse)—Buildings 3 and 3A, Tri-County Commerce Park, 2509 Lovi Road, Freedom (Beaver County), Pennsylvania, some 5 miles west of Site 1. The facilities (190 employees) are used to assemble and repair high-voltage circuit breakers (HTSUS Heading 8535) for export and the U.S. market. Up to 600 units can be produced annually. The circuit breakers (1,000+ volts) are assembled from domestic and foreign-origin components. Components purchased from abroad (representing approximately 50% of finished circuit breaker value) include: mechanisms, moving and stationary interrupters, trip coils, DC motors, auxiliary switches, porcelain and composite insulators, and tanks (duty rate range: free—4.0%). FTZ procedures would exempt MEPPI from Customs duty payments on the foreign materials used in export production. On its domestic sales and exports to NAFTA markets, the company would be able to choose the duty rate that applies to finished circuit breakers (2.0%) for the foreign-sourced components noted above. The application indicates that subzone status would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

*1. Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

*2. Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is September 26, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 14, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and at the U.S. Department of Commerce Export Assistance Center, Suite 2002, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Dated: July 16, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 03–19142 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 36–2003]**

### Foreign-Trade Zone 234—Gregg County, TX, Application for Subzone Status, Eubank Manufacturing Enterprises, Inc. (Air Conditioning and Heating Equipment), Longview, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Gregg County, Texas, grantee of FTZ 234, requesting special-purpose subzone status for the air conditioning and heating equipment manufacturing plant of Eubank Manufacturing Enterprises, Inc. (Eubank) (a subsidiary of Fedders Corporation), located in Longview, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 21, 2003.

The Eubank plant (9 acres/140,000 sq.ft.) is located adjacent to Interstate Highway 20 and FM2011 in Longview (Gregg County), Texas. The facility (140 employees) is used to produce air conditioning units (window/wall, unitary, condensing) and components (A-coils), air handlers, and furnaces for export and the U.S. market. The finished products are manufactured from domestic and foreign-origin components. Components that are, or may be, purchased from abroad (representing approximately 25% of finished product value) include: gases classified under HTSUS heading 2903—saturated/unsaturated chlorinated derivatives of acyclic hydrocarbons; fluorinated, brominated or iodinated derivatives of acyclic hydrocarbons; halogenated derivatives of cyclanic, cyclenic or cycloterpenic hydrocarbons; halogenated derivatives of aromatic hydrocarbons; polystyrene, styrene acrylonitrile, ABS and MBS copolymers, plastic gaskets/washer/seals/o-rings, v-belts and fasteners, articles of hard rubber, printed labels, glass fiber yarn (Category 201; must be admitted under privileged foreign status—19 CFR 146.41), glass fiber fabric, steel cloth/netting/fencing/bands, fasteners, radiators, hot-air distributors, copper bars/rods/profiles/tubes/pipes/fittings, aluminum bars/rods/profiles/plates/sheets/strips/foil, compressors, pumps, fans, hoods, furnace burners, filters, valves (check, safety relief, control, regulator), electric motors, transformers, conductors, rectifiers, power supplies, capacitors, switches, terminals, connectors, switchboards, circuit breakers, contractors, wire, thermostats, regulators, and controllers (duty rate range: free—7.4%)

FTZ procedures would exempt Eubank from Customs duty payments on the foreign materials used in export production. On its domestic sales and exports to NAFTA markets, the company would be able to choose the duty rate that applies to the finished air conditioning and heating equipment and components (free, 1.4%) for the foreign-sourced inputs noted above. Foreign status merchandise and domestic merchandise destined for export would be exempt from certain local inventory taxes. Eubank would be able to defer Customs duty payments on foreign-origin finished products that would be admitted to the proposed subzone for U.S. distribution. Duties would be deferred or reduced on foreign production equipment admitted to the proposed subzone until which time it becomes operational. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

*1. Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

*2. Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is September 26, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 14, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and at the U.S. Department of Commerce Export Assistance Center, Business Education Building 119H, One University Place, Shreveport, LA 71115–2399.

Dated: July 21, 2003.

**Pierre V. Duy,**

*Acting Executive Secretary.*

[FR Doc. 03–19138 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Sensors and Instrumentation Technical Advisory Committee; Notice of Open Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on August 12, 2003, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

**Agenda**

1. Introductions and opening remarks by the Chairman.
2. Presentation of papers and comments by the public.
3. Update on Bureau of Industry and Security initiatives.
4. Presentation on Special Comprehensive Licenses.
5. Update on the Wassenaar Arrangement.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS, MS: 3876, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: July 22, 2003.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 03–19034 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–JT–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-427–098]**

### Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to a request from a domestic interested party, the Department of Commerce is conducting an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France for the period January 1, 2002, through December 31, 2002.

We have preliminarily determined a dumping margin in this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Bureau of Customs and Border Protection to assess antidumping duties on subject merchandise manufactured or exported by Rhodia HPCII.

We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** July 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Susan Lehman or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–0180 or 202–482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 2, 2003, the Department of Commerce (the Department) published a notice of ''Opportunity to Request Administrative Review'' (68 FR 80) with respect to the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. The petitioner, PQ Corporation, requested a review of Rhodia HPCII (Rhodia) on January 30, 2003. In response to PQ Corporation's request, the Department published a notice of initiation of an administrative review on February 27, 2003 (68 FR 9048).

### Scope of Order

Imports covered by the review are shipments of ASM, a crystallized silicate which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under *Harmonized Tariff Schedules* (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

### Period of Review

The period of review is from January 1, 2002, through December 31, 2002.

### Facts Available

Section 776(a)(2) of the Act provides that, if an interested party 1) withholds information that has been requested by the Department, 2) fails to provide such information in a timely matter or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act, 3) significantly impedes a determination under the antidumping statute, or 4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall, subject to section 782(d) of the Act, use facts otherwise available in determining the dumping margin.

The Department sent Rhodia a questionnaire on March 3, 2003, with a deadline of April 9, 2003, for providing information necessary to conduct a review of any shipments that the firm may have made to the United States during the period of review. Rhodia did not respond to our original questionnaire. We sent a follow-up letter to the company on April 24, 2003, but Rhodia did not respond. Because Rhodia has withheld information we requested and has, in fact, made no effort to participate in this proceeding, we must, pursuant to sections 776(a)(2)(A) and (D) of the Act, use facts otherwise available to determine its dumping margin.

Based on the lack of any response from Rhodia, we find that the company has failed to cooperate by not acting to the best of its ability to comply with a request for information. Therefore, pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of Rhodia in selecting from among the facts otherwise available. This section also provides that an adverse inference may include reliance on information derived from the petition, the final determination in the investigation segment of the proceeding, a previous review under section 751 of the Act or a determination under section 753 of the Act, or any other information placed on the record. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate that if it had cooperated fully.'' SAA at 870. In employing adverse inferences, the Department is instructed to consider ''the extent to which a party may benefit from its own lack of cooperation.'' See *Roller Chain Other Than Bicycle, From Japan; Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 69477 (November 10, 1997), and *Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Administrative Review*, 62 FR 53808, 53820–21 (October 16, 1997). Because we find that Rhodia failed to cooperate by not complying with our request for information and in order to ensure that it does not benefit from its lack of cooperation, we are employing an adverse inference in selecting from the facts available.

The Department's practice when selecting an adverse rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales as Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).

In order to ensure that the rate is sufficiently adverse so as to induce Rhodia's cooperation, we have assigned this company as adverse facts available a rate of 60.0 percent, the margin calculated in the original less-than-fair-value (LTFV) investigation using information provided by Rhodia (then, Rhone-Poulenc, S.A.) (see *Anhydrous Sodium Metasilicate from France; Final Determination of Sales at Less Than Fair Value*, 45 FR 77498 (November 24, 1980)). This rate is currently applicable to Rhodia.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding, such as that used here, constitutes secondary information. The SAA

provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used here has probative value. SAA at 870. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. In an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstance indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) (where the Department disregarded the highest dumping margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). There is no evidence of circumstances indicating that the margin used as facts available in this review is not appropriate. Therefore, the requirements of section 776(c) of the Act are satisfied.

**Preliminary Results of the Review**

As a result of this review, the Department preliminarily determines that a margin of 60 percent exists for Rhodia for the period January 1, 2002, through December 31, 2002.

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results of this review, the Department shall determine, and the Bureau of Customs and Border Protection (BCBP) shall assess, antidumping duties on all appropriate entries. The rate will be assessed uniformly on all entries of Rhodia merchandise made during the period of review. The Department will issue appraisement instructions for Rhodia merchandise directly to the BCBP.

Furthermore, the following deposit rates will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash-deposit rate for Rhodia will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash-deposit rate shall be 60.0 percent, the ''all others'' rate established in the LTFV investigation (45 FR 77498, November 24, 1980). This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with section 751(a)(1) and section 777(i)(1) of the Act.

Dated: June 26, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03–19143 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A-475–818]**

## Certain Pasta from Italy: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 28, 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)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and the final results within 90 days after the date on which the preliminary results are issued. *See also* 19 CFR § 351.214(i)(1). However, if the Department determines that the case is extraordinarily complicated and that the review cannot be completed within that time period, section 751(a)(2)(B)(iv) of the Act, and 19 CFR § 351.214(i)(2) allow the Department to extend the time limit for the preliminary results up to 300 days from the date of initiation and, for the final results, up to 150 days from the date the preliminary results are issued.

## Background

On March 7, 2003, the Department published a notice of initiation of the new shipper review of the antidumping duty order on certain pasta from Italy, covering the period July 1, 2002 to December 31, 2002. *See Certain Pasta from Italy: Notice of Initiation of New Shipper Antidumping Duty Review*, 68 FR 11044 (March 7, 2003). The preliminary results are currently due no later than September 3, 2003.

## Extension of Preliminary Results of Reviews

We determine that this case is extraordinarily complicated, and that it is not possible to complete the preliminary results of this review within the original time limits. Specifically, on June 24, 2003, the Department initiated a cost investigation and issued instructions to respondents to fill out the Section D questionnaire, specifying that responses would be due on July 25, 2003. To adequately analyze the responses and allow additional time necessary for the issuance and analysis of supplemental sales and cost questionnaires, the Department requires an extension of the time limit for the preliminary results. Therefore, we are extending the time limit for completion of the preliminary results until no later than January 2, 2004. *See* Extension of Time Limit for the Preliminary Results Memorandum from Melissa Skinner, Director of Office VI, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated July 21, 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 90 days after the publication of the notice of preliminary results of this new shipper review.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: July 21, 2003.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 03–19140 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–806]**

## Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review and Notice of Intent To Revoke Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Preliminary results of antidumping duty administrative review, partial rescission of review and notice of intent to revoke order in part.

**SUMMARY:** In response to requests by Elkem Metals Company and Globe Metallurgical (collectively petitioners), and requests by Companhia Brasileira Carbureto de Calcio (CBCC) and Rima Industrial S/A (Rima), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicon metal from Brazil. The period of review (POR) is July 1, 2001, through June 30, 2002.

We preliminarily determine that CBCC did not sell subject merchandise at less than normal value (NV) during the POR. We also intend, preliminarily, to revoke the order, in part, with respect to CBCC, because we find that CBCC has met all of the requirements for revocation, as set forth in 19 CFR 351.222(b). We are rescinding the review with respect to Rima because, since the initiation of this current review, Rima has been revoked from the order in a prior administrative review of this proceeding. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess antidumping duties based on the difference between the export price (EP) or the constructed export price (CEP) and NV. We invite interested parties to comment on the preliminary results.

**EFFECTIVE DATE:** July 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Maisha Cryor at (202) 482–5831 or Ronald Trentham at (202) 482–6320, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

## Background

On July 31, 1991, the Department published in the **Federal Register** the antidumping duty order on silicon metal from Brazil. *See Antidumping Duty Order: Silicon Metal from Brazil* 56 FR 36135 (July 31, 1991). On July 1, 2002, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 2001, through June 30, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 67 FR 44172 (July 1, 2002). On July 15, 2002, CBCC and Rima requested that the Department conduct an administrative review of their sales, and partially revoke the order pursuant to 19 CFR 351.222. On July 31, 2002, petitioners requested that the Department conduct an administrative review of sales made by CBCC and Rima. On August 16, 2002, in anticipation of the current administrative review, the Department issued questionnaires to CBCC and Rima.[1] On August 27, 2002, in accordance with 19 CFR 351.221(c)(1)(i), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002).

On October 15, 2002, the Department received responses to sections A through C of the questionnaire from CBCC and Rima. On December 17, 2002, the order was revoked, in part, with respect to Rima. *See Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part,* 67 FR 77225, 77226 (December 17, 2002) (*2000–2001 Silicon Metal*). On February 10, 2003, the Department informed CBCC that it was required to respond to section D of the Department's questionnaire. On February 24, 2003, the Department received a response to section D of the questionnaire from CBCC.

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

On March 11, 2003, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the deadline for the preliminary results until July 22, 2003. *See Silicon Metal from Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 11519 (March 11, 2003).

The Department issued supplemental questionnaires to CBCC on April 16, 2003, and May 8, 2003, and received responses on May 9, 2003 and May 15, 2003, respectively.

The Department is conducting this review in accordance with section 751 of the Act.

**Scope of Review**

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to the order. Although the HTSUS item numbers are provided for convenience and for customs purposes, the written description remains dispositive.

**Fair Value Comparisons**

During the POR, CBCC reported that it made both EP and CEP sales to the United States. However, in CBCC's October 15, 2002, and May 9, 2003, questionnaire responses, CBCC stated that its U.S. sales to an unaffiliated trading company were ultimately purchased by Dow Corning Corporation, Inc. (Dow), its U.S. affiliate. Nevertheless, we have determined that the record evidence in this POR does not establish that at the time of the sales by CBCC to the unaffiliated trading company, CBCC had or should have had knowledge that this merchandise would ultimately be purchased by Dow. Therefore, for the purposes of these preliminary results, we have continued to treat CBCC's sales to the unaffiliated trading company as EP sales. *See* Section 772(e) Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated July 22, 2003, which is on file in the CRU. To determine whether EP sales of silicon metal by CBCC to the United States were made at less than NV, we compared EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. To determine whether CEP sales of silicon metal by CBCC to the United States were made at less than NV, we compared CEP to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP or CEP transactions, as appropriate.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products produced by CBCC, covered by the description in the *Scope of Review* section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Further, as in a prior segment of this proceeding, we have continued to treat all silicon metal meeting the description of the merchandise under the *Scope of Review* section above (with the exception of slag and contaminated products), as identical products for purposes of model-matching. *See Silicon Metal From Brazil: Preliminary Results, Intent To Revoke in Part, Partial Rescission of Antidumping Duty Administrative Review, and Extension of Time Limits,* 64 FR 43161 (August 9, 1999); *aff'd Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil,* 65 FR 7497 (February 15, 2000). Therefore, where applicable, if there were no contemporaneous sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period, consistent with section 351.405 of the Department's regulations.

**Verification**

As provided in section 782(i) of the Act, we conducted verifications of the information provided by CBCC. We used standard verification procedures including examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed and on file in the Central Records Unit (CRU), Room B099 of the Main Commerce building (CRU—Public File).

**Partial Rescission**

On December 17, 2002, the order was revoked, in part, with respect to Rima. *See 2000–2001 Silicon Metal,* 67 FR at 77226. Consequently, we are rescinding the administrative review with respect to sales made by Rima. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and Singapore: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not To Revoke Order in Part,* 68 FR 35623, 35625 (June 16, 2003).

**Revocation**

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the

subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2); *see also Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta From Italy,* 66 FR 34414, 34420 (June 28, 2001).

On July 15, 2002, CBCC submitted a request, in accordance with 19 CFR 351.222, that the Department partially revoke the order covering silicon metal from Brazil with respect to its sales of subject merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from CBCC that, for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. CBCC also agreed to its immediate reinstatement in this antidumping order, as long as any firm is subject to the order, if the Department concludes that, subsequent to revocation, CBCC sold the subject merchandise at less than NV. We received no comments from petitioners regarding CBCC's request for revocation.

Based on the preliminary results in this review and the final results of the two preceding reviews, CBCC has preliminarily demonstrated three consecutive years of sales at not less than NV. *See 2000–2001 Silicon Metal*, 67 FR 77225, 77226 (December 17, 2002); *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review,* 67 FR 6488, 6489 (February 12, 2002). Further, in determining whether three years of no dumping establish a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part,* 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part,* 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands,* 65 FR 742 (January 6, 2000). This practice has been codified in 19 CFR 351.222(d)(1), which states that, ''before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.'' *See* 19 CFR 351.222(d)(1); *see also* 19 CFR 351.222(e)(1)(ii). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are of an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

With respect to the threshold matter of whether CBCC made sales of subject merchandise to the United States in commercial quantities, we find that CBCC's sales to the United States were made in commercial quantities during each of the past three consecutive years. The quantity of CBCC's shipments of subject merchandise to the United States has remained at a sufficiently high level to be considered as having been made in commercial quantities. Therefore, we can reasonably conclude that the zero and *de minimis* margins calculated for CBCC in each of the last three administrative reviews are reflective of the company's normal commercial experience. *See* Memorandum from Maisha Cryor, Analyst, to File, ''Shipments of Silicon Metal to the United States by CBCC,'' dated July 22, 2003.

CBCC also agreed in writing that it will not sell subject merchandise at less than NV in the future and to the immediate reinstatement of the antidumping order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the partial revocation, CBCC has sold the subject merchandise at less than NV. Thus, in light of the above and pursuant to 19 CFR 351.222, we preliminarily find, for CBCC, that the subject merchandise was sold at not less than NV for a period of at least three consecutive years and that dumping is not likely to resume in the future. Consequently, the continuing imposition of an antidumping duty order is not necessary to offset dumping.

Therefore, if these preliminary results are affirmed in our final results, we intend to revoke the order in part with respect to merchandise produced and exported by CBCC. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, and will instruct the BCBP to refund any cash deposits.

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction, as appropriate. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, the U.S. LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated or affiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs actually existed in the home and U.S. markets for CBCC, we examined whether CBCC's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets.

CBCC reported home market sales through one channel of distribution to three unaffiliated customer categories (direct sales to distributors, original equipment manufacturers and silicon metal producers). CBCC reported both EP and CEP sales in the U.S. market. For EP sales, CBCC reported one customer category and one channel of distribution (direct sales to unaffiliated trading companies). For CEP sales, CBCC

reported one customer category and one channel of distribution (direct sales to original equipment manufacturers). In its response, CBCC stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, CBCC has not requested a LOT adjustment to NV for comparison to its EP and CEP sales.

Because of the similarity of the selling functions involved in the EP and CEP sales, we found there is only one LOT in the U.S. market. Moreover, in analyzing CBCC's selling activities in both the home and U.S. markets, we determined that essentially the same services were provided for both markets. The selling functions in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined that for CBCC, the LOT for all U.S. sales is the same as that in the home market. Consequently, because we find the U.S. and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7) of the Act is warranted for CBCC.

**Export Price**

For CBCC (where appropriate) we used the Department's EP methodology, in accordance with section 772(a) of the Act, because CBCC sold the subject merchandise to unaffiliated purchasers in the United States prior to importation and because the Department's CEP methodology was not otherwise warranted. We made deductions from the starting price for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, foreign inland freight, brokerage and handling, international freight, insurance and U.S. warehousing.

**Constructed Export Price**

In its October 15, 2002, response, CBCC reported sales to its U.S. affiliate, Dow, as CEP sales. CBCC also reported that Dow further manufactured the purchased silicon metal into a multitude of other products, mostly chemicals, and sold these products in the United States. Therefore, CBCC requested that the Department apply section 772(e) of the Act to the further manufactured sales.

Where appropriate, in accordance with section 772(d)(2) of the Act, the Department deducts from CEP the cost of any further manufacture or assembly in the United States, except where the special rule, provided in section 772(e) of the Act, is applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the Department has the discretion to determine the CEP using alternative methods.

The alternative methods for establishing CEP are: (1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person. The Statement of Administrative Action (SAA) notes the following with respect to these alternatives:

> There is no hierarchy between these alternative methods of establishing the export price. If there is not a sufficient quantity of sales under either of these alternatives to provide a reasonable basis for comparison, or if the Department determines that neither of these alternatives is appropriate, it may use any other reasonable method to determine CEP, provided that it supplies the interested parties with a description of the method chosen and an explanation of the basis for its selection. Such a method may be based upon the price paid to the exporter or producer by the affiliated person for the subject merchandise, if the Department determines that such price is appropriate.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for one form of the merchandise sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. *See* 19 CFR 351.402(2). Based on this analysis, and the information on the record, we determined that the estimated value added in the United States by Dow accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. As a consequence, the Department has relied upon an alternative methodology to calculate CBCC's margin for these sales. However, we found that there is not a sufficient quantity of sales to unaffiliated parties to use such sales as an alternative method of establishing export price. Therefore, as the alternative methodology, the Department used the price paid to CBCC by Dow. *See* Section 772(e) Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated July 22, 2003, which is on file in the CRU.

**Normal Value**

*1. Viability*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared CBCC's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Since CBCC's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

*2. COP Analysis*

On November 4, 2002, petitioners filed a timely sales-below-cost allegation with respect to CBCC. In the case of CBCC, petitioners' allegation was based on CBCC's antidumping duty questionnaire responses. Upon review of the allegation, we found that petitioners' methodology provided the Department with a reasonable basis to believe or suspect that sales in the home market had been made at prices below the COP by CBCC. Accordingly, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether CBCC's sales of silicon metal were made at prices below the COP during the POR. *See* Memorandum Regarding the Analysis of Petitioners' Allegation of Sales Below the COP for CBCC, dated February 10, 2003.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated company- and product-specific COPs based on the sum of CBCC's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A expenses, including interest expenses, and packing costs.

We relied on the COP information submitted by CBCC in its questionnaire responses and verified by the Department.

B. Test of Home Market Sales Prices for CBCC

For CBCC, we compared the per-unit adjusted weighted-average COP figures

for the POR to home market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and discounts. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time.

C. Results of COP Test for CBCC

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POR were made at prices below the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that CBCC did not make comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Therefore, we did not exclude any sales from our analysis in accordance with section 773(b)(1) of the Act.

**Price-to-Price Comparisons**

For those comparison products for which there were sales at prices above the COP, we based CBCC's NV on the prices at which the foreign like product was first sold to unaffiliated parties for consumption in Brazil, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act. We based NV on sales at the same LOT as the U.S. transactions. For LOT analysis, please see the *Level of Trade* section above. In accordance with section 773(a)(6) of the Act, we made adjustments to home market price, where appropriate, for inland freight. Where home market prices were reported inclusive of VAT, we deducted the VAT from the gross home market price, consistent with past practice. *See Silicon Metal from Brazil: Preliminary Results of Antidumping Administrative Review and Notice of Intent to Revoke Order in Part*, 67 FR 51539, 51543 (August 8, 2002); *aff'd 2000–2001 Silicon Metal* 67 at 77225.

To account for differences in circumstances of sale between the home market and the United States, where appropriate, we adjusted home market prices by deducting home market direct selling expenses (including credit) and adding an amount for late payment fees earned on home market sales, where appropriate. In order to adjust for differences in packing between the two markets, we deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act.

**Currency Conversions**

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period July 1, 2001, through June 30, 2002.

| Manufacturer/exporter | Weighted-average margin percentage |
|---|---|
| CBCC ..... | 0.00 |

Therefore, we preliminarily revoke the order covering silicon metal from Brazil with respect to sales of subject by CBCC. We are also rescinding the review of Rima as a result of our revocation of the order with respect to Rima in *2000–2001 Silicon Metal.*

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and BCBP shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to BCBP. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we will calculate a per-unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales. Where the assessment rate is above *de minimis*, we will instruct BCBP to assess duties on all entries of subject merchandise by that importer.

Furthermore, if these preliminary results are affirmed in the final results of this administrative review, we will not set a cash deposit requirement for CBCC since it has been revoked from the order. However, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) for all other manufacturers and/or exporters of this merchandise, the cash deposit rate will continue to be 91.06 percent, the ''all others'' rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until

publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 22, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Grant Aldonas, Under Secretary.*

[FR Doc. 03–19139 Filed 7–25–03; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C-580–851]**

### Notice of Amended Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of amended final affirmative countervailing duty determination.

**SUMMARY:** On June 16, 2003, the Department of Commerce issued the *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*. On June 23, 2003, the Department published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122. On June 24, 2003, Hynix Semiconductors, Inc., filed allegations of ministerial errors. On June 30, 2003, the petitioner, Micron Technologies, Inc., filed a response to the allegations. Based on our review of the comments received from all parties regarding the alleged ministerial errors, we have revised the estimated countervailing duty rate for Hynix Semiconductors, Inc., as well as the ''All Others'' rate. The revisions to the estimated countervailing duty rates are listed below in the ''Amended Final Determination'' section.

**EFFECTIVE DATE:** July 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ryan Langan or Jesse Cortes, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone(202) 482–2613 and (202) 482–3986, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Scope of Investigation

The products covered by this investigation are dynamic random access memory semiconductors (''DRAMS'') from the Republic of Korea (''ROK''), whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this investigation additionally includes memory modules containing DRAMS from the ROK. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This investigation also covers future DRAMS module types.

The scope of this investigation additionally includes, but is not limited to, video random access memory and synchronous graphics random access memory, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with the U.S. Bureau of Customs and Border Protection (''Customs'') that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this investigation does not include DRAMS or memory modules that are re-imported for repair or replacement.

The DRAMS subject to this investigation are currently classifiable under subheadings 8542.21.8005 and 8542.21.8021 through 8542.21.8029 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). The memory modules containing DRAMS from the ROK, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Removable memory modules placed on motherboards are classifiable under subheading 8471.50.0085. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this investigation remains dispositive.

#### Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2001, through June 30, 2002.

#### Amended Final Determination

In accordance with section 705(d) of the Tariff Act of 1930, as amended, (''the Act''), on June 23, 2003, the Department published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122. Subsequently, on June 24, 2003, Hynix Semiconductor, Inc. (''Hynix'' or ''respondent'') submitted timely ministerial error allegations pursuant to 19 CFR 351.224(c)(2). On June 30, 2003, the petitioner, Micron Technologies, Inc. (''Micron''), submitted a rebuttal to Hynix' allegations.

Hynix alleged that, for certain loans, the Department erroneously applied uncreditworthy benchmark interest rates to financing obtained before Hynix was determined to be uncreditworthy. The petitioner rebutted these allegations stating that they related to methodological issues, not ministerial issues. Additionally, the petitioner identified data that showed that Hynix' allegations were for loans that were

refinanced and, therefore, the Department correctly used uncreditworthy benchmark rates for these loans after the refinancing date. Hynix further alleged that the Department used long-term benchmark rates in the benefit calculations for three short-term loans, which were refinanced for an additional year. Micron claimed that this allegation is methodological, not ministerial, and should be rejected. Hynix then alleged that the Department erroneously included interest payments that accrued outside of the POI in its benefit calculations. Micron argued that this does not constitute a ministerial error because it is solely related to the methodology used by the Department. Hynix also alleged that the Department attributed the wrong percentage of KDB Fast Track bonds to Hynix' creditors because of debt conversions that occurred in June and December, 2001. Micron claimed that this allegation constitutes a methodological error allegation and, therefore, should be rejected by the Department. Finally, Hynix alleged that the Department failed to include the second of two interest payments that were made for the same bond but were reported separately. Micron stated that there is no evidence on the record linking the alleged second payment to the bonds identified by Hynix and, therefore, the Department must reject this allegation.

After analyzing the submissions, we have determined, in accordance with section 705(e) of the Act and 19 CFR 351.224, that we made the following ministerial errors in the margin calculations for Hynix: 1) For certain loans, we did not use the correct benchmark for financing obtained prior to the period during which we found Hynix to be uncreditworthy; 2) We incorrectly used a long-term benchmark interest rate for one loan that was refinanced for one year; 3) For KDB Fast Track bonds, we incorrectly calculated the percentage of these bonds held by Hynix' creditors after June 2001, and December 2001. For a detailed discussion of the ministerial error allegations and the Department's analysis, see the July 21, 2003 memorandum from Team to Laurie Parkhill, Acting Deputy Assistant Secretary entitled *Ministerial Error Allegations for the Final Determination*, which is on file in the Department's Central Records Unit in Room B-099 of the main Department building.

Therefore, we are amending the final determination for the countervailing duty investigation of dynamic random access memory semiconductors from the Republic of Korea to reflect the corrections of the above-noted ministerial errors. The revised total estimated net subsidy rate for each company is as follows:

| Producer/Exporter | Net Subsidy Rate |
|---|---|
| Samsung Electronics Co., Ltd. | 0.04 percent (de minimis) (unchanged from the Final Determination) |
| Hynix Semiconductor Inc. (formerly, Hyundai Electronics Industries Co., Ltd.) | 44.29 percent |
| All Others | 44.29 percent |

**Suspension of Liquidation**

In accordance with section 705(c)(1)(B) of the Act, we are directing Customs to continue suspending liquidation on all imports of subject merchandise from the Republic of Korea, except for imports of subject merchandise from Samsung Electronics Co., Ltd., that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs shall require a cash deposit or the posting of a bond equal to the margin/subsidy rates indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

We will issue a countervailing duty order if the International Trade Commission (''ITC'') issues a final affirmative injury determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our amended final determination.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 21, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Grant Aldonas, Under Secretary.*

[FR Doc. 03–19141 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 052803A]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys at the Storegga Slide, Norwegian Sea

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

**ACTION:** Notice of receipt of application and proposed incidental take authorization; request for comments.

**SUMMARY:** NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys at the Storegga slide off the west coast of Norway in the Norwegian Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

**DATES:** Comments and information must be received no later than August 27, 2003.

**ADDRESSES:** Comments on the application should be addressed to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

**Summary of Request**

On April 21, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program within the Storegga slide area off the west coast of Norway, in the Norwegian Sea, between 8°W. and 7°E. and between 62 and 68°N. during late August and September 2003. The Storegga slide was produced by colossal slope failures on the Norwegian continental margin in the late Quarternary period. The purpose of this survey is to determine whether submarine landslides can release methane from hydrate into the oceans and/or atmosphere. More specifically, the survey of the Storegga slide seeks to discover: (1) how much hydrate and free gas is present in the Storegga region and how it is distributed, (2) if methane escaped from the slide, and if so, how much, when and by what mechanisms, and (3) if hydrate dissociation promotes and/or localizes submarine landslides. A coordinated seismic and coring study of the Storegga slide is proposed to obtain information on these subjects (the coring portion of the project will be completed in 2004). This study will help explain whether methane in gas hydrate reservoirs is mobile and can affect the earth's climate.

**Description of the Activity**

The seismic survey will involve a single vessel, the *R/V Maurice Ewing*, which will conduct the seismic work. The *Maurice Ewing* will deploy an array of airguns as an energy source, plus a 6–km (3.2–nm) towed streamer containing hydrophones to receive the returning acoustic signals.

All planned geophysical data acquisition activities will be conducted by LDEO scientists, with the participation of scientists from the University of Wyoming. Water depths within the Storegga slide survey area will range from approximately 100 to 5,000 m (330 to 16,405 ft). The *Maurice Ewing* will initially deploy a 2–GI gun array for several survey lines, and then a 6–airgun array will be employed for several survey lines. Whichever array produces better data will be used for the rest of the cruise. The project will consist of 3,109 km (1,678 n.mi) of survey lines, of which approximately 2,596 km (1,402 n.mi) will be conducted in water depths greater than 1,000 m(3,280 ft.), 504 km (272 n.mi) will be surveyed in depths 100–1000 m (330–3,280 ft.), and 9 km (4.9 n.mi) will be surveyed in water less than 100 m (330 ft.) deep. There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The procedures to be used for the 2003 seismic survey will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed program will use conventional seismic methodology with a towed airgun array as the energy source and a towed streamer containing hydrophones as the receiver system. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. In addition, a multi-beam bathymetric sonar will be operated from the source vessel continuously throughout the entire cruise, and a lower-energy sub-bottom profiler will also be operated during most of the survey. Seismic surveys will likely commence on August 28, 2003, and continue until September 25, 2003, for a total of 29 days of seismic surveying.

The *R/V Maurice Ewing* will be used as the source vessel. It will tow the airgun array (either the 2–GI gun or 6–gun array) and a streamer containing hydrophones along predetermined lines. The vessel will travel at 4–5 knots (7.4–9.3 km/hr), and seismic pulses will be emitted at intervals of approximately 20 seconds. The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft). The 6–gun array will include six 2000 psi 1500C Bolt airguns ranging in chamber volume from 80 to 500 in$^3$, with a total volume of 1,350 in3. These airguns will be spaced in an approximate rectangle with dimensions 12 m (39.4 ft)(across track) by 10 m (32.8 ft)(along track). The two 105 in3 GI guns will be towed 7.8 m (25.6 ft) apart side by side and 37 m (121.4 ft) behind the vessel, with a total volume of 210 in$^3$.

The dominant frequency components for both airgun arrays is 0–188 Hz. The 2–airgun array will have a peak sound source level of 237 dB re 1 μPa or 243 dB peak-to-peak (P-P). The 6–airgun array will have a peak sound source level of 243 dB re 1 μPa or 250 dB P-P. These are the nominal source levels for the sound directed downward, and represent the theoretical source level close to a single point source emitting the same sound as that emitted by the array of 2 or 6 sources. Because the actual source is a distributed sound source (2 or 6 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the downward directional nature of the sound from these airgun arrays, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during most or all of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multi-beam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler will also be operated along with the multi-beam sonar. These mid-frequency sound sources are commonly operated from the *Maurice Ewing* simultaneous with the airgun array.

The Atlas Hydrosweep is mounted in the hull of the *R/V Maurice Ewing*, and it operates in three modes, depending on the water depth. The first mode is when water depth is <400 (1312.3 ft). The source output is 210 dB re 1 μPa-m rms and a single 1–millisec pulse or ''ping'' per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in beamwidth. The beamwidth is measured to the 3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes: The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237 dB rms source output. In the RDT mode, each ''ping'' consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the ''ping'', including all 5 successive segments, varies with water depth but is 1 millisec in water depths <500 m (1640.4 ft) and 10 millisec in the deepest water.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Sounds from the sub-bottom profiler are very short pulses, occurring for 1, 2 or 4 msec once every second. Pulse interval is 1 second but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. Most of the energy in the sound pulses emitted by this multi-beam sonar is at mid-frequencies, centered at 3.5 kHz. The beamwidth is approximately 30° and is directed downward.

Sound levels have not been measured for the sub-bottom profiler used by the *Maurice Ewing*, but Burgess and Lawson (2000) measured the sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 μPa-m). The 160 and 180 dB re 1 μPa (rms) radii, in the horizontal direction, were estimated to be near 20 m (66 ft) and 8 m (26 ft), respectively, from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft), assuming spherical spreading.

The sub-bottom profiler on the *Maurice Ewing* has a maximum source level of 204 dB re 1 μPa-m. Thus the received level would be expected to decrease to 160 and 180 dB at about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively (assuming spherical spreading). Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30° beamwidth) and the measurements of Burgess and Lawson (2000). Additional information on the airgun arrays, Atlas Hydrosweep, and sub-bottom profiler specifications is contained in the application, which is available upon request (see **ADDRESSES**).

## Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Norwegian Sea and its associated marine mammals can be found in a number of documents referenced in the LDEO application and is not repeated here. Approximately 24 species of cetaceans and seven species of pinnipeds may be found within the area of the Storegga slide. These species are the sperm whale (*Physeter macrocephalus*), Cuvier's beaked whale (*Ziphius cavirostris*), northern bottlenose whale (*Hyperoodon ampullatus*), Sowerby's beaked whale (*Mesoplodon bidens*), Blainville's beaked whale (*Mesoplodon densirostris*), beluga whale (*Delphinapterus leucas*), narwhal (*Monodon monoceros*), bottlenose dolphin (*Tursiops truncatus*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), white-beaked dolphin (*Lagenorhynchus albirostris*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), Risso's dolphin (*Grampus griseus*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), long-finned pilot whale (*Globicephala melas*), harbor porpoise (*Phocoena phocoena*), North Atlantic right whale (*Eubalaena glacialis*), bowhead whale (*Balaena mysticetus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), blue whale (*Balaenoptera musculus*), walrus (*Odobenus rosmarus*), bearded seal (*Erignathus barbatus*), hooded seal (*Cystophora cristata*), harbor seal (*Phoca vitulina*), ringed seal (*Pusa hispida*), grey seal (*Halichoerus grypus*), and the harp seal (*Pagophilus groenlandicus*). Additional information on most of these species is contained in Caretta *et al.* (2001, 2002) which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

## Potential Effects on Marine Mammals

With 2–GI gun and 6–gun arrays, the distances at which seismic pulses are expected to diminish to received levels of 190, 180, 170 dB and 160 dB re 1 μPa, on an rms basis, are as follows:

| Airgun Array | RMS Radii (m/ft) | | | |
|---|---|---|---|---|
| | *190 dB* | *180 dB* | *170 dB* | *160 dB* |
| 2 GI guns | 15/49 | 50/164 | 155/509 | 520/1706 |
| 6 airguns | 50/164 | 220/722 | 700/2297 | 2700/8859 |

An earlier notice of a (LDEO) application and proposed IHA was published in the **Federal Register** on April 14, 2003 (68 FR 17909). That notice described, in detail, the characteristics of the *Ewing's* acoustic sources and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential

hearing impairment and other physical effects. That information is not repeated here. However, possible effects of the sub-bottom profiler, which was not used in the project described in that notice, are described below. The LDEO application also provides information on what is known about the effects on marine mammals of the types of seismic operations planned by LDEO.

*Masking by Sub-bottom Profiler Signals*

There is little chance that marine mammal communications will be masked appreciably by the sub-bottom profiler signals given its relatively low power output, the low duty cycle, directionality, and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

*Behavioral Responses Resulting from Sub-bottom Profiler Signals*

Marine mammal behavioral reactions to pulsed sound sources and responses to the sub-bottom profiler are likely to be similar to those of other pulsed sources at the same received levels. However, the pulsed signals from the sub-bottom profiler are much weaker than those from the airgun array and the multi-beam sonar. Therefore behavioral responses rising to Level B harassment are not expected unless marine mammals are very close to the source, e.g. within about 160 m (525 ft) below the vessel, or a lesser distance to the side. Because simple momentary behavioral reactions that are within normal behavioral patterns for that species are not considered to be a taking, the very brief exposure of cetaceans to small numbers of signals from the sub-bottom profiler is unlikely to result in a ''take'' by harassment.

*Hearing Impairment and Other Physical Effects*

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar that will be used during the planned project. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or permanent hearing impairment in marine mammals appear to be higher than 180 dB. Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is briefly in a position immediately adjacent to the source.

Furthermore, the sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources before the mammals would be close enough to be affected by the less intense sounds from the sub-bottom profiler. In the event that mammals do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources (discussed later in this document) would further reduce or eliminate any minor effects of the sub-bottom profiler.

*Estimates of Take by Harassment for the Norwegian Sea Cruise*

The estimates of takes by harassment are based on the number of marine mammals that might be found within the 160 dB isopleth radius and potentially disturbed by operations with the 6–airgun array planned for the project. If the 2–GI gun array is used for all or part of the survey, the numbers of marine mammals that might be affected by the proposed seismic survey would be lower than the estimates described below. If only the 2–GI gun array is used, the numbers of animals that would encounter airgun sounds ≥160 dB re 1 (rms) would be about one-fifth of the number if only the 6–gun array were used.

Based on summer marine mammal density survey data collected by Sigurjonsson and Gunnlaugsson (1989), LDEO used its best estimate of density to compute a best estimate of the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1 μPa (rms) (NMFS' current criterion for onset of Level B harassment), except for bottlenose whales. Northern bottlenose whales are migratory and most leave the proposed seismic survey area before the end of June (Benjaminsen 1972; Sigurjonsson and Gunnlaugsson 1990). Therefore, only a few, if any, bottlenose whales may be seen during the seismic survey in the study area during late August to September. For bottlenose whales, LDEO used 0.10x the observed average or maximum density to calculate the numbers that might be exposed to seismic sounds, but even this reduced number is likely a high estimate. For all other species, the average densities were multiplied by the proposed survey effort (3109 km or 1678 n.mi) and twice the 160–dB safety radius around the 6–gun array to estimate the ''best estimate'' of the numbers of animals that might be exposed to sound levels ≥160 dB re 1 μPa (rms) during the proposed seismic survey program.

Based on this method, Table 3 in LDEO (2003) gives the best estimates of densities for each species or species group of marine mammal that might be exposed to received levels ≥160 dB re 1 μPa (rms), and thus potentially taken by Level B harassment, during seismic surveys in the proposed study area of the Norwegian Sea. Of these, 86 animals would be endangered species, primarily fin (42), humpback (22), and sperm whales (18). Delphinidae would account for 75 percent of the overall estimate for potential taking by harassment, with white-beaked dolphins (298) believed to account for about 90 percent of all delphinids in the area of the proposed seismic survey, and with killer whales (137) and long-finned pilot whales (302) accounting for most of the remaining 10 percent. However, part or all of the survey could be conducted with 2–GI guns. The 160–dB radius for the 2–GI gun array is 520 m (1706 ft) or 19 percent of that of the 6–gun array. Thus, if all surveys were conducted with the 2 GI guns, best estimates of the numbers of animals that would be exposed to seismic sounds ≥160 dB would be much less.

As described previously (68 FR 17909), animals subjected to sound levels ≥160 dB may alter their behavior or distribution, and therefore might be considered to be taken by Level B harassment. However, the 160 dB criterion is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive, and dolphins and harbor porpoises generally appear to be more tolerant of strong sounds than are most baleen whales. Delphinidae have their best hearing in the higher frequencies and are unlikely to be as sensitive as the mysticete whales to the low frequency of the airgun array. Therefore, they are less likely to experience Level B harassment at 160 dB. A more likely threshold for onset of Level B harassment in response to seismic sounds is at about 170 dB.

*Conclusions-Effects on Cetaceans*

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances

than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans because few mysticetes occur in the area where seismic surveys are proposed. LDEO's best estimate is that 42 fin whales, or 0.5 percent of the estimated fin whale population in and adjacent to the study area, will be exposed to sound levels ≥160 dB re 1 μPa (rms) and potentially affected. Similarly, 22 humpback whales, or 0.8 percent, and 18 sperm whales, or 0.2 percent of their populations that occur in and adjacent to the proposed survey area, would receive seismic sounds ≥160 dB. Therefore, these potential takings by Level B harassment will have a negligible impact on their populations. Numbers and impact would be even smaller if the 2–GI gun array is used for a substantial fraction of the survey project.

Larger numbers of odontocetes may be affected by the proposed activities, but the populations sizes of the main species are large and the numbers potentially affected are small relative to the population sizes. The best estimate of the total number of odontocetes that might be exposed to ≥160 dB re 1 μPa (rms) in the proposed survey area in the Norwegian Sea is 878. Of these, 770 are Delphinidae, and of these about 200 might be exposed to ≥170 dB. These figures are <0.1 percent of the populations of these combined species that occur in the Northeast Atlantic, and the 200 value is believed to be a more accurate estimate of the number potentially affected.

Mitigation measures such as controlled speed, look-outs, non-pursuit, ramp-ups, avoidance of start-ups during periods of darkness when possible, and shut-down when within defined ranges (See Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

*Conclusions-effects on Pinnipeds*

Very few if any pinnipeds are expected to be encountered during the proposed seismic survey in the Norwegian Sea. A maximum of 70 pinnipeds in the Storegga slide area may be affected by the proposed seismic surveys. If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment.

**Mitigation**

For the proposed seismic operations in the Storegga slide area in 2003, LDEO will use 2 GI guns with a total volume of 210 $in^3$ and/or a 6–gun array with a total volume of 1350 in3. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward.

Modeled results for the 2– and 6–gun arrays indicate received levels to the 180–dB re 1 μPa (rms) isopleth (the level for the potential for Level A harassment applicable to cetaceans) were estimated as 50 and 220 m (164 and 722 ft), respectively. The radii around the 2– and 6–gun arrays where the received level would be 190 dB re 1 μPa (rms), (the level for the potential for Level A harassment applicable to pinnipeds), were estimated as 15 and 50 m (49 and 164 ft), respectively. Results from a calibration study that occurred in late the spring of 2003 in the Gulf of Mexico will determine the actual radii corresponding to each sound level. If the modeled radii have not been verified by the time of the Storegga slide surveys, LDEO proposes to use 1.5 times the 180- (cetaceans) and 190– (pinnipeds) dB radii predicted by the model as the safety radii until the radii have been verified. Thus, during the Storegga slide cruise the proposed safety radii for cetaceans are 75 and 330 m (246 and 1,083 ft), respectively, for the 2–GI gun and 6–gun arrays, and the proposed safety radii for pinnipeds are 23 and 75 m (75 and 246 ft), respectively.

Vessel-based observers will monitor marine mammals in the vicinity of the arrays. LDEO proposes to shut down the seismic source if marine mammals are observed within the proposed safety radii. Also, LDEO proposes to use a ramp-up procedure when commencing operations using the 6–gun array. Ramp-up will begin with the smallest gun in the array (80 $in^3$), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minute period over a total duration of about 14 minutes. Ramp-up will not occur for the 2–GI gun array because the total air discharge volume is small (210 $in^3$). Please refer to LDEOs application for more detailed information about the mitigation measures that are an integral part of the planned activity.

*Operational Mitigation*

The directional nature of the 6–airgun array to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (2 or 6 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

*Marine Mammal Monitoring*

Up to three vessel-based observers will be stationed on the *R/V Maurice Ewing* during seismic operations in the Storegga slide area. Vessel-based observers will monitor for marine mammals near the seismic source vessel for at least 30 minutes prior to and during all daylight ramp-up and airgun operations, and during any nighttime startups of the airguns. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety zones, where there is a possibility of Level A harassment. Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be shut down if marine mammals are observed in or about to enter the safety radii. A marine mammal observer will be on ''standby'' at night, in case bridge personnel see a marine mammal. An image-intensifier night-vision device (NVD) will be available for use at night, although past experience has shown that NVDs are of limited value for this purpose. If the airguns are started up at night, two marine mammal observers will monitor for marine mammals near the source vessel for 30 minutes prior to start up using night-vision devices. The 30–minute observation period is only required prior to commencing seismic operations following an extended shut down period.

The *R/V Maurice Ewing* is a suitable platform for marine mammal observations. The observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge (the highest practical vantage point on the vessel), allowing for good visibility within a 210° arc for each observer. The proposed monitoring plan is summarized later in this document.

*Proposed Safety Radii*

Received sound levels have been modeled for the 2–GI guns and the 6–airgun arrays. Based on the modeling, estimates of the 190–, 180–, 170–, and 160–dB re 1 μPa (rms) distances (safety radii) for these arrays have been provided previously in this document.

Airgun operations will be suspended immediately when cetaceans are seen within or about to enter the appropriate 180–dB (rms) radius, or if pinnipeds are seen within or about to enter the 190–dB (rms) radius. These 180– and 190–dB criteria are consistent with guidelines listed for cetaceans and pinnipeds by NMFS (2000) and other guidance by NMFS.

*Mitigation During Operations*

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed Storegga slide seismic survey program and the acoustic verification program, provided that doing so will not compromise operational safety requirements: (1) Course alteration; and (2) Shut-down procedures; and (3) Ramp-up procedures.

Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, alternative ship tracks will be plotted against anticipated mammal locations. The vessel's direct course and/or speed will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safey radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Shutdown Procedures

Vessel-based observers will monitor marine mammals near the seismic vessel during daylight and for at least 30 minutes prior to start up during darkness throughout the program. Airgun operations will be suspended immediately when marine mammals are observed within, or about to enter, designated safety zones. The shutdown procedure should be accomplished within several seconds or one shot period of the determination that a marine mammal is within or about to enter the safety zone. Airgun operations will not resume until the marine mammal is outside the safety radius. Once the safety zone is clear of marine mammals, the observer will advise that seismic surveys can re-commence. The ''ramp-up'' procedure will then be followed.

Ramp-up Procedure

A ''ramp-up'' procedure will be followed when the airgun arrays begin operating after a specified-duration period without airgun operations. Under normal operational conditions (vessel speed 4–5 knots), a ramp-up would be required after a ''no shooting'' period lasting 2 minutes or longer. At 4 knots, the source vessel would travel 247 m (810 ft) during a 2–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, it is proposed that a ramp-up would be required after a ''no shooting'' period lasting 3 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 277 m (909 ft) in 3 minutes. These guidelines would require modification if the normal shot interval were more than 2 or 3 min, but that is not expected to occur during the Storegga slide cruise.

Ramp-up will begin with the smallest gun in the 6–gun array (80 $in^3$). Guns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–minute period over a total duration of approximately 14 min. During the ramp-up procedures, the safety zone for the full gun array will be maintained. Ramp-up will not occur for the 2–GI gun array, since the total air discharge volume for this array is small (210 $in^3$).

**Monitoring and Reporting**

LDEO proposes to conduct marine mammal monitoring of its 2003 Storegga slide seismic program in the Norwegian Sea and acoustical verification of safety radii, in order to satisfy the anticipated requirements of the IHA.

*Vessel-based Visual Monitoring*

The observer(s) will systematically scan the area around the vessel with 7 X 50 Fujinon reticle binoculars or with the naked eye during the daytime. At night, night vision equipment will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Bushnell Lytespeed 800 laser rangefinder with 4 optics or equivalent) will be available to assist with distance estimation. If a marine mammal is seen well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius (see Mitigation). When mammals are detected within or about to enter the designated safety radii, the airguns will be shut down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius.

At least one experienced marine mammal observer will be on duty aboard the seismic vessel, as well as a fishery expert (as likely required by the Norwegian Petroleum Directorate (2003)) and possibly one qualified contract biologist. Observers (appointed by LDEO) will complete a one-day training/refresher course on marine mammal monitoring procedures, given by a contract employee experienced in vessel-based seismic monitoring projects.

Observers will be on duty in shifts of duration no longer than 4 hours. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. Bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements, and before the start of the seismic survey will be given instruction in how to do so.

*Reporting*

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by Level B harassment. It will also provide the information needed in order to shut down the airguns at times when mammals are present in or near the safety zones. When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel

(shooting or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other programs for further processing and archiving.

Results from the vessel-based observations will provide (1) the basis for real-time mitigation (airgun shutdown); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS within 90 days after the end of the seismic program in the Storegga slide area. The end of the Storegga slide program is predicted to occur on or about September 25, 2003. The report will cover the seismic surveys in the Storegga slide area and will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

## Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

## National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the Storegga slide survey. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see ADDRESSES).

## Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting a seismic survey program in the Storegga slide portion of the southern Norwegian Sea will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited.

## Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic survey program in the Storegga slide portion of the southern Norwegian Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

## Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: July 21, 2003.

**Laurie K. Allen,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–19035 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–22–S

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 011503A]**

## Endangered Species; File No. 1409

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Karen G. Holloway-Adkins, East Coast Biologists, Inc., P.O. Box 33715, Indialantic, FL 32903, has been issued a permit to take green (*Chelonia mydas*) and loggerhead (*Caretta caretta*) turtles 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;

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:** Sarah Wilkin (301)713–2289 or Patrick Opay (301)713–1401.

**SUPPLEMENTARY INFORMATION:** On January 28, 2003, notice was published in the **Federal Register** (68 FR 4178) that a request for a scientific research permit to take loggerhead and green sea turtles had been submitted by the above-named individual. 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).

The purpose of the research is to characterize marine turtle aggregations (including their size class and foraging habits) that use the nearshore reefs of central Brevard County, FL as developmental habitat, and to gather information about sea turtle movements among similar study areas that exist on the east coast of Florida.

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: July 18, 2003.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–19146 Filed 7–25–03; 8:45 am]

**BILLING CODE 3510–22–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination Under the African Growth and Opportunity Act (AGOA)

July 22, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Determination

**SUMMARY:** The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabric and handmade articles made from such handloomed fabric that are produced in and exported from Zambia qualify for preferential treatment under Section 112(a) of the African Growth and Opportunity Act. Therefore, imports of eligible products from Zambia with an appropriate AGOA Visa will qualify for duty-free treatment under the AGOA.

**EFFECTIVE DATE:** August 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:** The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200)(AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of 9 groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping ''9'' is reserved for handmade, handloomed, or folklore articles.

In Section 2 of Executive Order 13191 of January 17, 2001, CITA is authorized to ''consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles'' (66 FR 7272). Consultations were held on March 13, 2003, and CITA has now determined that handloomed fabrics and handmade articles made from such handloomed fabrics produced in and exported from Zambia are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs to allow entry of such products from Zambia under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate export visa in Grouping ''9''.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 22, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13191 of January 17, 2001, has determined that, effective on August 4, 2003, handloomed fabric produced in Zambia and handmade articles produced in Zambia from such handloomed fabric shall be treated as being handloomed, handmade, or folklore articles under the AGOA, and that an export visa issued by the Government of Zambia for Grouping ''9'' is a certification by the Government of Zambia that the article is handloomed, handmade, or folklore. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate visa and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,
James C. Leonard III,
*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–19062 Filed 7–25–03; 8:45 am]

**BILLING CODE 3510–DR–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

July 22, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** July 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 72922, published on December 9, 2002.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 22, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 3, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and wool textile products in the following categories, produced or manufactured in Colombia and

exported during the twelve-month period which began on January 1, 2003, and extends through December 31, 2003.

Effective on July 28, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 315 | 39,084,116 square meters. |
| 443 | 151,374 numbers. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.03–19064 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DR–S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

July 22, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** July 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68572, published on November 12, 2002.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 22, 2003.

Commissioner,

*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003.

Effective on July 29, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 335/635 | 367,981 dozen. |
| 338/339 | 922,140 dozen. |
| 341/641 | 267,966 dozen. |
| 347/348 | 1,536,223 dozen. |
| 647/648 | 445,061 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–19063 Filed 7–25–03; 8:45 am]

BILLING CODE 3510– DR–S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 03–10]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–10 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 21, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

17 JUL 2003
In reply refer to:
I-03/002455

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-10, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $60 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

**Transmittal No. 03-10**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

(i) **Prospective Purchaser:** Egypt

(ii) **Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $ 0 million |
| Other | $60 million |
| TOTAL | $60 million |

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** two C-130H-based roll-on/roll-off airborne Electronic Intelligence (ELINT) systems with the following major subsystems: two airborne signal detection and processing centers which can be mounted on C-130H aircraft; ground analysis center; ground mobile tactical center; and base workshop repair station. This proposed sale will also include related modification kits, support/test equipment, spare/repair parts, publications, technical data, U.S. Government and contractor technical services, and other related elements of logistics support.

(iv) **Military Department:** Air Force (QES)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 17 JUL 2003

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Egypt – C-130H Based Roll-on/roll-off ELINT Systems

The Government of Egypt has requested a possible sale of two C-130H-based roll-on/roll-off airborne Electronic Intelligence (ELINT) systems with the following major subsystems: two airborne signal detection and processing centers which can be mounted on C-130H aircraft; ground analysis center; ground mobile tactical center; and base workshop repair station. This proposed sale will also include related modification kits, support/test equipment, spare/repair parts, publications, technical data, U.S. Government and contractor technical services, and other related elements of logistics support. The estimated cost is $60 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The ELINT systems will be integrated on existing C-130H aircraft and will provide the Egyptian Air Force (EAF) an important ability to build, maintain, and update threat radar data. The EAF should have no problem operating and maintaining this retrofit capability.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Lockheed Martin ISR Systems of Englewood, Colorado; Plano Microwave Incorporated of Plano, Texas; and Mission Research Corporation of Santa Barbara of California. There are no offset agreements proposed in connection with this potential sale.

This program will include semi-annual management reviews for one-week intervals with 10 each U.S. Government and contractor representatives. In addition, annually, there will be 10 each U.S. Government and contractor representatives to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

**Transmittal No. 03-10**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

**Annex**
**Item No. vii**

**(vii) Sensitivity of Technology:**

**1. The C-130H-based roll-on/roll-off ELINT system contains sensitive technology. This is a radio signal monitoring system based on the USAF Senior Scout system and provides the ability to collect threat radar data.**

**2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.**

**3. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.**



[FR Doc. 03–19077 Filed 7–25–03; 8:45 am]
BILLING CODE 5001–08–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 03–15]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–15 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 21, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–08–M**

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

**17 JUL 2003**
**In reply refer to:**
**I-03/003310**

**The Honorable J. Dennis Hastert**
**Speaker of the House of**
**Representatives**
**Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-15, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $50 million. Soon after this letter is delivered to your office, we plan to notify the news media.**

**Sincerely,**

Richard J. Millies
Deputy Director

**Attachments**

**Same ltr to: House Committee on International Relations**
**Senate Committee on Foreign Relations**
**House Committee on Armed Services**
**Senate Committee on Armed Services**
**House Committee on Appropriations**
**Senate Committee on Appropriations**

**Transmittal No. 03-15**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended (U)**

(i) **Prospective Purchaser:** Egypt

(ii) **Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $43 million |
| Other | $ 7 million |
| TOTAL | $50 million |

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 414 AIM-9M-1/2 Sidewinder air-to-air missiles, missile containers, support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and support services and other related elements of logistics support.

(iv) **Military Department:** Navy (ACM)

(v) **Prior Related Cases, if any:**
FMS case ABR - $36 million - 05Dec96
FMS case AAP - $37 million - 01Jul86
FMS case AAJ -. $14 million - 27Dec83
FMS case AAD - $27 million - 15Jun82

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:**

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Egypt – AIM-9M-1/2 Sidewinder Missiles

**The Government of Egypt has requested a possible sale of 414 AIM-9M-1/2 Sidewinder air-to-air missiles, missile containers, support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and support services and other related elements of logistics support. The estimated cost is $50 million.**

**This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.**

**The missiles obtained in this proposed sale will augment existing inventories of AIM-9L and AIM-9M-1/2 Sidewinder air-to-air missiles and improve the defensive air intercept capabilities of Egyptian Air Force's F-16 fighters. Egypt will have no difficulty absorbing the additional missiles into its munitions inventory.**

**The proposed sale of this equipment and support will not affect the basic military balance in the region.**

**The prime contractor is the Raytheon Systems Corporation of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.**

**Implementation of this sale will not require the assignment of any additional U.S. Government and contractor representatives in Egypt. However, there will be U.S. Government representatives for two-week intervals twice annually to participate in training, program management and technical review.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

**Transmittal No. 03-15**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

**Annex**
**Item No. vii**

**(vii) Sensitivity of Technology:**

**1. The external view of the AIM-9M-1/2 Sidewinder missile is Unclassified and not sensitive. The guidance and control system and target detector are Confidential and contain sensitive state-of-the-art technology. Manuals and technical documents, which are necessary for operational use and organization maintenance, include Confidential information. Performance and operating logic of the countermeasures circuits are Secret. This information is required for the effective deployment of the system and to enable the recipient country to maintain it properly.**

**2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.**

**3. A determination has been made that the Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.**



[FR Doc. 03–19078 Filed 7–25–03; 8:45 am]
BILLING CODE 5001–08–C

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of U.S. Patent Applications for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with 35 U.S.C. 209 and 37 CFR part 404, announcement is made of the availability for licensing of the following U.S. Patent Applications for non-exclusive, exclusive, or partially exclusive licensing listed under **SUPPLEMENTARY INFORMATION.** The inventions listed below have been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Biffoni, Intellectual Property Attorney, U.S. Army Soldier and Biological Chemical Command, ATTN: AMSSB–CC (Bldg. E4435), Aberdeen Proving Ground, MD 21010–5424, phone: (410) 436–1158, FAX: (410) 436–2534, or e-mail: *John.Biffoni@sbccom.apgea.army.mil.*

**SUPPLEMENTARY INFORMATION:**

1. *Title:* ''Compositions and Methods for Enhancing Bioassay Performance.''

*Description:* This invention relates generally to nanomanipulation and, more particularly, to nanoorientation of antibody-dendrimer conjugates. The compositions of matter and methods of the present invention allow one to construct more sensitive bioassays by improving the orientation of the antibody binding domains within the bioassay at the nanoscopic level.

*Patent Application Number:* 09/939,884.

*Filing Date:* 08/27/2001.

*2. Title:* ''Enhancing Protein Activity Through Nanoencapsulation''

*Description:* This invention deals with nanoencapsulation and nanocapsules, and a method of using these encapsulation systems to enhance protein/enzyme reactivity. The invention uses nanocapsules to protect and enzymes from inactivation in a variety of harsh environments such as extreme temperatures and pH. In addition, it provides a method for using nanoencapsulation to enhance protein/enzyme reactivity in organic solvents. Finally, the invention provides a method of using nanocapsules as controlled-release agents or carries for drug, protein, and vaccine delivery.

*Patent Application Number:* 09/859,260.

*Filed:* May 17, 2001.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 03–19099 Filed 7–25–03; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of U.S. Patent and U.S. Patent Applications for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with 35 U.S.C. 209 and 37 CFR part 404 announcement is made of the availability for licensing of the U.S. Patent Applications and U.S. Patent for non-exclusive, exclusive, or partially exclusive licensing listed in under **SUPPLEMENTARY INFORMATION.** The inventions listed have been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Biffoni, Intellectual Property Attorney, U.S. Army Soldier and Biological Chemical Command, ATTN: AMSSB–CC (Bldg E4435), Aberdeen Proving Ground, MD 21010–5424; phone: (410) 436–1158, FAX: 410–436–2534 or e-mail: *John.Biffon@sbccom.apgea.army.mil.*

**SUPPLEMENTARY INFORMATION:**

1. *Title:* ''Enzymatic Detoxification of Organophosphorus Compounds''

*Description:* The present invention relates to the expression of a recombinant bacterial enzyme which is useful for detoxifying cholinesterase-inhibiting organophosphorus compounds such as pesticides and chemical nerve agents and the decontamination of substances contaminated with these compounds.

*Patent Number:* 5,928,927.

*Issue Date:* July 27, 1999.

2. *Title.* ''One-step Purification Process for Organophosphorus Hydrolase Enzyme.''

*Description:* The present invention relates to an improved and simplified process for purifying organophosphorus hydrolase enzyme (''OPH'' from a recombinant host cell, that expresses this enzyme.

*Patent Number:* 6,469,145.

*Issue Date:* October 22, 2002.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 03–19098 Filed 7–25–03; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Department of the Army is altering a system of records notice 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 August 27, 2003, unless comments are received which result in a contrary determination.

**ADDRESSES:** Army Systems of Records Notices Manager, Department of Army Freedom of Information and Privacy Acts Office, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–7137.

**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 proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 9, 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, 2996, 61 FR 6427).

Dated: July 21, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0380–19 SAIS**

**SYSTEM NAME:**

Information Assurance For Automated Information Systems (AIS) Files (April 13, 2001, 66 FR 19148).

## Changes

* * * * *

**SYSTEM NAME:**

Delete entry and replace with 'Information Assurance For Automated Information Systems (AIS) and Defense Biometric Technology Files.'

**SYSTEM LOCATION:**

Delete entry and replace with 'Department of Defense Biometrics Fusion Center, 1600 Aviation Way, Bridgeport, WV 26330–9476 and at any Department of Defense system that collects, stores, accesses, retrieves, or uses biometrics technology to recognize the identity, or verify the claimed identity of an individual.'

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with 'Individuals covered include, but is not limited to military, civilian, and contractor personnel; military reserve personnel; and other persons requiring access to DoD information and facilities.'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Add 'images,' to entry.

**PURPOSE(S):**

Add a new paragraph 'To control logical and physical access to DoD information and facilities by using a measurable physical or behavioral characteristic.'

* * * * *

**RETRIEVABILITY:**

Add to entry 'biometric template'.

* * * * *

## A0380–19 SAIS

**SYSTEM NAME:**

Information Assurance For Automated Information Systems (AIS) and Defense Biometric Technology Files.

**SYSTEM LOCATION:**

Department of Defense Biometrics Fusion Center, 1600 Aviation Way, Bridgeport, WV 26330–9476, and at any Department of Defense system that collects, stores, accesses, retrieves, or uses biometrics technology to recognize the identity, or verify the claimed identity of an individual.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered include, but is not limited to military, civilian, and contractor personnel; military reserve personnel; Army and Air National Guard personnel; and other persons requiring access to DoD information and facilities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Operator's/user's name, Social Security Number, organization, telephone number, and office symbol; security clearance; level of access; subject interest code; user identification code; data files retained by users; assigned password; magnetic tape reel identification; abstracts of computer programs and names and phone numbers of contributors; similar relevant information; biometrics templates, images, and supporting documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 106–246, section 112; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; Department of Defense Directive 8500.1, Information Assurance (IA); Army Regulation 380–19, Information System Security; and E.O. 9397 (SSN).

**PURPOSE(S):**

To administer passwords and identification numbers for operators/users of data in automated media; to identify data processing and communication customers authorized access to or disclosure from data residing in information processing and/or communication activities; and to determine propriety of individual access into the physical data residing in automated media.

To control logical and physical access to DoD information and facilities by using a measurable physical or behavorial characteristic.

**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.

**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:**

Name, Social Security Number, subject, application program key word/author, and biometric template.

**SAFEGUARDS:**

Computerized records maintained in a controlled area are accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties.

**RETENTION AND DISPOSAL:**

Individual data remain on file while a user of computer facility; destroyed on person's reassignment of termination.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

Director, Department of Defense Biometrics Management Office, 2531 Jefferson Davis Highway, Arlington, VA 22202–4800.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

For verification purposes, individual should provider full name, sufficient details to permit 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, DoD security offices, system managers, computer facility managers, automated interfaces for user codes on file at Army sites.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 03–19079 Filed 7–25–03; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Prepare a Supplemental Overseas Environmental Impact Statement/Supplemental Environmental Impact Statement for Employment of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) Regulations 40 CFR 1502.9, and pursuant to Executive Order 12114, the Department of the Navy (Navy) is announcing its intent to prepare a Supplemental Overseas Environmental Impact Statement (SOEIS)/ Supplemental Environmental Impact Statement (SEIS) for the operational employment of SURTASS LFA sonar.

**SUPPLEMENTARY INFORMATION:** The Final Overseas Environmental Impact Statement and Environmental Impact Statement (OEIS/EIS) for the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar was completed in January 2001. The Deputy Assistant Secretary of the Navy for Environment (DASN[E]) reviewed the SURTASS LFA Sonar OEIS/EIS and, after carefully weighing the operational, scientific, technical, and environmental implications of the alternatives considered, announced the decision to employ two SURTASS LFA sonar systems with certain geographical restrictions and monitoring mitigation designed to reduce adverse effects on the marine environment. This decision, which pertained to the employment of two SURTASS LFA systems, implemented the preferred alternative, Alternative 1, identified in the Final OEIS/EIS.

DASN(E) found that the analysis in the OEIS/EIS had taken the requisite ''hard look'' at the environmental consequences of the decision to employ the SURTASS LFA sonar and issued the Record of Decision (ROD) on 16 July 2002.

However, in recognition of concerns raised in Federal Court over employment of the SURTASS LFA system and to further the Navy's commitment to responsible stewardship of the marine environment, DASN(E) has determined that the purposes of NEPA would be furthered by the preparation of a supplemental analysis related to employment of the system. This analysis will take the form of a SOEIS/SEIS and will provide additional information regarding the environment that could be potentially affected by employment of SURTASS LFA and additional information related to mitigation of the potential impacts of the system, focusing on identifying geographic areas and seasonal periods of high marine mammal abundance in those areas where the Navy intends to use SURTASS LFA for routine training and testing. The SOEIS/SEIS will consider this information in the context of specific potential operational areas. The SOEIS/SEIS will comply with both NEPA and Executive Order 12114.

Dated: July 16, 2003.

**E. F. McDonnell,**

*Major, U.S. Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 03–19089 Filed 7–25–03; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Performance Review Board Membership

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for monetary performance awards. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

ACKLEY, V. H. MR.
ADAMS, P. C. MS.
AKIN, M. G. MR.
ANTANITUS, D. RADM
ANTOINE, C. S. MR.
ARNY, L. W. MR.
AVILES, D. M. HON.
BAILEY, W. C. MR.
BALDERSON, W. M. MR.
BARBER, A. H. MR.
BARNUM, H. C. MR.
BAUMAN, D. M. MR.
BEDARD, E. R. LTGEN
BELAND, R. W. DR.
BETRO, T. A. MR.
BEVINS, S. E. MR.
BLAIR, A. K. MS.
BONIN, R. L. MR.
BONWICH, S. M. MR.
BOZIN, S. D. RADML
BRANT, D. L. MR.
BREEDLOVE, W. J. DR.
BROWN, P. F. MR.
BURNS, J. RADM
BUSH, C. T. RADML
BUTLER, J. D. RADML
CALI, R. T. MR.
CARPENTER, A. MS.
CATRAMBONE, G. P. MR.
CATTO, W. D. BGEN
CHURCH III, A. T. VADM
CIESLAK, R. C. MR.
CLARK, C. A. MS.
COBB JR. W. W. RADM
COCHRANE JR, E. R. MR.
COHEN, J. M. RADM
COHN, H. MR.
COLEMAN, R. S. BGEN
COMBS, D. S. MR.
COMMONS, G. J. MS.
COOK, C. E. MR.
CRABTREE, T. R. MR.
CROWLEY III, R. E. RADM
CUDDY, J. V. MR.
CURTIS, D. I. MR.
DECKER, J. MS.
DECKER, M. H. MR.
DEWITTE, C. K. MS.
DONAHUE, P. E. MR.
DUDLEY, W. S. DR.
DURAND, S. R. MS.
DWYER, D. M. RADM
DYER, J. W. VADM
EASTER, S. B. MS.
EDMOND, D. J. MS.
EHRLER, S. M. MR.
ELLIS, W. G. MR.
ENGELHARDT, B. B. RADML
ENNIS, M. BGEN
EVANS, G. L. MS.
EXLEY, R. L. MR.
FILIPPI, D. M. MS.
FLYNN, B. P. MS.
FRANKLIN, R. E. MR.
GODWIN III, J. B. RADM
GREER, E. R. MR.
GRIFFIN JR, R. M. MR.
HAAS, R. L. MR.
HAGEDORN, G. D. MR.
HANDEL, T. H. MR.
HANNAH, B. W. DR.
HAYNES, R. S. MR.
HILDEBRANDT, A. H. MR.
HOBART, R. L. MR.
HOGUE, R. D. MR.
HONECKER, M. W. MR.
HOWARD, J. S. MR.
HUBBELL, P. C. MR.
JAGGARD, M. F. MR.
JAMES, J. H. MR.
JOHNSON, H. T. HON
JOHNSTON JR, C. H. RADM
JOHNSTON, K. J. DR.
JUNKER, B. R. DR.
KASKIN, J. D. MR.

KEENEY, C. A. MS.
KELLY, R. L. LTGEN
KLEIN, J. A. MR.
KLEINTOP, M. U. MS.
KLEMM, W. R. RADM
KRANZ, T. F. MR.
KRASIK, S. A. MS.
KRUM, R. A. MR.
LACEY, M. E. MRS.
LA RAIA, J. H. MR.
LAUX, T. E. MR.
LEACH, R. A. MR.
LEBOEUF, G. G. MR.
LEDVINA, T. N. MR.
LEGGIERI, S. R. MS.
LENGERICH, A. W. RADM
LEWIS, R. D. MS.
LIBERATORE, C. MS.
LOFTUS, J. V. MS.
LOTT, B. M. MAJGEN
LOWELL, P. M. MR.
MAGLICH, M. F. MR.
MAGNUS, R. LTRGEN
MASCIARELLI, J. R. MR.
MATTHEIS, W. G. MR.
MCDONNELL, T. E. MR.
MCGRATH, M. F. MR.
MCLAUGHLIN, P. M. MR.
MCNAIR, J. W. MR.
MEADOWS, L. J. MS.
MEEKS JR, A. W. DR.
MELCHER, G. K. MR.
MELOY, K. E. MS.
MERRITT, M. M. MR.
MESEROLE JR., M. MR.
MILLER, K. E. MR.
MOHLER, M. K. MR.
MOLZAHN, W. R. MR.
MONTGOMERY, J. A. DR.
MOORE, S. B. MR.
MORA, A. J. HON
MORRAL, D. G. RADML
MORRIS, D. A. MR.
MURDAY, J. S. DR.
MURPHY, P. M. MR.
MURPHY, R. E. MR.
MUTH, C. C. MS.
MYERS IV, A. G. RADM
NATHMAN, J. B. VADM
NAVAS JR., W. A. HON.
NEWSOME, L. D. RADM
NEWTON, L. A. MS.
NICKELL JR, J. R. MR.
ORNER, J. G. MR.
PANEK, R. L. MR.
PAOLETTI, C. R. MR.
PARKS, G. L. LTGEN
PAULING, D. V. MR.
PAYNE, T. MR.
PERSONS, B. J. MR.
PHELPS, F. A. MR.
PHILLIPS, R. L. RDML
PIC, J. E. MR.
PIVIROTTO, R. R. MR.
PLUNKETT, B. J. MR.
POLZIN, J. E. MR.
RANDALL, S. R. MR.
RAPS, S. P. MS.
REEVES, C. R. MR.
RHODES, M. L. MR.
ROBY, C. MS.
RODERICK, B. A. MR.
ROGERS, L. F. MR.
ROSENTHAL, R. J. MR
RYZEWIC, W. H. MR.
SANDEL, E. A. MS.
SANDERS, D. MR.
SAUL, E. L. MR.
SCHAEFER, J. C. MR.
SCHREGARDUS, D. R. MR.
SCHUBERT, D. CAPT
SCHUSTER, J. G. MR.
SHARP, M. A. RADML
SHEPHARD, M. R. MS.
SHOUP, F. E. DR.
SIMON, E. A. MR.
SLOCUM, W. MR.
SMITH, R. F. MR.
SOMOROFF, A. R. DR.
STELLOH-GARNER, C. MS.
SULLIVAN, P. E. RADML
TAMBURRINO, P. M. MR.
TARRANT, N. J. MS.
TESCH, T. G. MR.
THOMAS, J. R. BGEN
THOMPSON, R. C. MR.
THROCKMORTON JR., E. L. MR.
TOWNSEND, D. K. MS.
TRAMMELL, R. K. MR.
TULLAR, E. W. MR.
UHLER, D. G. DR.
WENNERGREN, D. M. MR.
WEST, L. E. MR.
WEYMAN, A. S. MR.
WHITON, H. W. RADM
WHITTEMORE, A. MS.
WILLIAMS, G. P. MR.
WRIGHT JR, J. W. DR.
YOUNG, C. B. RADM
YOUNG, J. J. HON.
ZEMAN, A. R. DR.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmen Arrowood, Office of Civilian Human Resources, telephone (202) 764–0635.

Dated: July 16, 2003.

**E.F. McDonnell,**

*Major, U.S. Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 03–19105 Filed 7–25–03; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

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

**DATES:** Interested persons are invited to submit comments on or before September 26, 2003.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 22, 2003.

**Angela C. Arrington,**

*Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of Vocational and Adult Education

*Type of Review:* Reinstatement.

*Title:* Carl D. Perkins Vocational and Technical Education Act (Pub. L. 105–332)—State Plan-Perkins Annual Levels of Performance

*Frequency:* Annually.

*Affected Public:* State, local or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 25.

*Burden Hours:* 1,700.

*Abstract:* Pub. L. 105–332 requires eligible State agencies to submit a 5-year

State plan, with annual revisions as the agency deems necessary, in order to receive Federal funds. Program staff review the plans for compliance and quality. This collection also solicits proposed annual levels of performance from States and outlying areas in accordance with section 113(b)(3)(A)(v) of the Carl D. Perkins Vocational and Technical Education Act (Pub. L. 105–332).

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 2313. 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 *vivian_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 Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–19053 Filed 7–25–03; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2003.

**SUMMARY:** This notice announces closing dates, priorities, and other information regarding the transmittal of grant applications for FY 2003 competitions under two programs authorized under part D, subpart 2 of the Individuals with Disabilities Education Act, as amended (IDEA). The two programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (1 priority); and (2) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (1 priority).

Please note that significant dates for the availability and submission of applications, as well as important fiscal information, are listed in a table at the end of this notice.

**Waiver of Rulemaking**

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

**General Requirements**

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

*Page Limit:* If you are an applicant, Part III of each application, the application narrative, is where you address the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed in the table at the end of this notice, using the following standards:

- A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

**Application Procedures**

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

*Project for Electronic Submission of Applications*

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The two programs in this announcement: Research and Innovation to Improve Services and Results for Children with Disabilities—CFDA 84.324, and Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—CFDA 84.326, are included in the pilot project. If you are an applicant for a grant under the two programs in this notice, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you

enter the e-Application system, you will find information about its hours of operation.

• You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

• *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Research and Innovation to Improve Services and Results for Children with Disabilities Program, or the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC, time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Research and Innovation to Improve Services and Results for Children with Disabilities Program, or the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program at: *http://e-grants.ed.gov*.

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application packages.

**Research and Innovation To Improve Services and Results for Children With Disabilities [CFDA Number 84.324]**

*Purpose of Program:* To produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

*Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the EDGAR general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions will be provided in the application package for these competitions.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

**Priorities**

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following priority:

*Absolute Priority—Research Institute on Progress Monitoring (84.324H)*

Background

Progress monitoring research has focused mostly on developing basic reading and math skills for elementary school students with high incidence disabilities. The focus of this research must be expanded to include students with significant cognitive and developmental disabilities. The use of progress monitoring will determine the skills that these students have learned and need to learn, their rates of learning, and instructional modifications that are needed to improve their access to and progress in the general education curriculum.

Priority

The purpose of this priority is to support a cooperative agreement for an Institute that will conduct a program of research that addresses issues associated with the use of progress monitoring for students with significant cognitive and developmental disabilities in elementary school, middle school, and high school. The Institute's activities must include, but are not limited to, the following:

(a) Developing and implementing plans of research to identify and validate progress monitoring strategies for elementary school, middle school, and high school that will maximize achievement of students who have significant cognitive and developmental disabilities. These strategies should focus on content domains and complex skills and align with the existing curriculum.

(b) Developing a conceptual framework that builds upon current progress monitoring research, provides a basis for the intervention strategies to be studied, and includes a theoretical and empirical rationale for the research design.

(c) Establishing and validating progress monitoring standards. This activity must:

(1) Describe the process for assessing student progress given the wide range of student performance and high expectations States have for all students;

(2) Ensure that standards are relevant for students with significant disabilities;

(3) Identify and describe what assessments will be used, how often measures will be administered, how the measures will be scored, and to what grade level the measures apply; and

(4) Identify methods for effectively reporting progress to teachers and parents.

(e) Evaluating the interaction between instruction and progress monitoring. This evaluation must:

(1) Examine and improve the process for making decisions about how to target instruction that will be effective, given the identified learning characteristics of each student;

(2) Measure the interaction between progress monitoring outcomes and the modification of instruction in terms of the consistency, explicitness, intensity, and duration of the instruction as well as the fidelity to its design;

(3) Evaluate the effect that context of instruction has on student growth and outcomes;

(4) Study content of instruction and the efficacy of progress monitoring in this content;

(5) Document changes that could be made to strengthen the approach to instruction modification based upon progress monitoring results;

(6) Identify effective strategies for including progress monitoring in the Individualized Education Program development; and

(7) Examine the role of technology in progress monitoring.

The Institute must also:

(a) For projects that use group comparison research, or other research covered by the Design and Implementation Assessment Device (DIAD), utilize an overall methodology that meets the standards set out in the DIAD protocol from the What Works Clearinghouse (WWC);

(b) Report the findings, as specified in the DIAD protocol from the What Works Clearinghouse, for all publications based on group comparison research, or other research covered by the DIAD. More information about the WWC and the DIAD protocol can be found at *http://www.w-w-c.org;*

(c) Prepare and disseminate reports and documents, including publications in peer-refereed journals, on progress monitoring and other related topics for specific audiences, as appropriate, such as researchers and policymakers;

(d) Prepare and disseminate, through a Web site (in both English and Spanish) and by other means, reports and documents on research findings and related topics, including a comprehensive analysis of progress monitoring literature;

(e) Share information with the Technical Assistance and Dissemination Center on Progress Monitoring;

(f) Maintain communication with the Federal project officer through e-mail communication, as needed, and monthly conference calls. The Institute must submit annual performance reports and provide additional written materials, as needed, for the Federal project officer to monitor the Institute's work;

(g) Establish, maintain, and meet at least annually with an advisory committee consisting of researchers, representatives of State and local agencies, individuals with significant disabilities, parent educators, TA providers, professional organizations and advocacy groups, and representatives of other appropriate groups to review and advise on the Institute's design, plans, products, and activities; and

(h) In addition to the three two-day meetings listed in the General Requirements section of this notice, budget for, at least, two annual planning meetings and, at least, eight two-day trips annually as requested by OSEP to attend meetings such as Department briefings, Department sponsored conferences, and other OSEP-requested activities.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

**Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities [CFDA Number 84.326]**

*Purpose of Program:* The purpose of this program is to provide technical assistance and information—through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity—to (1) improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address systemic-change goals and priorities.

*Eligible applicants:* State educational agencies, local educational agencies, institutions of higher education, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions will be provided in the application package for these competitions.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Priorities**

Under 34 CFR 75.105(c)(3) we consider only applications that meet the following priority:

*Absolute Priority—Technical Assistance and Dissemination Center on Progress Monitoring (84.326W)*

Background

The use of progress monitoring can lead to improved learning outcomes for students with and without disabilities and higher expectations for students through more frequent instructional modifications. Although progress monitoring is proving to be a powerful tool, it is not widely utilized. Widespread use of progress monitoring will provide more timely information on the extent to which students with disabilities are making progress and are prepared for statewide assessments.

Priority

The purpose of this priority is to support a cooperative agreement for a Center that will provide technical assistance for State educational agencies (SEAs) and local educational agencies (LEAs) and disseminate information regarding progress monitoring, particularly for use in content areas taught in grades kindergarten through five.

The Center's activities must include, but are not limited to, the following:

(a) Working directly with the Office of Special Education (OSEP) Technical Assistance Network, States, school districts, national teacher organizations, and other relevant programs and organizations on the scale up and sustainability of progress monitoring in schools, particularly in grades kindergarten through five. This activity must include:

(1) Setting student expectations, selecting measures of progress, scoring and analyzing progress monitoring data, and using data to institute changes in instruction, policy, and teacher accountability;

(2) Establishing a cadre of national trainers and a system for communication and discussion among States implementing progress monitoring;

(3) Conducting an annual survey of States to determine the current status of

implementing progress monitoring, including how States use progress monitoring and how States promote its use, and evaluating policies and practices that sustain its use;

(4) Identifying States and LEAs that have successfully used progress monitoring to improve outcomes for students with disabilities;

(5) Fostering partnerships between LEAs that have successfully used progress monitoring and others that want to implement progress monitoring, and observing and documenting the process of change for those LEAs who have not previously implemented progress monitoring;

(6) Providing technical assistance to States based upon their needs and commitment to implementation of progress monitoring. This must include providing technical assistance to three OSEP-identified States per year. This effort may include the following: (i) Collaborative Web-based technical assistance activities, (ii) coordination of and participation in State-to-State communities of practice, and (iii) direct technical assistance to OSEP-specified States through partnerships between OSEP and selected States.

**Note:** Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the project award (OSEP anticipates that technical assistance to OSEP-specified States could average approximately $40,000 per year. Budgets should be developed with this in mind);

(7) Developing and applying strategies for the dissemination of information to specific audiences including teachers, families, administrators, policymakers, and researchers. Such strategies must involve collaboration with other technical assistance providers, organizations, and researchers as described above; and

(8) Establishing an internal evaluation to:

(i) Document successful practices and analyze less successful approaches to determine changes that could strengthen these less successful approaches;

(ii) Examine patterns and strategies for implementing effective use of progress monitoring across successful LEAs; and

(iii) Identify where additional areas of limited knowledge research is needed.

(b) Conducting National and regional meetings including large-scale dissemination conferences, focused trainer forums, topical symposium, and other meetings on progress monitoring and related issues as requested by OSEP. At a minimum, the Center must hold trainer forums every other year, a symposium in the off years, and a national conference in year 5.

(c) Preparing and disseminating reports and documents, on progress monitoring and other related topics for specific audiences, as appropriate, such as parents, administrators, teachers, related-services personnel, researchers, and individuals with disabilities. This effort must also include compiling documentation to assist LEAs in implementing progress monitoring and other technical assistance providers in developing training materials.

(d) Preparing and disseminating, through a Web site (in both English and Spanish) and by other means, reports and documents on research findings and related topics, including a comprehensive analysis of progress monitoring literature.

(e) Sharing information with the Research Institute on Progress Monitoring.

(f) Maintaining communication and collaboration with other Office of Special Education and Rehabilitative Services (OSERS)—funded projects such as the Office of Special Education Regional Resource Centers; the IDEA Partnership Project; parent projects; other OSEP progress monitoring, dissemination, and synthesis projects; and other projects, as appropriate.

(g) Maintaining communication with the Federal project officer through e-mail communication, as needed, and monthly conference calls. The Center must submit annual performance reports and provide additional written materials, as needed, for the Federal project officer to monitor the Center's work.

(h) Establishing, maintaining, and meeting at least annually with an advisory committee consisting of technical assistance providers, researchers, representatives of State and local agencies, individuals with disabilities, parents, professional organizations and advocacy groups, and representatives of other appropriate groups to review and advise on the Center's design, plans, products, and activities.

(i) Establishing an external evaluation mechanism to analyze the implementation of progress monitoring and the overall impact of the Center's work, particularly its effect on student outcomes. The Center must report its evaluation findings annually to the Federal project officer.

(j) Coordinating with the National Dissemination Center for Children with Disabilities, which OSEP expects to fund this year, to ensure timely and accurate dissemination of progress monitoring information. Evidence of coordination and proposed outcomes of the coordination must be reported to the Federal project officer.

(k) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of the National Dissemination Center for Children with Disabilities.

(l) In addition to the three two-day meetings listed in the General Requirements section of this notice, budget for, at least, two 2-day annual planning meetings and at least eight two-day trips annually as requested by OSEP to attend meetings such as Department briefings, Department sponsored conferences, and other OSEP-requested activities.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2003

| CFDA No. and name | Applications available | Application deadline date | Deadline for intergovernmental review | Estimated available funds | Maximum award (per year)* | Project period | Page limit | Estimated number of awards |
|---|---|---|---|---|---|---|---|---|
| 84.324H Research Institute on Progress Monitoring. | 07/28/03 | 08/27/03 | 09/29/03 | $1,000,000 | $1,000,000 | Up to 60 mos. | 70 | 1 |
| 84.326W Technical Assistance and Dissemination Center on Progress Monitoring. | 07/28/03 | 08/27/03 | 09/29/03 | 800,000 | 800,000 | Up to 60 mos. | 70 | 1 |

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months.
**Note:** The Department of Education is not bound by any estimates in this notice.

*For Applications Contact:* If you want an application for any competition in this notice, contact Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify the competition by the appropriate CFDA number.

**FOR FURTHER INFORMATION CONTACT:** If you want additional information about any competition in this notice, contact the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT**. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

### Intergovernmental Review

All programs in this notice (except for the Research and Innovation to Improve Services and Results for Children with Disabilities Program) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for these programs.

### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *www.ed.gov/legislation/FedRegister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html*.

**Program Authority:** 20 U.S.C. 1405, 1461, 1471, 1472, and 1485.

Dated: July 22, 2003.

**Loretta Petty Chittum,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 03–19081 Filed 7–25–03; 8:45 am]

BILLING CODE 4000–01–U

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## DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2003.

**SUMMARY:** This notice announces closing dates, priorities, and other information regarding the transmittal of grant applications for FY 2003 competitions under three programs authorized under part D, subpart 2 of the Individuals with Disabilities Education Act, as amended (IDEA). The three programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (2 priorities); (2) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (2 priorities); and (3) Special Education—Technology and Media Services for Individuals with Disabilities (3 priorities).

Please note that significant dates for the availability and submission of applications, as well as important fiscal information, are listed in a table at the end of this notice.

### Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

### General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in

Washington, DC during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

**Page Limit**

If you are an applicant, part III of each application, the application narrative, is where you address the selection criteria that are used by reviewers in evaluating the application. You must limit part III to the equivalent of no more than the number of pages listed in the table at the end of this notice, using the following standards:

- A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I—the cover sheet; part II—the budget section, including the narrative budget justification; part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in part III.

We will reject without consideration or evaluation any application if —

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

**Application Procedures**

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

*Project for Electronic Submission of Applications*

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The three programs in this announcement: Research and Innovation to Improve Services and Results for Children with Disabilities—CFDA 84.324, Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—CFDA 84.326, and Technology and Media Services for Individuals with Disabilities—CFDA 84.327, are included in the pilot project. If you are an applicant for a grant under any of the three programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Research and Innovation to Improve Services and Results for Children with Disabilities Program, the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program, or the Technology and Media Services for Individuals with Disabilities Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) The person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Research and Innovation to Improve Services and Results for Children with Disabilities Program, the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program, or the Technology and Media Services for Individuals with Disabilities Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application packages.

**Research and Innovation To Improve Services and Results for Children With Disabilities [CFDA Number 84.324]**

*Purpose of Program*

To produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

*Eligible Applicants*

State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

*Applicable Regulations*

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b). The selection criteria, chosen from the EDGAR general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions will be provided in the application package for these competitions.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

*Priorities*

Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities:

Absolute Priority 1—Research Validation and Implementation Project for Children Who Are Deaf-Blind (84.324D)

Background

New evidence-based research findings, including those related to hearing impairment, visual impairment, and other disabilities, have not been rapidly or systematically applied to children who are deaf-blind. These children are at high risk for exclusion from evidence-based research practices that promote high student achievement.

Priority

This priority supports a cooperative agreement to validate evidence-based research findings by translating those findings into procedures usable by personnel serving children who are deaf-blind, implementing new intervention procedures in home and community settings, and evaluating the effectiveness of the new procedures in meeting the early intervention and educational needs of children who are deaf-blind.

Projects are expected to address one or more of the following areas of investigation: (a) Assessment of communication and cognitive development in infants, toddlers, and young children who are deaf-blind; (b) improving communication and language development for children who are deaf-blind including alternative forms for those children who do not use signs or speech; (c) learning strategies that encourage systematic instruction with a clear focus on targeting specific educational outcomes and producing knowledge on how these outcomes are achieved and replicated; (d) use of innovative technology to increase access to education and enhance learner performance; (e) transition from school to work; and (f) improved strategies and models for the use of paraprofessionals, including the intervenor. An intervenor is a term used in the deaf-blind community to describe an individual who provides direct support for all or part of the instructional day to a student who is deaf-blind.

The project must:

(a) Form a consortium with one or more research institutions at other locations to (1) Validate new approaches with multiple children and in multiple settings and (2) replicate initial evaluation findings.

(b) Identify specific research findings and the interventions or strategies based on those findings that will be implemented and evaluated;

(c) Carry out the project activities within a conceptual framework that provides a basis for the areas of investigation, the interventions or strategies to be implemented and evaluated, the evaluation design, and the target population;

(d) Produce a variety of descriptive and outcome data, including (1) Information regarding the settings, the service providers, the children, and if applicable, their families, targeted by the project (*e.g.*, age, disabilities, skill and ability levels); and (2) multiple, performance outcome data regarding the children and families who are the focus of the interventions or strategies;

(e) Address causal questions by employing randomized experimental designs, to the extent appropriate; and

(f) Translate research findings into demonstrable practice that provides the informational bridge necessary to (1) Move research into practice, and (2) reduce lag time between research and implementing practice for children who are deaf-blind.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition —

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. The project must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

Absolute Priority 2—Center on Outcomes for Infants, Toddlers, and Preschoolers With Disabilities (84.324L)

Background

The NCLB Act and the IDEA Amendments of 1997 emphasize accountability in improving results for children with disabilities. With the Administration's ''Good Start, Grow Smart'' early childhood initiative, programs serving young children such as Head Start, Early Head Start, and State-funded Pre-Kindergarten programs are beginning to develop standards, outcome measures, and accountability systems to track the progress of the children they serve.

As part of this emphasis on accountability for results, reliable and valid outcome measures designed for young children with disabilities and their families must be developed and implemented.

Priority

The purpose of this priority is to fund a cooperative agreement to support a center to provide national leadership in the development and use of outcome information by early intervention and preschool special education programs and personnel. This Center must identify current and best practices in measuring outcomes for children with disabilities birth through five years of age and their families, served under parts C and B of IDEA, including performance indicators and assessment methodologies. The Center must accomplish this mission through a combination of research, technical assistance, dissemination, collaboration, and other leadership functions.

The Center's research activities must include, but are not limited to:

(a) Conducting an annual survey of State educational agencies (SEAs), local educational agencies (LEAs), and part C Lead Agencies (LAs) to determine their current progress in identifying outcomes for children with disabilities birth through five years of age and their families, and in developing performance indicators and assessment methodologies to measure the progress of children birth through five years of age and their families served under IDEA (including determining the age range of the children in accountability systems and whether or not they are aligned with other accountability systems such as Head Start, State Pre-K, and K–12 accountability systems);

(b) Evaluating State and local policies and practices to determine valid and technically adequate approaches to measuring the progress of young children with disabilities (in areas such as cognition, pre-reading and language skills, communication, social-emotional development, adaptive/self-help skills, and physical development);

(c) Conducting an annual review of State reports and parts C and B data to track the development of State parts C and B accountability systems and the status of State data systems;

(d) Synthesizing research on relevant topics such as the technical adequacy of outcome measures for young children vis-a-vis the range of disabilities defined under IDEA; the variation of eligibility criteria for services among States; the measurement of satisfaction of parents regarding children's progress; the impact of families on children's outcomes; the methods for aggregating data from child and family measures for use at the local, State, and Federal level; and procedures for data analysis and reporting;

(e) Conducting, collaborating in, or commissioning focused research studies on topics related to outcomes and measurement of the performance of programs serving young children with disabilities and their families, including work to ensure that technically adequate measures of outcomes for young children with disabilities are identified or developed; and

(f) Conducting or commissioning a synthesis of the measures and approaches to measurement used for assessment of family outcomes, including work to ensure that technically adequate measures of outcomes for families are identified or developed.

The Center's technical assistance and dissemination activities must include, but are not limited to:

(a) Preparing and disseminating reports and documents on research findings and related topics;

(b) Maintaining a world wide Web site with relevant information and documents in an accessible formats for individuals with disabilities;

(c) Conducting national and regional meetings, in collaboration with other centers such as the National Early Childhood Technical Assistance Center, the Regional Resource Centers, and the National Center for Special Education Accountability Monitoring, and the national and regional parent technical assistance centers to assist part C lead agencies, SEAs, LEAs, and local agencies in working collaboratively with stakeholders to develop accountability systems to measure the progress of children birth through five served under IDEA.

(d) Working directly with State educational agencies, local educational agencies, local agencies, and other stakeholders to develop and improve accountability systems to measure progress of children with disabilities, birth through five; and

(e) Developing and applying strategies for dissemination of information to specific audiences, including teachers, service providers, families, administrators, policymakers, and researchers. Such strategies must involve collaboration with other technical assistance providers, organizations, and researchers as described below.

The Center's collaboration and other leadership activities must include, but are not limited to:

(a) Maintaining communication and collaboration with other technical assistance providers (including the National Early Childhood Technical Assistance Center, the Regional Resource Centers, the Federal Resource Center, the National Center for Special Education Accountability Monitoring, the National Center on Educational Outcomes, Parent Training and Information Centers, and others) and organizations (including the National Association of State Directors of Special Education, the Council for Exceptional Children, the Infant and Toddler Coordinator's Association, Council of Chief State School Officers, parent and disability organizations, and others), as well as technical assistance projects funded under Office of Elementary and Secondary Education and Head Start concerning the development of outcome measures for young children with disabilities and accountability-related activities;

(b) Maintaining communication and collaboration with researchers (including researchers funded by the Institute of Education Sciences, the National Institute of Child Health and Human Development, the National Institute of Mental Health, and Administration for Children and Families) studying outcome measures for young children, accountability systems for programs serving young children, and related topics in order to promote the use of research findings and measures;

(c) Working directly with State educational agencies, local educational agencies, local agencies, technical assistance providers, parent organizations, parent trainers, other relevant organizations, and researchers to build consensus among stakeholders on what is important to measure, how the measurement should be conducted, the importance of using outcome indicators in early intervention and preschool special education, and the selection of child outcomes and indicators and family outcomes and indicators. The strategies for developing measures should include broad stakeholder input as to what they are, and how they should be considered;

(d) Convening conferences, at the request of OSEP, on topics related to the development of outcome measures and accountability systems for young children served under IDEA; and

(e) Collaborating and coordinating with Head Start and regular early childhood programs.

The Center must also:

(a) Establish, maintain, and meet at least annually with an advisory committee consisting of representatives of State and local educational and part C lead agencies, individuals with disabilities, parents of children with disabilities, including parents of young children with disabilities, educators, service providers, professional organizations and advocacy groups, researchers, and other appropriate groups to review and advise on the Center's activities and plans. The committee membership must include individuals who are from communities representing rural, low-income, urban, and limited English proficient populations;

(b) Establish, maintain, and meet at least annually with a technical workgroup consisting of SEA, LEA, and part C LA data specialists, researchers, and other appropriate individuals to advise on the Center's technical and research activities;

(c) Fund as project assistants at least three doctoral students per year who have concentrations in relevant topics such as early childhood special education, early intervention,

assessment, educational policy, and administration;

(d) In addition to the two-day Project Directors Meeting listed in the General Requirements section of this notice, budget for two additional two-day trips annually to Washington, DC, to attend an additional Project Director meeting and to attend an OSEP Leadership Conference; and one trip a month to attend appropriate meetings convened by the Department of Education, and other Centers and organizations.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center;

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge; and

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved outcomes for children with disabilities.

**Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities [CFDA Number 84.326]**

*Purpose of Program*

The purpose of this program is to provide technical assistance and information—through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity—to (1) Improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address systemic-change goals and priorities.

*Eligible Applicants*

State educational agencies, local educational agencies, institutions of higher education, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

*Applicable Regulations*

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions will be provided in the application package for these competitions.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

*Priorities*

Under 34 CFR 75.105(c)(3) we consider only applications that meet one of the following priorities:

Absolute Priority 1—National Dropout Prevention Center for Students With Disabilities (84.326Q)

Background

The National Longitudinal Transition Study (NLTS) reported that 38 percent of students with disabilities who left school did so by dropping out, 30 percent enrolled in high school but did not finish, and 8 percent dropped out before entering high school. In 1996, Blackorby and Wagner found the dropout rate for students with disabilities to be approximately twice that of regular education students. Through technical assistance that will lead to improved results for children with disabilities, this priority is expected to have a significant impact on dropout prevention, the improvement of educational services, and interagency coordination.

Priority

The Secretary establishes an absolute priority for a cooperative agreement to support a National Dropout Prevention Center for Students with Disabilities to provide guidance and assistance to States, schools, families, agencies, and communities in designing, implementing, and evaluating effective comprehensive dropout prevention programs based on scientifically validated practices for students with disabilities. The Center will focus on two broad areas: (1) Prevention and Educational Programs, and (2) Reentry. The Center must address these areas through knowledge development activities and technical assistance and dissemination.

Knowledge development activities of the Center must include, but are not limited to:

(a) Conducting an annual survey of States to determine the current status of implementation of scientifically validated dropout prevention and educational and reentry programs and evaluating policies and practices that sustain or pose barriers to these interventions. Reentry program status must include information on service options such as the general education diploma (GED) participation, test accommodations on the GED, and adult education programs.

(b) Contracting with the What Works Clearinghouse to identify effective exemplary programs for wide replication.

(c) Organizing and synthesizing research, policy, and practice and advances in the two focus areas.

Technical assistance and dissemination activities of the Center must include, but are not be limited to:

(a) Responding to written and telephone inquiries with research-validated information.

(b) Collaborating with the National Center on Secondary Education and Transition and the Office of Special Education Programs (OSEP)-supported Promoting What Works Synthesis Center on the preparation and dissemination of information materials designed to increase awareness of and the use of research-validated practices by a variety of audiences (*e.g.*, educators, policy makers, service providers, families, community agencies).

(c) Developing partnerships and communications around dropout issues with leaders and key stakeholders in special education and regular education, State and school level administrators, and consumer and advocacy organizations such as the Parent Training and Information Centers (PTIs).

(d) Establishing a coordinated network of researchers, practitioners, policy makers, families, service providers, community agencies, business groups who will serve as resources to States in designing and implementing effective programs.

(e) Providing for information exchanges between researchers and practitioners who direct effective model programs and those seeking to design, implement, or replicate these models. Information must be exchanged through a variety of methods, including a national forum during the first year, and a national forum in the fifth year. These exchanges must be designed to expand the coordinated interagency network, create a dialog about systemic

comprehensive services, develop awareness of the scientifically based practices in dropout prevention and education programming, and reentry. This forum must include exemplars and descriptions of model programs addressing the two focus areas.

(f) Packaging a set of effective models that would permit others to replicate or implement effective practices that also include alternative approaches to delivery of effective services for students. The package must identify barriers and effective programming and suggest effective proven strategies for working with students with disabilities from low socio-economic backgrounds, speakers of English as a second language, those who become pregnant, and those who repeat a grade or more.

(g) Developing and implementing strategic activities to provide technical assistance to States to assist them in the development of effective systems to address the dropout problem.

(h) Coordinating with the OSEP contractor in working with States to improve data quality and analyze the approaches to assess the nature and extent of the problem.

(i) Assisting States in developing model districts and school sites and help States replicate these models throughout the State.

(j) Providing technical assistance to States focused on needs identified in the State survey and State's commitment to implementation.

(k) Submitting for approval a proposal describing the content and purpose of any new product, whether paper or electronic, to the document review board of OSEP's newly funded Dissemination Center, for which OSEP expects to fund this year.

(l) Providing OSEP-specified technical assistance to States. This effort may include participation in: (1) Collaborative Web-based technical assistance activities, (2) coordination of and participation in State-to-State communities of practice, and (3) direct technical assistance to OSEP-specified States through partnerships between OSEP and selected States. Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the project award (OSEP anticipates that technical assistance to OSEP-specified States could averaged approximately $40,000 per year. Budgets should be developed with this in mind).

The Center must also:

(a) Meet with the OSEP project officer in the first two months of the project to review and refine the strategic plan of technical assistance and dissemination approaches;

(b) In addition to the two-day Project Director's Meeting listed in the general requirements section of this notice, budget for at least two annual planning meetings and eight two-day trips annually as requested by OSEP for Department briefings, Department sponsored conferences and other events.

(c) Maintain communication with the Federal project officer through monthly phone conversations and e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the project Federal officer to monitor the Center's work.

(d) Establish, maintain and meet at least biannually with an advisory committee consisting of representatives of State, local agencies, individuals with disabilities, persons from underrepresented populations, parent educators, professional organizations or advocacy groups, researchers, and other appropriate groups to review and advice the Center's activities and plans.

(e) Conduct evaluations of its specific activities and of the overall impact of its work. The Center must report its evaluation findings annually to the Federal project officer.

(f) Maintain a Web site with relevant information and documents in an accessible format with information available in both English and Spanish.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

Absolute Priority 2—Center on Positive Behavioral Interventions and Supports (84.326S)

Background

In 1998 the Office of Special Education Programs (OSEP) funded the establishment of the Center on Positive Behavioral Interventions and Supports. This targeted technical assistance effort was a response to the newly reauthorized IDEA, which specified the need for the Individualized Education Program teams to consider, when appropriate, positive behavioral interventions and supports and other strategies to address problem behavior. Based on a strong history of application of these practices to improve the behavior of primarily individual students with mental retardation, recent research and demonstration has focused on expanding these practices to groups of students, classrooms, schools, districts, and States, focusing on building infrastructures of support that ultimately improve the school environment and the overall quality of life for children with challenging behaviors.

OSEP established this Center to give schools capacity-building information and technical assistance for identifying, adapting, and sustaining effective schoolwide disciplinary practices.

The Center had two primary foci: (1) Broad dissemination to schools, families, and communities about a technology of schoolwide positive behavioral interventions and support and (2) Demonstrations at the levels of individual students, schools, districts, and States of the feasibility and effectiveness of schoolwide positive behavioral interventions and support. The follow-up investment in this area will continue the work of the past five years building on the emerging Positive Behavioral Support (PBS) Blueprint for Practice with an emphasis on building State and district level infrastructures of support to enable efficient and effective large scale implementation and sustainability of positive behavior support. For further information on the PBS Blueprint for Practice and the work of the past investment go to *http://www.PBIS.org.*

Priority

This priority will support a cooperative agreement for a technical assistance center focusing on dissemination of research-based schoolwide practices, and systems of positive behavioral support that foster positive learning and teaching environments and support the large-scale implementation and sustainability of those practices for school-aged children. Positive behavioral support has been defined as a broad range of systematic and individualized strategies for achieving important social and learning outcomes while preventing problem behavior. The Center must engage in a variety of leadership and

technical assistance activities regarding positive behavioral supports and related topics such as: schoolwide discipline systems; classroom and nonclassroom management; individual student behavioral management; functional assessment-based behavioral support planning; social skills and self-management instruction; safe schools; discipline and behavioral support policy; and family, school, and community partnerships.

The Center's knowledge development activities must include, but are not limited to, the following:

(a) Conducting an annual survey of States to determine the current status of establishing Statewide infrastructures to support systems of positive behavioral support and evaluate any policies and practices that sustain or pose barriers to these systems.

(b) Continuing documentation of the PBS practices by continued demonstrations across the continuum of primary, secondary, and tertiary interventions in elementary, middle, and high schools at the local level and system implementation at the district and State levels with particular emphasis on (1) Function-based support at the tertiary level; (2) district and State level implementation; (3) students in high schools; and (4) coordination with other agencies such as mental health and juvenile justice.

(c) Establishing a mechanism for assessing and synthesizing the growing research base on positive behavioral support. This process should include the establishment of a network of researchers to assist the Center in the analysis and synthesis of the current and emerging research on PBS and other related topics.

(d) Maintaining a database suitable for collecting and analyzing information from schools, districts and States on behavior measures such as office discipline referrals and other appropriate data to enable schools to make data-based decisions and track progress regarding PBS. The Center must have training and materials available to facilitate implementation of the data collection system at local sites. The Center will also be responsible for analysis of the data and producing reports on trends and patterns related to PBS and other topics as requested by OSEP such as analysis of urban and rural schools and overrepresentation issues.

The Center's technical assistance activities must include, but are not limited to, the following:

(a) Maintaining a user-friendly Web site with relevant information and documents in an accessible format with information available in both English and Spanish.

(b) Working directly with States and school districts to (1) Improve systemic implementation of positive behavioral supports and (2) establish and maintain an evaluation system based on a standard protocol such as the school evaluation tool (SET, *see http://www.pbis.org*) to measure progress of implementation. This work must also include a plan for the establishment of a cadre of national trainers and a system for communication and discussion among State implementation teams.

(c) Conducting national and regional meetings including large-scale dissemination conferences, focused trainer forums, topical symposia and other meetings on PBS and related issues as requested by OSEP. At a minimum the Center must hold trainer forums every other year, a symposia in the off years and a national conference in year 5.

(d) Preparing and disseminating reports and documents on positive behavioral support and other related topics such as those listed above including publications in peer-referred journals.

(e) Developing and applying strategies for the dissemination of information to specific audiences including teachers, families, administrators, policymakers, and researchers. Such strategies must involve collaboration with other technical assistance providers, organizations and researchers as described above.

(f) Developing partnerships with relevant programs and organizations to assist with the scale up and sustainability efforts. Partners are not limited to but must include national teacher organizations, school administrators, parent organizations, and teacher trainers.

(g) Prior to developing any new product, whether paper or electronic, submitting for approval a proposal describing the content and purpose of any new product whether paper or electronic, to the document review board of OSEP's new Dissemination Center which OSEP expects to fund this year.

(h) Providing OSEP-specified technical assistance to States. This effort may include participation in: (1) Collaborative Web-based technical assistance activities, (2) coordination of and participation in State-to-State communities of practice, and (3) direct technical assistance to OSEP-specified States through partnerships between OSEP and selected States. Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the project award (OSEP anticipates that technical assistance to OSEP-specified States could average approximately $40,000 per year. Budgets should be developed with this in mind).

The Center must also:

(a) Meet with the OSEP project officer and other appropriate staff in DC within the first two months of the project to clarify project activities and develop a strategic plan for technical assistance and dissemination.

(b) Maintain communication with the Federal project officer through monthly phone conversations and e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the Federal project officer to monitor the Center's work.

(c) Establish, maintain and meet at least annually with an advisory committee consisting of representatives of State or local agencies, individuals with disabilities, parent educators, professional organizations or advocacy groups, researchers and other appropriate groups to review and advise the Center's activities and plans.

(d) Maintain communication and collaboration with other OSERS-funded projects such as the OSEP Regional Resource Centers, the IDEA Partnership Project, the Parent Training and Information Centers and other parent projects, the National Institute on Disability and Rehabilitation Research's Research Training Center on PBS, other OSEP PBS projects, dissemination and synthesis projects, and other projects as appropriate.

(e) Fund, as project assistants, three doctoral students per year who have concentrations in relevant topics such as special education or behavioral disorders.

(f) Conduct evaluations of its specific activities and of the overall impact of its work. The Center must report its evaluation findings annually to the Federal project officer.

(g) In addition to the two-day Project Meeting listed in the general requirements section of this notice, budget for an additional two-day project meeting to attend the Research Project Meeting and at least two annual planning meetings; and eight two-day trips annually as requested by OSEP to attend meetings such as Department briefings, Department-sponsored conferences; and other OSEP-requested activities.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

**Special Education—Technology and Media Services for Individuals With Disabilities [CFDA Number 84.327]**

*Purpose of Program*

To: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; and (3) provide support for some captioning, video description, and cultural activities.

*Applicable Regulations*

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria for this priority are chosen from the EDGAR general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions will be provided in the application package for these competitions.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

*Eligible Applicants*

State and local educational agencies; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

*Priority*

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following priorities:

Absolute Priority 1—Family Center on Technology and Disability (84.327F)

Background

Parents and families play a critical role in obtaining the benefits of assistive technology for students with disabilities. Parents must often advocate for making assistive technology available to their children and can help in selecting, planning, and implementing assistive technology. Family support is often an important determinant of the success or failure of assistive technology.

To fulfill these functions, parents and families must have up-to-date information about various forms of assistive technology and the processes for obtaining assistive technology devices and services. Parents and families may need to learn skills in using technology and helping students with disabilities in its use.

There is a national infrastructure of programs and organizations that can potentially address the assistive technology-related needs of parents and families. These include the Parent Training and Information Centers and the Community Parent Resource Centers funded by the Office of Special Education Programs (OSEP), disability and advocacy groups, professional associations, community groups, etc. However, these programs and organizations are often not adequately prepared to provide information and services related to assistive technology.

Since 1998, OSEP has funded a center called the Family Center on Technology and Disability (FCTD) not to work directly with parents but instead to work with other relevant programs and organizations to improve the availability and quality of technology-related information and support to families of children with disabilities. Information about FCTD is available at the Center's Web site at: *http://www.fctd.info.* The contract supporting FCTD is currently scheduled to end in September 2003.

Priority

The purpose of this priority is to support a cooperative agreement for a Center to improve the availability and quality of technology-related information and support to families of children with disabilities. The Center's activities must include, but are not limited to:

(a) *Developing a strategic plan.* The Center must review existing data and literature and develop a strategic plan for increasing the capacity of projects and organizations such as the Parent Training and Information Centers and the Community Parent Resource Centers funded by OSEP, disability and advocacy groups, professional associations, and community groups to meet the assistive technology needs of parents and families within the parameters of this priority. The purpose of this strategic plan is to integrate the Center's various activities, as described below, into a cohesive process for improving the capacity of projects and organizations to meet the assistive technology needs of parents and families.

(b) *Maintaining and expanding a broad-based network.* The Center must retrieve all available information on network members from the current FCTD contractor and establish a database and communication system for maintaining the network. The Center must also establish and carry out a plan for identifying and recruiting as network members other relevant programs and organizations that can help to address the technology-related needs of parents and families of children with disabilities.

(c) *Providing information and support to the network.* The Center must develop and carry out plans for providing network members with information and resources that will enable them to better meet the assistive technology needs of the parents and families with whom they work. The Center must develop and carry out plans for fostering communication and collaboration with and among the programs and organizations in the network to better meet the assistive technology needs of the parents and families. The Center must provide for information exchange through a newsletter.

(d) *Developing strategic responses to direct inquiries from parents and families.* It is likely that the Center will receive inquiries about assistive technology directly from parents and families of children with disabilities, even though it is not intended to provide this type of direct assistance. The Center must develop a plan for referring these contacts to the appropriate members of the network, and for using them as an opportunity for developing the capacity of projects and organizations to respond to the needs expressed.

(e) *Collecting, revising, developing, and disseminating materials.* The Center must retrieve the resource review database and materials collected by the current FCTD contractor and establish a searchable online database to continue making these reviews available to the public. The Center must continue to update and expand the resource review database by removing outdated

materials and adding new materials. The Center must, to the maximum extent possible, include high quality resources that are available free of charge and downloadable from the Internet. The Center must focus on materials that are useful in meeting the assistive technology needs of parents and families, and must avoid, to the maximum extent possible, duplicating the functions of other online resources such as *assitivetech.net* and *abledata.com.*

(f) *Participating in meetings, conferences, and events.* The Center must participate in meetings, conferences, and other events to improve the capacity of other projects and organizations to meet assistive technology needs of parents and families. The Center's participation may include, but is not limited to, delivering presentations, exhibiting and demonstrating materials, conducting discussions, and participating in work groups.

(g) *Maintaining an accessible Web site.* The Center must maintain an accessible site on the Web with information about the Center, the searchable resource review database, topical online discussions, links to other relevant sites, newsletters, and other resources.

(h) *Conducting evaluations.* The Center must conduct evaluations of its activities to determine if it is meeting needs effectively and efficiently. The Center must report its evaluation findings annually to the Federal project officer.

(i) *Maintaining communication with the Federal project officer.* The Center must conduct monthly phone conversations with the Federal project officer and must maintain e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the Federal project officer to monitor the Center's work.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

Absolute Priority 2—Television Access (84.327J)

This priority supports cooperative agreements to provide (1) Captioning of local news and public information television programs, and (2) captioning, description, or captioning and description of children's television programs. Only programs not previously captioned are eligible for funds for captioning under this activity. In awarding funds the Secretary will consider the extent to which the applicant or a third party shares in the cost of the project. Program hours or the costs of captioning associated with those programs that are funded by promotional billboards will not be considered as an in-kind cost, or a private sector match, for Federal funds.

A project must do the following:

(a) Include criteria for selecting programs that take into account the preference of educators, students, and parents; the diversity of the type of programming available; and the contribution of the programming to the general educational experience of students who have disabilities in the areas of vision or hearing.

(b) Identify and support a consumer advisory group, including parents and educators, that would meet at least annually.

(c) Use the expertise of this consumer advisory group to certify that each program captioned or described with project funds is educational, news, or informational programming.

(d) Identify the extent to which the programming is widely available.

(e) Identify the total number of program hours the project will make accessible and the cost per hour for description or captioning or both.

(f) For each program to be described or captioned or both, identify the source of any private or other public support, and the projected dollar amount of that support, if any.

(g) Demonstrate the willingness of program providers or owners of programs to permit and facilitate the description or captioning or both of their programs.

(h) Provide assurances from program providers or owners of programs stating that programs made accessible under this project will air, and will continue to air, with descriptions or captions or both.

(i) Implement procedures for monitoring the extent to which full accessibility is provided, and use this information to make refinements in project operations.

(j) Identify the anticipated shelf-life and range of distribution of the captioned or described programs that is possible without further costs to the project beyond the initial captioning costs.

An application may address only one type of the following programs—

(1) *Local News and Public Information Programs.* The Secretary intends to fund projects that will increase the capacity of the television captioning industry to respond to demands for accurate real-time captioning. To be funded a project must caption local news and public information programs using the real-time stenographic method preferred by consumers who are deaf or hard of hearing.

(2) *Accessible Children's Television Programs.* The Secretary intends to fund projects that will describe and caption widely available educational, news, and informational programs for children shown on broadcast, satellite, or cable systems.

Competitive Preference Priority

Within the Local News and Public Information Programs segment of this absolute priority, we award under 34 CFR 75.105(c)(2)(i) an additional 20 points to an application from an applicant that—

(a) During fiscal year 2002, was not a grantee or a subcontractor of a grantee under the Technology and Media Services for Individuals with Disabilities program; and

(b) Won't use a subcontractor who was a grantee or a subcontractor of a grantee under this program during fiscal year 2002.

Thus, an applicant meeting this competitive preference could receive a maximum possible score of 120 points.

*Fiscal Information*

Under this priority, we intend to make one or more awards in each of the two areas of activity identified.

Absolute Priority 3—Center on Technology and Standards-Based Reform for Students With Disabilities (84.327R)

Standards-based reform is premised on a ''theory of action'' in which standards, assessments, and accountability lead to improved curriculum and clear expectations for students and schools, which in turn lead to professional development and

improved teaching, which ultimately lead to higher levels of student learning (Elmore and Rothman, Eds., 1999, available at *http://www.nap.edu/catalog/9609.html).* This theory suggests that for standards-based reform to benefit students with disabilities, certain conditions must be met. Among these are the following: (1) Assessments must be accessible and valid for the widest possible range of students with disabilities (with valid and reliable alternate assessments available for students with disabilities who cannot participate in general assessments); (2) Information on assessment results must be available to all appropriate parties in a timely fashion and must be applicable to instruction as well as to accountability; (3) Coherent standards-based instruction must be delivered, and student progress toward meeting standards must be monitored; (4) Principles of universal design must be applied to standards, assessments, curriculum, and instruction; and (5) Connections must be maintained between the components of the system, including standards, assessments, reporting, instructional planning, professional development, and instruction.

Priority

This priority supports a cooperative agreement for a center to conduct research, synthesize research, collect information, disseminate information, and provide assistance to States (in collaboration with other assistance providers) on the use of technology to maximize the benefits of standards-based reform for students with disabilities. Technologies may include, but are not limited to, technology-based assessments, computerized curriculum-based measurement, technology-based instruction, and technology-based systems for managing and analyzing information. The Center's work must address a range of the conditions necessary for standards-based reform to benefit students with disabilities as presented in the Background section of this priority, as well as other important conditions that become apparent during the course of the project.

The Center's activities must include, but are not limited to:

(a) *Conducting research syntheses and needs assessments.* The Center must conduct needs assessments through such means as stakeholder focus groups that include parents, individuals with disabilities, and others; analyze current State efforts and currently available products and approaches; and synthesize research relevant to the use of technology to increase the benefits of standards-based reform for students with disabilities. The products of these activities must be disseminated by means of the Web site discussed in paragraph (f) of this section.

(b) *Developing and implementing a strategic plan.* Based on its needs assessments, analyses of State efforts, and research syntheses, the Center must develop a strategic plan that integrates its activities in research, research synthesis, information collection, dissemination, and assistance to States. The goal of the strategic plan is to ensure that the Center's efforts are coherent, targeted at high-priority needs, and likely to have widespread positive effects. The Center must submit the strategic plan for approval by the Office of Special Education Programs (OSEP), and must revise the plan as instructed.

(c) *Developing and evaluating approaches for using technology in standards-based reform.* In collaboration with State and local educational agencies and other stakeholders, the Center must develop, implement, and evaluate approaches for using technology to increase the benefits of standards-based reform for students with disabilities. These approaches must be implemented in the context of ongoing State or local efforts related to standards-based reform. Specific approaches may address specific topics, but overall the Center's activities must address a range of the conditions presented in the first paragraph of the Background section above. Outcome measures must include the performance of students with disabilities on standards-based assessments.

(d) *Providing collaborative assistance to States.* In collaboration with other projects and organizations, the Center must provide assistance to States on the use of technology to maximize the benefits of standards-based reform for students with disabilities. This assistance must be designed to help as many States as possible, and may be provided in the context of national or regional conferences, professional meetings, internet-based assistance, or similar approaches.

(e) *Coordinating with relevant Federal projects.* The Center must share information and coordinate plans with other relevant federally funded projects. These projects may include, but are not limited to, the National Center on Educational Outcomes (NCEO), the National Center on Technology Innovation (NCTI), the National Center for Research on Evaluation, Standards, and Student Testing (CRESST), National Center on Accessing the General Curriculum (NCAC), and the Technology-Based Assessment (TBA) project sponsored by the National Center for Education Statistics.

(f) *Maintaining a Web site.* The Center must maintain a Web site for the purpose of disseminating information products and maintaining communication with and among interested parties.

(g) *Conducting evaluations.* The Center must conduct evaluations of its specific activities and of the overall impact of its work. The Center must report its evaluation findings annually to the Federal project officer.

(h) *Convening an advisory committee.* The Center must: (1) form an advisory committee that represents researchers, policymakers, State and local educational personnel, developers and vendors, individuals with disabilities, and other relevant perspectives; and (2) convene the advisory committee annually in the Washington, DC area to review the Center's work and suggest future research and dissemination activities.

(i) *Maintaining communication with the Federal project officer.* The Center must conduct monthly phone conversations with the Federal project officer and must maintain e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the Federal project officer to monitor the Center's work.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project is making a positive contribution—and its strategies are demonstrating the potential for disseminating significant knowledge to State and local constituencies—to using technology to maximize the benefits of standards-based reform for students with disabilities.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2003

| CFDA number and name | Applications available | Application deadline date | Deadline for intergovernmental review | Estimated available funds | Maximum award (per year)* | Project period | Page limit | Estimated number of awards |
|---|---|---|---|---|---|---|---|---|
| 84.324D Research Validation and Implementation Projects for Children who are Deaf-Blind. | 07/28/03 | 08/27/03 | 09/29/03 | $615,000 | $205,000 | Up to 60 mos ..... | 50 | 3 |
| 84.324L Center on Outcomes for Infants, Toddlers, and Preschoolers with Disabilities. | 07/28/03 | 08/27/03 | 09/29/03 | 700,000 | 700,000 | Up to 60 mos ..... | 70 | 1 |
| 84.326Q National Dropout Prevention Center for Students with Disabilities. | 07/28/03 | 08/27/03 | 09/29/03 | 700,000 | 700,000 | Up to 60 mos ..... | 70 | 1 |
| 84.326S Center on Positive Behavioral Interventions and Supports. | 07/28/03 | 08/27/03 | 09/29/03 | 1,700,000 | 1,700,000 | Up to 60 mos ..... | 70 | 1 |
| 84.327F Family Center on Technology and Disability. | 07/28/03 | 08/27/03 | 09/29/03 | 600,000 | 600,000 | Up to 60 mos ..... | 70 | 1 |
| 84.327J Television Access. | 07/28/03 | 08/27/03 | 09/29/03 | ..... | ..... | Up to 36 mos ..... | 50 | ..... |
| —Local News and Public Information Programs. | ..... | ..... | ..... | 330,000 | 110,000 | ..... | ..... | 3 |
| —Accessible Children's Television Programs. | ..... | ..... | ..... | 800,000 | 200,000 | ..... | ..... | 4 |
| 84.327R Center on Technology and Standards-Based Reform for Students with Disabilities. | 07/28/03 | 08/27/03 | 09/29/03 | 600,000 | 600,000 | Up to 60 mos ..... | 70 | 1 |

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months.
**Note:** The Department of Education is not bound by any estimates in this notice.

*For Applications Contact*

If you want an application for any competition in this notice, contact Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify the competition by the appropriate CFDA number.

**FOR FURTHER INFORMATION CONTACT:** If you want an additional information about any competition in this notice, contact the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

*Intergovernmental Review*

All programs in this notice (except for the Research and Innovation to Improve Services and Results for Children with Disabilities Program) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for these programs.

*Electronic Access to This Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/legislation/FedRegister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html.*

**Program Authority:** 20 U.S.C. 1405, 1461, 1471, 1472, 1485, and 1487.

Dated: July 22, 2003.

**Loretta Petty Chittum,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 03–19083 Filed 7–25–03; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.235R]**

## Special Demonstration Programs—Projects for Orthotic and Prosthetic Research; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

*Purpose of program:* To provide one-time funding in response to the Department of Education Appropriations Act, as enacted by section G of the Consolidated Appropriations Resolution for FY 2003 (ED Appropriations Act), for one or more projects designed to improve the quality of applied orthotic and prosthetic research and to help meet the increasing demand for provider services.

For FY 2003 the competition focuses on one or more projects designed to meet the priority described in the PRIORITY section of this application notice.

*Eligible applicants:* Public or nonprofit agencies or organizations, State vocational rehabilitation agencies, community rehabilitation programs, or Indian tribes or tribal organizations.

*Applications available:* July 28, 2003.

*Deadline for transmittal of applications:* August 27, 2003.

*Deadline for intergovernmental review:* September 26, 2003.

*Available funds:* $993,500. This amount will be reduced by an estimated $3,000 to $12,000 to cover peer reviewer costs.

**Note:** In no case will we make an award greater than $993,500 for a single budget period of 12 months.

*Estimated number of awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project period:* Up to 12 months.

*Page limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. It is suggested that you limit Part III to 35 pages.

*Applicable regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Selection criteria:* In evaluating an application for a new grant under this competition, we use selection criteria chosen from the general selection criteria in 34 CFR 75.209 and 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

### Priority

*Background*

The ED Appropriations Act includes $993,500 in the Rehabilitation Services and Disability Research account for activities to improve the quality of applied orthotic and prosthetic research and to help meet the demand for provider services. In addition, the accompanying conference report states that the conferees intend that these funds be used to support an orthotics and prosthetics awareness campaign, consisting of an educational outreach initiative designed to recruit and retain professionals and a series of consensus conferences to develop best practices in the field. The Senate Committee's report accompanying the Senate bill states that the Committee expects the Department to award the funding included in the bill for this purpose through a grant competition.

*Absolute Priority*

This competition focuses on projects designed to meet a priority that the Rehabilitation Services Administration (RSA) has chosen from allowable activities specified in the program statute (*see* 34 CFR 75.105(b)(2)(v) and section 303(b)(4)(E) of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 773(b)). For FY 2003 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Projects must improve the quality of applied orthotic and prosthetic research and assist in meeting the increasing demand for provider services.

To meet the absolute priority requirements for special demonstration projects, the application must explain—

(1) How the project will improve the quality of applied orthotic and prosthetic research, especially research relating to the development of clinical standards of practice or care;

(2) How the project will help move research knowledge into practice;

(3) How the project will help to meet the increasing demand for provider services;

(4) How the project will support an orthotics and prosthetics awareness campaign consisting of an educational outreach initiative designed to recruit and retain professionals; and

(5) How the project plans to provide a series of consensus conferences to develop and disseminate best practices in the field to be used by both training programs and practitioners.

*For applications contact:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235R.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**FOR FURTHER INFORMATION CONTACT:** Joyce Libby, U.S. Department of Education, 400 Maryland Avenue, SW., room 3320, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–5392; or Theresa DeVaughn, U.S. Department of Education, 400 Maryland Avenue, SW., room 3316, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–5392. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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**Program Authority:** 29 U.S.C. 773(b).

Dated: July 23, 2003.

**Loretta Petty Chittum,**

*Acting Assistant Secretary for Special Education Rehabilitative Services.*

[FR Doc. 03–19084 Filed 7–25–03; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Office of Science; Fusion Energy Sciences Advisory Committee; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Fusion Energy Sciences Advisory Committee has been renewed for a two-year period beginning November 2003. The Committee will provide advice to the Director, Office of Science, on long-range plans, priorities, and strategies for demonstrating the scientific and technological feasibility of fusion energy.

The Secretary has determined that the renewal of the Fusion Energy Sciences Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and implementing regulations.

Further information regarding this advisory committee can be obtained from Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on July 18, 2003.

**James N. Solit,**

*Advisory Committee Management Officer.*

[FR Doc. 03–19093 Filed 7–25–03; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Interim Management of Nuclear Materials; Savannah River Site Waste Management

**AGENCY:** Department of Energy.

**ACTION:** Amended record of decision.

**SUMMARY:** In 1995 the Department of Energy (DOE) prepared an environmental impact statement (EIS) for the stabilization, processing, and safe storage of nuclear materials at the Savannah River Site (SRS) entitled *Interim Management of Nuclear Materials* (IMNM EIS). The IMNM EIS analyzed several alternate methods of stabilizing, processing, or storing various types of nuclear materials. None of those alternatives envisioned disposing of any of the materials directly as waste. Based on the analysis in the IMNM EIS, DOE issued a series of records of decision (RODs) selecting a storage, stabilization, and/or processing strategy for each type of material, and DOE continues to carry out those actions.

In 1995 DOE also prepared an EIS for the treatment, storage and disposal of waste at SRS entitled *Savannah River Site Waste Management Environmental Impact Statement* (SRS WM EIS). The SRS WM EIS analyzed the management of SRS waste by general category, *i.e.*, hazardous waste, mixed waste (radioactive and hazardous), low level waste (LLW), transuranic waste (TRUW) and high level waste (HLW).

In this amended ROD, DOE is announcing that it has decided to dispose of as waste, pursuant to the SRS WM EIS, the majority of one type and a small portion of a second type of nuclear materials analyzed in the IMNM EIS. The materials will only be disposed of once it has been established that they meet the applicable waste criteria. This action will be taken in lieu of the earlier stabilization and processing decisions made for these materials. Because stabilization and processing activities result in the generation of additional waste, this decision will decrease by about 1,145 cubic meters (1,500 cubic yards) the amount of LLW, and by about 120 cubic meters (160 cubic yards) the amount of TRUW, to be managed at SRS as compared to the amounts that would have been generated under DOE's previous decisions.

**FOR FURTHER INFORMATION CONTACT:** For further information on the interim management of nuclear materials and radioactive waste management at the SRS, or to receive a copy of the IMNM or SRS WM EIS's, contact: Andrew R. Grainger, NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, Building 730B, Room 2418, Aiken, South Carolina 29802, (800) 881–7292, Internet: *drew.grainger@srs.gov.*

For further information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Programmatic Basis for the Revised Decision*

DOE's clean-up at the SRS is focused on an accelerated risk-based strategy. Under this strategy, the clean-up will be expedited by disposing of as waste all materials that are suitable for direct disposal, and by processing in the SRS canyon facilities only those materials that require such processing. This strategy will also allow DOE to reduce costs.

*NEPA Reviews and Decisions*

DOE prepared a final environmental impact statement, *Interim Management of Nuclear Materials* (IMNM EIS) (DOE/EIS–0220, October 1995), in accordance with the National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*], Council on Environmental Quality regulations implementing NEPA [40 CFR 1500–1508], and DOE implementing procedures [10 CFR 1021]. The IMNM EIS grouped the nuclear materials at the SRS into three categories: Stable (thousands of items in nine material types), Programmatic (three material types), and Candidates for Stabilization (seven material types). Some of the ''Programmatic'' and all of the ''Candidates for Stabilization'' materials could have presented environmental, safety, and health vulnerabilities in their then-current storage condition.

On December 12, 1995, DOE issued a ROD and Notice of Preferred Alternatives (60 FR 65300) on the interim management of several types of nuclear materials at the SRS. DOE decided to stabilize the Candidates for Stabilization material type known as

''Plutonium and Uranium Stored in Vaults'' by: (1) Heating or repackaging the material into better containers, and (2) dissolving some materials in the SRS canyon facilities to chemically remove impurities or radioactive decay products, and converting the resulting purified solutions to a metal, an oxide, or a glass (*i.e.*, vitrification). On February 21, 1996, DOE issued a Supplemental ROD (61 FR 6633) announcing its decision to stabilize the Candidates for Stabilization material type known as ''Other Aluminum-Clad Targets'' by dissolving them in acid in the SRS canyon facilities and transferring the resulting nuclear material solution to the high-level waste (HLW) tanks for future vitrification in the Defense Waste Processing Facility.

The environmental impacts of disposing of low-level waste (LLW), and managing transuranic waste (TRUW) pending disposal, are analyzed in the *Savannah River Site Waste Management Environmental Impact Statement* (SRS WM EIS) (DOE/EIS–0217, July 1995).[1] In preparing the SRS WM EIS, DOE recognized the difficulty in trying to comprehensively identify all of the wastes that would require treatment over a 30-year period. Therefore, in providing examples of different waste types, DOE used terms such as ''typical'' and ''includes'' to clearly indicate that other materials, such as those identified in this Amended ROD, could also be considered for waste treatment, storage, and disposal as long as those other materials met the definitions of the various waste categories in the SRS WM EIS.

Action alternatives analyzed in the SRS WM EIS included three waste treatment configurations (limited, moderate, and extensive), all of which were found to protect human health and the environment, meet applicable storage and disposal requirements, and use reasonable treatment, storage, and disposal technologies. Each of these treatment configurations was analyzed in the context of multiple waste volume scenarios (expected, minimum, and maximum) which included projections of waste volumes the SRS would need to manage over a 30-year planning period (1995 through 2024). In a September 22, 1995, ROD (60 FR 55249), DOE selected the moderate treatment configuration for its waste management system. On June 28, 2001, DOE issued an Amended ROD (66 FR 34431) announcing its decision to add offsite disposal of certain SRS waste as a management method, consistent with DOE policy.

*Other Aluminum-Clad Targets*

The Other Aluminum-Clad Targets material type includes 771 cobalt-60 and 1 (one) thulium-170 ''slugs''[2] as well as approximately 150 slugs and assemblies of other materials (*e.g.*, thorium, uranium, and plutonium).

DOE has determined that cobalt-60 and thulium-170 slugs, and potentially the remaining materials in the Other Aluminum-Clad Targets material type, may be disposed of as LLW without additional processing. One form of the Other Aluminum-Clad Targets, plutonium-242 flux monitor pins, may require disposal as TRUW rather than as LLW. In order to qualify for direct disposal the materials must meet the definition of LLW or TRUW,[3] whichever is applicable, and meet the waste acceptance criteria of the receiving, treatment, storage, or disposal facility.

Disposing of the cobalt-60 and thulium-170 slugs, and the qualifying remaining Other Aluminum-Clad Targets material type, as LLW would generate only about five cubic meters of LLW, as compared to approximately 1,150 cubic meters of LLW estimated for the processing stabilization alternative previously selected for this material type.[4] This is a net reduction of approximately 1,145 cubic meters of LLW generation. These materials are currently stored in the L-Area Disassembly Basin, the Receiving Basin for Offsite Fuels, and the Savannah River Technology Center. The materials in this category that are determined to qualify for direct disposal as LLW will be buried in a shielded container or containers at the SRS or at an offsite facility to ensure that radiation exposure is kept as low as reasonably achievable.

*Plutonium and Uranium Stored in Vaults*

Similarly, DOE has determined that some of the Plutonium and Uranium Stored in Vaults material type may be disposed of as TRUW without further processing. DOE has already characterized and stabilized about 90 percent of the approximately 3,000 containers of the Plutonium and Uranium Stored in Vaults material type. Characterization and stabilization of the remaining containers is scheduled to be complete by the end of Fiscal Year 2005. During characterization, DOE will determine which of the remaining approximately 300 containers can be directly disposed of as TRUW. Adding TRUW disposal as a management option does not change the characterization process. Disposing of this small portion of Plutonium and Uranium Stored in Vaults as TRUW could result in the generation of about eight cubic meters of TRUW, compared with approximately 130 cubic meters of TRUW estimated for processing this material as described in the IMNM EIS.[5] If the plutonium-242 flux monitor pins discussed in the preceding section are disposed of as TRUW rather than as LLW, less than two additional cubic meters of TRUW would require management at the SRS, resulting in the generation of less than ten cubic meters of TRUW from this decision. This is a net reduction of approximately 120 cubic meters of TRUW generation below the amount envisioned under previous RODs. In each case, the material to be directly disposed of must meet the TRUW definition and meet the applicable acceptance criteria for packaging, storage and disposal as TRUW. If any material cannot meet the applicable waste acceptance criteria, that material will be stabilized as described in previous RODs.

*Potential Environmental Impacts*

The IMNM EIS analyzed the potential impacts of a range of alternatives for managing all SRS nuclear materials.

[1] Low-level radioactive waste is radioactive waste that is not high-level radioactive waste, spent nuclear fuel, transuranic waste, byproduct material (as defined in section 11e.(2) of the *Atomic Energy Act of 1954,* as amended), or naturally occurring radioactive material. Transuranic waste is radioactive waste containing more than 100 nanocuries (3700 becquerels) of alpha-emitting transuranic isotopes per gram of waste, with half-lives greater than 20 years, except for: (1) High-level radioactive waste; (2) Waste that the Secretary of Energy has determined, with the concurrence of the Administrator of the Environmental Protection Agency, does not need the degree of isolation required by the 40 CFR Part 191 disposal regulations; or (3) Waste that the Nuclear Regulatory Commission has approved for disposal on a case-by-case basis in accordance with 10 CFR Part 61. [DOE G 435.1–1, Implementation Guide for Use with DOE's Radioactive Waste Management Manual]

[2] A ''slug'' is generally a short cylinder, approximately 12–18 inches long by three to four inches in diameter, of fuel, target, or barrier material in the form of pellets, pins, or solid metal that is assembled with other slugs in a tube for insertion in a nuclear reactor as a single rod or combined with others to form an assembly.

[3] DOE Guide 435.1–1, Chapters III and IV, July 9, 1999.

[4] Table 2–11 of the IMNM EIS indicates that 2,300 cubic meters of LLW could result from the stabilization processing of the entire Other Aluminum-Clad Targets material type. Some of this material type has already been processed. DOE estimates the remaining Other Aluminum-Clad Targets that are the subject of this Amended ROD represent approximately 50 percent of this material type analyzed in the IMNM EIS.

[5] Table 2–8 of the IMNM EIS indicates that 1,300 cubic meters of TRUW could result from the stabilization processing of the entire Plutonium and Uranium Stored in Vaults material type. DOE estimates that processing the remaining ten percent of these materials would have a potential of generating only ten percent of this amount.

Summaries of potential impacts from the alternatives, including the resulting generation of LLW and TRUW, are presented in the IMNM EIS, Table 2–2 through Table 2–12 (pp. 2–48 through 2–58). As described below, the direct disposal of the materials discussed herein as waste could reduce the impacts slightly.

The impacts caused by the disposition of cobalt-60 and thulium-170 slugs, and the remaining materials in the Other Aluminum-Clad Targets material category, as LLW would be within those described in Table 2–15 of the SRS WM EIS, and remain consistent with the moderate treatment alternative selected by DOE in the October 30, 1995, ROD (60 FR 55249). The 1,145 cubic meter reduction forecast from this decision is a very small fraction of both the LLW volume forecast in the SRS WM EIS (approximately 475,000 cubic meters) and the current SRS forecast (approximately 300,000 cubic meters) resulting from program changes, waste minimization, and volume reduction activities. Any material disposed of as LLW must meet the definition of LLW and the disposal facility's waste acceptance criteria.

Some of the Plutonium and Uranium Stored in Vaults materials, and potentially the plutonium-242 flux monitor pins in the Other Aluminum-Clad Targets material type, may be determined to be TRUW. If so, they would represent a small fraction of the TRUW generated and stored at the SRS, and the potential impacts would not exceed those described for TRUW treatment and storage in Table 2–17 of the SRS WM EIS. TRUW would be stored at the SRS pending shipment to DOE's Waste Isolation Pilot Plant near Carlsbad, New Mexico, for disposal. SRS has the capacity to store 34,400 cubic meters of TRUW and has a TRUW inventory of approximately 11,000 cubic meters. The *Waste Isolation Pilot Plant Disposal Phase Supplemental EIS* (DOE/EIS–0026–FS2) evaluated the transportation and disposal of up to 23,000 cubic meters of waste originating from the SRS. The most recent estimate of SRS-originated TRUW, which includes TRUW to be generated from the Mixed Oxide Fuel Fabrication Facility, is 21,155 cubic meters. Therefore, the estimated 120 cubic meter reduction that could result from implementation of this decision is a small fraction of both the SRS storage capacity and the analyzed WIPP disposal capacity.

## Decision

DOE is amending the December 12, 1995, ROD and the February 21, 1996, ROD by canceling, in part, the processing alternative selected for the Plutonium and Uranium Stored in Vaults material type and the Other Aluminum-Clad Targets material type. DOE instead will dispose of, as TRUW, that portion of the remaining Plutonium and Uranium Stored in Vaults, and possibly the plutonium-242 flux monitor pins in the Other Aluminum-Clad Target material type, which meets the criteria set forth below for TRUW. DOE also will dispose of, as LLW, the cobalt-60 and thulium-170 slugs, and any of the remaining Other Aluminum-Clad Target materials that meet the criteria set forth below for LLW. This LLW will be disposed of at the SRS, or at an offsite facility, along with other SRS LLW as discussed in the September 22, 1995, and June 28, 2001, RODs for the SRS WM EIS.

Any material disposed of as LLW or TRUW must meet the definition of the relevant waste type under DOE Guide 435.1–1, which provides guidance for implementation of DOE Order 435.1, Radioactive Waste Management. In addition, disposal of any materials would be contingent upon a demonstration that they meet the appropriate treatment, storage, or disposal facility waste acceptance criteria. The environmental impacts of treatment, storage, and disposal of LLW and TRUW at the SRS are analyzed in the SRS WM EIS (DOE/EIS–0217, July 1995).

Adding disposal as LLW or TRUW to the management methods available for Other Aluminum-Clad Targets and Plutonium and Uranium Stored in Vaults will allow DOE to optimize the use of the SRS canyon facilities to process higher priority materials. Additionally, implementing this additional management method for qualifying plutonium materials will reduce the amount of plutonium that would otherwise need to be processed to meet the plutonium storage standard (DOE-STD–3013), reduce vault storage space requirements for plutonium and the associated storage containers, and lower vault surveillance and maintenance costs. There is no programmatic need for the materials covered by this decision.

Issued in Washington, DC, July 17, 2003.

**Jessie Hill Roberson,**

*Assistant Secretary for Environmental Management.*

[FR Doc. 03–19094 Filed 7–25–03; 8:45 am]

BILLING CODE 6450–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

July 22, 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 Paperwork Reduction Act (PRA) comments should be submitted on or before August 27, 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 contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232, or via fax at 202–395–5167 or via Internet at *Kim_A._Johnson@omb.eop.gov,* and Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Judith-B.Herman@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** *The Commission has requested emergency*

*OMB review of this revised information collection with an approval by July 30, 2003.*

*OMB Control Number:* 3060–1004.

*Title:* Wireless Telecommunications Bureau Standardizes Carrier Reporting on Wireless E911 Implementation.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, and state, local, or tribal government.

*Number of Respondents:* 303 respondents; 1,212 responses.

*Estimated Time Per Response:* 4–5 hours.

*Frequency of Response:* Quarterly, semi-annual and one-time reporting requirements, recordkeeping requirement, and third party disclosure requirement.

*Total Annual Burden:* 1,282 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The Wireless Telecommunications Bureau takes steps to facilitate more uniform reporting of wireless Enhanced 911 (E911) deployment, in order to foster greater coordination and collaboration among various stakeholders in the implementation process. The Bureau has established a format in an Excel spreadsheet to be submitted with the wireless carrier E911 deployment quarterly reports required by the Commission. The next quarterly report is to be filed on August 1, 2003. This information was announced in a Public Notice dated June 6, 2003, DA03–1902.

Federal Communications Commisssion.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 03–19135 Filed 7–25–03; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 2003.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1. Campbell Hill Bancshares, Inc.*, Campbell Hill, Illinois; to acquire 100 percent of the voting shares of Southwest Illinois Bancshares, Inc., Coulterville, Illinois, and thereby indirectly acquire voting shares of The First National Bank of Coulterville, Coulterville, Illinois.

**B. Federal Reserve Bank of Kansas City** (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. BOK Financial Corporation*, Tulsa, Oklahoma; to acquire and merge with, BOKF Merger Corporation Number Eleven, Tulsa, Oklahoma, 100 percent of the voting shares of Colorado Funding Company, Denver, Colorado, and thereby indirectly acquire Colorado State Bank and Trust, Denver, Colorado.

Board of Governors of the Federal Reserve System, July 22, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–19033 Filed 7–25–03; 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 website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 2003.

**A. Federal Reserve Bank of Kansas City** (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Shamrock Bancshares, Inc., Employee Stock Ownership Plan*, Coalgate, Oklahoma; to acquire an additional 43.12 percent, for a total of 68.46 percent, of the voting shares of Shamrock Bancshares, Inc., and thereby indirectly acquire voting shares of Shamrock Bank, National Association, both in Coalgate, Oklahoma.

Board of Governors of the Federal Reserve System, July 23, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–19136 Filed 7–25–03; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires

persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| 09–JUN–03 ..... | 20030667 | G | k1 Ventures Limited. |
| | | G | Citizens Communications Company. |
| | | G | Citizens Communications Company. |
| | 20030668 | G | Warburg Pincus Private Equity VIII, L.P. |
| | | G | Wellman, Inc. |
| | | G | Wellman, Inc. |
| | 20030669 | G | TECO Energy, Inc. |
| | | G | Panda Energy International, Inc. |
| | | G | TECO-PANDA Generating Company, L.P. |
| | 20030673 | G | 2000 Riverside Capital Appreciation Fund, L.P. |
| | | G | The Dwyer Group, Inc. |
| | | G | The Dwyer Group, Inc. |
| | 20030678 | G | Liberty Media Corporation. |
| | | G | UnitedGlobalCom, Inc. |
| | | G | UnitedGlobalCom, Inc. |
| | 20030682 | G | Tenet Healthcare Corporation. |
| | | G | Tenet Healthcare Corporation. |
| | | G | Tenet MetroWest Healthcare System, Limited Partnership. |
| 11–JUN–03 ..... | 20030676 | G | Ness Technologies, Inc. |
| | | G | Apar Holding Corp. |
| | | G | Apar Holding Corp. |
| 12–JUN–03 ..... | 20030636 | G | Triton PCS Holdings, Inc. |
| | | G | Lafayette Communications Company L.L.C. |
| | | G | Lafayette Communications Company L.L.C. |
| | 20030672 | G | Tomkins plc. |
| | | G | The Stackpole Corporation. |
| | | G | Stackpole Limited. |
| | 20030679 | G | Robert Bosch industrietreuhand KG. |
| | | G | James V. Zeleski. |
| | | G | Vetronix Corporation. |
| | | G | Vetronix Sales Corporation. |
| | | G | Vetronix Telematics LLC. |
| | | G | Vetronix Japan KK. |
| | 20030686 | G | MDU Resources Group, Inc. |
| | | G | Francis M. Young. |
| | | G | YB Holdings, Inc. |
| 13–JUN–03 ..... | 20030616 | G | Parthenon Investors II, L.P. |
| | | G | Gemini I, LLC. |
| | | G | Gemini Industries, Inc. |
| | 20030660 | G | AmerisourceBergen Corporation. |
| | | G | Anderson Packaging, Inc. |
| | | G | Anderson Packaging, Inc. |
| | 20030683 | G | Abbott Laboratories. |
| | | G | Spinal Concepts, Inc. |
| | | G | Spinal Concepts, Inc. |
| | 20030689 | G | Morgan Stanley. |
| | | G | DigitalGlobe, Inc. |
| | | G | DigitalGlobe, Inc. |
| 16–JUN–03 ..... | 20030204 | G | Open Joint Stock Company MMC Norilsk Nickel. |
| | | G | Stillwater Mining Company. |
| | | G | Stillwater Mining Company. |
| 17–JUN–03 ..... | 20030690 | G | Kenneth I. Nelkin. |
| | | G | Marmon Holdings, Inc. |
| | | G | Vessel One Corporation. |
| | | G | Candy Cap, L.P. II–XX. |
| | | G | TU Vessel Leasing Corp. |
| 19–JUN–03 ..... | 20030302 | G | Automatic Data Processing, Inc. |
| | | G | ProBusiness Services, Inc. |
| | | G | ProBusiness Services, Inc. |
| 20–JUN–03 ..... | 20030693 | G | Fox Paine Capital Fund II International, L.P. |
| | | G | Wind River Investment Corporation. |
| | | G | Wind River Investment Corporation. |

TRANSACTION GRANTED EARLY TERMINATION—Continued

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| | 20030696 | G | Robert E. Rich, Jr. |
| | | G | Dean Foods Company. |
| | | G | Dean Foods Company. |
| | 20030702 | G | Reliance Steel & Aluminum Co. |
| | | G | John R. Eiting. |
| | | G | Precision Strip, Inc. |
| | 20030704 | G | Krispy Kreme Doughnuts, Inc. |
| | | G | Greater DFW Doughnuts, Inc. |
| | | G | Greater DFW Doughnuts, LLP. |
| | | G | Hulen St. Doughnut Company, LLP |
| | | G | Old Towne Doughnut Company, LLP. |
| | | G | Grapevine Doughnut Company, LLP. |
| | | G | Arlington Doughnut Company, LLP. |
| | | G | Euless Doughnut Company, LLP. |
| | | G | Frisco Doughnut Company, LLP. |
| | 20030712 | G | Cinergy Corp. |
| | | G | Suez. |
| | | G | Trigen-Cinergy Solutions of St. Paul, LLC. |
| 23–JUN–03 ..... | 20030688 | G | Municipal Mortgage & Equity, LLC. |
| | | G | Lend Lease Corporation Limited. |
| | | G | Acquisition Investment Corp. |
| | | G | Lend Lease MSR Corp. |
| | | G | Lend Lease BFRP, Inc. |
| | | G | The Boston Financial Group Limited Partnership. |
| | | G | BFG Investments, LLC. |
| | 20030699 | G | Charter Municipal Mortgage Acceptance Company. |
| | | G | Stephen M. Ross. |
| | | G | RCC Credit Facility, L.L.C. |
| | | G | Related Capital Company. |
| | | G | Related S.J. SLP, Inc. |
| | | G | Related Insured Tax Credit Partners III, Inc. |
| | | G | Related Independence Associates Inc. |
| | | G | Related Independence Associates III Inc. |
| | | G | Related Housing Programs Corporation. |
| | | G | RCC Corporate Monitoring Inc. |
| | | G | Liberty Credit Assignor Inc. |
| | | G | Liberty Credit Assignor III Inc. |
| | | G | Liberty Credit Assignor II Inc. |
| | | G | Lehigh Tax Credit Partners, Inc. |
| | | G | Independence Assignor Inc. |
| | | G | Freedom Assignor, Inc. |
| | | G | CIP Associates, Inc. |
| | | G | Related Charter L.L.C. |
| | | G | Related Equities Corporation. |
| | | G | Related Credit Properties, Inc. |
| | | G | Related Credit Properties, III Inc. |
| | | G | Related Credit Properties, II Inc. |
| | | G | Related Beta Corporation. |
| | | G | Related Aurora Associates, Inc. |
| | | G | Related AMI Associates, Inc. |
| | | G | Related Advantaged Residential Associates Inc. |
| | | G | RCC General Corp. |
| | | G | Related Charter LP. |
| | | G | RCC Managing Member LLC. |
| 24–JUN–03 ..... | 20030706 | G | Sanmina-SCI Corporation. |
| | | G | Newisys, Inc. |
| | | G | Newisys, Inc. |
| 26–JUN–03 ..... | 20030677 | G | Amgen Inc. |
| | | G | Tularik Inc. |
| | | G | Tularik Inc. |
| 30–JUN–03 ..... | 20030274 | G | Waste Management, Inc. |
| | | G | Allied Waste Industries, Inc. |
| | | G | Giordano Recycling Corp. |
| | | G | Automated Modular Systems, Inc. |
| | | G | Garafolo Brothers, Inc. |
| | | G | Joe Diresi and Sons, Inc. |
| | 20030685 | G | Fritz Gerber. |
| | | G | Maxygen, Inc. |
| | | G | Maxygen, Inc. |
| | 20030718 | G | Degussa AG. |
| | | G | Cargill, Incorporated. |

TRANSACTION GRANTED EARLY TERMINATION—Continued

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| | | G | Midwest Lysine LLC. |
| | 20030720 | G | United Technologies Corporation. |
| | | G | Chubb plc. |
| | | G | Chubb plc. |
| | 20030722 | G | Bank One Corporation. |
| | | G | Zurich Financial Services. |
| | | G | Federal Kemper Life Assurance Company. |
| | | G | Zurich Life Insurance Company of America. |
| | | G | Zurich Direct, Inc. |
| | 20030715 | G | Schneider Electric S.A. |
| | | G | EQT Scandinavia Limited. |
| | | G | TAC Holding AB. |
| | 20030717 | G | eBay Inc. |
| | | G | EachNet, Inc. |
| | | G | EachNet, Inc. |
| | 20030721 | G | Telefonica, S.A. |
| | | G | Terra Networks, S.A. |
| | | G | Terra Networks, S.A. |
| | 20030728 | G | Caliper Technologies Corp. |
| | | G | The Berwind Company LLC. |
| | | G | ZYAC Holding Corporation. |
| | 20030735 | G | CGW Southeast Partners IV, L.P. |
| | | G | R. Wayne Penrod. |
| | | G | Ladd Industries, Inc. |
| 02–JUL–03 ..... | 20030726 | G | Liberty Mutual Holding Company Inc. |
| | | G | Prudential Financial, Inc. |
| | | G | Prudential Commercial Insurance Company, Inc. |
| | | G | Prudential Property and Casualty Insurance Company. |
| | | G | Prudential General Insurance Company. |
| 03–JUL–03 ..... | 20030595 | G | The Procter & Gamble Company. |
| | | G | Wella AG. |
| | | G | Wella AG. |
| | 20030687 | G | Illinois Tool Works Inc. |
| | | G | APC Senior Holdings, Inc. |
| | | G | Acme Packaging Corporation. |
| | 20030703 | G | Patterson-UTI Energy, Inc. |
| | | G | TMBR/Sharp Drilling, Inc. |
| | | G | TMBR/Sharp Drilling, Inc. |
| | 20030725 | G | Quad-C Partners VI, L.P. |
| | | G | Max Gondon, Jr. and Diana B. Gondon. |
| | | G | Walnut Investment Corp. d/b/a Acoustical Material Services. |
| 07–JUL–03 ..... | 20030731 | G | Mercury Interactive Corporation. |
| | | G | Kintana, Inc. |
| | | G | Kintana, Inc. |
| | 20030732 | G | Cortec Group Fund III, L.P. |
| | | G | Jeffrey R. Haines. |
| | | G | Royce Medical Company. |
| | 20030738 | G | TCV IV, L.P. |
| | | G | InPhonic, Inc. |
| | | G | InPhonic, Inc. |
| | 20030743 | G | Kroll Inc. |
| | | G | Factual Data Corp. |
| | | G | Factual Data Corp. |
| | 20030744 | G | B&C Privatstifung. |
| | | G | Semperit Aktiengesellschaft Holding. |
| | | G | Semperit Aktiengesellschaft Holding. |
| | 20030746 | G | DLJ Merchant Banking Partners III, L.P. |
| | | G | Jostens, Inc. |
| | | G | Jostens, Inc. |
| | 20030748 | G | American Securities Partners III, L.P. |
| | | G | Kirtland Capital Partners III, L.P. |
| | | G | Unifrax Corporation. |
| 10–JUL–03 ..... | 20030576 | G | Konica Corporation. |
| | | G | Minolta Co., Ltd. |
| | | G | Minolta Co., Ltd. |
| | 20030713 | G | Warburg Pincus Private Equity VIII, L.P. |
| | | G | Odyssey Investment Partners Fund, L.P. |
| | | G | Transdigm Holding Company. |
| | 20030747 | G | Picnal Limited. |
| | | G | CORNISH H E's Settlement Trust. |
| | | G | LINPAC Group Limited. |

TRANSACTION GRANTED EARLY TERMINATION—Continued

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| 11–JUL–03 ..... | 20030729 | G | Omnicare, Inc. |
| | | G | Sun Healthcare Group, Inc. |
| | | G | Sunscript Pharmacy Corporation. |
| | | G | First Class Pharmacy, Inc. |
| | | G | HoMed Convalescent Equipment, Inc. |
| | | G | Advantage Health Services, Inc. |
| | 20030772 | G | Willis Stein & Partners III, L.P. |
| | | G | TWC Virginia, Inc. |
| | | G | Baker & Taylor Corporation. |
| 14–JUL–03 ..... | 20030692 | G | McCarthey Family, LLC. |
| | | G | MediaNews Group, Inc. |
| | | G | Kearns-Tribune, LLC. |
| | 20030700 | G | PeopleSoft, Inc. |
| | | G | J.D. Edwards & Company. |
| | | G | J.D. Edwards & Company. |
| | 20030741 | G | Reed Elsevier PLC. |
| | | G | Applied Discovery, Inc. |
| | | G | Applied Discovery, Inc. |
| | 20030742 | G | Reed Elsevier NV. |
| | | G | Applied Discovery, Inc. |
| | | G | Applied Discovery, Inc. |
| | 20030755 | G | Societe Generale S.A. |
| | | G | Robert M. Bass. |
| | | G | FEP Capital, L.P. |
| | 20030758 | G | Inergy Propane, LLC. |
| | | G | Robert A. Pascal. |
| | | G | United Propane, Inc. |
| | 20030760 | G | Cablevision Systems Corporation. |
| | | G | Cablevision Systems Corporation. |
| | | G | The Independent Film Channel LLC. |
| | | G | American Movie Classics Company. |
| | 20030763 | G | Marathon Fund Limited Partnership IV. |
| | | G | The Elder-Beerman Stores Corp. |
| | | G | The Elder-Beerman Stores Corp. |
| | 20030764 | G | Callaway Golf Company. |
| | | G | SHC, Inc. |
| | | G | Top-Flite Golf Company. |
| 15–JUL–03 ..... | 200307 | G | Cytec Industries Inc. |
| | | G | Avecia (Jersey) Limited. |
| | | G | Avecia Inc. |
| | 20030770 | G | Temasek Holdings (Private) Limited. |
| | | G | Global Crossing Ltd. |
| | | G | Global Crossing Ltd. |
| | 20030779 | G | Geac Computer Corporation Limited. |
| | | G | Comshare, Incorporated. |
| | | G | Comshare, Incorporated. |
| | 20030788 | G | Gas Natural SDG, S.A. |
| | | G | Enron Corp. (Debtor-in-Possession). |
| | | G | Enron LNG Power (Atlantic) Ltd. |
| | | G | Buenergia Gas & Power, Ltd. |
| | | G | El Puerto Rico Operations, Inc. |
| | | G | LNG Power III, L.L.C. |
| | | G | Enron Development Corp. |
| 16–JUL–03 ..... | 20030740 | G | WebMD Corporation. |
| | | G | Advanced Business Fulfillment, Inc. |
| | | G | Advanced Business Fulfillment, Inc. |
| 17–JUL–03 ..... | 20030719 | G | Northrop Grumman Corporation. |
| | | G | XonTech, Inc. |
| | | G | XonTech, Inc. |
| | 20030769 | G | Dearborn Holdings Corporation. |
| | | G | Exelon Corporation. |
| | | G | InfraSource Incorporated. |
| | 20030773 | G | Francisco Partners, L.P. |
| | | G | Schlumberger Limited. |
| | | G | NPTest, Inc. |
| | 20030776 | G | J.W. Childs Equity Partners III, L.P. |
| | | G | Murray's Inc. |
| | | G | Murray's Inc. |
| | 20030780 | G | Three Cities Fund III, L.P. |
| | | G | US Liquids Inc. |
| | | G | Romic Environmental Technologies Corporation. |

TRANSACTION GRANTED EARLY TERMINATION—Continued

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| | | G | Parallel Products of Kentucky, Inc. |
| | | G | US Liquids of La., L.P. |
| | | G | USL Parallel Products of California. |
| 18–JUL–03 ..... | 20030775 | G | Olympus Growth Fund III, L.P. |
| | | G | Orlando Foods, Ltd. |
| | | G | Orlando Foods, Ltd. |
| | 20030783 | G | Wachovia Corporation. |
| | | G | CapitalSource Inc. |
| | | G | CapitalSource Inc. |
| | 20030784 | G | Madison Dearborn Capital Partners III, L.P. |
| | | G | CapitalSource, Inc. |
| | | G | CapitalSource, Inc. |
| | 20030785 | G | Farallon Capital Institutional Partners, L.P. |
| | | G | CapitalSource, Inc. |
| | | G | CapitalSource, Inc. |
| | 20030786 | G | Farallon Capital Partners, L.P. |
| | | G | CapitalSource, Inc. |
| | | G | CapitalSource, Inc. |
| | 20030787 | G | Friedman Fleischer & Lowe Capital Partners, L.P. |
| | | G | CapitalSource, Inc. |
| | | G | CapitalSource, Inc. |
| | 20030790 | G | Jason M. Fish. |
| | | G | CapitalSource, Inc. |
| | | G | CapitalSource, Inc. |
| | 20030791 | G | John K. Delaney. |
| | | G | CapitalSource, Inc. |
| | | G | CapitalSource, Inc. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative or Renee Hallman, Legal Technician. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 03–19149 Filed 7–25–03; 8:45 am]

**BILLING CODE 6750–01–M**

## FEDERAL TRADE COMMISSION

**[File No. 021 0178]**

## Physician Network Consulting, L.L.C., et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before August 19, 2003.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the Supplementary Information section.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Brennan, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3688.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for July 22, 2003), on the World Wide Web, at ''*http://www.ftc.gov/os/2003/07/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

### Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with an independent practice association (''IPA'') of

physicians who practice orthopedic medicine, its members physician practices, their negotiating agent, and the agent's managing director. The agreement settles charges that the respondents violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements to fix prices and other terms on which they would deal with a payor, and to refuse to deal with that payor except on collectively-determined terms. The respondents named in the complaint are the agent, Physician Network Consulting, L.L.C., and its managing director, Michael J. Taylor; the IPA, Professional Orthopedic Services, Inc.; and the three physician practices whose physicians are members of the IPA, The Bone & Joint Clinic of Baton Rouge, Inc., Baton Rouge Orthopaedic Clinic, L.L.C., and Orthopaedic Surgery Associates of Baton Rouge, L.L.C. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by respondents that they violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

**The Complaint Allegations**

Professional Orthopedic Services consists of approximately 28 physicians who provide approximately 70 percent of the orthopedic medicine services in the Baton Rouge, Louisiana, area. To be competitively marketable in the Baton Rouge area, a payor's health insurance plan must include in its physician network members of Professional Orthopedic Services, including physicians from at least The Bone and Joint Clinic or Baton Rouge Orthopaedic Clinic.

Physician Network Consulting is an agent for Professional Orthopedic Services' members. It represents physicians in contract negotiations with health insurance firms and other third-party payors. Physician Network Consulting's client base includes physicians in approximately seven states. Michael J. Taylor is the founder and managing director of Physician Network Consulting.

As the complaint alleges, this matter involves the fixing of price terms demanded from United HealthCare of Louisiana, Inc., by Professional Orthopedic Services' members. With and through Mr. Taylor, the members agreed to terminate their respective contracts with United. They authorized Physician Network Consulting to be their common agent to negotiate more lucrative price terms with United. Although Physician Network Consulting purported to operate as a ''messenger''—that is, an arrangement that does not facilitate horizontal agreements on price—it engaged in various actions that reflected or orchestrated such agreements.[1]

According to the complaint, respondents succeeded in coercing United to accept their price demands, and thereby raised the cost of orthopedic services in the Baton Rouge area. Professional Orthopedic Services engaged in no efficiency-enhancing integration sufficient to justify respondents' agreement on price. By orchestrating agreements among Professional Orthopedic Services' members to deal only on collectively-determined terms, and by refusing to deal with United unless it would meet those terms, respondents violated section 5 of the FTC Act.

**The Proposed Consent Order**

The proposed order is designed to remedy the illegal conduct charged in the complaint and to prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans. The order also includes temporary ''fencing-in'' relief to ensure that the alleged unlawful conduct by respondents does not continue. Respondents Physician Network Consulting and Mr. Taylor conduct business in a number of states, and the order applies to their activities in all such states.

The proposed order's specific provisions are as follows:

Paragraph II. contains the proposed order's core prohibitions against collectively negotiating prices or organizing group boycotts of payors. Paragraph II.A prohibits the respondents from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, refuse to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or not to deal with any payor through any arrangement other than Professional Orthopedic Services.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraphs II.A or II.B. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations.

First, respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, whether a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement.''

As defined in the proposed order, a ''qualified risk-sharing joint arrangement'' possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A ''qualified clinically-integrated joint arrangement,'' on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation

[1] Some arrangements can facilitate contracting between physicians and payors without fostering an agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a ''messenger model'' arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice. See *http://www.ftc.gov/reports/hlth3s.htm.*

among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Second, because the order is intended to reach agreements among horizontal competitors, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice (defined in Paragraph I.I).

Paragraph III, for three years, bars Physician Network Consulting and Mr. Taylor from negotiating with any payor on behalf of the other respondents, and from advising any physician who participates in Professional Orthopedic Services, or advising the respondent Physician Practices (defined in Paragraph I.G), to accept or reject any term, condition, or requirement of dealing with any payor. This temporary ''fencing-in'' relief will ensure that the alleged unlawful conduct by these respondents does not continue.

Paragraph IV, for three years, requires Physician Network Consulting and Mr. Taylor to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V requires Professional Orthopedic Services to send the complaint and order to all physicians who have participated in Professional Orthopedic Services, and to payors that contract with Professional Orthopedic Services.

Paragraphs VI and VII generally require Physician Network Consulting to distribute the complaint and order to physicians who have participated in any group that has been represented by Physician Network Consulting since January 1, 1999, and each payor with which Physician Network Consulting has dealt since January 1, 1999, for the purpose of contracting.

Paragraph VI.B requires Physician Network Consulting to distribute the complaint and order to present and past employees, and to each individual who has acted as a contractor for Physician Network Consulting relating to contracting or advising physicians with regard to their dealings with payors. Paragraph VI.B is intended to ensure that past as well as present employees and contractors of Physician Network Consulting are made aware of the complaint and consent in order to discourage similar illegal conduct.

In the event that Physician Network Consulting fails to comply with the requirements set forth in Paragraphs IV, VI, VII.A.2, VII.B, or VII.C, Mr. Taylor must do so pursuant to Paragraph VIII.

Paragraph IX requires the respondent Physician Practices to terminate any contract with United HealthCare at United HealthCare's request and without penalty.

Paragraphs VII.B, VII.C, X, and XI of the proposed order impose various obligations on respondents to report or provide access to information to the Commission in order to facilitate monitoring respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 03–19148 Filed 7–25–03; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Notice of Meeting of the Advisory Committee on Blood Safety and Availability

**AGENCY:** Office of the Secretary.

**ACTION:** Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on Thursday August 21, 2003, and Friday, August 22, 2003, from 8 a.m. to 5 p.m. The meeting will take place at the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

The purpose of this meeting will be to examine the effect of mass smallpox vaccinations on the blood donor base and the effects of emerging infectious diseases and bioterrorism on the blood supply.

Public comment will be solicited at the meeting. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Acting Executive Secretary prior to close of business August 15, 2003. Those who wish to utilize electronic data projection in their presentation to the Committee must submit their material to the Acting Executive Secretary prior to close of business August 15, 2003. In addition, anyone planning to comment is encouraged to contact the Acting Executive Secretary at her/his earliest convenience.

**FOR FURTHER INFORMATION CONTACT:** CAPT Lawrence C. McMurtry, Acting Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 1101 Wootton Parkway, Room 275, Rockville, MD 20852; (301) 443–4788, FAX (301) 443–4361, e-mail *lmcmurtry@osophs.dhhs.gov.*

Dated: July 18, 2003.

**CAPT Lawrence C. McMurtry,**

*Acting Executive Secretary, Advisory Committee on Blood Safety and Availability.*

[FR Doc. 03–19067 Filed 7–25–03; 8:45 am]

BILLING CODE 4150–28–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–10084]**

### 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 (CMS)), 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.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Design and Implementation of a Targeted Beneficiary Survey on Access to Physician Services Among Medicare Beneficiaries; *Form No.:* CMS–10084 (OMB# 0938–0890); *Use:* This survey of Medicare beneficiaries in targeted communities will be used to obtain information on whether they are experiencing problems accessing

physician services. CMS will use data collected to determine if access problems exist at all, where and why problems may arise, whom they affect, and what the consequences are for Medicare beneficiaries. CMS will also learn the extent to which physician access problems are Medicare-specific.; *Frequency:* One-time; *Affected Public:* Individuals or Households; *Number of Respondents:* 4,000; *Total Annual Responses:* 4,000; *Total Annual Hours:* 958.

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 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: July 17, 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. 03–19103 Filed 7–25–03; 8:45 am]

**BILLING CODE 4120–03–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–730 & CMS–80, CMS–2649, and CMS–R–282]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

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 (CMS)), 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:* Extension of a currently approved collection; *Title of Information Collection:* Employee Building Pass Application and File; *Form No.:* CMS–730 & CMS–80 (OMB# 0938–0812); *Use:* The purpose of this system is to control United States Government Building Passes issued to all Centers for Medicare & Medicaid Services (CMS) employees and non-CMS employees who require continuous access to CMS buildings in Baltimore and other CMS and HHS Buildings; *Frequency:* As needed; *Affected Public:* Federal Government and Business or other for-profit; *Number of Respondents:* 2000; *Total Annual Responses:* 2000; *Total Annual Hours:* 500.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Reconsideration of Part A Medicare Claims and Supporting Regulations in 42 CFR, 405.711; *Form No.:* CMS–2649 (OMB# 0938–0045); *Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with the intermediary's determination or amount of benefit paid. This form is used so that a party may request a reconsideration of the initial determination; *Frequency:* Monthly, Quarterly, Annually; *Affected Public:* Individuals or Households and Not-for-profit institutions; *Number of Respondents:* 62,000; *Total Annual Responses:* 62,000; *Total Annual Hours:* 15,500.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare + Choice (M+C) Organization Appeals and Grievance Data Disclosure Requirements and Supporting Regulations in 42 CFR 422.64, 422.111, and 422.560–422.626; *Form No.:* CMS–R–282 (OMB# 0938–0778); *Use:* M+C organizations will collect information on appeals and grievance dispositions to help CMS monitor plan performance and to provide information to beneficiaries to help them make informed decisions about their or potential health plans' performance; *Frequency:* Semi-Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 214; *Total Annual Responses:* 428; *Total Annual Hours:* 1284.

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@cms.hhs.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: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 17, 2003.

**Dawn Willinghan,**

*CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.*

[FR Doc. 03–19104 Filed 7–25–03; 8:45 am]

**BILLING CODE 4120–03–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 1988N–0038]**

### Agency Information Collection Activities; Announcement of OMB Approval; Records and Reports Concerning Experience With Approved New Animal Drugs

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Records and Reports Concerning Experience With Approved New Animal Drugs'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 5, 2003 (68 FR 23726), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0284. The approval expires on June 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: July 21, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–19031 Filed 7–25–03; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0318]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on extending the existing reporting and recordkeeping requirements for processors and importers of fish and fishery products.

**DATES:** Submit written or electronic comments on the collection of information by September 26, 2003.

**ADDRESSES:** Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

### Procedures for the Safe Processing and Importing of Fish and Fishery Products—21 CFR Part 123 (OMB Control Number 0910–0354)—Extension

FDA regulations in part 123 (21 CFR part 123) mandate the application of hazard analysis and critical control point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (a)(4)), and became effective on December 18, 1997.

Certain provisions in part 123 require that processors and importers of seafood collect and record information. The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (e.g., the values for processing times, temperatures, acidity, etc., as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided. HACCP records are normally reviewed by appropriately trained employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and on the nature of the equipment or instruments required to monitor critical control points. The burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry.

The burden estimate in table 1 of this document includes only those collections of information under the

seafood HACCP regulations that are not already required under other statutes and regulations. For example, the current food manufacturing practices provisions in 21 CFR part 110 already require that all food processors ensure good sanitary practices and conditions, monitor the quality of incoming materials, monitor and control food temperatures to prevent bacterial growth, and perform certain corrective actions and verification procedures. Furthermore, the estimate does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (21 CFR 1240.60) is a customary and usual practice among seafood processors. Consequently the estimates in table 1 account only for new information collection and recording requirements attributable to part 123.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency of Recordkeeping[2] | Total Annual Records | Hours per Recordkeeper[3] | Total Hours | Total Operating and Maintenance Costs (in dollars) |
|---|---|---|---|---|---|---|
| 123.6(a), (b), and (c) | 243 | 1 | 243 | 16.00 | 3,888 | 58,320 |
| 123.6(c)(5) | 4,850 | 4 | 19,400 | 0.30 | 5,820 | 87,300 |
| 123.8(a)(1) and (c) | 4,850 | 1 | 4,850 | 4.00 | 19,400 | 291,000 |
| 123.12(a)(2)(ii) | 1,000 | 80 | 80,000 | 0.20 | 16,000 | 240,000 |
| 123.6(c)(7) | 4,850 | 280 | 1,358,000 | 0.30 | 407,400 | 6,111,000 |
| 123.7(d) | 1,940 | 4 | 7,760 | 0.10 | 1,940 | 29,100 |
| 123.8(d) | 4,850 | 47 | 227,950 | 0.10 | 22,795 | 341,925 |
| 123.11(c) | 4,850 | 280 | 1,358,000 | 0.10 | 135,800 | 2,037,000 |
| 123.12(c) | 1,000 | 80 | 80,000 | 0.10 | 8,000 | 120,000 |
| 123.12(a)(2) | 50 | 1 | 50 | 4.00 | 200 | 3,000 |
| 123.10 | 243 | 1 | 24 | 24.00 | 5,832 | 87,480 |
| Annual burden hours ..... 627,075 | | | | | | 9,406,125 |

[1] These estimates include the information collection requirements in the following sections:
§ 123.16—Smoked Fish—process controls (see § 123.6(b))
§ 123.28(a)—Source Controls—Molluscan Shellfish (see § 123.6(b))
§ 123.28(c) and (d)—Records—molluscan shellfish (see § 123.6(c)(7))
[2] Based on an estimated 280 working days per year.
[3] Estimated average time per 8 hour work day unless one time response.

Dated: July 21, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–19032 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0106]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; and Electronic Submission Using FDA Forms 3503 and 3504

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by August 27, 2003.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Submission of Petitions: Food Additive, Color Additive (Including Labeling), and GRAS Affirmation; Electronic Submission Using FDA Forms 3503 and 3504 (OMB Control Number 0910–0016)—Extension

This notice solicits comments on a proposed collection of the following four existing submissions of petitions: (1) Food additive and food additive petitions (FAPs) (OMB control number 0910–0016), (2) affirmation of generally

recognized as safe (GRAS) status (OMB control number 0910–0132), (3) labeling requirements for color additives (other than hair dyes) and petitions (CAPs) (OMB control number 0910–0185), and (4) electronic submission of food and color additive petitions (OMB control number 0910–0480).

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) The additive and its use, or intended use, are in conformity with a regulation issued under section 409 of the act that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact notification submitted under section 409(h) of the act is effective. FAPs are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 175 through 178, and 180 (21 CFR parts 172, 173, 175 through 178, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. CAPs are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 (21 CFR part 71.1) specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA's color additive labeling requirements in § 70.25 (21 CFR part 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

Under authority of sections 201, 402, 409, and 701 of the act (21 U.S.C. 321, 342, 348, and 371), FDA reviews petitions for affirmation as GRAS that are submitted on a voluntary basis by the food industry and other interested parties. Specifically under section 201(s) of the act, a substance is GRAS if it is generally recognized among experts qualified by scientific training and experience to evaluate its safety, to be safe through either scientific procedures or common use in food. The act has historically been interpreted to permit food manufacturers to make their own determination that use of a substance in food is GRAS. To implement the GRAS provisions of the act, FDA has issued procedural regulations under 21 CFR 170.35(c)(1).

In the **Federal Register** of July 31, 2001 (66 FR 39517), FDA announced the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format for Food Additive and Color Additive Petitions.'' This guidance describes the procedures for electronic submission of FAPs and CAPs using FDA Form No. 3503, entitled ''Food Additive Petition Submission Application,'' and FDA Form No. 3504, entitled ''Color Additive Petition Submission Application.''

FDA scientific personnel review food and color additive and GRAS affirmation petitions to ensure the safety of the intended use of the substance in or on food, or of a food additive that may be present in food as a result of its use in articles that contact food (or for color additives, its use in food, drugs, cosmetics, or medical devices). Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food.

In the **Federal Register** of April 4, 2003 (68 FR 16517) FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the reporting burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section/ FDA Form | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Operating and Maintenance Costs | Total Hours |
|---|---|---|---|---|---|---|
| CAPS | | | | | | |
| 70.25 | 0 | 1 | 0 | 0 | 0 | 0 |
| 71.1 | 2 | 1 | 2 | 1,652 | $5,600 | 3,304 |
| FDA Form 3504 | 1 | 1 | 1 | 1 | 0 | 1 |
| GRAS Affirmation Petitions | | | | | | |
| 170.35 | 1 | 1 | 1 | 2,598 | | 2,598 |
| FAPs | | | | | | |
| 171.1 | 7 | 1 | 7 | 3,640 | | 25,480 |
| FDA Form 3503 | 2 | 1 | 2 | 1 | | 2 |
| Total | | | | | $5,600 | 31,385 |

[1] There are no capital costs associated with this collection of information.

The estimate of burden for FAPs and CAPs is based on the average number of new FAPs and CAPs received in calendar years 2000 through 2002 and the total hours expended in preparing the petitions. Although the burden varies with the type of petition submitted, an average FAP or CAP, or GRAS affirmation petition, involves analytical work and appropriate toxicological studies, as well as the work of drafting the petition itself. The burden varies depending on the complexity of the petition, including the amount and types of data needed for scientific analysis.

Electronic submissions of petitions contain the same petition information required for paper submission. The agency estimates that up to 30 percent of the petitioners for both food and color additives will take advantage of the electronic submission process. By using the guidelines and forms that FDA is providing, the petitioner will be able to organize the petition to focus on the information needed for FDA's safety review. Therefore, we estimate that petitioners will only need to spend approximately 1 hour completing the electronic submission application form (Form 3503 or 3504, as appropriate) because they will have already used the guidelines to organize the petition information needed for the submission.

The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the act and other specific labeling acts administered by FDA. Label information does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because labeling requirements under § 70.25 for a particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for §§ 70.25 and 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Also, because labeling requirements under parts 172, 173, 175 through 178, and 180 for particular food additives involve information required as part of the FAP safety review process under § 171.1, the burden hours for labeling are included in the estimate for § 171.1.

Dated: July 21, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–19075 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0034]**

### Agency Information Collection Activities; Announcement of OMB Approval; FDA Safety Alert/Public Health Advisory Readership Survey

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''FDA Safety Alert/Public Health Advisory Readership Survey'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 13, 2003 (68 FR 25616), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0341. The approval expires on July 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: July 21, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–19076 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003N–0312]**

### Discussion of Animal Feed Safety System: A Comprehensive Risk-Based Safety Program for the Manufacture and Distribution of Animal Feeds; Notice of Public Meeting

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

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a meeting to discuss the potential development of a comprehensive, risk-based animal feed safety system (AFSS) describing how animal feeds (individual ingredients and mixed feeds) should be manufactured and distributed to minimize risks to animals consuming the feed and people consuming food products from animals. We are informing you (consumers, animal feed processors, animal producers, State and local officials, and other interested persons) of this meeting in an effort to solicit comments and seek your assistance in our consideration of a safety program to effectively minimize the hazards to public health, both human and animal health, posed by animal feed products.

*Date and Time*: The public meeting will be held on Tuesday, September 23, 2003, from 1 p.m. to 5 p.m., and Wednesday, September 24, 2003, from 8 a.m. to 3 p.m. You may submit written or electronic comments at any time, but they would be most helpful if received either before or within 30 days after the close of the meeting.

*Location*: The meeting will be held at the Hyatt Dulles International Airport, 2300 Dulles Corner Blvd., Herndon, VA, 1–800–233–1234 or 703–713–1234.

*Comments and Electronic Access*: Interested persons may submit written or electronic comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with docket number found in brackets in the heading of this document. A copy of the received comments will be available for public examination in the Dockets Management Division between 9 a.m.

and 4 p.m., Monday through Friday. You can view comments FDA has received on the Internet at *http://www.fda.gov/ohrms/dockets/*.

*For General Information Contact*: George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6651; FAX 301–827–1484 or e-mail: *ggraber@cvm.fda.gov*.

*For Information About Registration Contact*: Linda Grassie, Center for Veterinary Medicine (HFV–12), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–3796; FAX 301–827–4065 or e-mail: *Linda.Grassie@fda.gov*.

*Registration*: There is no registration fee for the meeting, but registration is required. Limited space is available (maximum of 200), so early registration is encouraged. You may register by phone, Fax or e-mail (see *For Information About Registration Contact*). Registration forms are also available on the Division of Dockets Management Web site at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*.

If you need special accommodations due to a disability, please contact Linda Grassie (see *For Information About Registration Contact*) at least 7 days in advance.

*Transcripts*: You may request a transcript of the meeting's general session in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857. The transcript will not include the individual breakout sessions, although their summaries will be included in the general session transcript. The transcript of the public meeting will be available after the meeting, at a cost of 10 cents per page. You may also examine the transcript of the meeting at the Division of Dockets Management (see *Comments and Electronic Access*) between 9 a.m. and 4 p.m., Monday through Friday and on the Center for Veterinary Medicine Web site at *http://www.fda.gov/cvm.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The regulation of animal feed by FDA has focused on areas recognized as having an important impact on human health. Medicated feed good manufacturing practice regulations (GMPs) help prevent potentially unsafe drug residues in edible animal tissue. The regulation that prohibits the feeding of mammalian proteins to ruminant animals is intended to help prevent bovine spongiform encephalopathy in our cattle herd and the potential for variant Creutzfeldt-Jakob disease in humans. FDA believes it may be of value to develop a comprehensive preventive program for the manufacture and distribution of animal feed.

While emphasis for fostering safety has been placed on end product sampling, only a limited number of samples are tested for potential contaminants. More and more, industry is considering preventative, risk-based system controls to augment end product testing. We are exploring risk-based, preventative measures as an approach designed to help prevent feed-related hazards from occurring and to detect problems prior to distribution and sale of feed products. Control systems vary, but generally they have a number of common basic elements. These include the following elements: (1) A thorough analysis of manufacturing and distribution for each product, (2) identification of risks associated with the process and product, (3) identification and implementation of controls to effectively prevent identified risks, (4) employee training programs, (5) controls focused on critical steps, (6) assurances such steps are accurately and consistently performed, and (7) recordkeeping and validation of the system.

Although the purpose of an AFSS would be to reduce the risks associated with animal feeds, the design of a final program would consider costs, technological limitations, and other resource limitations. Some available approaches include hazard analysis and critical control points and GMPs, International Organization for Standardization procedures, statistical process controls, and standard sanitary operating procedures. These have been used by regulatory agencies and industry to help ensure the production and distribution of safe human foods.

## II. Meeting

We are holding the meeting in an effort to gather information from you, our stakeholders, on the design of an effective, comprehensive, preventive, risk-based program to help minimize risks associated with animal feeds. Resources and costs are important considerations in any such undertaking, and we are receptive to suggestions about how these can be controlled or used most effectively (such as use of State inspections and self-inspections) while focusing preventive efforts on important known and emerging health risks associated with animal feeds.

The meeting will feature stakeholder and government speakers discussing safety measures currently in use and others which could be adapted to the feed industry. We plan several facilitated break-out discussion groups to explore topics such as the following:

1. What are the strengths of the current Federal and State regulatory programs for feed safety?
2. What are the weaknesses of the current Federal and State regulatory programs for feed safety?
3. What are the strengths and weaknesses of current industry feed safety programs?
4. What are the potential benefits of a comprehensive, risk-based Federal feed safety program?
5. What components should be included in an AFSS?
6. What is the potential burden (increased cost and manpower) of a comprehensive, risk-based Federal feed safety program, and what options are available to minimize the burden?

Dated: July 19, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–19030 Filed 7–25?–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003D–0317]**

### Draft Guidance for Reviewers and Industry on Good Review Management Principles for Prescription Drug User Fee Act Products; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for reviewers and industry entitled ''Good Review Management Principles for PDUFA Products.'' This is one in a series of guidance documents that FDA agreed to draft and implement in conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA). The good review management principles (GRMPs) are intended to promote efficient and consistent management of application reviews. The GRMPs focus on the role of both reviewers and industry, emphasizing effective communication to enhance the drug development and review processes.

**DATES:** Submit written or electronic comments on the draft guidance by September 11, 2003. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Food and Drug Administration, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** John Jenkins, Center for Drug Evaluation and Research (HFD–020), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–3937; or Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for reviewers and industry entitled ''Good Review Management Principles for PDUFA Products.'' This document is intended to provide guidance to industry and the review staff in CDER and CBER on GRMPs for the conduct of the first-cycle review of a new drug application (NDA), a biologics license application (BLA), or an efficacy supplement under PDUFA. The GRMPs in this guidance are based on the collective experience of CDER and CBER with review of applications for PDUFA products and are intended to promote efficient and consistent management of application reviews. A key aspect of GRMPs is their emphasis on effective communication between the agency and applicants throughout the drug and biologic product development and review processes.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on GRMPs for PDUFA products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: July 18, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–19026 Filed 7–25–03; 8:45 am]

**BILLING CODE 4160–01–S**

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Council on Graduate Medical Education (COGME).

*Dates and Times:* September 17, 2003, 8 a.m.–4:45 p.m., September 18, 2003, 8 a.m.–3 p.m.

*Place:* Holiday Inn Select, Versailles 1, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Status:* The meeting will be open to the public.

*Agenda:* The agenda for September 17 will include: Welcome and opening comments from the Chair of COGME and staff of the Health Resources and Services Administration. In the morning there will be a series of speakers on topics covering the physician workforce, including ''Managed Care Staffing Patterns,'' ''Small Area Variations,'' and the ''Impact of an Aging Society on Physician Workforce Requirements.'' There will also be presentations on the ''Impact of Residency Duty Hours Restrictions-Cost and Structural Adaptations.''

In the afternoon there will be a luncheon presentation on the ''University of Michigan Supreme Court Case and its Impact for Medical School Diversity Initiatives.'' Lunch will not be provided to the general public. Later that afternoon, the Council's three workgroups—Diversity, Graduate Medical Education Financing, and Physician Workforce—will convene.

The agenda for September 18 will include a presentation by the Gallup Organization regarding the results of the General Services Administration's Stakeholder Engagement Survey of the Council; discussion of the survey by the Council will follow. The Council's three workgroup chairs will give their reports. There will be a report on development of a framework for revised COGME physician workforce goals, with subsequent discussion of Council recommendations covering the physician workforce and graduate medical education.

Agenda items are subject to change as priorities dictate.

*For Further Information Contact:* Anyone requiring information regarding the meeting should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Acting Executive Secretary, Council on Graduate Medical Education, Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Dated: July 22, 2003.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 03–19074 Filed 7–25–03; 8:45 am]

**BILLING CODE 4165–15–P**

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Substance Abuse and Mental Health Services Administration

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

*Practitioner Services Network Initiative*—New—SAMHSA's Center for Substance Abuse Treatment (CSAT) plans to obtain information about the providers, care and characteristics of clients with substance abuse disorders and related co-morbidities that receive treatment from practitioners in private practice and organizational settings. This information is needed to complement available information about

the substance abuse treatment provided in institutional and publicly funded settings, in order to more completely describe the full range and nature of substance abuse problems affecting the nation.

The CSAT Practitioner Services Network initiative will provide support to four of the largest behavioral health associations in the nation to design and implement surveys using representative samples of their members and the clients they serve. The membership of the selected Associations collectively represent a significant proportion of the behavioral health professionals in the country. Two additional associations, the American Psychiatric Association and the American Psychological Association, have separately functioning Internet-based PSN infrastructures; from these two groups CSAT will be able to purchase reports based on the data they have already collected.

For the American Association for Marriage and Family Therapy; the American Counseling Association; NAADAC, The Association for Addiction Professionals; and the National Association of Social Workers, CSAT will sponsor new data collection efforts to provide a core set of data elements to be collected in their upcoming membership surveys. The four Associations conduct periodic sample surveys of their memberships through their individual Practitioner Services Network infrastructures and will incorporate a common set of specific substance-abuse questions that are of importance to CSAT into these studies. CSAT will sponsor data collection and purchase, from each Association, a report that addresses the characteristics of practitioners who may be expected to encounter clients with substance abuse disorders, the characteristics of clients with behavioral and/or substance abuse disorders, and the nature of services rendered to these clients.

The reports to be purchased by CSAT will be based on the Associations' surveys of a representative sample of 500 of their members. Practitioners in the sample will abstract demographic and encounter-specific data from two of their current patients' records. No client identifying information will be collected as part of this study. Data collection methods will include mailed surveys with mailed reminders and follow-up phone calls in order to achieve a target response rate of 80 percent. This information will complement CSAT's and SAMHSA's existing data collection efforts and provide a more comprehensive view of the populations in need of services, the prevalence of substance abuse and mental health co-morbidities, and the qualifications and training of private practitioners who serve these clients. The burden estimates are summarized in the following table.

| Estimated number of respondents | Responses per respondent | Estimated completion time (hours) | Total burden hours |
|---|---|---|---|
| 2,000 | 1 | .33 | 660 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: (202) 395–6974.

Dated: July 21, 2003.

**Anna Marsh,**

*Acting Executive Officer, SAMHSA.*

[FR Doc. 03–19058 Filed 7–25–03; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Citizenship and Immigration Services

### Agency Information Collection Activities: Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review; Employment Eligibility Verification; Form I–9.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 26, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the equality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–9. Bureau of Citizenship and Immigration Services, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000,000 responses at 9 minutes (.15 hours) per response and 20,000,000 recordkeepers at 4 minutes (.066 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,020,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services, Bureau of Citizenship and Immigration Services, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Clearance Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Room 4636–26, Washington, DC 20202.

Dated: July 22, 2003.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.*

[FR Doc. 03–19052 Filed 7–25–03; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG 2002–13487]**

### Environmental Assessment of Implementation of the Coast Guard Training Center Cape May's Integrated Natural Resources Management Plan

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability of finding of no significant impact (FONSI).

**SUMMARY:** The U.S. Coast Guard announces the availability of its Finding of No Significant Impact (FONSI) regarding its implementation of the Coast Guard Training Center Cape May's Integrated Natural Resources Management Plan (INRMP) in Cape May, New Jersey. The FONSI records the Coast Guard's determination that the proposed implementation would have no significant impact on the environment.

**ADDRESSES:** The material referenced in this notice is available for inspection at Docket Management Facility (USCG–2002–13487), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001 and on the Internet at *http://dms.dot.gov.* Written requests for copies of the FONSI, or requests for information, should be directed to: U. S. Coast Guard Training Center, Facilities Engineering, 1 Munro Ave., Cape May, NJ 08204.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about the project, you may contact Mr. Christopher Hajduk, at 1 Munro Avenue, Cape May, NJ 08204, or *chajduk@tracencapemay.uscg.mil.*

**SUPPLEMENTARY INFORMATION:** On October 21, 2002, the Coast Guard published a notice in the **Federal Register** (67 FR 64694–64695) requesting comments on a draft Integrated Natural Resources Management Plan (INRMP) and Environmental Assessment (EA) developed for use by U.S. Coast Guard (USCG) and the USCG Training Center (TRACEN) Cape May, New Jersey in accordance with USCG Commandant Instruction (COMDTINST) M5090.3, Natural Resources Management, COMDTINST M16475.1D, National Environmental Policy Act Manual, and Department of Transportation (DOT) Order 5610.1C, Procedures for Considering Environmental Impacts.

The INRMP provides TRACEN Cape May with a description of the Installation (*e.g.*, location, history, and mission), information about the surrounding physical and biotic environment, and an assessment of the impacts to natural resources as a result of mission activities. Furthermore, the INRMP recommends various management practices, in compliance with Federal, state, and local standards, designed to mitigate negative impacts and to enhance the positive effects of the TRACEN's mission on local ecosystems.

The INRMP integrates all aspects of natural resources management with the rest of the TRACEN Cape May's mission, and therefore becomes the primary tool for managing the TRACEN's ecosystems while ensuring the successful accomplishment of the training, law enforcement, and Search and Rescue (SAR) missions at the highest possible levels of efficiency. The INRMP is a guide for the management and stewardship of all natural resources present at the TRACEN.

No comments were received during the review process.

The INRMP and EA are available for public inspection or copying at the Docket Management Facility listed in **ADDRESSES.** The Docket Management Facility is open 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Dated: July 8, 2003.

**D.S. Klipp**

*CDR, U.S. Coast Guard, Facilities Engineer, Coast Guard Training Center, Cape May.*

[FR Doc. 03–19040 Filed 7–25–03; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1477–DR]**

### Arizona; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–1477–DR), dated July 14, 2003, and related determinations.

**EFFECTIVE DATE:** July 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 14, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arizona, resulting from the Aspen Fire on June 17, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arizona.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any

other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Arizona to have been affected adversely by this declared major disaster:

Pima County for Public Assistance.

All counties within the State of Arizona are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19109 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1476–DR]**

### Indiana; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

**EFFECTIVE DATE:** July 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 11, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms, tornadoes, and flooding on July 4, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

Adams, Allen, Benton, Blackford, Boone, Carroll, Cass, Clinton, Fountain, Howard, Huntington, Jasper, Jay, Kosciusko, Miami, Montgomery, Noble, Pulaski, Tippecanoe, Tipton, Wabash, Warren, Wells, White, and Whitley Counties for Individual Assistance.

All counties within the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19112 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1476–DR]**

### Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

**EFFECTIVE DATE:** July 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of July 11, 2003:

Delaware, Grant, Hamilton, Hancock, Henry, Madison, Marion, Randolph, and Wayne Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19113 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1476–DR]**

### Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

**EFFECTIVE DATE:** July 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Clay, Fulton, Morgan, Newton, Parke, and Vigo Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19114 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1475–DR]**

### Kentucky; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1475–DR), dated July 2, 2003, and related determinations.

**EFFECTIVE DATE:** July 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 2, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms, flooding, mud and rock slides, and tornadoes on June 14, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Alexander S. Wells, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Harlan, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Owsley, Perry, Pike, and Rowan Counties for Individual Assistance.

Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Johnson, Knott, Knox, Lawrence, Leslie, Magoffin, Monroe, Montgomery, Owsley, Perry, Pike, and Rowan Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19111 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1475–DR]**

### Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–1475–DR), dated July 2, 2003, and related determinations.

**EFFECTIVE DATE:** June 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective June 27, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19116 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1478–DR]**

### Ohio; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1478–DR), dated July 15, 2003, and related determinations.

**EFFECTIVE DATE:** July 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 15, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms and flooding on July 4, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster: Auglaize, Darke, Logan, Mercer, Shelby, and Van Wert Counties for Individual Assistance.

All counties within the State of Ohio are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19110 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1474–DR]**

### West Virginia; Amendment No. 7 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

**EFFECTIVE DATE:** July 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective July 15, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19115 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[FEMA–1474–DR]**

## West Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

**EFFECTIVE DATE:** July 14, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2003:

Monongalia County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19117 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[FEMA–1474–DR]**

## West Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

**EFFECTIVE DATE:** July 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2003: Doddridge, Harrison, and Ritchie Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19118 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[FEMA–1474–DR]**

## West Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

**EFFECTIVE DATE:** July 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2003:

Nicholas County for Individual Assistance (already designated for Public Assistance.)

Cabell County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–19119 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4814–N–07]**

### Notice of Proposed Information Collection: Comment Request, Youthbuild Program

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 26, 2003.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sheila Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Phyllis Williams at telephone number (202) 708–2290 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Youthbuild Program.

*OMB Control Number, if applicable:* 2506–0142.

*Description of the need for the information and proposed use:* The Youthbuild Program was authorized under Section 164 of the Housing and Community Development Act of 1992 (42 U.S.C. 8011). Funded programs provide disadvantaged youth, predominantly high school drop outs with educational opportunities and job skills training. Information is collected from eligible applicants for a competition to determine which entities will receive grant funds.

*Agency form numbers, if applicable:* HUD Form 40211, SF1199A, HUD–27054.

*Members of affected public:* Public or private nonprofit agencies, including State or local housing agencies or authorities, State or units of local government, or any entity eligible to provide education and employment training under other Federal employment training programs.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 121,280.

*Status of the proposed information collection:* Since FY 2000, all grant administration and record keeping for the Youthbuild Program has been delegated to HUD Field Office jurisdictions. They have the responsibility for reviewing grant activities via Semi-Annual Reports for recipients of Youthbuild funds.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 22, 2003.

**Roy A. Bernardi,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 03–19047 Filed 7–25–03; 8:45 am]

**BILLING CODE 4210–29–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4837–D–43]**

### Order of Succession for the Office of Policy Development and Research

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice of order of succession.

**SUMMARY:** In this notice, the Assistant Secretary for Policy Development and Research designates the Order of Succession for the Office of Assistant Secretary for Policy Development and Research. This Order of Succession supersedes the Order of Succession for the Office of Policy and Development, published on December 1, 1998.

**EFFECTIVE DATE:** July 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lynn B. Newkirk, Director, Management and Administrative Services, Department of Housing and Urban Development, Room 8228, 451 Seventh Street, SW, Washington, DC 20410–6000, telephone (202) 708–1812. (This is not a toll-free number.) Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Policy Development and Research is issuing this Order of Succession of officials authorized to perform the duties and functions of the Office of the Assistant Secretary when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice on December 1, 1998 (63 FR 66193).

Accordingly, the Assistant Secretary for Policy Development and Research designates the following Order of Succession:

**Section A. Order of Succession**

Subject to the provision of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Policy Development and Research is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Policy Development and Research, the following officials within the Office of Policy Development and Research are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary.

(2) Deputy Assistant Secretary for Economic Affairs.

(3) Deputy Assistant Secretary for Research, Evaluation, and Monitoring.

(4) Deputy Assistant Secretary for Policy Development.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his or hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

**Section B. Authority Superseded**

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Policy Development and Research, published on December 1, 1998 (63 FR 66193).

**Authority:** Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 8, 2003.

**Alberto F. Treviño,**

*Assistant Secretary for Policy Development and Research.*

[FR Doc. 03–19122 Filed 7–25–03; 8:45 am]

BILLING CODE 4210–62–P

## DEPARTMENT OF THE INTERIOR

## Geological Survey

### Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the information collection described below will be submitted to the Office of Management and Budge for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Copies of the proposed collection instrument may be obtained by contacting the USGS clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Telephone 703–648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* The National Atlas of the United States of America®.

*Current OMB approval number:* 1028–0057.

*Abstract:* Potential customers of National Atlas products and services will be asked questions that provide (1) potential uses of these products and services; (2) types of personal computers and telecommunications used; (3) current methods of acquiring atlas-type information; (4) demographic information; (5) personal expectations from the products; (6) suggestions for improving these products and services. Survey questionnaires will be distributed by mail in a return postage-paid format, in person at National Atlas exhibits and other venues, and via the World Wide Web. Focus groups will be held at various locations across the United States and could include prototype product testing. Software usability studies will be conducted at various locations and will result in the development of products and services that are easier to use. Customer information gathered from the questionnaires, focus groups, and usability studies will be used to evaluate and improve the National Atlas of the United State based on customer responses. The proposed collection is limited in scope to the National Atlas products and the capability of the products to meet customer needs.

*Bureau form number:* None.

*Frequency:* An estimated 2–3 surveys, 2–5 focus groups, and 2–5 software usability studies per year to evaluate potential customer segments and reactions.

*Description of respondents:* Owners of personal computers, with Internet access. Potentially the general public, libraries, and schools.

*Estimated completion time:* Varies depending on the mechanism used: Approximately 0.15 minutes per survey and 1 hour per focus group session of usability test session.

*Annual responses:* Approximately 1,000 survey, 75 focus group responses, and 75 software usability responses.

*Annual burden hours:* 400.

*Bureau clearance officer:* John Cordyack, 703–648–7313.

Dated: July 14, 2003.

**Robert A. Lidwin,**

*Chief of Staff for Geography.*

[FR Doc. 03–19100 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–Y7–M

## DEPARTMENT OF THE INTERIOR

## U.S. Geological Survey

### Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal to extend the collection of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* Annual National Earthquake Hazards Reduction Program Announcement.

*OMB approval number:* 1028–0051.

*Abstract:* Respondents submit proposals to support research in earthquake hazards and earthquake prediction to earth-science data and information essential to mitigate earthquake losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports are required on each selected performance.

*Bureau form number:* None.

*Frequency:* Annual proposals, annual or final reports.

*Description of respondents:* Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

*Annual responses:* 370.

*Annual burden hours:* 12,800 hours.

*Bureau clearance officer:* John Cordyack, 703–648–7313.

Dated: July 14, 2003.

**Frances W. Pierce,**

*Acting Associate Director for Geology.*

[FR Doc. 03–19101 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–Y7–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[OR–050–1020–PG: GP03–0237]**

## Notice of Public Meeting: Washington/Oregon Combined Resource Advisory Council Meeting for John Day/Snake, Southeast Oregon and Eastern Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake, Southeast Oregon and Eastern Washington Resource Advisory Councils (RACs), will meet as indicated below.

**DATES:** The two-day public meeting will be held at the Kah-Nee-Ta High Desert Resort, 6823 Highway 8, Warm Springs, OR on Monday, September 22, 2003 from 12:30 p.m. to 4:30 p.m. and on Tuesday, September 23, 2003 from 8 a.m. to noon and 1 p.m to 4 p.m. On September 23, a public comment period will follow the meeting, starting at approximately 4 p.m. and ending at approximately 5:30 pm.

**SUPPLEMENTARY INFORMATION:** The three 15-member Councils advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Oregon and Washington.

*Meeting Topics May Include:*

Rangeland Health Assessment—Wild Horses
Sustaining Working Landscapes Overview—Noxious Weeds
Recordable Disclaimers of Interest (Roads)

### Meeting Procedures

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below

**FOR FURTHER INFORMATION CONTACT:** Virginia Gibbons at (541) 416–6700, Prineville Bureau of Land Management, 3050 NE Third Street, Prineville, OR, 97754.

Dated: July 21, 2003.

**Alan Barron Bail,**

*District Manager.*

[FR Doc. 03–19061 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–33–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NDM–88114]**

## Public Land Order No. 7577; Transfer of Jurisdiction; North Dakota

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order transfers jurisdiction of 640 acres of public land within the boundary of the Little Missouri National Grasslands to the United States Forest Service.

**EFFECTIVE DATE:** July 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Deborah Sorg, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5045, or Douglas Burger, BLM North Dakota Field Office, 2933 Third Avenue West, Dickinson, North Dakota 58601–2619, 701–227–7703.

**SUPPLEMENTARY INFORMATION:** This is a transfer of surface estate only. The land has been and shall remain open to mining, mineral and geothermal leasing, and mineral material sales.

### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land and Policy Management Act of 1976, 43 U.S.C. 1714 (1994) it is ordered as follows:

Subject to valid existing rights, jurisdiction of the following described land within the boundary of the Little Missouri National Grasslands, is hereby transferred to the United States Forest Service, to be managed as National Grasslands:

**Fifth Principal Meridian, North Dakota**

T. 141 N., R. 101 W.,

Sec. 10.

The area described contains 640 acres in Billings County.

Dated: July 11, 2003.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 03–19124 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[UTU 42839 and UTU 42839A]**

## Public Land Order No. 7576; Partial Revocation of Secretarial Order Dated December 21, 1906; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order partially revokes a Secretarial Order insofar as it affects approximately 400 acres of National Forest System lands withdrawn for Bryant's Fork, Strawberry, and Uinta River Administrative Sites. This action will open the lands to such forms of disposition as may by law be made of National Forest System lands and to mining, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

**EFFECTIVE DATE:** August 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marsha Fryer, Forest Service, Intermountain Region, 324–25th Street, Ogden, Utah 84401–2310, 801–625–5802.

**SUPPLEMENTARY INFORMATION:** The Secretarial Order dated December 21, 1906, withdrew National Forest System lands for Bryant's Fork, Strawberry, and Uinta River Administrative Sites, and several other administrative sites (ranger stations). The Forest Service has determined that the withdrawal is no longer needed on the three administrative sites listed above and has requested the partial revocation.

### Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated December 21, 1906, which withdrew National Forest System lands for several Forest Service administrative sites, is hereby revoked insofar as it affects the following described lands:

**Uinta National Forest**

*Bryant's Fork Administrative Site*

Uinta Special Meridian

T. 3 S., R. 12 W.,
Sec. 36, W½SE¼.

*Strawberry Administrative Site*

Uinta Special Meridian

T. 2 S., R. 12 W.,
Sec. 27, NE¼.

**Ashley National Forest**

*Uinta River Administrative Site*

Uinta Special Meridian

T. 2 N., R. 2 W.,
Sec. 4, E½SW¼ and W½SE¼.
The areas described aggregate approximately 400 acres.

2. At 10 a.m. on August 27, 2003, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 11, 2003.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 03–19125 Filed 7–25–03; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of an extension of a currently approved information collection (OMB Control Number 1010–0138).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 206, subpart B. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled ''30 CFR Part 206, Subpart B, Establishing Oil Value on Royalty Due on Indian Leases.''

**DATES:** Submit written comments on or before August 27, 2003.

**ADDRESSES:** Submit written comments either by fax (202) 395–5806 or e-mail (*Ruth_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0138). Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781. You may also contact Sharron Gebhardt to obtain a copy at no cost of the regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* ''30 CFR Part 206, Subpart B, Establishing Oil Value on Royalty Due on Indian Leases.''

*OMB Control Number:* 1010–0138.

*Bureau Form Number:* None.

*Abstract:* The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under the Mineral Leasing Act (30 U.S.C. 1923 and the OCS Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

On December 20, 1995, MMS published an Advance Notice of Proposed Rulemaking (60 FR 65610) regarding valuation of oil from Federal and Indian leases. In the notice, we asked all interested parties to submit and/or comment on alternate methodologies for valuing oil production. Additionally, we asked for comments related to ''significant quantities'' in valuation determinations.

Although industry generally had no comments due to pending litigation on this issue, many States and Indian organizations generally believed the current system is outdated and a new system based on either the New York Mercantile Exchange (NYMEX) or spot prices would be more appropriate. In response to these concerns, we published a proposed rule on February 12, 1998 (63 FR 7089), revising the current Indian oil valuation regulations. This proposed rule ''Establishing Oil Value for Royalty Due on Indian Leases,'' added more certainty to valuation of oil produced from Indian lands and eliminated any direct reliance on posted prices.

Then, MMS proposed further changes to its proposed rule regarding the valuation, for royalty purposes, of crude oil produced from Indian leases by publishing a supplementary proposed rule on January 5, 2000 (65 FR 403).

This supplementary proposed rule established a new form—*Form MMS–4416,* Indian Crude Oil Valuation Report, for collecting value and value differential data. OMB approved the use of this proposed Form MMS–4416 and assigned OMB Control Number 1010–0113.

MMS is now requesting OMB to renew its approval for the reporting requirements under the proposed and supplementary proposed rules until a final rule is published. We are also seeking OMB's approval for the current requirements in 30 CFR part 206, subpart B, that were inadvertently overlooked. This notice gives the public another opportunity to comment on the reporting requirements in the proposed and supplementary proposed rules and to also comment on the current requirements.

MMS announced in the **Federal Register** on February 12, 2003 (68 FR 7086), the dates, places, and times for workshops on issues related to the existing rules adopted in March 2000 governing the valuation for royalty purposes of crude oil produced from Federal leases. The workshops, held on March 4–6, 2003, addressed, among other things, issues related to

calculation of transportation allowances (including the rate of return allowed for calculating actual costs under non-arm's-length transportation arrangements), timing and application of published index prices, and calculation of location and quality differentials under certain circumstances.

Because of the substantive overlap between these issues and issues involved in the proposed rule on Indian oil valuation, and to give persons interested in Indian lease issues an opportunity to participate in the workshops, MMS reopened the comment period (68 FR 7086) for 60 days on the proposed rule on Indian oil valuation so it can include in the record any relevant comments received. MMS will then consider those comments as they might apply to the Indian oil valuation rule.

*Frequency of Response:* Annually and monthly.

*Estimated Number and Description of Respondents:* 236 Companies paying royalties on oil produced from tribal and allotted Indian leases.

- 225 respondents (proposed and supplementary proposed rules)
- 11 respondents (current regulations)

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 6,980 Hours.

- 6,680 hours (proposed and supplementary proposed rules)
- 300 hours (current regulations)

The following chart details the individual components and estimated hour burdens for the proposed rule, supplementary proposed rule, and the current reporting requirements under 30 CFR part 206, subpart B. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

BURDEN HOUR CHART FOR PROPOSED AND SUPPLEMENTARY PROPOSED REPORTING REQUIREMENTS

| Proposed 30 CFR 206, subpart B | Reporting requirement | Burden hours per response | Annual number of responses | Annual burden hours |
|---|---|---|---|---|
| Proposed § 206.52. | You must determine the value of oil using the method that yields the highest value. | 2 | 2,700 | 5,400 |
| Proposed § 206.52(d). | On Form MMS–2014, you must initially report and pay the value of production at the higher of the index-based or gross proceeds-based values * * * You must file this report * * * you must submit an amended Form MMS–2014 with the higher value within 30 days after you receive notice from MMS of the major portion value. | Burden covered under OMB Control Number 1010–0140. | | |
| Proposed § 206.53(a) and (b). | On request, you must make available sales and volume data for production you sold, purchased, or obtained from the designated area or from nearby fields or areas * * * You must make this data available to the authorized MMS * * * You must retain all data relevant to the determination of royalty value. | Normal records retention for targeted audit purposes—exempt from the Paperwork Reduction Act. | | |
| Proposed § 206.54. | You may ask MMS for guidance in determining value. You may propose a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. | 400 | 2 | 800 |
| Proposed/Supplementary Proposed § 206.60(b)(2). | You may ask MMS to approve a transportation allowance deduction * * * You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant supporting documentation * * *. | Burden covered under OMB Control Number 1010–0095 | | |
| Proposed/ Supplementary Proposed § 206.61 (c)(3)(i), (ii), (iii), and (iv). | If an MMS-calculated differential * * * does not apply to your oil, either due to location or quality differences, you must request MMS to calculate a differential for you* * * After MMS publishes its annual listing of location/quality differentials, you must file your request in writing with MMS for an MMS-calculated differential. You must demonstrate why the published differential does not adequately reflect your circumstances * * *. If you file a request for an MMS-calculated differential within 30 days after MMS publishes its annual listing of location/quality differentials, * * * Send your request to: Minerals Management Service * * *. | 40 | 12 | 480 |
| Proposed/Supplementary Proposed § 206.61(d)(4). | You must report transportation allowances, location differentials, and quality differentials as separate lines on Form MMS–2014. | Burden covered under OMB Control Number 1010–0140. | | |
| Proposed/Supplementary Proposed § 206.61(d)(5). | You must submit information on Form MMS–4416 * * * you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease. | Burden covered under OMB Control Number 1010–0113. | | |
| Total ..... | ..... | ..... | 2,714 | 6,680 |

BURDEN HOUR CHART FOR CURRENT REPORTING REQUIREMENTS IN 30 CFR PART 206, SUBPART B

| Current 30 CFR 206, Subpart B | Reporting or recordkeeping requirement | Burden hours per response | Annual number of responses | Annual burden hours |
|---|---|---|---|---|
| **Valuation Standards** | | | | |
| § 206.52(e)(1) and (2) | * * * the lessee shall retain all data relevant to the determination of royalty value * * * A lessee shall notify MMS if it has determined value. . . The notification shall be by letter to MMS . . . The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. | 20 | 1 | 20 |
| § 206.52(g) | The lessee may request a value determination from MMS * * * the lessee shall propose to MMS a value determination method . . . The lessee shall submit all available data relevant to its proposal. | 40 | 1 | 40 |
| **Transportation Allowances** | | | | |
| § 206.54(b)(2) | Upon request of a lessee, MMS may approve a transportation allowance deduction . . . The lessee must demonstrate that the transportation costs incurred in excess of the limitation . . . were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and support documentation necessary for MMS to make a determination. | Burden covered under OMB Control Number 1010–0095. | | |
| § 206.55(a)(1)(i) | * * * the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, * * *. | Burden covered under OMB Control Number 1010–0061. | | |
| § 206.55(a)(2)(i) | * * * no allowance may be taken for the costs of transporting lease production which is not royalty bearing without MMS approval. | 40 | 1 | 40 |
| § 206.55(a)(2)(ii) | * * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. | 20 | 1 | 20 |
| § 206.55(a)(3) | If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS * * * The lessee shall submit all available data to support its proposal. | 40 | 1 | 40 |
| § 206.55(b)(1) | * * * the lessee must submit a completed Form MMS–4110 . . . A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS * * * MMS may direct a lessee to modify its actual transportation allowance deduction. | Burden covered under OMB Control Numbers 1010–0061 and 1010–0140. | | |
| § 206.55(b)(2)(iv) | After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS. | 20 | 1 | 20 |
| § 206.55(b)(2)(iv)(A) | After an election is made, the lessee may not change methods without MMS approval. | 20 | 1 | 20 |
| § 206.55(b)(3)(i) | * * * the lessee may not take an allowance for transporting lease production which is not royalty bearing without MMS approval. | 40 | 1 | 40 |
| § 206.55(b)(3)(ii) | * * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. | 20 | 1 | 20 |
| § 206.55(b)(4) | Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS * * * The lessee shall submit all available data to support its proposal. | 20 | 1 | 20 |

BURDEN HOUR CHART FOR CURRENT REPORTING REQUIREMENTS IN 30 CFR PART 206, SUBPART B—Continued

| Current 30 CFR 206, Subpart B | Reporting or recordkeeping requirement | Burden hours per response | Annual number of responses | Annual burden hours |
|---|---|---|---|---|
| § 206.55(b)(5) | A lessee may apply to MMS for an exception from the requirement that it compute actual costs * * *. | 20 | 1 | 20 |
| § 206.55(c)(1)(i) | * * * the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance. | Burden covered under OMB Control Number 1010–0061. | | |
| § 206.55(c)(1)(iii) and (iv) | * * * lessees must submit page one of Form MMS–4410 (and Schedule 1) within 3 months after the applicable contract or rate terminates or is modified or amended, . . . MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. | Burden covered under OMB Control Number 1010–0061. | | |
| § 206.55(c)(2)(i) | . . . the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014 * * *. | Burden covered under OMB Control Number 1010–0061. | | |
| § 206.55(c)(2)(iii) | * * * the lessee shall submit a completed Form 4110 containing the actual costs for the previous reporting period . . . the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year . . . MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period * * *. | Burden covered under OMB Control Number 1010– 0061. | | |
| § 206.55(c)(2)(iv) | For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. | Burden covered under OMB Control Number 1010–0061. | | |
| § 206.55(c)(2)(vi) | Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4410. | Burden covered under OMB Control Number 1010–0061. | | |
| § 206.55(c)(4) | Transportation allowances must be reported as a separate line item on Form MMS–2014 * * *. | Burden covered under OMB Control Number 1010–0140. | | |
| § 206.55(e)(2) | For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs * * *. | Burden covered under OMB Control Number 1010–0140. | | |
| Total | | | 11 | 300 |

*Estimated Annual Reporting and Recordkeeping ''Non-Hour'' Cost Burden:* We have identified no ''non-hour'' cost burdens.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that 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.

*Comments:* Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on February 28, 2003 (68 FR 9709), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 27, 2003.

*Public Comment Policy:* We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we

withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: May 23, 2003.

**Cathy J. Hamilton,**

*Acting Associate Director for Minerals Revenue Management.*

[FR Doc. 03–19070 Filed 7–25–03; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010–0049).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under ''30 CFR 250, Subpart B, Exploration and Development and Production Plans.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by August 27, 2003.

**ADDRESSES:** You may submit comments either by fax (202) 395–5806 or e-mail (*Ruth_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0049). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street, Herndon, Virginia 20170–4817.

**FOR FURTHER INFORMATION CONTACT:** Arlene Bajusz, Rules Processing Team, telephone (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations, forms, and notices that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 250, Subpart B, Exploration and Development and Production Plans.

*OMB Control Number:* 1010–0049.

*Bureau Form Numbers:* Forms MMS–137, MMS–138, MMS–139, and MMS–141.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Sections 11 and 25 of the amended OCS Lands Act require the holders of OCS oil and gas and sulphur leases to submit exploration plans (EPs) and development and production plans (DPPs) for approval before starting these activities. The implementing regulations and associated information collection requirements are contained in 30 CFR 250, subpart B, Exploration and Development and Production Plans. In addition, MMS has issued Notices to Lessees and Operators (NTLs) that provide supplementary guidance and procedures as applicable to each Region or nationally. These NTLs address the various surveys, reports, plans (including deepwater operations plans and conservation information), etc., that are necessary for MMS to approve exploration or development and production activities.

With this submission, we are requesting renewal of the currently approved information collection requirements of subpart B, and related forms and NTLs, and are revising form MMS–137, OCS Plan Information Form. The revised form has been redesigned and includes additional information on schedule and description of proposed activities and associated anchors with no change to the burden.

The MMS engineers, geologists, geophysicists, and environmental scientists use the information collected under subpart B, and related forms and NTLs, to analyze and evaluate the planned operations to ensure that they will not adversely affect the marine, coastal, or human environment and that they conserve the resources of the OCS. It would be impossible for the Regional Supervisor to make an informed decision on whether to approve the proposed plans, or whether modifications are necessary, without the analysis and evaluation of the required information. The affected States also review the information collected for consistency with approved Coastal Zone Management plans.

*Frequency:* On occasion.

*Estimated Number and Description of Respondents:* Approximately 150 Federal OCS oil, gas, and sulphur lessees.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* The estimated annual ''hour'' burden for this information collection is a total of 300,905 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

| Citation 30 CFR 250 subpart B and related NTLs | Reporting and recordkeeping requirement | Hour burden | Average number annual responses | Annual burden hours |
|---|---|---|---|---|
| 201 | Notify MMS and others of preliminary activities and submit follow-up information. | 10 | 22 notices/information | 220 |
| 202 | Submit conservation information documents | 443 | 30 documents | 13,290 |
| 203 | Submit initial exploration plan, including surveys, reports, studies, GOM Region forms MMS–137, MMS–138, MMS–139, *etc.,* including notification requirements. | 580 | 200 plans | 116,000 |

| Citation 30 CFR 250 subpart B and related NTLs | Reporting and recordkeeping requirement | Hour burden | Average number annual responses | Annual burden hours |
|---|---|---|---|---|
| 203(i), (j), (k), (l), (n), (q) | Submit revised/modified exploration plan, including surveys, reports, studies, departures, *etc.* | 118 | 220 | 25,960 |
| 203(o); 204(s) | Conduct surveys or monitoring programs and submit results; form MMS–141. | 2 | 2 each for 33 wells = 66. | 132 |
| 203(p); 204(t) | Submit Application for permit to Drill | Burden covered under 1010–0044 | | 0 |
| 204 | Submit initial development and production plan (or DOCD used in western GOM), including surveys, reports, studies, GOM Region forms MMS–137, MMS–138, MMS–139, *etc.,* including notification requirements. | 630 | 110 plans | 69,300 |
| 204 | Submit deepwater operations plans for projects in GOM water depths greater than 1,000 feet and projects utilizing subsea production technology. | 750 | 68 plans | 51,000 |
| 204(k) | Submit preliminary plans for tracts in vicinity of a DPP that requires NEPA procedures. | 2 | 0 plans | 0 |
| 204(l), (m), (n), (o), (q), (u). | Submit revised/modified development and production plan (or DOCD), including surveys, reports, studies, departures, *etc.* | Gulf Region: 95 | 250 revisions | 23,750 |
| | (Pacific Region hours dramatically increased due to political issues in California). | Pacific Region: 600 | 1 revision | 600 |
| 250.200–250.204 | General departure and alternative compliance requests not specifically covered elsewhere in subpart B. | 1 | 25 | 25 |
| Reporting Subtotal | | | 992 Responses | 300,277 |
| Supplemental NTLs | Retain original copies of surveys, studies, reports, *etc.* (**Note:** Respondents would retain these as part of usual and customary business activities. The burden is to make them available to MMS if needed.). | 2 | 314 | 628 |
| Recordkeeping Subtotal. | | | 150 Record-keepers | 628 |
| Total Burden | | | 1,306 Responses | 300,905 |

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified no reporting and recordkeeping ''non-hour'' cost burdens for this collection.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 25, 2003, we published a **Federal Register** notice (68 FR 14423) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250, subpart B, regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 27, 2003.

*Public Comment Policy:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: July 3, 2003.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 03–19071 Filed 7–25–03; 8:45 am]

**BILLING CODE 4310–MR–P**

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010–0137).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements for the Notice to Lessees (NTL) on the Historical Well Data Cleanup (HWDC) Project. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by August 27, 2003.

**ADDRESSES:** You may submit comments either by fax (202) 395–5806 or e-mail (*Ruth_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0137). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

**FOR FURTHER INFORMATION CONTACT:** Arlene Bajusz, Rules Processing Team, telephone (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations and NTL that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* Historical Well Data Cleanup (HWDC) Project.

*OMB Control Number:* 1010–0137.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCSLA at 43 U.S.C. 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.''

The MMS's Historical Well Data Cleanup Project, NTL 98–29, Addendum 2, is currently underway and is expected to last several years to allow operators ample time to provide the missing or corrected data. The information we collect under NTL 98–29, Addendum 2, is missing data for wellbores that MMS has not assigned API numbers and other well data discovered as missing while completing the well data base cleanup project.

We are not able to manage and utilize data from drilling operations accurately without the information for the missing wells. We will use the information to identify other well data (*e.g.*, logs, surveys, tests) missing from our records, geologically map existing MMS data to the correct wellbore/location, and correctly exchange information with the operators and industry. Our geoscientists use the information to evaluate resources for lease sales for fair market value. With respect to safety concerns, we believe that there may be anywhere from 3,000 to 5,000 unidentified completed and abandoned wellbores (bypasses and sidetracks), some of which may contain stuck drill pipe or other materials. In approving permits and other operations in an area, it is important for us to know what may be adjacent to or near the vicinity of the activity we are approving to minimize the risk of blowouts, loss of well control, and endangerment to life, health, and the environment. This is particularly important as, over the years, the number of wells drilled constantly increases, thereby increasing the risk to adjacent activities if operators are not aware of what might be in the area.

*Frequency:* On occasion—one-time response.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil, gas, and sulphur lessees.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* The estimated annual ''hour'' burden for this information collection is a total of 56,250 hours for the remaining 25,000 wells based on:

| | |
|---|---|
| ¼ hour to locate/copy scout tickets for each well: | |
| .25 hour × 25,000 wells = | 6,250 |
| 2 hours to retrieve/analyze each well file: | |
| 2 hours × 25,000 wells = | 50,000 |
| Total | 56,250 |

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified no reporting and recordkeeping ''non-hour cost'' burdens associated with the collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on February 19, 2003, we published a **Federal Register** notice (68 FR 8044) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We

have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 27, 2003.

*Public Comment Policy:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: April 9, 2003.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 03–19072 Filed 7–25–03; 8:45 am]

**BILLING CODE 4910–MR–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010–0128).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 250, Subpart O, ''Well Control and Production Safety Training.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** Submit written comments by August 27, 2003.

**ADDRESSES:** You may submit comments either by fax (202) 395–5806 or e-mail (*Ruth_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0128). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

**FOR FURTHER INFORMATION CONTACT:** Arlene Bajusz, Rules Processing Team, telephone (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 250, Subpart O, Well Control and Production Safety Training.

*OMB Control Number:* 1010–0128.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.'' This authority and responsibility are among those delegated to the Minerals Management Service (MMS). To carry out these responsibilities, MMS issues regulations governing oil and gas or sulphur operations in the OCS.

Regulations at 30 CFR 250, subpart O, implement these safe operation requirements. The MMS uses the information collected under subpart O to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner. In some instances, MMS will conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. The information collected is necessary to verify personnel training compliance with the requirements.

*Frequency:* Primarily on occasion.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS lessees.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* The estimated annual ''hour'' burden for this information collection is a total of 2,067 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary, and took that into account in estimating the burden.

| Citation 30 CFR 250 subpart O | Reporting & recordkeeping requirement | Hour burden | Average No. annual responses | Annual burden hours |
|---|---|---|---|---|
| 1502 | Notify MMS of early implementation of revised final regulations (final program is implemented 10/15/02; requirement is no longer necessary). | 0 | 0 Notifications | 0 |
| 1503(b), (c) | Develop training plans. Note: Existing lessees/respondents already have training plans developed. This number reflects development of plans for any new lessees. | 60 | 2 New Plans | 120 |

| Citation 30 CFR 250 subpart O | Reporting & recordkeeping requirement | Hour burden | Average No. annual responses | Annual burden hours |
|---|---|---|---|---|
| 1503(c) | Maintain copies of training plan and employee training documentation for 5 years. | 15 min. × 130 plans = 1,950 ÷ 60 | 130 Recordkeepers | 33 (rounded) |
| | | 5 min. × 20,000 employee records = 100,000 ÷ 60 | | 1,667 (rounded) |
| 1503(c) | Upon request, provide MMS copies of employee training documentation or provide copy of training plan. | 5 | 27 Submissions | 135 |
| 1507(b) | Employee oral interview conducted by MMS | 10 min. × 562 interviews = 5,620 ÷ 60 | 562 Interviews | 94 (rounded) |
| 1507(c), (d); 1508; 1509. | Written testind conducted by MMS or authorized representative. | Exempt under 5 CFR 1320.3(h)(7). | | 0 |
| 1510(b) | Revise training plan and submit to MMS. | 4 | 3 Respondents | 12 |
| 250.1500–1510 | General departure or alternative compliance requests not specifically covered elsewhere in subpart O. | 2 | 3 Requests | 6 |
| Total Hour Burden | | | 727 Responses | 2,067 |

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on January 30, 2003, we published a **Federal Register** notice (68 FR 4792) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, Section 250.199 provides the OMB control number for the information collection requirements imposed by 30 CFR 250, subpart O, regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 27, 2003.

*Public Comment Policy:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: April 22, 2003.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 03–19073 Filed 7–25–03; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Information Collection Activities Under OMB Review

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of data collection submission.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below (OMB No. 1006–0015) 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 cost and burden.

**DATES:** Comments must be submitted on or before August 27, 2003.

**ADDRESSES:** You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile at (202) 395–5806 or via e-mail at *Ruth_Solomon@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention Ms. Nancy DiDonato, Contract and Repayment Specialist, Lower Colorado Regional Office, PO Box 61470, Boulder City, NV 89006–1470.

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy of the proposed collection of information, contact Ms. Nancy DiDonato at 702–293–8532.

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical use; (b) The accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Our practice is to make comments, including names and home address of respondents, available for public review. Individual respondents may request that we withheld their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public disclosure in their entirety.

*Title:* Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin.

*OMN No.:* 1006–0015.

*Abstract:* Reclamation delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. Under Supreme Court order, the United States is required, at least annually, to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use. This information is needed to ensure that a State or a water user within a State does not exceed its authorized use of Colorado River water. Water users are obligated by provisions in their water delivery contracts to provide Reclamation information on diversions and return flows. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means. Without the information collected, Reclamation could not comply with the order of the United States Supreme Court to prepare and maintain detailed and accurate records of diversions, return flow, and consumptive use.

*Description of respondents:* The Lower Basin States (Arizona, California, and Nevada), local and tribal entities, water districts, and individuals that use Colorado River water.

*Frequency:* Monthly, annually, or otherwise as determined by the Secretary of the Interior.

*Estimated total number of respondents:* 54.

*Estimated total number of annual responses:* 330.

*Estimated total annual burden hours:* 290.

ESTIMATED BURDEN FOR EACH FORM

| Form No. | Estimated number of respondents | Total responses per year | Estimated annual burden hours per form |
|---|---|---|---|
| LC–72 | 6 | 78 | 54 |
| LC–72A | 8 | 20 | 30 |
| LC–72B | 15 | 51 | 78 |
| Custom Forms | 25 | 181 | 128 |

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. Reclamation will display a valid OMB control number on the forms. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2003 (68 FR 12932). Reclamation received comments from one entity on this collection of information during the comment period which offered ways to improve our current information collection practices. The comments were (i) publish the information collected in a more timely fashion by updating the monthly consumptive use records shown in the provisional report accessible on Reclamation's Web site at *http://www.lc.usbr.gov/g4000/use2002.pdf;* (ii) subject the information collected to a more stringent quality control process prior to publication of the provisional report; and (iii) for forms LC–72 and LC–72A delete the option on the forms of reporting less frequently than monthly as more precise forecasts of the amount of unused water potentially available to other users is necessary. For the first comment, the provisional monthly report has typically been updated on or about the 18th day of each month with the water user records available to Reclamation. However, we are in the process of implementing a real-time water use monitoring system that will provide daily estimates of water use-to-date, as well as forecasts fo end-of-year use. Although full implementation of the system is expected to take approximately 3 years, we expect to begin posting daily updates on our Web site (*http://www.usbr.gov/lc.region/*) on or about June 15 of this year, using all available daily data and estimates for those users for which daily data is not available. Automatic data collection devices will be installed over the 3-year period in priority order and will include some of the entities listed in the respondent's letter dated May 15, 2003. As automation continues, the forecast will become more precise. Since these provisional records will continue to form the basis for the final annual reporting of uses, we will be able to publish that report in a more timely fashion after year's end. In addition, we are working with the U.S. Geological Survey to provide a mid-year finalization of the priority records to further increase the accuracy of the forecasts. For the second comment, we agree that quality control is extremely important and will continue to improve our quality control processes. For the third comment, annual reporting of water use by smaller water users, when such discretion is allowed by the water delivery contracts, is consistent with the intent of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) Therefore, we do not intend to change forms LC–72 and LC–72A.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

**Gary Palmeter,**

*Manager, Information Management Division.*

[FR Doc. 03–19057 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–MN–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 332–350 and 332–351]**

## Monitoring of U.S. Imports of Tomatoes and Monitoring of U.S. Imports of Peppers

**AGENCY:** International Trade Commission.

**ACTION:** Publication of monitoring reports in 2003.

**SUMMARY:** The Commission hereby gives notice of its intention to publish the results of its monitoring of U.S. imports of tomatoes and U.S. imports of peppers, other than chili peppers, in November 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** July 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Timothy McCarty (202–205–3324, *mccarty@usitc.gov*) or Cathy Jabara (202–205–3309, *jabara@usitc.gov*), Agriculture and Forest Products Division, Office of Industries, U.S. International Trade Commission, 500 E Street, SW., Washington DC 20436, for general information, or William Gearhart (202–205–3091, *wgearhart@usitc.gov*), Office of the General Counsel, U.S. International Trade Commission, for information on legal aspects. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON LINE) at *http://dockets.usitc.gov/eol/public.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—Section 316 of the North American Free-Trade Agreement Implementation Act (NAFTA Implementation Act) (19 U.S.C. 3881), directs the Commission to monitor imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00), until January 1, 2009. As a result of such monitoring, the domestic industry producing a like or directly competitive perishable agricultural product may request, in a global safeguard petition filed under section 202 of the Trade Act of 1974 or a bilateral safeguard petition filed under section 302 of the NAFTA Implementation Act, that provisional relief be provided pending completion of a full section 202 or 302 investigation. If provisional relief is requested, the Commission has 21 days in which to make its determination and to transmit any provisional relief recommendation to the President. In response to the monitoring directive, the Commission instituted investigation No. 332–350, Monitoring of U.S. Imports of Tomatoes (59 FR 1763) and investigation No. 332–351, Monitoring of U.S. Imports of Peppers (59 FR 1762).

Although section 316 of the NAFTA Implementation Act does not require that the Commission publish reports on the results of its monitoring activities, the initial notices of institution of these investigations indicated that the Commission planned to publish reports on the monitoring annually. Subsequently, the Commission has published statistical reports in those years in which it was not conducting an investigation under other statutory authority with respect to such products. The most recent monitoring reports were published in November 2001 for tomatoes and in November 2002 for peppers.

*Written submissions.*—The Commission does not plan to hold a public hearing in connection with preparation of the 2003 statistical reports. However, interested persons are invited to submit written statements concerning the matters to be addressed in the reports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. The Commission will not include any confidential business information in its monitoring report, but may include such information in a report to the President under section 202 or 302 if a request for such an investigation were received. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission in accordance with § 201.8 of the Commission's rules at the earliest practical date and should be received no later than the close of business on August 13, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

By order of the Commission.

Issued: July 22, 2003.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03–19126 Filed 7–25–03; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Service Creation Community (SCC)

Notice is hereby given that, on July 7, 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''), Service Creation Community (SCC) 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, Accenture, Dallas, TX; ADC Telecommunications, Rumson, NJ; Ai Metrix, El Dorado Hills, CA; BT, Billericay, United Kingdom; Broadband Content Coalition, Guilford, United Kingdom; Current Analysis, Sterling, VA; Infonautics Consulting, Inc., Ramsey, NJ; InStat/MDR, Scottsdale, AZ; Internetwork, Inc., San Francisco, CA; IP Infusion, San Jose, CA; Juniper Networks, Sunnyvale, CA; Maranti Networks, San Jose, CA; Microsoft Corporation; Redmond, WA; Net.com, Fremont, CA; Oracle, St. Louis, MO; PacketExchange, London, United Kingdom; Paradyne, Largo, FL; Procket Networks, Milpitas, CA; Radvision, Glen Rock, NJ; Siemens, Boca Raton, FL;

Telechoice, Dallas, TX; Tony Fisch Consulting, Los Angeles, CA; Wandl Inc., Bound Brook, NJ; and Yipes, San Francisco, CA have been added as parties to this venture.

Also, AirFiber, San Diego, CA; American Management Systems, Fairfax, VA; Array Networks, Campbell, CA; Convedia Corporation, Vancouver, British Columbia, Canada; Eureka Soft, Cedex, France; Kabira Technologies, San Rafael, CA; Olsen Consulting, Staten Island, NY; Pingtel, Woburn, MA; and Polycom Inc., Pleasanton, CA 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 SCC intends to file additional written notification disclosing all changes in membership.

On February 4, 2003, SCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 16, 2003 (68 FR 26649).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 03–19049 Filed 7–25–03; 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—VSI Alliance

Notice is hereby given that, on July 9, 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''), VSI Alliance 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, Luciano Agostini (individual member), Pelotas, Brazil; Bill Ashely (individual member), Seattle, WA; Don Bouldin (individual member), Knoxville, TN; Liang T. Chen (individual member), Menlo Park, CA; Cira Nova, Inc., Campbell, CA; Dolphin Technology, Inc., San Jose, CA; Fraunhofer IPMS, Dresden, Germany; GDA Telechonogies, Inc., Bangalore, India; Stewart Goudie (individual member), Edinburgh, Scotland, United Kingdom; Diethard Mahorka (individual member), Melk, Austria; Gary Panzer (individual member), Alta Loma, CA; Cyril Rayan (individual member), San Jose, CA; Renesas Technology Corp., Tokyo, Japan; Pratul Shroff (individual member), Santa Clara, CA; Jorge Sitkewich (individual number), Los Gatos, CA; Telecom Italia S.p.A., Torino, Italy; VCX Limited, Livingston, Scotland, United Kingdom; and WIS Technologies, Inc., San Jose, CA have been added as parties to this venture.

Also, Acuid Limited, Edinburgh, Scotland, United Kingdom; Alatek, Inc., Las Vegas, NV; ATI Technologies, Inc., Markham, Ontario, Canada; CoWare, Inc., San Jose, CA; Cypress Semiconductor, Inc., San Jose, CA; Fraunhofer Institute IMS, Dresden, Germany; Fujitsu Limited, Tokoyo, Japan; Jeda Technologies, Los Altos, CA; Susan Harrison (individual member), Palo Alto, CA; Hitachi Semiconductor America, Tokyo, Japan; Improv Systems, Inc., San Jose, CA; LogicVision, Inc., San Jose, CA; LSI Systems, Inc., Kawasaki-city, Japan; Mitsubishi Electric Corporation, Itami, Japan; Silicon Design Solutions, Inc., Milpitas, CA; Telecom Italia Lab (TILAB) Torino, Italy; The Athena Group, Inc., Gainesville, FL; and Virtual Component Exchange, Livingston, Scotland, United Kingdom have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on April 8, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 14, 2003 (68 FR 25906).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 03–19050 Filed 7–25–03; 8:45 am]

BILLING CODE 4410–11–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Combined Arts Advisory Panel—Notice of Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the open session for the meeting of the Combined Arts Advisory Panel, Multidisciplinary section (Creativity category) to the National Council on the Arts previously announced for August 1, 2003 from 11 a.m.–12 p.m. has been changed. The open session will instead be held from 10:10 a.m.–11:30 a.m.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 22, 2003.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 03–19137 Filed 7–25–03; 8:45 am]

BILLING CODE 7537–01–P

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* ''Nuclear Material Events Database (NMED)'' for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Monthly or within 30 days of receipt from licensee. Events that pose significant health and safety hazards—within the next working day of notification by an Agreement States licensee.

5. *Who will be required or asked to report:* Current Agreement States and any State receiving Agreement State status in the future.

6. *An estimate of the number of annual responses:* 620.

7. *The estimated number of annual respondents:* 32.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,240 hours (an average of approximately 2.0 hours per response) for all existing Agreement States reporting; any new Agreement State would add approximately 19 event reports (including follow-up reports) per year or 38 burden hours.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* NRC regulations require NRC licensees to report incidents and events involving the use of radioactive byproduct material, and source material, such as those involving radiation overexposures, leaking or contaminated sealed source(s), release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, abandoned well logging sources and medical events. Agreement State licensees are also required to report these events to their individual Agreement State regulatory authorities under compatible Agreement State regulations. NRC is requesting that the Agreement States provide information on the initial notification, response actions, and follow-up investigations on events involving the use of nuclear materials regulated pursuant to the Atomic Energy Act. The event information should be provided in a uniform electronic format, for assessment and identification of any facilities/site specific or generic safety concerns that could have the potential to impact public health and safety. The identification and review of safety concerns may result in proposals for changes or revisions to technical or regulatory designs, processes, standards, guidance or requirements.

A copy of the final 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 should be directed to the OMB reviewer listed below by August 27, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0163), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of July, 2003.

For the Nuclear Regulatory Commission.

**Brenda Jo Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 03–19066 Filed 7–25–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–00044]**

## Notice of Consideration of Request for License Termination of Rolls-Royce Corporation License and Release of Its Facility In Indianapolis, IN; Amendment and Opportunity to Provide Comments and Request a Hearing

**ACTION:** Notice of consideration of amendment request to terminate Source Material License No. STB–204 and release of facility for unrestricted use.

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9870 or by e-mail at *pjl2@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Rolls-Royce Corporation (Rolls-Royce) Source Material License No. STB–204, to terminate the License and release its facility located at 2355 South Tibbs Avenue in Indianapolis, Indiana, for unrestricted use. The site was initially licensed under the name of General Motors Corporation, Allison Division. Other names on the license were Allison Gas Turbine Division, General Motors Corporation, and Allison Engine Company, Inc., prior to the license being amended to Rolls-Royce in February 2003. In December 1956, a license was approved for the fabrication of aircraft components made of magnesium alloy containing not to exceed 4 percent by weight of thorium. Fabrication of aircraft parts containing thorium continued until 1989. In 1994, the license was amended to allow possession incident to storage only for the licensed materials. On December 3, 2002, Rolls-Royce submitted its request to the NRC to terminate its license.

The NRC staff has prepared an Environmental Assessment (EA) in support of this licensing action in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

### II. EA Summary

The staff has examined Rolls-Royce's request and the information that the licensee has provided in support of its request, including the surveys performed by Rolls Royce to demonstrate compliance with 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use,'' to ensure that the NRC's decision is protective of the public health and safety and the environment. All machining operations for the fabrication of aircraft parts containing thorium were conducted under ''wet conditions,'' meaning drilling, grinding, burring, etc., were performed with the castings under oil/liquid coolants intended to prevent potential fires. This industry-wide method of machining not only prevents potential fires, it prevents contamination from airborne thorium dust. The thoriated magnesium cuttings, turnings, scraps, coolants, and clean-up debris were collected and sent off-site to a low-level radioactive waste disposal site.

The licensee's final status survey did not show any residual contamination in the facility. Therefore, the staff has determined that there will be no environmental impacts associated with the release for unrestricted use of the Rolls-Royce Corporation facility.

### III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of Rolls-Royce's proposed license amendment to release the Indianapolis facility for unrestricted use. On the basis of the EA, the staff has concluded that the environmental impacts from the

proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an environmental impact statement is not warranted.

**IV. Further Information**

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' Rolls-Royce's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html.* These documents include Rolls-Royce's letters to NRC dated December 3, 2002, and May 5, 2003, with enclosures (Accession No. ML031700067); and the EA summarized above (Accession No. ML031980587). Any questions with respect to this action should be directed to Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9870 or by e-mail at *pjl2@nrc.gov.*

Dated at Lisle, Illinois, this 17th day of July, 2003.

**Christopher G. Miller,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.*

[FR Doc. 03–19065 Filed 7–25–03; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL SERVICE BOARD OF GOVERNORS

### Sunshine Act Meeting

**TIME AND DATES:** 9 a.m., Monday, August 4, 2003; 3:30 p.m., Monday, August 4, 2003; and 8 a.m., Tuesday, August 5, 2003.

**PLACE:** Portland, Maine, at the Marriott Hotel, 200 Sable Oaks Drive, in Salons D and E of the Grand Ballroom.

**STATUS:** August 4—9 a.m. (Closed); 3:30 p.m. (Open); August 5—8 a.m. (Closed).

**MATTERS TO BE CONSIDERED:**

Monday, August 4—9 a.m. (Closed)

1. Strategic Planning.
2. Financial Update.
3. Preliminary Report on Goals and Performance Assessment for Fiscal Year 2004.
4. Preliminary Fiscal Year 2004 Integrated Financial Plan and Financial Outlook.
5. Personnel Matters and Compensation Issues.

Monday, August 4—3:30 p.m. (Open)

1. Minutes of Previous Meetings, June 2, June 27, and July 21, 2003.
2. Remarks of the Postmaster General and CEO.
3. Quarterly Report on Service Performance.
4. Financing the Postal System—Cost and Revenue Analysis Report.
5. Capital Investments.
   a. Flats ID Code Sort for All Automated Flat Sorting Machines (AFSM) 100s.
   b. 354 Automatic Tray Handling Systems for the AFSM 100s.
   c. Philadelphia, Pennsylvania, Processing & Distribution Center and Vehicle Maintenance Facility.
6. Report on the Northeast Area and Maine District.
7. Tentative Agenda for the September 8–9, 2003, meeting in Washington, DC.

Tuesday, August 5—8 a.m. (Closed)

1. Strategic Planning
2. Personnel Matters and Compensation Issues.

**CONTACT PERSON FOR MORE INFORMATION:** William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

**William T. Johnstone,**

*Secretary.*

[FR Doc. 03–19250 Filed 7–24–03; 11:56 am]

BILLING CODE 7710–12–M

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In Accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*The and purpose of information collection:* Job Information Report, OMB 3220–0193. In July of 1997, the Railroad Retirement Board (RRB) adopted standards for the adjudication of occupational disabilities under the Railroad Retirement Act (RRA). As part of these standards, the RRB requests job information to determine an applicant's eligibility for an occupational disability. The job information received from the railroad employer and railroad employee is compared, reconciled (if needed), and then used in the occupational disability determination process. The process of obtaining information from railroad employers used to determine an applicant's eligibility for an occupational disability is outlined in 20 CFR 220.13.

To determine an occupational disability, the RRB determines if an employee is precluded from performing the full range of duties of his or her regular railroad occupation. This is accomplished by comparing the restrictions on impairment(s) causes against an employee's ability to perform his/her normal duties. To collect information needed to determine the effect of a disability on an applicant's ability to work, the RRB needs the applicant's work history. The RRB currently utilizes Form G–251, *Vocational Report* (OMB 3220–0141), to obtain this information from the employee applicant.

**Note:** Form G–251 is provided to *all* applicants for employee disability annuities and to those applicants for a widow(er)'s disability annuity who indicate that they have been employed at some time.

In accordance with the standards, the RRB also requests pertinent job information from employers. The employer is given thirty days from the date of the notice to respond. The responses are not required, but are voluntary. If the job information is received timely, it is compared to the job information provided by the employee. Any material differences are resolved by an RRB disability examiner. Once resolved, the information is compared to the restrictions caused by the medical impairment. If the restrictions prohibit the performance of the regular railroad occupation, the claimant is found occupationally disabled.

The RRB uses two forms to secure job information data from the railroad employer. RRB Form G–251a, Employer Job Information (job description), is released to an employer when an application for an occupational disability is filed by an employee whose regular railroad occupation is one of the more common types of railroad jobs (locomotive engineer, conductor,

switchman, etc.) If is accompanied by a *generic job description* for that particular railroad job. The generic job descriptions describe how these select occupations are generally performed in the railroad industry. However, not all occupations are performed the same way from railroad to railroad. Thus, the employer is given an opportunity to comment on whether the job description matches the employee's actual duties. If the employer concludes that the generic job description accurately describes the work performed by the applicant, no further action will be necessary. If the employer determines that the tasks are different, it may provide the RRB with a description of the actual job tasks. The employer has thirty days from the date the form is released to reply .

**Note:** The generic job descriptions were prepared and approved by a joint committee consisting of representatives of railroad and railroad management.

Proposed Form G–251b, Employer Job Information (general), is released to an employer when an application for an RRB occupational disability is filed by an employee whose regular railroad occupation does not have a generic job description. It notifies the employer that the employee has filed for a disability annuity and that, if the employer wishes, it may provide the RRB with job duty information. The type of information the RRB is seeking is outlined on the form. The employer has thirty days from the date the form is released to reply.

The RRB proposes no changes to Forms G–251a and G–251b.

The completion time for Form G–251a and G–251b is estimated at 20 minutes. Completion is voluntary. The RRB estimates that approximately 125 G–251a's and 305 G–251b's are completed annually.

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. 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. 03–19095 Filed 7–28–03; 8:45 am]

BILLING CODE 7905–01–M

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Vocational Report; OMB 3220–0141. Section 2 of the Railroad Retirement Act (RRA) provides for payment of disability annuities to qualified employees and widow(ers). The establishment of permanent disability for work in the applicants ''regular occupation'' or for work in any regular employment is prescribed in 20 CFR 220.12 and 220.13 respectively.

The RRB utilizes Form G–251, Vocational Report, to obtain an applicant's work history. This information is used by the RRB to determine the effect of a disability on an applicant's ability to work. Form G–251 is designed for use with the RRB's disability benefit application forms and is provided to all applicants for employee disability annuities and to those applicants for a widow(er)'s disability annuity who indicate that they have been employed at some time. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

The RRB proposes non-burden impacting formatting and editorial changes to Form G–251. The completion time for Form G–251 is estimated at between thirty and 40 minutes per response. The RRB estimates that approximately 6,000 Form G–251's are completed annually.

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 03–19096 Filed 7–25–03; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48180A; File No. PCAOB–2003–03]**

### Public Company Accounting Oversight Board; Order Approving Proposed Rules Relating to Registration System

July 22, 2003.

**Correction**

In FR Document No. 03–18497, which published on July 21, 2003, beginning on page 43244, in the last paragraph of column one, correct the file number to read (File No. PCAOB–2003–03).

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–19086 Filed 7–25–03; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48202; File No. SR–CHX–2003–20]**

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Execution of Limit Orders Following Exempted ITS Trade-Through

July 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2003, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

The proposal is intended to coincide with the Commission's extension of a *de minimis* exemption from the trade-through provisions of the Intermarket Trading System (''ITS'') Plan with respect to certain transactions in the Nasdaq-100 Index (''QQQs''), the Dow Jones Industrial Average (''DIAMONDs''), and the Standard & Poor's 500 Index (''SPDRs'').[3] The Commission's original exemption expired on June 4, 2003. The Exchange Rule that mirrors the Commission's exemption similarly expired on June 4, 2003.[4] The Commission recently extended the effectiveness of the exemption to March 4, 2004.[5] In order to avoid a lapse in the effectiveness of the corresponding Exchange Rule, this order is approving the Exchange's proposal to extend the rule from June 5, 2003 until March 4, 2004.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In response to the Commission's extension of a *de minimis* exemption for transactions in certain exchange-traded funds (''ETFs'') from the trade-through provisions of the ITS Plan to March 4, 2004,[6] the Exchange proposes to amend certain provisions of CHX Article XX, Rule 37, which governs, among other things, execution of limit orders in a CHX specialist's book following a trade-through in the primary market. Specifically, the CHX seeks to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through constitutes an Exempted Trade-Through.[7] The text of the proposed rule change is available at the Commission and at the CHX.

[3] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 (''ITS Exemption Order'').

[4] *See* Securities Exchange Act Release No. 46760 (November 1, 2002), 67 FR 68219 (November 8, 2002)(order approving SR–CHX–2002–29).

[5] *See* Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003)(order extending ITS Exemption Order).

[6] *Id.*

[7] An Exempted Trade-Through is a trade-through in one of the three ETFs designated in the ITS Exemption Order when the transaction is executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item III below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Article XX, Rules 37(a)(3) and 37(b)(6) of the CHX Rules, which govern execution of limit orders in a CHX specialist's book, provide for the execution of such orders at the limit price when certain conditions occur in the primary market. Specifically, these provisions obligate a CHX specialist to fill limit orders in his book if there is a trade-through of the limit price in the primary market.

With continued effectiveness of the ITS Exemption Order until March 4, 2004, certain primary market trade-throughs in ETFs that will trigger a CHX specialist's obligation to provide trade-through protection will constitute Exempt Trade-Throughs, and will leave the CHX specialist without recourse to seek satisfaction from the primary market. While the CHX believes that certain CHX specialists may still wish to provide trade-through protection to their limit orders for business and marketing reasons, the CHX believes that trade-through protection should no longer be mandated in the case of Exempted Trade-Throughs. The proposed rule change would continue to permit, but would not require, a CHX specialist firm to fill limit orders in his book when an Exempted Trade-Through occurs in the primary market.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[8] The CHX believes the proposal is consistent with section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

### *B. Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 CHX. All submissions should refer to File No. SR–CHX–2003–20 and should be submitted by August 18, 2003.

## IV. Discussion

After careful review, 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 exchange.[10] In particular, the Commission finds that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act[11] because it is designed to facilitate transactions in securities; to remove impediments to

[10] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

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; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**, and is granting approval retroactively to June 5, 2003, the effective date of the Commission's extension of the ITS exemption so that the proposed rule change coincides with the Commission's extension of its *de minimis* trade-through exemption for certain ITS securities. The Commission believes that by extending the Exchange's proposed exemption for its members, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market.

This obligation was one the CHX assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the CHX to make.[12]

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR—CHX–2003–20) is approved on an accelerated basis and is effective retroactively to June 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Jill M. Peterson**

*Assistant Secretary*

[FR Doc. 03–19085 Filed 7–25–03; 8:45 am]

**BILLING CODE 8010–01–P**

[12] The Commission notes that the CHX's proposed rule change will remain in effect only until the expiration of the extension of Commission's ITS Exemption Order on March 4, 2004.

[13] 15 U.S.C. 78f(b)(2).

[14] 17 CFR 200.30–3(a)(12).

# DEPARTMENT OF STATE

**[Public Notice 4421]**

## Bureau of Near Eastern Affairs; Gulf Educational Reform Program

**AGENCY:** Department of State.

**ACTION:** Notice.

### Introduction

The Office of Public Diplomacy (NEA/PD) announces an open competition for a proposal for Gulf Educational reform program in the following countries: Bahrain, Kuwait, Qatar, UAE, Oman and Yemen. One award will be made with this announcement.

Proposals may address any area or sector within a broad range of educational reform initiatives in the aforementioned countries, including, but not limited to, the following:

- Designing and mapping curriculum,
- Developing critical thinking skills,
- Introducing modern and innovative teaching methods to the classroom,
- Consulting on accreditation for Ministries of Education for both secondary and university-level institutions.

In order to optimize the impact of the educational reform program, initiatives should target the following groups:

- Ministry of Education supervisors and inspectors,
- Curriculum developers,
- Senior teachers and staff members from as many educational districts as possible,
- Teacher trainers.

The list is not intended to be exclusive or binding, and the office of Public Diplomacy in the bureau of Near Eastern Affairs (NEA/PD) remains open to considering a broad range of educational-related NGO activities and innovative projects designed to support and encourage educational reform in the region.

### Purpose

The purpose of this agreement is educational reform in the Gulf, Chapter 4 of part II of the Foreign Assistance Act of 1961, as amended (PL 107–206). Projects should focus on Bahrain, Kuwait, Qatar, the United Arab Emirates, Oman and Yemen. Regional initiatives are encouraged where appropriate (depending on local situation/level of education system). Due to staffing constraints, Public Affairs Sections of U.S. Embassies in the region will be very limited in the assistance they can provide. Organizations should, therefore, have their own network of contacts, infrastructure and resources in-country and be prepared to carry out their programs with a minimum of official support. Public Affairs Officers will be available for consultations and program planning. NEA/PD encourages direct cooperation with Ministries of Education to ensure the successful completion of the program and to foster continuing linkages to American educational institutions.

### Eligible Applicants

Eligible applicants include all non-governmental and non-profit organizations.

### Legislative Authority

This program is authorized by the 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States. PL 107–206.

### Availability of Funds

The funding level for this program is $290,000.00. NEA/PD reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government. Program funds will be available until September 30, 2003.

### Review Criteria

Eligible applications will be competitively evaluated according to the following criteria:

*Results or Benefits Expected*—The applicant clearly describes the results and benefits to be achieved. The applicant identifies how improvement will be measured on key indicators and provides milestones indicating progress. Proposed outcomes are tangible and achievable within the grant project period. (30 points)

*Approach*—The applicant must demonstrate that its strategy and plan are likely to achieve the proposed results; the proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to have a positive impact on the quality of education in the region. (25 points)

*Organization Profiles*—Where sub-contractors are proposed, the applicant describes the rationale for the collaboration, each partner agency's respective role, and how the sub-contractor will enhance the accomplishment of the project goals. In all cases, the applicant describes planning consultation efforts undertaken. The proposed sub-contractor is appropriate with respective roles and financial responsibilities delineated. Evidence of commitment by sub-contractors in implementing the activities is demonstrated, *i.e.,* by letters or the terms of the signed agreement among participants. The applicant or sub-contractor provide documented experience in performing the proposed services as well as adequate gender balance and constituent representation on the proposed project's advisory

board. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. Individual organization staff must be well-qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, is described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. (25 points)

*Budget and Budget Justification*—The budget and narrative justification are reasonable in relation to the proposed activities and anticipated results and the plan for services is realistic. (20 points)

**Application/Proposal Submission and Deadline**

An application (Standard Form 424) with an original signature and two clearly identified copies is required. The application form (Standard Form 424) and instructions can be obtained from either:

(1) The following Web sites:

<*http://www.whitehouse.gov/omb/grants/#forms*>

<*http://www.usaid.gov/procurement_bus_opp/procurement/forms/SF–424/*>

Jessica Davies and Lavenia Holland, U.S. Department of State, NEA/PD, Room 6247, 2201 C Street NW., Washington, DC 20520, telephone (202) 647–6489, fax (202) 647–6448, e-mail *DaviesJX@state.gov* and *Hollandly@state.gov.*

Application materials must be submitted to the U.S. Department of State, Jessica Davies and Lavenia Holland, U.S. Department of State, NEA/PD, Room 6247, 2201 C Street NW., Washington, DC 20520, on or before close of business (4:30 P.M. EST) August 18, 2003. Due to delays in regular mail delivery to the State Department, applicants are strongly encouraged to hand-carry or use couriers to deliver applications to NEA/PD, between the hours of 8:30–4:30 P.M., to the attention of Jessica Davies and Lavenia Holland. Express or overnight mail services may also be used, though applicants are cautioned that express/overnight mail services do not always deliver as agreed and other delays may occur until regular mail delivery is resumed.

Applicants must also provide an electronic copy of the proposal by e-mail to Jessica Davies and Lavenia Holland at e-mail address *DaviesJX@state.gov* and *Hollandly@state.gov.* Proposals must be submitted in both hard copy and by e-mail; proposals submitted only by e-mail, or only in hard copy, will not be considered. NEA/PD must be aware that the proposal is on its way, or the package risks being considered late or turned away by Diplomatic Security.

Applications submitted by e-mail and either (1) mail (including express mail or overnight mail services), or (2) hand-carried by applicant couriers or by other representatives of the applicant, shall be considered as meeting an announced deadline if they are received on or before close of business (4:30 PM EST) August 18, 2003.

*Late Applications*

Applications received after the closing date and time will be classified as late. Applications which do not meet the criteria above are considered late applications. PD shall notify each late applicant that its application will not be considered in the current competition.

**General Instructions for Preparing a Full Project Description**

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

*Length of Applications*

Each application narrative should not exceed 25 double-spaced pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. Each page should be numbered sequentially, including the attachments or appendices. This limitation of 25 pages plus the SF 424 should be considered as a maximum, and not necessarily a goal.

*Introduction*

NEA/PD is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Applicants shall prepare the project description statement in accordance with the following instructions.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Results or Benefits Expected

Identify the results and benefits to be derived.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

*Staff and Position Data*

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

*Organization Profiles*

Provide information on the applicant organization(s) and cooperating partners

such as organizational charts, financial statements, audit reports, documentation of experience in the program area, and other pertinent information.

*Third-Party Agreements*

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

*Budget and Budget Justification*

Applicants must submit a comprehensive budget for the entire project. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets, sub-grant, or contract budgets for each program component, phase, location, or activity to provide clarification. Provide line item detail and detailed calculations for each budget object class identified. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. The following guidelines are for preparing the budget and budget justification.

Personnel

Description: Costs of employee salaries and wages. Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate. Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel or travel by local program participants for training—*i.e.* teachers, Ministry of Education employees travel to the U.S. for seminars/workshops). Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances.

Equipment

Description: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above. Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category. Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Justification: Attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, professional services costs, space and equipment rentals, printing and publication, computer use, and administrative costs. Justification: Provide computations, a narrative description and a justification for each cost under this category.

*Total Direct Charges, Total Indirect Charges, Total Project Costs:* Self explanatory.

**Reporting Requirement**

Quarterly progress and financial reports are required for all funded projects. Final reports will be due 90 days after end of project period (which should begin no later than September 30, 2004).

**Where To Obtain Additional Information**

Questions regarding this Request for Proposals should be directed to Jessica Davies and Lavenia Holland, U.S. Department of State, NEA/PD, Room 6247, 2201 C Street NW., Washington, DC 20520, telephone (202) 647–6489, fax (202) 647–6448, e-mail *DaviesJX@state.gov* and *Hollandly@state.gov.*

Dated: July 21, 2003.

**James Larocco,**

*Principal Deputy Assistant Secretary, Bureau of Near Eastern Affairs, Department of State.*

[FR Doc. 03–19108 Filed 7–25–03; 8:45 am]

BILLING CODE 4710–31–P

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## DEPARTMENT OF STATE

**[Public Notice 4420]**

## Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), and the functions and authorities delegated to the Secretary of State, or his or her delegate, by Presidential Determination 99–6 of November 30, 1998, and subsequently redelegated to me by Delegation of Authority of January 5, 1999, I hereby designate migrants displaced from Côte d'Ivoire as qualifying for assistance under Section 2(b)(2) of that Act, and determine that such assistance will contribute to the foreign policy interests of the United States.

This determination shall be transmitted to the President and published in the **Federal Register.**

Dated: July 22, 2003.

**Richard L. Greene,**

*Acting Assistant Secretary of State, Bureau of Population, Refugees, and Migration, Department of State.*

[FR Doc. 03–19107 Filed 7–25–03; 8:45 am]

BILLING CODE 4710–33–P

## TENNESSEE VALLEY AUTHORITY

### Meeting Notice (Meeting No. 1546)

**AGENCY:** Tennessee Valley Authority

**TIME AND DATE:** 9 a.m. (EDT), July 30, 2003, City of Chickamauga Civic Center, 100 Euclid Avenue, Chickamauga, Georgia.

**STATUS:** Open.

**Agenda**

Approval of minutes of meeting held on May 21, 2003.

*New Business*

C—Energy

C1. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a spot coal contract with Massey Utility Sales Company to supply low-sulfur coal for 17 months to Kingston Fossil Plant.

C2. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a 3-year contract with CSX Transportation to provide rail transportation of coal to Widows Creek Fossil Plant.

C3. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a term coal contract with Peabody Coalsales Company for sub-bituminous Powder River Basin coal to supply various TVA fossil plants.

C4. Supplement to blanket Contract Nos. 453 and 454 with Performance Contracting, Inc., and G&A Environmental to provide asbestos and nonasbestos vacuum services for various TVA fossil plants.

C5. Supplement to Contract 99999563 with Day & Zimmermann NPS, Inc., for management and craft labor for the planning and execution of modification and supplemental maintenance work and multiple selective catalytic reduction projects at TVA assigned fossil plants.

C6. Supplement to contract with Framatome ANP for nuclear fuel and fuel engineering services for Sequoyah Nuclear Plant.

C7. Supplement to contract with Flowserve Corporation for pumps and pump replacement parts at any TVA nuclear plant.

C8. Supplement to contract with Westinghouse Electric Company LLC for nuclear fuel and fuel engineering services at Watts Bar Nuclear Plant.

C9. Supplement to contract with Framatome ANP for refuel floor support services and reactor component inspections at Browns Ferry Nuclear Plant Units 2 and 3.

C10. Indefinite quantity term contract with Ritz Instrument Transformers for the supply of instrument transformers.

E—Real Property Transactions

E1. Sale of permanent easements to Richard L. Pelham, affecting approximately 0.13 acre of land on Chatuge Reservoir in Towns County, Georgia, to allow a portion of an existing condominium and sewer line to remain without future title concerns, Tract Nos. XCHR–77B and XCHR–78S.

E2. Grant of permanent easements for a raw water intake and water distribution lines to Franklin County Water Services Authority, affecting approximately 5.9 acres of land on Bear Creek Reservoir in Franklin County, Alabama, Tract No. XTBCBR–2P.

E3. Grant of a permanent easement to the State of Tennessee for a highway improvement project, affecting approximately 0.18 acre of land on Watts Bar Reservoir in Roane County, Tennessee, Tract No. XTWBR–146H.

E4. Grant of a permanent easement to the State of Tennessee for a highway improvement project, affecting approximately 1.9 acres of land on Chickamauga Reservoir in Hamilton County, Tennessee, Tract No. XTCR–201H.

E5. Sale of a noncommercial, nonexclusive permanent easement to Russell A. House for construction and maintenance of recreational water-use facilities, affecting approximately 0.15 acre of land on Tellico Reservoir in Monroe County, Tennessee, Tract No. XTELR–239RE.

E6. Grant of noncommercial, nonexclusive permanent easements to Southern Heritage, LLC, and four private property owners for construction and maintenance of recreational water use facilities, affecting approximately 7.68 acres of land on Guntersville Reservoir in Marshall and Jackson Counties, Alabama, Tract Nos. XGR–752RE, XGR–753RE, XGR–754RE, XGR–755RE, XGR–756RE, and XGR–757RE, in exchange for approximately 71 acres of land on Guntersville Reservoir in Marshall and Jackson Counties, Alabama, Tract No. GR–1882, and change in the land use allocation of the Guntersville Reservoir Land Management Plan to effect these changes.

E7. Grant of noncommercial, nonexclusive permanent easements to Scott Roberts, Ken Herrick, and Harold Daniels for construction and maintenance of recreational water use facilities, affecting approximately 1.3 acres of land on Chickamauga Reservoir in Hamilton County, Tennessee, Tract Nos. XCR–701RE, XCR–702RE, and XCR–703RE, in exchange for approximately 7.3 acres of land on Chickamauga Reservoir in Hamilton County, Tennessee, Tract No. CR–1599, and change in the land use allocation of the Chickamauga Reservoir Land Management Plan to effect these changes.

E8. Sale of approximately 116.4 acres of land to LTR Properties, Inc. (Rarity Communities), Tract No. XTELR–236, for residential and commercial recreation development; grant of noncommercial, nonexclusive permanent easements affecting approximately 273.6 acres in Loudon and Monroe Counties, Tennessee, to the Tellico Reservoir Development Agency, Tract Nos. XTTELR–44RE and XTTELR–45RE; and land allocation changes to the Tellico Reservoir Land Management Plan as follows: (1) Release the natural resource conservation and recreation allocation from the Tellico Reservoir Land Management Plan of the approximately 116.4 acres proposed to be sold to Rarity Communities; (2) Change the allocation of 7.3 acres, which is the remaining TVA property fronting the 116.4 acres from recreation to natural resource conservation, which will provide a protective buffer for wetlands and water quality; (3) Allocate the 256 acres of land to be conveyed to TVA by Rarity Communities as recreation (117 acres) and natural resource conservation (139 acres); and (4) Change the allocation of the 17.6 acres where Rarity Communities will be developing public recreational facilities as part of the mitigation from natural resource conservation to recreation at the location.

E9. Nineteen-year commercial recreation lease to South Sauty Creek Resort, Inc., affecting approximately 34 acres of land on Guntersville Reservoir in Jackson County, Alabama, Tract No. XGR–751L.

E10. Deed modification of certain deed restrictions affecting approximately 0.9 acre of former TVA land on

Chickamauga Reservoir in Rhea County, Tennessee, Tract No. XCR–188, S.5X.

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements and rights of way affecting Tract Nos. SBFP–66, Sebastopol Switching Station, Scott County, Mississippi; and Tract No. WPSVT–8, Wartrace Primary-Shelbyville No. 2 (North) Tap, Bedford County, Tennessee.

*Information Items*

1. Approval of delegation of authority to the Chief Financial Officer and the Senior Vice President and Treasurer, or a designee(s), to enter into lease financing and related arrangements with respect to certain categories of computer and related software and equipment.

2. Approval of the issuance, sale, and delivery of TVA Power Bonds.

3. Approval of the issuance, sale, and delivery of TVA Power Bonds, and delegation of authority to amend the International Swaps and Derivatives Association, Inc., Credit Support Annex between TVA and Morgan Stanley Capital Services, Inc., and to enter into currency swap arrangements with Morgan Stanley.

4. Approval of the sale of a 30-year term easement for a natural gas pipeline to East Tennessee Natural Gas Company, affecting approximately 0. 3 acre of TVA land in Sullivan County, Tennessee, Tract No. XFHR–35P.

5. Approval of amendments to TVA's Section 26a Regulations.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: July 23, 2003.

**Maureen H. Dunn,**

*General Counsel and Secretary.*

[FR Doc. 03–19193 Filed 7–24–03; 10:15 am]

BILLING CODE 8120–08–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Advisory Circular (AC) 45–23B, Identification and Registration Marking

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of AC 45–2B, Identification and Registration Marking. AC 45–2B provides information and guidance concerning the requirements for identifying aircraft and related products with identification plates, and identifying aircraft with nationality and registration marks. The requirements are detailed in Title 14, Code of Federal Regulations (14 CFR), part 45, Identification and Registration Marking.

**ADDRESSES:** Copies of AC 45–2B can be obtained from the following: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 7th Ave., Landover, MD 20785.

Issued in Washington, DC, on July 16, 2003.

**Frank P. Paskiewicz,**

*Manager, Production and Airworthiness Division, AIR–200.*

[FR Doc. 03–19164 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Harris County, Texas

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Harris County, Texas.

**FOR FURTHER INFORMATION CONTACT:** John Mack, Federal Highway Administration, Texas Division, 826 Federal Building, 300 East 8th Street, Austin, Texas 78701, Telephone 512–536–5960.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) will prepare an environmental impact statement (EIS) for improvements in the US 290 corridor from IH 610 to FM 2920, a distance of approximately 38 miles (including the Hempstead Highway corridor and the connections to the IH 610 West Loop). The project is in Harris County, Texas, primarily within the city limits of Houston, although the corridor also extends into Jersey Village and the smaller communities of Cypress, Hockley, and Waller. A Major Investment Study (MIS) for the project was completed in 2003. The MIS evaluated modal and configuration alternatives for improvements within the study corridor and recommended a locally preferred multi-modal configuration to meet the corridor's transportation needs, while minimizing impacts to the surrounding environment.

The alternatives studied in the EIS will be variations, of the multi-modal configurations suggested in the US 290 Corridor Major Investment Study. The proposed alternative includes general-purpose lanes, managed lanes (possibly toll), and a reserve for advanced high-capacity transit (light rail/bus rapid transit). The EIS will evaluate alternative alignments for potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation improvement), air, and noise impacts from construction equipment and operation of the facilities, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States including wetlands from right-of-way encroachment, impacts to historic and archeological resources, impacts to floodplains, and impacts and/or potential displacements to residents and businesses.

To ensure that the full range of issues relating to this proposed action are addressed, a series of public scoping meetings will be held from 6 to 9 p.m., as follows: On August 25, 2003, at Jersey Village High School (7600 Solomon, Houston, TX 77040), August 26 at Wainwright Elementary School (5330 Milwee, Houston, TX 77092), and August 27 at Ault Elementary School (21010 Maple Village Dr, Cypress, TX 77429). The purpose of the public scoping meetings will be to request comments and identify issues to be considered during evaluation of alignment alternatives and preparation of the EIS. All interested citizens are encouraged to attend these meetings. During the open house meetings, displays showing the project area and other project information will be presented and staff will be available to answer questions. In addition, a public hearing will be held in the future. Public notice will be given of the time and place of future public meetings and

the public hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

Appropriate Federal, State and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal will be sent letters describing the proposed action and soliciting comments.

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 governmental consultation on Federal programs and activities apply to this program.)

**John R. Mack,**

*District Engineer.*

[FR Doc. 03–19097 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Salt Lake County, Utah

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed transportation improvements in Salt Lake County, Utah.

**FOR FURTHER INFORMATION CONTACT:** Mike Morrow, Field Operations Engineer, Federal Highway Administration, 2520 West 4700 South Suite 9A, Salt Lake City, Utah 84118–1847, Telephone: (801) 963–0182.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Utah Department of Transportation will prepare an environmental impact statement on proposed transportation improvements in the 11400 South area. The proposed improvements will be developed after a study has been completed to determine the current and future transportation needs in the study area, which extends from 10400 south to 12600 south and from 700 East to Bangerter Highway. The FHWA will evaluate a reasonable range of alternatives including such alternatives as increasing capacity by other methods like changing the facilities at 12300 and/or 10600 South, expanded public transportation system, intelligent transportation system and/or traffic demand management. FHWA will fully evaluate the indirect and cumulative effects of the proposed project as required by law. The proposed project study area lies within Salt Lake County and includes portions of Draper City, Riverton City, Sandy City, and South Jordan City, Utah.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings, including scoping meetings, will be held in the project area. in addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure the full range of issues related to this proposed action and 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: July 22, 2003.

**Gregory S. Punske,**

*Environmental Project Manager, Salt Lake City, Utah.*

[FR Doc. 03–19060 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Sherburne County, MN

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a Tier I environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 10 from 1.0 mile east of Big Lake to 0.75 mile west of Big Lake, in Sherburne County, Minnesota. The Tier I EIS will include the analysis needed for a location decision to facilitate preservation of right-of-way.

**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 Claudia Dumont, Project Manager, Minnesota Department of Transportation—District 3B, 3725 12th Street North, ST. Cloud, Minnesota 56303, Telephone (320) 654–5134.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare a Tier I EIS on a proposal to improve TH 10 from 1.0 mile east of Big Lake to 0.75 mile west of Big Lake, in Sherburne County, Minnesota. The proposed action is being considered to preserve right-of-way for the proposed highway improvement. The proposed action is being considered to address future transportation demand, safety problems, access management and interregional corridor status.

The Tier I EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build, (2) Improvements to the existing TH 10 corridor, and (3) One or more new alignments south of existing TH 10.

The Tier II EIS will be prepared in approximately ten to fifteen years. At that time, design alternatives for the preferred alignment will be considered and environmental impacts and mitigation will be studied in greater detail. The construction of the preferred alternative is planned for implementation in approximately fifteen years.

It is anticipated that the ''TH 10 Scoping Document/Draft Scoping Decision Document'' will be published in the Fall of 2003. 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 Tier I 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 scooping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting. A Tier I Draft EIS will be prepared based on the

outcome of the scoping process. 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: July 10, 2003.

**Stanley M. Graczyk,**

*Project Development, Team Leader, Federal Highway Administration, St. Paul, Minnesota.*

[FR Doc. 03–19102 Filed 7–25–03; 8:45 am]

**BILLING CODE 4910–22–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2003–15642]**

## Safety Auditor Certification; Extension of Statutory Compliance Date

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of extension of statutory compliance date.

**SUMMARY:** The FMCSA is required by law to ensure that all safety audits or compliance reviews of motor carriers conducted after December 31, 2002 be conducted by duly certified personnel. The Secretary of Transportation is authorized to extend this deadline until December 31, 2003 by notifying Congress that implementation of this requirement cannot be achieved by the initial deadline, and stating the reasons. By this document the FMCSA is notifying the public that on July 17, 2003 the Secretary of Transportation gave notice to Congress that he is extending the deadline to December 31, 2003. The extension is necessary because of a recent Federal court decision that set aside the FMCSA rule establishing procedures for certifying personnel to conduct safety reviews.

**DATES:** The Secretary of Transportation has extended the statutory deadline for 49 U.S.C. 31148(b) until December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Schultz, Jr., Office of Bus & Truck Standards and Operations, (202) 366–4001, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (MCSIA)(Pub. L. 106–159). Section 210 of MCSIA requires that all new entrant motor carriers, both foreign and domestic, receive safety audits within 18 months of commencing operations in interstate or foreign commerce. Section 211 of MCSIA requires the Secretary of Transportation to complete a rulemaking to improve training and provide for the certification of motor carrier safety auditors to conduct safety inspection audits and reviews. The legislation also gives the Secretary oversight responsibility for these motor carrier auditors and investigators, including the authority to decertify them.

As enacted by section 211(a), 49 U.S.C. 31148(b) and (c) read as follows:

(b) CERTIFIED INSPECTION AUDIT REQUIREMENT.—Not later than one year after completion of the Rulemaking required by subsection (a), any safety inspection audit or review required by, or based on the authority of, this chapter or chapter 5, 313, or 315 of this title and performed after December 31, 2002, shall be conducted by—

(1) a motor carrier safety auditor certified under subsection (a); or

(2) a Federal or State employee who, on the date of the enactment of this section, was qualified to perform such an audit or review.

(c) EXTENSION.—If the Secretary determines that subsection (b) cannot be implemented within the 1-year period established by that subsection and notifies the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the determination and the reasons therefor, the Secretary may extend the deadline for compliance with subsection (b) by not more than 12 months.

On March 19, 2002, the FMCSA published an Interim Final Rule implementing section 211 (the auditor certification rule) by establishing three types of certification: (1) Certification to conduct safety audits, (2) certification to conduct compliance reviews, and (3) certification to conduct roadside inspections (67 FR 12776). This rule was primarily designed to respond to the increase in audits necessitated by the new entrant requirements of Section 210 of MCSIA. However, publication of the rule was one of several conditions imposed in the 2002 DOT Appropriations Act (Pub. L. 107–87), which had to be met before FMCSA could begin processing applications to allow Mexico-domiciled motor carriers to operate in the United States beyond the commercial zones along the United States-Mexico border in accordance with the North American Free Trade Agreement (NAFTA). Another condition imposed by the Appropriations Act was FMCSA publication of a rule implementing section 210 of MCSIA. An Interim Final Rule establishing procedures for increasing FMCSA's safety scrutiny of new entrant motor carriers, including standards and procedures regarding the safety audits mandated by section 210, was published on May 13, 2002 (67 FR 31978) and became effective on January 1, 2003.

FMCSA hired and trained over 200 people to perform compliance reviews, safety audits, and vehicle inspections. However, most audits of new entrant motor carriers are to be undertaken by State employees under the Motor Carrier Safety Assistance Program (MCSAP).

On January 16, 2003, the U.S. Court of Appeals for the Ninth Circuit set aside the auditor certification rule and two other FMCSA rules which established application and safety monitoring procedures for Mexico-domiciled motor carriers seeking authority to operate in the United States. The Court's ruling was based on its conclusion that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these regulations. *Public Citizen* v. *Dept. of Transportation*, 316 F.3d 1002. The Department of Transportation filed a petition for rehearing with the Ninth Circuit, but this petition was denied on April 10, 2003. Consequently, the Court's mandate setting aside the three rules took effect on April 18, 2003.

As noted above, section 210 of the MCSIA requires that all new entrant motor carriers, both foreign and domestic, receive safety audits within 18 months of commencing operations in interstate or foreign commerce. As a result of the Ninth Circuit decision in *Public Citizen*, FMCSA and its State partners will not be able to hire and train additional personnel to conduct motor carrier safety audits, reviews or inspections, thereby impairing their ability to comply with the statutory mandate regarding new entrant motor carriers. The consequent reduction of

Federal and State oversight activities will likely have an adverse impact on public safety.

For the reasons stated above, the Secretary of Transportation has determined that it is necessary to extend the compliance date established by 49 U.S.C. 31148(b) to December 31, 2003, so that FMCSA and its State partners can continue to carry out their statutory responsibilities while the Department of Transportation acts to comply with applicable environmental laws before implementing procedures for certification of safety auditors. This extension is retroactive to January 1, 2003.

On July 17, 2003, the Secretary of Transportation sent letters to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives' Committee on Transportation and Infrastructure notifying them that he had extended the deadline for complying with the requirements of 49 U.S.C. 31148(b) to December 31, 2003.

Issued on: July 22, 2003.

**Annette M. Sandberg,**

*Acting Administrator.*

[FR Doc. 03–19150 Filed 7–25–03; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Proposed Agency Information Collection Activities; Comment Request

**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 Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe 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 collections of information was published on May 20, 2003 (67 FR 27626).

**DATES:** Comments must be submitted on or before August 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of 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 May 20, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 67 FR 14766. FRA received no comments in response to this notice.

Before OMB decides whether to approve this proposed collection 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:* State Safety Participation Regulations and Remedial Actions.

*OMB Control Number:* 2130–0509.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Businesses.

*Form(s):* FRA F 6180.33; FRA F 6180.61; FRA F 6180.67; FRA F 6180.96/96A; FRA F 6180.109; FRA F 6180.110; FRA F 6180.111; FRA F 6180.112.

*Abstract:* The collection of information is set forth under 49 CFR part 212, and requires qualified state inspectors to provide various reports to FRA for monitoring and enforcement purposes concerning state investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations. Additionally, railroads are to report to FRA actions taken to remedy certain alleged violations of law.

*Annual Estimated Burden Hours:* 10,359.

*Title:* Certification of Glazing Materials.

*OMB Control Number:* 2130–0525.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Businesses.

*Form(s):* N/A.

*Abstract:* FRA uses this information to assure that window glazing materials have been fully tested and are in compliance with Federal Railroad Safety Standards.

*Annual Estimated Burden Hours:*119.

**ADDRESSES:** Send comments regarding these information collections 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 collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections 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 July 21, 2003.

**Kathy A. Weiner,**

*Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 03–19041 Filed 7–25–03; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

**Docket No. FRA–2003–15369**

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130, Jacksonville, Florida 32256.

CSX Transportation, Incorporated (CSXT) seeks approval of the proposed discontinuance and removal of the automatic block and cab signal systems, on the two main tracks between CP Anacostia, milepost QL133.5 and CP Landover, milepost QL128.8, near Washington, DC, on the Baltimore Division, Landover Subdivision. The proposed changes are associated with the redesignation of this section of main track to ''Other than Main Track,'' governed by CSXT Rule 105.

The reason given for the proposed changes is that all train operations are yard shifting and local switching movements.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 15, 2003.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 03–19044 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–06–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

**Docket No. FRA–2003–15370**

*Applicant:* CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130, Jacksonville, Florida 32256.

CSX Transportation, Incorporated (CSXT) seeks approval of the proposed modification of the signal system, on the two main tracks between CP Virginia, milepost QL136.7 and CP Anacostia, milepost QL134.2, near Washington, DC, on the Baltimore Division, Landover Subdivision. The proposed changes consist of the discontinuance and removal of the cab signal system only, and conversion from the existing NORAC Operating Rules to CSXT Operating Rules, under the direction of the CSXT Dispatcher in Jacksonville, Florida.

The reason given for the proposed changes is that all train operations have changed where only through freight revenue trains now proceed from CP Virginia to the Alexandria Extension and onto the Capital Subdivision. All Amtrak and Commuter Services will continue to diverge at CP Virginia to Union Station, and do not operate between CP Virginia and CP Anacostia.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 15, 2003.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 03–19045 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

**Docket Number FRA–2003–14799**

*Applicant:* CSX Transportation, Mr. N. Michael Choat, Assistant Chief Engineer of Signal Maintenance, 4901 Belfort Road, Suite 130 (J370), Jacksonville, Florida 32256.

CSX Transportation (CSXT) seeks approval to extend the temporary discontinuance of the traffic control system (TCS), on portions of the Florence Service Lane, Aberdeen Subdivision, between milepost S164.8 and milepost S241.6, for approximately one year. The request is associated with the December 6, 2002-catastrophic event in which CSXT experienced a severe ice storm over portions of the Aberdeen Subdivision. Major damage to the signal pole line resulted in the removal of the TCS from service as authorized by 49 CFR, Section 235.7(a)(4), and implementation of Direct Traffic Control (DTC), under the direction of the train dispatcher.

The reason given for the proposed changes is to allow CSXT time to file a block signal application with the Federal Railroad Administration for the proposed permanent discontinuance and removal of the existing TCS between milepost S164.8 and milepost S241.6, and installation of DTC authority for movement supplemented with CSXT's Communications Based Train Management System (CTBM). The petition process and the implementation of CBTM would be completed within the one-year time frame.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 21, 2003.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 03–19046 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Environmental Impact Statement for the Spokane Regional Light Rail (South Valley Corridor) Project in Spokane, Washington Metropolitan Area

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

**ACTION:** Notice of intent to prepare an environmental impact statement that includes two new alternatives.

**SUMMARY:** The Federal Transit Administration (FTA) and the Spokane Transit Authority (STA) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transit improvements in Spokane County, between downtown Spokane and Liberty Lake. The EIS will be prepared to satisfy both NEPA and the Washington State Environmental Policy Act (SEPA). This project was originally scoped as an Environmental Assessment (EA), but transitioned to an Environmental Impact Statement as a result of a second scoping meeting held on June 4, 2002. Because of the recent demonstrated need to study two additional lower cost build alternatives, an additional scoping meeting will be required.

The purpose of this Notice of Intent is to notify interested parties of the intent to prepare an EIS with two additional build alternatives and to invite participation in the study. The project proposes to implement a major high capacity transit improvement in the Spokane Metropolitan area that maintains livability, manages growth and provides a balanced transportation system. The Proposed Action is intended to contribute to implementation of a series of state, regional, and local planning policies that address air quality, sprawl, and growth. In addition to the original alternatives, two new alternatives (described below) will be evaluated in the EIS.

**DATES:** The public is welcome to make comments on the scope of the proposed project. Written comments should be sent to the Spokane Transit Authority within 30 days from the date of publication of this notice in the local newspaper or September 18, 2003, whichever is later. A packet on the proposed project, project alternatives, and the scoping process may be obtained from the Spokane Transit Authority. The information may also be obtained by sending an electronic request through the ''Contact Us'' section of the project Web site, *www.spokanelightrail.com.* A *Public Open House/Scoping Meeting* will be held on Thursday, September 4, 2003 from 5 p.m. to 7 p.m. PDT, at the Kress Gallery on the third floor of the Riverpark Square Mall, located at 808 West Main Avenue, Spokane, WA 99206. An *Agency Scoping Meeting* will be held at 1:30 p.m. PDT on Thursday, September 4, 2003, at the Spokane

Transit Authority (STA) Board Room, 1230 West Boone Avenue, Spokane, WA 99201. Both meeting locations are accessible to persons with disabilities. Any individual with a disability who requires special assistance, such as a sign language interpreter, should contact Geralyn Garberg at (509) 325–6000, ext. 196 or e-mail *ggarberg@spokanetransit.com,* at least 48 hours in advance of the meeting in order for STA to make necessary arrangements.

**FOR FURTHER INFORMATION CONTACT:** The Spokane Transit Authority Agency Coordination contact is Lesley Sutton, Project Executive Assistant at (509) 325–6056 or e-mail: *lsutton@spokanetransit.com.* The STA Public Information contact is Molly Myers, Project Communications Manager at (509) 325–6090 or e-mail *mmyers@spokanetransit.com.* The STA TDD number is (509) 456–4327. Written comments should be sent to: Spokane ''South Valley Corridor'' Project Manager, Spokane Transit Authority, 1230 West Boone Ave., Spokane, WA 99201.

The Federal agency contact is John Witmer, Federal Transit Administration, 915 Second Avenue, Suite 3142, Jackson Federal Building, Seattle, WA 98174. Phone (206) 220–7964.

**SUPPLEMENTARY INFORMATION:**

**1. Notice of Intent**

This Notice of Intent to prepare an EIS is being published to notify interested parties. The Spokane ''South Valley Corridor'' Project is examining two new high-capacity transit build alternatives in the south valley portion of the Spokane metropolitan area. Because the study is a transit alternatives study, FTA regulations and guidance will be used for the analysis and preparation of the South Valley Corridor Project EIS.

**2. Study Area**

The South Valley Corridor includes an area roughly parallel to I–90 running east through downtown Spokane, southeast Spokane, the City of Spokane Valley, unincorporated urban Spokane County, and into the City of Liberty Lake. The proposed alternatives primarily utilize existing right-of-ways along operational and former railroad corridors and roadways.

**3. Alternatives**

The three original alternatives are as follows: (#1) The No-Build Alternative will provide the basis for comparison of the build alternatives. The No-Build Alternative includes the existing transportation system plus projects listed in the Spokane Metropolitan Area Transportation Improvement Program (TIP). (#2) The Separate Rail Alignment Alternative includes a light rail transit line running from downtown Spokane to Liberty Lake on an exclusive alignment. (#3) The Shared Rail Alignment includes a light rail line from downtown Spokane to Liberty Lake sharing existing rail lines with the Union Pacific Railroad along portions of the alignment. This alternative would use operating time restrictions to separate light rail traffic from heavy rail traffic. Between the two termini there would be intermediate stations and associated local parking. Both the separate rail alignment and shared rail alignment Build Alternatives may use either electrified or diesel multiple unit (DMU) vehicle technology. These alternatives will also incorporate in-street operations along Riverside Avenue, between Post Street and Division Street. The rail options will utilize the former Milwaukee Road rail corridor, east of University Road.

The two new alternatives are as follows: (#4) The Rail Minimum Operable Segment (MOS) Rail alternative is similar to the Shared Rail Alignment alternative except the rail portion of the alignment has an eastern terminus at University City. The rail segment assumes the use of Diesel Multiple Unit (DMU) vehicles and a possible interface with a separate project that includes a Downtown Spokane streetcar system. The rest of the east-west corridor from University City to Liberty Lake will be served by a low-cost transit segment that will utilize Bus Rapid Transit (BRT) strategies and rubber-tired BRT vehicles on existing roadways. The second new alternative (#5) serves the entire corridor with low-cost Bus Rapid Transit (BRT) strategies using rubber-tired BRT vehicles on existing roadways.

**4. Probable Effects**

FTA and Spokane Transit Authority will evaluate the environmental, social and economic impacts of the alternatives and measures to mitigate any adverse impacts.

Issued on July 16, 2003.

**Linda M. Gehrke,**

*Acting Regional Administrator, FTA Region 10.*

[FR Doc. 03–19153 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2003–15428]**

### Extension of Comment Period on Whether Nonconforming 2003–2004 Micro Car Company Smart Passion (Glass Top and Convertible) Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Extension of comment period.

**SUMMARY:** On June 20, 2003, NHTSA published notice (at 68 FR 37040) that it had received a petition to decide that nonconforming 2003–2004 Micro Car Company Smart Passion (glass top and convertible) passenger cars are eligible for importation into the United States. The notice solicited public comments on the petition and stated that the closing date for comments is July 21, 2003.

This is to notify the public that NHTSA is extending the comment period until July 31, 2003. This extension is based on a request from Mercedes-Benz USA L.L.C. (Mercedes-Benz). In requesting the extension, Mercedes-Benz stated that ''upon reviewing the record to determine if sufficient engineering data had been submitted to enable NHTSA to make a determination whether the proposed vehicle is eligible for importation, [it] found no such data.'' As a consequence, the company stated that it needs ''additional time to prepare the analytical data [it believes] is necessary for the agency to make an informed and rational decision regarding the petition.'' Mercedes-Benz requested that the deadline be extended from July 21, 2003 until July 31, 2003.

**DATES:** Comments on the import eligibility petition must be submitted on or before July 31, 2003.

**ADDRESSES:** Comments are to be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. 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 document (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–787) or you may visit *http://dms.dot.gov.*

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 23, 2003.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 03–19154 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2002–13014; Notice 2]**

### Dorel Juvenile Group; Denial of Application for Decision of Inconsequential Noncompliance

Dorel Juvenile Group [Cosco] (DJG), of Columbus, Indiana, failed to comply with S5.1.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' and filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' DJG has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on September 5, 2002, in the **Federal Register** (67 FR 56872), with a 30-day comment period. NHTSA received no comments.

The noncompliance reported by DJG is the separation of the tether strap and steel belt slot adjustment channel from the Cosco Alpha Omega child restraint system (CRS) seat shell produced from November 1, 2000 through January 10, 2001 (6 Models and 86,476 units).

FMVSS No. 213, S5.1.1 ''Performance Requirements,'' requires for dynamic performance that:

S5.1.1. *Child restraint system integrity.* When tested in accordance with S6.1 each child restraint system shall meet the requirements of paragraphs (a) * * * of this section.

(a) Exhibit no complete separation of any load bearing structural element * * *.

DJG supports its application for inconsequential noncompliance with the following, as summarized by NHTSA.

DJG does not think that tether separation during sled test constitutes a complete separation of a load bearing structural element. DJG believes that the regulatory history of S5.1.1 shows that the purpose of the requirement is to reduce the likelihood of injury during collapse or disintegration of the system; therefore, the cutting of the tether strap does not present a risk of collapse or disintegration. DJG states that the agency's compliance test data show tether separation of the Alpha Omega CRS under dynamic loading provides significantly improved results compared to other Alpha Omega CRS without tether separation under dynamic loading. Therefore, DJG filed this petition on the basis that the noncompliance is inconsequential to motor vehicle safety.

The agency has reviewed DJG's application and concluded that the noncompliance is not inconsequential to motor vehicle safety for the following reasons.

First, even though the Alpha Omega CRS met other dynamic test requirements, it did not meet S5.1.1(a) when the tether strap separated from the CRS. The agency has consistently viewed tether strap separation as a load bearing structural failure.

Second, structural failure is similar to vehicle LATCH anchorage failure—a failure of either one causes a child seat to be restrained improperly.

Finally, the agency has taken enforcement action for a similar failure. In 2001, the agency notified Britax Child Safety, Inc (Britax), of a potential noncompliance due to the detachment of a tether strap during dynamic testing of one of its child restraint models. Britax initiated a recall campaign to provide owners of the affected model with repair kits.

In consideration of the foregoing, NHTSA has decided that DJG has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, DJG's application is hereby denied. Therefore, DJG must fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

**Authority:** 49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 22, 2003.

**Roger A. Saul,**

*Director, Office of Crashworthiness Standards.*

[FR Doc. 03–19152 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–98–4470]**

### Pipeline Safety: Meeting of the Technical Hazardous Liquid Pipeline Safety Standards Committee

**AGENCY:** Office of Pipeline Safety, Research and Special Programs Administration, DOT.

**ACTION:** Notice—Meeting of Technical Hazardous Liquid Pipeline Safety Standards Committee.

**SUMMARY:** The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will convene a meeting of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The purpose of the meeting is to request the Committee's input on the conceptual framework of the OPS five-year research and development program plan as required by section 12 of the Pipeline Safety Improvement Act of 2002. RSPA/OPS staff will also brief the Committee and request their advice on a possible rule change to the operator qualification standard and on a rulemaking on annual reporting.

**DATES:** The meeting will be held on Wednesday, August 6 from 11 a.m. to 2 p.m. Advisory Committee members will participate via telephone conference call. Notice of each Committee meeting will be published in the **Federal Register** at least 15 days in advance of the meeting, except in emergency situations. This Notice is delayed due to the complex coordination among several agencies to complete and expedite the conceptional framework of the OPS five-year research and development program plan to meet the December 2003 deadline required by the Pipeline Safety Improvement Act of 2002.

**ADDRESSES:** Members of the public may attend the meeting in room 4236 at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC.

An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Jean Milam, (202) 493–0967, not later than August 1, 2003, on the topic of the statement and the length

of the presentation. The presiding officer at the meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should reference docket number RSPA–98–4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

You may search the electronic form of all comments received into any of the DOT dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jean Milam at (202) 493–0967.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

**SUPPLEMENTARY INFORMATION:** The agenda for this meeting of the THLPSSC will include:

1. A briefing and request for Committee comment on the conceptual framework of the OPS five-year research and development program plan.

2. A briefing and request for advice on a possible rule change to the Operator Qualification Standard.

3. A briefing on the hazardous liquid annual report rulemaking.

The THLPSSC is a statutorily mandated advisory committee that advises RSPA/OPS on proposed safety standards for liquid pipelines. The advisory committee is constituted in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committee consists of 15 members—five each representing government, industry, and the public. The THLPSSC is tasked with determining reasonableness, cost-effectiveness, and practicability of proposed pipeline regulations.

**Authority:** 49 U.S.C. 60102, 60115.

Issued in Washington, DC, on July 22, 2003.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 03–19151 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34378]**

### The Burlington Northern and Santa Fe Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) on UP's Black Butte and Valley Subdivisions, between Klamath Falls, OR, at UP milepost 428.7, and Binney Junction (Marysville), CA, at UP milepost 141.9, a distance of approximately 285 miles.[1]

The transaction was scheduled to become effective on July 16, 2003, and the authorization is scheduled to expire on August 15, 2003. The purpose of the temporary rights is to allow BNSF to bridge its train service while its main lines are out of service due to certain programmed track, roadbed, and structural maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *United States,* 675 F.2d 1248 (D.C. Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34378, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Michael E. Roper, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: July 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–18974 Filed 7–25–03; 8:45 am]

BILLING CODE 4915–00–P

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[1] By amendment received on July 16, 2003, BNSF states that the reason there is a 1.8-mile difference between the milepost locations and the actual distance is that the railroad uses station mileposts to determine mileage. BNSF indicates that there frequently is a small distance between the station milepost and the actual location of the switch where the railroad enters or departs its trackage.

# Corrections

Federal Register

Vol. 68, No. 144

Monday, July 28, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments

*Correction*

In notice document 03–18015 beginning on page 42006 in the issue of Wednesday, July 16, 2003, make the following corrections:

1. On page 42007, in the first column, under ''*Docket Number*: 03–031'', in the 13th line, ''used in perform'' should read, ''used to perform''.

2. On the same page, in the second column, under ''*Docket Number*: 03–033'', in the fifth line, ''Model Tecnai $^{2}$'', should read, ''Model Tecnai G$^{2}$''

[FR Doc. C3–18015 Filed 7–25–03; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Open Meeting on Department of Defense Directive 1344.7, ''Personal Commercial Solicitation on DoD Installations''

*Correction*

In notice document 03–18508 appearing on page 43344 in the issue of Tuesday, July 22, 2003, make the following correction:

On page 43344, in the third column, under the heading **SUPPLEMENTARY INFORMATION**, in the 12th line, in the Web site address, ''*d13447wch2_021386/d13447p.pdgf*'' should read, ''*d13447wch2_021386/d13447p.pdf*''.

[FR Doc. C3–18508 Filed 7–25–03; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF HOMELAND SECURITY

### Transporation Security Administration

### Port Security Grant Program; Application Notice Describing the Category of Interest and Establishing the Closing Date for Receipt of Applications Under the Port Security Grant Program—Round 3

*Correction*

In notice document 03–18463 beginning on page 43152 in the issue of Monday, July 21, 2003, make the following correction:

On page 43153, in the first column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the last line, ''*Tony.Cario@dhs.gov*'' should read, ''*Tony.Corio@dhs.gov*''.

[FR Doc. C3–18463 Filed 7–25–03; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4815–N–43]**

### Notice of Submission of Proposed Information Collection to OMB: Application for the Transfer of Physical Assets

*Correction*

In notice document 03–18180 beginning on page 42745 in the issue of Friday, July 18, 2003 make the following correction:

On page 42745, in the second column, under the **DATES** heading, in the first line, '' July 18, 2003'' should read, ''August 18, 2003''.

[FR Doc. C3–18180 Filed 7–25–03; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2002–NM–205–AD; Amendment 39–13229; AD 2003–14–10]**

**RIN 2120–AA64**

### Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplane

*Correction*

In rule document 03–17693 beginning on page 42583 in the issue of, Friday, July 18, 2003 make the following correction:

**§39.13 [Corrected]**

On page 42585, in § 39.13, under TABLE 2. –SERVICE BULLETINS, in the fourth column, the fourth line should read ''April 19, 2001''.

[FR Doc. C3–17693 Filed 7–25–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
July 28, 2003

# Part II

# Department of Transportation

## Federal Railroad Administration

49 CFR Part 214

**Roadway Maintenance Machine Safety; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 214**

**[Docket No. FRA–2000–8156, Notice No. 2]**

**RIN 2130–AB28**

## Roadway Maintenance Machine Safety

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FRA is amending its Railroad Workplace Safety regulations by adding a new subpart prescribing safety standards for railroad on-track roadway maintenance machines and hi-rail vehicles. The purpose of these standards is to protect roadway workers during the lawful operation of this equipment and to promote railroad safety overall.

**DATES:** (1) *Effective Date:* This regulation is effective September 26, 2003.

(2) Any petition for reconsideration of any portion of the rule must be submitted no later than September 26, 2003.

**ADDRESSES:** A petition for reconsideration (identified by DOT DMS Docket Number FRA–2000–8156) may be submitted by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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**SUPPLEMENTARY INFORMATION:**

### Introduction

*Background*

In May 1990, the Brotherhood of Maintenance of Way Employes (BMWE) filed a petition with FRA to revise the Track Safety Standards and add to them new regulations addressing the safety of roadway workers and roadway maintenance machines. In response, FRA first initiated a negotiated rulemaking to address roadway worker safety. The final rule resulting from that rulemaking was published in December, 1996 (*see* 61 FR 65959), and the regulations addressing roadway worker safety now reside in 49 CFR part 214, subpart C.

Also in 1996, FRA requested that the newly formed Railroad Safety Advisory Committee (RSAC) develop recommendations to the Administrator on how to address by rulemaking the revision of the Track Safety Standards petitioned by the BMWE. The RSAC agreed to the task and formed a Track Working Group to draft a proposed revision. The Track Working Group decided by consensus that the draft revision would update the Track Safety Standards found at 49 CFR part 213, and that a new set of regulations addressing the safety of on-track roadway maintenance machines would be initiated in a separate rulemaking. The RSAC approved by majority consensus a draft Notice of Proposed Rulemaking (NPRM) for revision of part 213 in October, 1996. The Administrator approved and signed the NPRM, which was published on July 3, 1997. *See* 62 FR 36138. The final rule was published on June 22, 1998 (*see* 63 FR 33992), and the revised track standards became effective on September 21, 1998.

Even after the publication of the revised Track Safety Standards, the Track Working Group remained in existence to accomplish two additional tasks accepted by the RSAC: The amendment of part 213 to add safety standards for Gage Restraint Measuring Systems (GRMS), and the amendment of part 214 to add safety standards for on-track roadway maintenance machines. To accomplish the latter, the Track Working Group appointed a six-member Task Group to draft, by consensus, rule text and analysis for the preamble.

The Task Group consisted of representatives from FRA, Association of American Railroads (AAR), BMWE, Norfolk Southern Railway Co., and an equipment supplier. The Task Group met several times and conducted numerous conference calls before drafting proposed rule language to recommend to the RSAC for approval. The Task Group's recommended proposed rule was approved by the RSAC in 2000, and the proposed rule was subsequently issued by the Administrator and then published on January 10, 2001. *See* 66 FR 1930.

FRA received comments from five organizations in response to the proposed rule. The commenters included the BMWE, the AAR, Loram Maintenance of Way, Inc. (Loram), Transtar, Inc. (Transtar), and the Wisconsin Central System (Wisconsin Central). Loram recommended that FRA terminate the rulemaking because the Task Group included only one representative of the equipment industry who could not adequately represent the diversity of roadway maintenance equipment. Loram further suggested that, in the alternative, FRA should convene a task group that included at least two representatives of manufacturers and operators of roadway maintenance equipment.

In February 2002, the Task Group met with most of the commenters, as well as other representatives from the industry, to gain clarification of, and further discuss, the comments and suggestions provided by the commenters. The Task Group met with representatives of Loram, Plasser American, and the Railway Progress Institute, and then, by unanimous vote, recommended how this final rule would respond to each of the comments. (Discussion of those recommendations is detailed in the Section-by-Section Analysis segment of this document, below.) Thereafter, in May 2002, the Task Group's recommendations were unanimously approved by the full RSAC.

*Categories of Equipment*

When the Task Group began the task of developing a proposed rule for roadway maintenance machine safety, it initially divided roadway maintenance machines into three broad categories: on-track, on/off track (such as hi-rail vehicles), and off-track. The Task Group quickly decided to confine the regulations to on-track equipment and

equipment used both on and off track. The Task Group further divided two remaining categories of roadway maintenance machines into five sub-categories: Large self-propelled equipment; medium self-propelled equipment; small ''walk-along'' equipment; hi-rail equipment; and motor cars.

The Task Group conducted a systematic review of various types and configurations of machinery, as well as of their current use in the railroad industry. The Task Group determined that the railroad industry is rapidly phasing out the use of motor cars, replacing them with hi-rail vehicles. In fact, motor cars have not been manufactured for use in the United States in several years. Therefore, it was decided that there was no need to write a rule covering motor cars. However, if in the future, the industry returns motor cars for widespread use as inspection vehicles, FRA may reconsider its decision to exclude motor cars from this regulation.

Next, the Task Group decided to eliminate small ''walk-along'' track equipment from the scope of the new regulations. ''Walk-along'' equipment includes small pieces of track maintenance equipment that rolls on the rails but may not be self-propelled. This type of equipment includes tie borers, nut runners, portable rail grinders and other track maintenance equipment of similar size which can be placed on, or removed from, the track with relative ease by one or more roadway workers. The Task Group determined that the great variety of this type of equipment would necessitate writing a very complicated set of regulations governing a category of equipment that does not pose a very significant safety hazard. Therefore, the Task Group decided to focus the rulemaking on the three remaining sub-categories of roadway maintenance equipment: Large on-track machines, medium on-track machines, and hi-rail vehicles.

To distinguish large on-track machines from medium-sized on-track machines, the Task Group decided to consider the light weight of the vehicles. Large equipment was designated as ''Category I'' equipment and included on-track self-propelled roadway maintenance machines having a light weight of 17,500 pounds or more. ''Category II'' machines included similar equipment whose light weight was less than 17,500 pounds but more than 7,500 pounds.

The final categorization of covered roadway maintenance machines dealt with the age of the vehicles. The Task Group determined that all of the regulations would apply to new machines. The Group decided to define ''new'' as any machine ordered for manufacture 90 days after the issuance of a final rule, to prevent the rule from interfering with the manufacture of new equipment already on order but not yet completed when the rule is issued.

Likewise, the Task Group believed it necessary to limit the number of older roadway maintenance machines that would need retrofitting following the issuance of a final rule. Because technology has changed and many types of roadway maintenance machines have been redesigned in more recent years, the Task Group determined that the new rule should not apply to the oldest equipment in the industry's collective fleet. Therefore, the Task Group decided that the requirements for retrofitting would not apply to any roadway maintenance machine manufactured prior to January 1, 1991.

With the parameters about types of equipment agreed upon, the Task Group then set out to determine what safety features on the machines should be covered by the regulations. The Group reviewed existing standards for work equipment issued by the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, and discussed the American National Standards Institute (ANSI) and the Society of Automotive Engineers (SAE) standards, which are voluntary industry standards. The Group identified 18 items on the Category I and Category II machines that should be included in the regulations:

- Operator Seating;
- Brakes;
- Horn;
- Work Lights;
- Mirrors;
- Change of Direction Alarm;
- Fire Extinguisher;
- Safety Glass;
- Power Wipers;
- Strobe Light;
- Heat and Ventilation for Non-Pressurized Cab;
- Flagging Equipment;
- Headlights;
- Turntable Positive Restraint Device;
- Equipment Light Weight Displayed;
- Heat, Ventilation, and Air Conditioning for Pressurized Cab;
- Brake Lights; and
- First-Aid Kit.

For hi-rail vehicles, the Group determined that the regulations should address:

- Operator Seating;
- Brakes;
- Horn;
- Mirrors;
- Fire Extinguisher;
- Safety Glass;
- Power Wipers;
- Heat and Ventilation for Non-Pressurized Cab;
- Headlights;
- Equipment Light Weight Displayed;
- Brake Lights;
- Change of Direction Alarm;
- Strobe Light;
- Flagging Equipment; and
- First-Aid Kit.

Because the regulations are intended to cover hi-rail vehicles only when they are being used as on-track vehicles, the Task Group determined that the regulations should not replace any Federal or State requirements covering hi-rail vehicles when they are used as roadway motor vehicles.

As the discussions continued over many months in preparation of a proposed rule, some early decisions made by the Task Group changed. For example, the Category I and II designations, which helped the Task Group early in the discussions, eventually became unnecessary as proposed requirements changed. This final rule makes the distinction between large equipment and medium-sized equipment in only two instances, making it unnecessary to maintain the designated categories for purposes of the rule.

*Shunting*

Early in the deliberations, the Task Group explored whether or not the regulations should require that the covered track maintenance machines be non-insulated for the purpose of shunting the track circuits. Machines capable of shunting track circuits would enable a track circuit to indicate track occupancy by the machine, affording an extra measure of protection for the track crew through the signal system, as well as protection at highway-rail crossings through the activation of warning devices at crossings so equipped.

The railroad industry has struggled many years to develop a technology that would provide reliable shunting capabilities for track maintenance machines. Even heavy equipment such as single unit self-propelled passenger cars and single unit locomotive consists without cars do not always shunt the track circuits. The Task Group discussed the advantages of current shunting technologies when the technologies work successfully, and balanced them against the possibility that the technologies might fail. Roadway workers could develop a false sense of security when using machines designed to shunt track circuits, perhaps relying too heavily on shunting as a

method of protection when the reliability of the shunting is not failsafe.

The Task Group agreed that, because present shunting technology has not advanced enough to guarantee a level of reliability necessary for track maintenance machines, this rule should not require that the machines be non-insulated. However, if FRA finds in the future that the technology has advanced to a high level of reliability for track maintenance machines, the agency may reconsider its position regarding insulation.

*Noise Conservation*

The Task Group considered including in the regulations a design standard that would require new roadway maintenance machines covered by the rule to maintain the noise level in the cab of the machine to no more than 85 dBA measured on the A-scale of a standard sound level meter at slow response over an eight-hour period. Hearing loss caused by exposure to loud levels of noise over an extended period of time is a significant issue among roadway workers. Workers on roadway maintenance machines are currently protected by OSHA regulations set forth in 29 CFR 1910.95, which require a covered employer to provide a hearing conservation program, hearing protection, and training for employees.

However, if FRA were to establish noise exposure standards here with a new design standard, such standards would oust OSHA's jurisdiction over hearing conservation, pursuant to section 4(b)(1) of the Occupational Safety and Health Act, 29 U.S.C. 653(b)(1). Therefore, with a design standard for new equipment, but no requirement for a hearing conservation program, personal hearing protection or employee training, the roadway workers affected by this rule would receive less protection than they receive now under OSHA regulations. In addition, an effort by FRA to enter the field of hearing conservation on some roadway maintenance machines could result in FRA displacing OSHA regulations for all roadway maintenance machines. This result would leave operators of roadway equipment not under the design standard (*i.e.,* older equipment or equipment weighing less than 7,500 pounds) with no hearing protection under Federal law whatsoever.

To prevent such an unwanted result, FRA would need to institute its own set of comprehensive regulations dealing with hearing protection, hearing conservation programs, and testing. Given the fact that OSHA currently has authority to address noise exposure and hearing loss for these employees, as well as the requisite expertise at hand to do so effectively, FRA sees no need to duplicate such a program. In fact, as FRA understands, the railroads currently follow the OSHA regulations and have established hearing conservation programs that include these employees.

*Environmental Controls in Cabs*

The issue of environmental controls in cabs of roadway maintenance machines, including heating, air conditioning, and protection from air contaminants like silica dust, was the topic of much discussion among Task Group members. The Task Group worked hard to find a balance between environmental controls perceived to be safety enhancements and those perceived by some to be merely ''comfort'' improvements. The resulting requirement in this rule is therefore designed to protect employees working on certain types of roadway machines from air contaminants that may cause respiratory health problems for employees while also protecting equipment components from the effects of temperature extremes or degradation from dust and debris. This standard will also enhance safety by reducing noise inside the cab, thereby effectuating clearer radio communications between employees. In addition, the standard will afford clearer visibility for those working inside the cab.

Under this regulation, OSHA environmental standards, which already govern the working environments of roadway maintenance machines, essentially remain in effect. By cross-referencing in this regulation the OSHA standards contained in 29 CFR 1910.1000, FRA becomes the enforcing agency as to environmental controls over the selected types of equipment, rather than OSHA. Environmental controls in equipment not covered by this rule and the limiting of exposure to employees working outside equipment remain subject to OSHA enforcement, and the regulation is the same (29 CFR 1910.1000).

It is important to note that the rule cross-references OSHA standards without limiting the references to OSHA standards in effect on a certain date. As with all regulatory agencies, OSHA from time to time revises and updates its standards. By cross-referencing the OSHA standards without limiting the references to standards in effect on a certain date, this regulation automatically references any revisions by OSHA to these standards so as to remain in conformance with any revised OSHA standards. This action prevents the undesirable result whereby operators of roadway maintenance machines covered by this regulation could receive less protection than other operators in the event that OSHA revises any of the referenced standards.

The regulation requires positive pressurized ventilation systems with temperature controls only on new roadway maintenance machines as defined in § 214.7. In addition, the requirement is limited to ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, and other equipment with equivalent functions. It is FRA's understanding that these types of equipment are now typically manufactured with engineering controls that prevent inhalation of hazardous substances. The regulation requires temperature controls because, by their nature, pressurized cabs require full enclosure without access to open windows or similar sources of ventilation. It becomes imperative, therefore, that the cabs also be equipped with a means to control the temperature inside the cab. If the engineering controls fail for the ventilation system of any roadway maintenance machine covered by the requirement, employees on the machine must be equipped with personal respiratory protective equipment that is operative and meets the OSHA standards contained in 29 CFR 1910.134.

To prevent confusion about which agency has enforcement authority over specific roadway maintenance machines, the rule requires railroads to maintain a roster of machinery that falls under FRA's jurisdiction for purposes of this regulation. The roster may be maintained on paper or electronically, but it must be accessible and available to FRA, OSHA, and other Federal and State agencies so that inspectors may determine which agency has responsibility for inspection of which machines. The roster is intended to prevent confusion that may otherwise cause certain machines to be inspected by two Federal agencies while other machines go uninspected altogether.

Although the regulation addresses pressurized cabs and temperature controls for only certain types of new roadway maintenance machines, railroads are not precluded from equipping other types of machinery, or older machinery, with the same features. If the railroad desires that FRA become the inspection agency for those machines so retrofitted, the railroad may simply add the designated machines to the roster. However, once added to the roster, a designated machine must remain on the roster until it is retired or its ownership changes.

*Crane Safety*

In 1998, the BMWE petitioned FRA to issue new regulations governing the safety of on-track railroad maintenance cranes. Currently, the safety of railroad crane operations is governed generally by OSHA regulations at 29 CFR 1910.180. Through its petition, the BMWE sought to reduce the number of railroad crane operators who are killed or seriously injured when cranes accidentally tip over due to shifting loads, excessive loads, defective equipment, supervisor misjudgment, or operator error.

However, this rule is not intended to cover crane safety as envisioned by the petition. For example, this rule does not address those elements of crane safety involving the lifting and transferring of loads. Further, FRA makes clear that this rule is not intended to displace OSHA's regulations governing crane safety at 29 CFR 1910.180. FRA has made a commitment to gather additional data and information regarding crane safety. Upon completing that effort, FRA will consult with members of the Task Group and, if appropriate, seek the advice of the RSAC about the necessity of issuing FRA regulations as called for in the BMWE's petition.

**Section-by-Section Analysis**

FRA is amending 49 CFR part 214 by adding a new subpart D specifically devoted to the prevention of accidents and casualties caused by the operation of on-track roadway maintenance machines and hi-rail vehicles. FRA is also amending subpart A of part 214 by adding new definitions to § 214.7 that describe and categorize the types of on-track roadway maintenance machines and hi-rail vehicles that subpart D addresses.

*Section 214.7 Definitions*

Section 214.7 contains additional entries which are particularly important to the understanding of the types of equipment that are to be covered by the new rule. Subpart D addresses two general types of roadway maintenance machines. ''On-track roadway maintenance machines'' are defined as self-propelled, rail-mounted, non-highway roadway maintenance machines whose light weight is in excess of 7,500 pounds and whose purpose is not for the inspection of railroad track. ''Hi-rail vehicles'' are defined as roadway maintenance machines that are manufactured to meet Federal Motor Vehicle Safety Standards and are equipped with retractable flanged wheels so that the vehicles may travel over the highway or on railroad tracks.

Both on-track roadway maintenance machines and hi-rail vehicles are further classified as ''new'' for the purposes of this rule. A ''new'' on-track roadway maintenance machine is defined as an on-track roadway maintenance machine which is ordered after December 26, 2003 *and* completed after September 27, 2004. Whereas, a ''new'' hi-rail vehicle is defined as a hi-rail vehicle which is ordered after December 26, 2003 or completed after September 27, 2004. The result of these somewhat different definitions is to afford new on-track roadway maintenance machines more time to be built in compliance with the rule, due to the concern that it would take longer to do so for such machines than for hi-rail vehicles. On-track roadway maintenance machines are further classified as ''existing,'' comprising any on-track roadway maintenance machines covered by this subpart which do not meet the definition of ''new'' on-track roadway maintenance machines. Hi-rail vehicles are not further classified as ''existing'' in the text of this rule, due to the structure of the rule. However, when the term ''hi-rail vehicle'' is used in the rule text, in distinction to the term ''new hi-rail vehicle,'' any hi-rail vehicle covered by this subpart is included, whether ''new'' or not. Nevertheless, in some portions of this rule's preamble FRA does refer to ''existing'' hi-rail vehicles for added clarity in explaining when a specific section of the rule addresses all hi-rail vehicles covered by this subpart.

Roadway maintenance machines not included within the scope of subpart D are ''on-track roadway maintenance machines'' whose light weight does not exceed 7,500 pounds, off-track equipment such as bulldozers, backhoes, and road graders, as well as that class of antiquated equipment referred to as motor cars. Although this equipment is not covered under the scope of subpart D, it nevertheless meets the general definition of ''roadway maintenance machines'' as defined in this section for purposes of the Roadway Worker Protection regulations contained in subpart C of this part.

In addition, it is important to note here that the term ''employer'' as defined in subpart A includes both railroads and contractors of railroads. In subpart D, FRA has used the term ''employer'' as defined; that is, both railroads and their contractors are subject to the requirements of subpart D.

One commenter, Loram, objected to the definition of ''new'' roadway maintenance equipment, stating that the proposed definition was confusing and provided a lead-time that is too short. The commenter also questioned the definition's apparent assumption that all roadway maintenance machines are ordered to specifications when in fact some machines are built in anticipation of future orders. The commenter suggested that the definition of ''new'' machines be ''any machines completely manufactured more than one year after issuance of the final rule.'' After discussion of the comment, the Task Group voted unanimously that the definition already developed by its members and approved by the entire RSAC is a more effective definition to apply to the regulation. FRA agrees with the reasoning of the Task Group; therefore, no change has been made.

*Section 214.501 Purpose and Scope*

The purpose for the minimum safety standards prescribed under this subpart is the protection of roadway workers during the lawful operation of on-track roadway maintenance machines and hi-rail vehicles. This subpart prescribes minimum safety standards for on-track roadway maintenance machines and hi-rail vehicles, although railroads and railroad contractors (referred to collectively as ''employer'' throughout subpart D, as the term is defined in subpart A) may adopt more stringent standards as long as they are consistent with this subpart. As it has done in other regulations, FRA is including railroad contractors within the scope of this regulation. A good deal of track maintenance is performed by contractors to railroads, so it is important for those entities to fall within the requirements for safe performance of that work.

This section further states that any working condition which involves the protection of railroad employees engaged in roadway maintenance duties but which is not specifically addressed in this subpart (for example, noise exposure) continues to be governed by the regulations of OSHA. The purpose of this section is to avoid the unintentional displacement of OSHA safety regulations governing the roadway maintenance machine work environment.

Furthermore, all of the provisions set forth in subpart A to this part, which concerns the purpose and scope of this part, apply to subpart D as well.

FRA received no comments in response to this section of the proposed rule; therefore, no changes from the proposed rule have been made.

*Section 214.503 Good-Faith Challenges; Procedures for Notification and Resolution*

This section outlines the circumstances under which employees operating on-track roadway maintenance machines and hi-rail vehicles are guaranteed the right and have the responsibility to make challenges relative to the operation or condition of on-track roadway maintenance machines and hi-rail vehicles. In the final rule, FRA has expressly added hi-rail vehicles as roadway maintenance machines covered by the requirements of this section. Hi-rail vehicles were not intended to be treated differently and excluded from this section's requirements. It is consistent with safety to afford the operators of hi-rail vehicles the same protections- and impose on them the same obligations-under this section as the operators of on-track roadway maintenance machines.

Paragraph (a) addresses the employee's responsibility to inform the employer whenever the employee makes a good-faith determination that the on-track roadway maintenance machine or hi-rail vehicle does not comply with FRA regulations or has a condition that inhibits its safe operation. The employee should consider not only the minimum safety requirements specified in this subpart, but also the general requirements specified in § 214.341 of subpart C, which also address the safety of roadway workers who operate or work near roadway maintenance machines.

A challenge must be made in good faith in order to fall within the purview of this section.

Paragraph (b) guarantees the employee's right of refusal to operate any on-track roadway maintenance machine or hi-rail vehicle once the employee has made a good-faith determination that the machine or vehicle does not meet all the requirements of this subpart, or has a condition that inhibits its safe operation. As specified in § 214.531, this rule generally allows the employer up to seven days to repair a roadway maintenance machine or hi-rail vehicle found to be noncompliant. However, the employer cannot require an employee, who in good faith challenges the fitness of a machine or vehicle, to operate the machine or vehicle until the challenge has been resolved.

Under paragraph (c), each employer must have in place, and must adhere to, written procedures for attaining a prompt and equitable resolution of challenges resulting from good-faith determinations made in accordance with this section. The procedures shall outline the steps the employer will take to investigate each good-faith challenge. They shall also include steps to be taken when the employer's investigation shows that the challenged machine or vehicle should not be used as it is, to ensure that the challenged machine or vehicle is not used until repaired or removed from service to comply with this subpart. Further, the written procedures shall include the title and location of the employer's designated official(s) for the purpose of reporting conditions found to be in non-compliance with this subpart, to ensure that machine and vehicle operators are informed as to whom they should address any good-faith challenges. FRA's purpose in requiring these procedures is to make certain that a machine or vehicle operator who makes a good-faith challenge of a machine's or vehicle's fitness to operate receives an explanation of the employer's decision to either keep the machine or vehicle in service, repair it, or replace it. FRA will not consider an employer to be in compliance with this section if it responds to any good-faith challenge with a mere ''yes'' or ''no'' answer.

FRA envisions that operators will challenge the fitness of an assigned machine or vehicle only in good faith, and the employer likewise will respond in good faith as well. FRA realizes that an employer's fleet of roadway maintenance machines and hi-rail vehicles may be very large and that machines and vehicles may sometimes become unfit for safe use without the employer's immediate knowledge. This provision seeks to establish a system under which a machine or vehicle operator, who on any day may be in the best position to assess the safety fitness of a particular machine or vehicle, can bring to the employer's attention safety deficiencies and other defects that should be immediately addressed.

However, FRA does realize that sometimes defects can appear to be more serious than they actually are. What may appear to be a defect jeopardizing operational safety may in reality be a minor flaw that can be addressed at a later, more convenient time or location. This section allows an employer to investigate a good-faith challenge to a roadway maintenance machine's and hi-rail vehicle's safety fitness and make its own good-faith determination that the machine or vehicle may be used without immediate repairs. However, this section requires good faith on the part of all parties involved. If FRA determines that an employer has not exercised good faith in determining that a machine or vehicle need not be immediately repaired or replaced, FRA may seek enforcement action against the employer for being in violation of this section. On the other hand, FRA will not consider an employer's response to a challenge to be a violation of this section if FRA determines that the challenge was made for purposes of disrupting or delaying work or in a manner demonstrating motivations other than good faith and concern for safety.

In the final rule, FRA has modified paragraph (a) to make it more consistent with paragraphs (b) and (c) by expressly focusing the employee's good-faith challenge on the condition of the machine or vehicle, instead of on the employer's rules governing the machine or vehicle. As paragraph (a) read in the NPRM, the employee would have been required to inform the employer whenever the employer's rules governing the machine did not comply with FRA regulations. However, paragraphs (b) and (c) in the NPRM expressly focused on the safety of the machine itself. For example, paragraph (c) referred to the employer's ''challenged machine''—not to the employer's ''challenged rule.'' FRA's modification of paragraph (a) eliminates this inconsistency.

One of the commenters to the proposed rule, Loram, objected to the rule's guarantee of an employee's right to refuse to operate a roadway maintenance machine which the employee has determined in good faith to be non-compliant with the regulation. The commenter suggested that one employee could, in effect, shut down a rail operation if a single machine does not meet all of the many requirements of the rule. Loram stated that mechanisms are already in place on railroads for such disputes to be resolved. Furthermore, Loram added that the provision itself suggests that there is necessarily an adversarial relationship between employers and employees in the railroad industry. According to Loram, this regulation would add to the burden of regulations already imposed on the industry.

In considering this comment, it was noted that the language of the regulation is modeled after the good-faith challenge that is permitted of employees who are working under the roadway worker safety regulations in subpart C to this part. Since the early months of 1997 when the roadway worker safety regulations became effective, few roadway workers have exercised the good-faith challenge provision. As far as FRA is aware, in each case where the challenge has been exercised, the

roadway worker sought to address a legitimate safety concern. The Task Group reiterated its belief that the provision is a necessary part of the new regulation. FRA believes that this provision is necessary for employee safety and that it does not impose an undue burden; therefore, FRA has declined to adopt Loram's comment.

*Section 214.505 Required Environmental Control and Protection Systems for New On-Track Roadway Maintenance Machines*

This section requires that certain types of new on-track roadway maintenance machines be equipped with enclosed cabs with positive pressurized ventilation systems that include climate control. By design, most pressurized ventilation systems do not provide a means of exchanging internal air for outside air while the roadway maintenance machine is in operation. In other words, the machine cabs with pressurized ventilation systems generally are not equipped with other means of ventilation or climate control, such as operable windows. Therefore, the requirement for positive pressurized ventilation systems necessitates that these machines also be equipped with operative heating and air conditioning systems.

The equipment covered by this section includes ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, and other equipment with equivalent functions. This equipment is used to perform track and roadbed maintenance and typically causes significant noise, debris, and dust. This work often occurs while employees are situated both in the cab of the equipment and along the right-of-way, in close proximity to the equipment as it is operated.

The requirements of this section provide for the safety of employer operations and employees in a variety of ways:

- The visibility of those working in the cab is improved.
- Employees working in the cab are protected from exposure to unhealthy levels of silica dust, which is prevalent in many regions of the country where track repair work is done, as well as other air contaminants.
- Equipment components are protected from temperature extremes and the degradation that may occur due to concentrations of dust and debris.
- Any combustion fumes generated by the equipment are prevented from entering the cab, so that employees are not exposed to the potential hazards of fuel exhaust.
- With diminished noise, dust, and debris in the cab, employees are better able to communicate with one another in the cab and, through the use of radios, with those employees working on the ground who might be placed at risk if the equipment moves or operates unexpectedly.

FRA is cross-referencing and enforcing OSHA environmental standards contained in 29 CFR 1910.1000. Environmental controls of on-track roadway maintenance machines not covered by § 214.505 are governed by these same OSHA regulations, but compliance continues to be enforced by OSHA. It is FRA's understanding that new roadway maintenance machines of the types covered by this section are manufactured with engineering controls that prevent the inhalation of hazardous substances, as required by OSHA standards. By adopting the OSHA regulations for such new machinery, FRA is in a position to make progressive improvements in the environmental quality of roadway equipment based upon a foundation of protection already established by OSHA.

Employers must maintain a roster of roadway maintenance machines that come under FRA's jurisdiction for purposes of this regulation. The roster, which may be electronic, must be readily available to FRA and other Federal and State agencies upon request so that inspectors may determine which agency has responsibility for enforcement of respiratory safety regulations for each roadway maintenance machine.

Employers may elect to include on the roster existing roadway maintenance machines that are equipped with engineering controls for air ventilation. These machines designated for inclusion on the roster may be ones manufactured with engineering controls for ventilation or machines retrofitted by the employer to have engineering controls. When added to the roster, a designated machine becomes subject to FRA inspection and enforcement, and it must remain on the roster until it is retired or its ownership changes.

FRA recognizes that engineering controls for ventilation may fail from time to time. Consequently, when a new or designated roadway maintenance machine of the type listed in paragraph (a), or functionally equivalent thereto, does not offer the protection required by 29 CFR 1910.1000 because the engineering controls have temporarily failed, the employer must provide employees in the cab of the machine with personal respiratory protective equipment for protection from air contaminants, in accordance with paragraph (e). Paragraph (f) specifies that the personal respiratory protective equipment must be operative and comply with standards issued by OSHA in 29 CFR 1910.134. These OSHA standards require employers to use respirators certified by the National Institute for Occupational Safety and Health (NIOSH). Employers must have in place a respiratory protection program including procedures for proper inspection and maintenance of the respirators and medical evaluations of personnel designated to use the respirators.

By referencing OSHA's regulations already in effect, FRA is not imposing a new burden on employers. Rather, FRA is simply adopting standards that are already required by another government agency. The requirement for heating, air conditioning, pressurized cabs, and personal respiratory protective equipment in these new roadway maintenance machines constitutes an exercise of FRA jurisdiction over the working condition of employee exposure to temperature extremes and air contaminants for those employees working in the cabs of this equipment. This exercise of FRA jurisdiction consequently ousts any authority or enforcement power of OSHA concerning working conditions related to the operation of air conditioning and heating systems or high levels of air contaminants in the cabs of this equipment. FRA makes clear that it is prepared to address any failure to comply with the working condition requirements, either through consultation with employers to remedy any problems or by taking enforcement action to bring about compliance.

In cross-referencing the OSHA standards, FRA makes clear that when OSHA revises the standards FRA will enforce the revised standards on those machines over which FRA has jurisdiction. This will ensure that any OSHA revision does not create an inconsistency whereby some types of roadway maintenance machines would be governed by the revised standards enforced by OSHA and others would be governed by the standards without the revisions as enforced by FRA.

FRA makes clear that it is not adopting those OSHA standards that include protection from silica dust for employees not working inside the cabs of on-track roadway maintenance machines covered by this section. The extent of FRA's adoption of OSHA standards in this section reaches only as far as the cab of the covered on-track roadway maintenance machine. As a result, when working inside the cab,

workers receive protection from FRA; when working outside the cab, workers receive protection from OSHA. For example, roadway workers working along the right-of-way will continue to receive silica dust protection as administered by OSHA. In addition, to make clearer which employees are protected by this section when the ventilation system fails on a machine, FRA has modified paragraph (e) to make clear FRA's intent that the protections of this section apply only to employees ''in the cab'' of the machine, and not generally to any employee ''on the'' machine, whether inside the cab or not, as stated in the NPRM.

FRA also makes clear that this section of the final rule does not constitute an exercise of FRA authority over noise exposure for employees working on or around equipment covered by this section. This section does not establish permissible noise exposure levels for employees working on or around this equipment. OSHA's existing standards for noise exposure at 29 CFR 1910.95 continue to apply.

Paragraph (g) applies to new on-track roadway maintenance machines with enclosed cabs that are not of the type covered by paragraph (a). These new on-track roadway maintenance machines must be equipped with operative heating and ventilation systems.

Paragraph (h) refers to new on-track roadway maintenance machines that have, in addition to the main cab, non-enclosed operator stations in other places on the machine. These stations must be equipped with a covering of some kind that protects the operator in that position from midday sun or from normal rain. Of course, there will be times during the day when the sun is in such a position in the sky that a covering will not completely protect the operator from the sun. Likewise, a cover may not completely protect an operator from very heavy or wind-driven rain. This paragraph is not intended to require coverings to protect the operator in all circumstances. The coverings are required only when the design of the machine allows for the placement of a covering. Some operators' positions may be situated such that the addition of a covering is either impossible or would obstruct another working part of the equipment. In those instances, the coverings are not required.

One of the commenters to the NPRM, Loram, noted that the proposed rule referenced silica dust as an air contaminant that would be addressed by pressurized cabs on roadway maintenance machines. Loram suggested that the final rule be directed more specifically to silica dust contamination. The Task Group disagreed. Air contaminants generated by roadway maintenance work may include more than silica. Following a discussion of the issue at a meeting with the Task Group, Loram withdrew the comment stating that it agreed that the rule should address the broader issue of contaminants.

Loram further suggested that the final rule clearly define the word ''cab'' as a ''structure in which crews are housed and from which they operate controls required for the machine to carry out its primary function or movement.'' According to Loram, some machines are equipped with ''work rooms, convenience areas and storage locations'' which may resemble a cab. The Task Group disagreed that the word ''cab'' requires specific definition, and FRA has not adopted Loram's comment. FRA does not believe there should be any confusion about the term ''cab.'' The types of compartments described by Loram as resembling a cab are typically found on rail grinders only. However, rail grinders are not covered by this section of the rule.

Loram also commented that the proposed rule did not clearly distinguish between the types of equipment requiring enclosed cabs from equipment that must be provided with an overhead covering above the operator's stand. Loram suggested that this distinction could be accomplished by listing the elements each type of feature (enclosed cab or overhead covering) is meant to shield against. The Task Group discussed this comment directly with representatives of Loram at the Task Group meeting following publication of the NPRM. Loram acknowledged that it had misread the proposed regulation and withdrew the comment from consideration.

In commenting on the NPRM, Transtar maintained that small railroads would bear an onerous burden from the requirement that personal respiratory protective equipment be supplied to employees in the event of a failure of the environmental controls in a pressurized cab. Transtar suggested that the regulation permit employers to use ''engineering and/or administrative controls'' when the environmental controls fail on pressurized cabs. Transtar did not identify what those engineering and administrative controls should be. The Task Group disagreed with Transtar and FRA has not adopted the comment. The provision would not present a new burden since it mirrors OSHA regulations already in effect.

Transtar also stated that the proposed regulation did not clearly describe the demarcation between FRA's jurisdiction and OSHA's jurisdiction over the working conditions of the roadway maintenance machines. The Task Group believed that this division of enforcement jurisdiction between the two agencies was discussed extensively in the preamble and recommended that the language of the proposed rule remain the same. FRA believes that it has addressed this issue in both the NPRM and this final rule.

*Section 214.507 Required Safety Equipment for New On-Track Roadway Maintenance Machines*

This section contains requirements for safety equipment for all new on-track roadway maintenance machines. Several of the requirements are structural in nature, such as seats and handrails, and would be best met through engineering design by the equipment manufacturer. Other requirements, like fire extinguishers and first-aid kits, can be installed either by the manufacturer or by the employer after delivery from the manufacturer.

Paragraph (a) requires that each new on-track roadway maintenance machine be equipped with a seat for each operator, unless the machine is designed to be operated by an operator in the standing position. Further, each roadway worker transported on an on-track roadway maintenance machine is required to have a safe and secure position with handholds, handrails, or a secure seat. These safe and secure positions must be located so that they offer protection from moving parts of the machine which could entangle clothing or body extremities. In the final rule, FRA has modified paragraph (a)(2) to make clear that moving parts of the machine which could entangle clothing or body extremities are not located only inside of the cab. This is consistent with the preamble to the NPRM which described the proposed protection from moving parts of the machine generally, without limiting that protection to parts located inside of the cab, and makes good safety sense.

In the NPRM, FRA offered to consider adding regulatory language to the final rule to describe ''safe and secure positions'' with more specificity. FRA requested comment on the need for a more specific description and asked for suggestions about what the description should include. The AAR responded to the request by stating that the phrase ''safe and secure positions'' needed no further definition. The BMWE suggested that a safe and secure position should have a minimum of three points of contact for a person riding in that position. Loram commented that any description of ''safe and secure'' should

not include a definition of how seats should be mounted, as this decision should be left to the vendor's discretion. In this final rule, FRA has decided to follow the recommendation of the Task Group by not changing the proposed language, except to place the last clause of the paragraph in its own sentence for clarity. Only the comment from the BMWE could be considered as supporting a more specific requirement, and, in any event, FRA believes that the requirement is consistent with three-point protection.

Some on-track roadway maintenance machines are equipped with turntables to allow them to quickly change working direction when wye or loop tracks are not readily accessible. Paragraph (a)(3) requires that new machines equipped with turntables have a positive method of mechanical securement, through engagement of pins and hooks, to prevent the lowering of the turntable device below the head of the rail when not in use. This arrangement of pins and hooks provides a safety redundancy in case the main activation system fails or is accidentally triggered.

In commenting on the NPRM, Loram stated that the proposed rule neglected to address positive lockouts for other types of roadway maintenance equipment that may also encroach on the area below the top of the rail. The Task Group concluded that the proposed rule, which addressed positive securement of turntables for new and existing roadway maintenance machines, adequately addressed the machinery intended to be covered by this rule. FRA agrees. The rule focuses on roadway maintenance machines equipped with turntables because turntables may be held in place simply by hydraulic pressure, which may be bleed off and unintentionally lower the turntable device. Other roadway maintenance machines have pins, clamps, or other devices to positively secure equipment that may encroach on the area below the top of the rail. FRA is not aware of any other type of roadway maintenance machine, other than machines equipped with turntables, which needs to be subject to this requirement. Accordingly, FRA has not adopted the comment.

Paragraph (a)(4) requires new on-track roadway maintenance machines to have windshields made of safety glass or other material with similar properties, such as Lexan. The machinery is also required to have power windshield wipers. However, in cases where traditional windshield wipers are incompatible with the windshield material, the employer must provide a suitable alternative that offers the operator an equivalent level of vision.

Paragraph (a)(5) requires that new on-track roadway maintenance machines be equipped with primary braking systems capable of effectively controlling the movement of the machines under normal operating conditions.

Paragraphs (a)(6) and (7) together require that new on-track roadway maintenance machines must have a suitable first-aid kit and fire extinguisher readily accessible to the operator(s). The first-aid kit must comply with OSHA regulations prescribed at 29 CFR 1926.50(d)(2). Consequently, the first-aid supplies in the kits must be in individual sealed packages for each type of item and placed in a weatherproof container. Further, the OSHA regulations specify that the kits must be inspected before being sent out on each job and at least weekly to ensure that expended items are replaced. The referenced OSHA standard does not regulate the minimum contents of the first-aid kit, but it recommends as an example the description of the contents of a generic first-aid kit described in American National Standard (ANSI) Z308.1–1978, ''Minimum Requirements for Industrial Unit-Type First-aid Kits.'' *See* Appendix A to 29 CFR 1926.50.

FRA does not intend that a railroad be required to open the first-aid kit each time to confirm that the proper supplies are in the kit. Rather, FRA would expect that railroads would apply a seal of some kind to a properly supplied first-aid kit to show that it contains the proper supplies. An employee inspecting a first-aid kit with an unbroken seal would be able to presume that the kit contains the proper supplies. As a result, the burden of inspecting the first-aid kits would be significantly minimized.

The fire extinguisher required by this section must be operative and properly charged, securely mounted near the operator's work station, and designed with a rating of 5 BC or higher. A fire extinguisher with a ''BC'' rating is suitable to combat fires generated by flammable liquids or electrical equipment. The ''5'' designation indicates the extinguisher's volume and fire-fighting capacity. A requirement of a 5 BC rating is consistent with workplace standards in other industries.

In commenting on the NPRM, Transtar stated that a requirement for first-aid kits and fire extinguishers to be on board roadway maintenance machines would be too expensive for the railroad industry, given the vulnerability of this type of equipment to vandalism and theft. Transtar suggested that the regulation require that first-aid kits and fire extinguishers be ''readily available.'' During the development of the NPRM, the placement of first-aid kits and fire extinguishers was extensively discussed by the Task Group. The Task Group was able to reach consensus on the proposed language after lengthy debate, and the RSAC later agreed with the proposal. After discussing Transtar's comment, the Task Group recommended that FRA decline to change the language of this portion of paragraph (a). FRA agrees with the Task Group's recommendation, and has not changed the final rule in response to the comment. FRA has not found the cost of complying with the requirements to be burdensome, and in any case first-aid kits and fire extinguishers serve vital safety interests.

When new on-track roadway maintenance machines are designed to be operated with the operator in a standing position, the requirements of paragraph (a)(1) of this section do not apply. Instead, paragraph (b) requires these machines to be designed and equipped with handholds and handrails that provide the operator with a safe and secure position.

Paragraph (c) requires that each new on-track roadway maintenance machine with a light weight in excess of 32,500 pounds be equipped with a speed indicator if the machine is operated at speeds in excess of 20 mph. The speed indicator must be calibrated to be accurate within ± 5 mph of the actual speed when speeds are 10 mph or greater.

Paragraph (d) requires the manufacturer of new on-track roadway maintenance machines to display the as-built light weight of the machine. The light weight of the machine is calculated when the machine is not loaded with passengers or extraneous equipment not part of the machine itself. The light weight must be displayed in a conspicuous location on the machine and will serve to identify its proper category for the purposes of this regulation. The light weight will also provide essential information to crane operators in the event the machines are lifted on to—or loaded off of—flatbed trucks or rail cars for movement from one work site to another.

*Section 214.509 Required Visual Illumination and Reflective Devices for New On-Track Roadway Maintenance Machine*

This section prescribes requirements for lights and reflective devices for new on-track roadway maintenance machines. An on-track roadway maintenance machine operator must

have sufficient light to safely work or travel, especially during nighttime operations. The requirements will also help to make these machines more visible to roadway workers on the track and to vehicular traffic at highway-rail grade crossings.

This section makes several references to visibility in normal weather and atmospheric conditions. The requirement to illuminate the track ahead for a minimum distance of 300 feet is a measure to be considered under generally clement weather and atmospheric conditions. FRA understands that during periods of rain, fog, snow and other occurrences that are common in normal weather patterns, the lighting capability of the illumination devices may temporarily be unable to reach a full 300 feet. These temporary instances when full illumination is not possible will not be considered a violation of this regulation. In addition, FRA will not consider unusual weather events such as hurricanes, tornadoes, eclipses, or horizontally driven snow to be normal weather and atmospheric conditions under which the regulation must be met.

Paragraph (a) requires an illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a minimum distance of 300 feet under normal weather and atmospheric conditions. In commenting on the NPRM, Loram stated that the requirement should define the area of the track and roadbed to illuminate and include a specific value of adequate illumination or a light intensity minimum. Nevertheless, the Task Group was satisfied with the language of paragraph (a) in the NPRM for purposes of its application to new on-track roadway maintenance machines. FRA has elected not to change paragraph (a). FRA believes that this performance requirement provides sufficient specificity for the regulated industry.

When on-track roadway maintenance machines are operated during the period between one-half hour after sunset and one-half hour before sunrise, or in dimly lit areas such as tunnels, they are required by paragraph (b) to be equipped with operating work lights unless equivalent lighting is otherwise provided, for example, by portable wayside lighting.

Paragraph (c) requires an operative warning light or beacon mounted to the roof of new on-track roadway maintenance machines. The light or beacon must be designed to flash intermittently while rotating 360 degrees or otherwise emitting light in a 360-degree field. Exempt from this requirement are on-track roadway maintenance machines designed without fixed roofs that have a light weight less than 17,500 pounds.

In commenting on the NPRM, Loram stated that the proposed requirement for a light that rotates 360 degrees would seem to disallow the use of strobe lights. In considering Loram's comment, the Task Group concluded that the NPRM's preamble language concerning paragraph (c) was confusing. FRA agrees with Loram and the Task Group and makes clear that, while the light or beacon required by this paragraph must emit light in a 360-degree field, it does not have to rotate to do so. The intent is that the light or beacon be visible to someone in the vicinity of the machine, whether that person is in front, back, or to the side of the machine. A strobe light that intermittently flashes light in a 360-degree field, but does not need to rotate to do so, would certainly fulfill the requirements of this paragraph.

FRA notes that in the NPRM the second sentence of paragraph (c) reads: ''New roadway maintenance machines that are not equipped with fixed roofs and have a light weight greater than *7,000* pounds but less than 17,500 pounds are exempt from this requirement;'' (emphasis added). The reference to ''7,000 pounds'' was in error and should have read ''7,500 pounds.'' Yet, FRA is removing the reference as unnecessary because a machine having a weight of 7,500 pounds or less does not meet the definition of an ''on-track roadway maintenance machine'' in § 214.7 and, therefore, is not subject to the requirements of this section.

Paragraph (d) requires new on-track roadway maintenance machines to be equipped with brake lights activated by an application of the machine braking system. The brake lights must be visible for a distance of at least 300 feet under normal weather and atmospheric conditions.

In commenting on this paragraph, Loram pointed out that the regulation does not seem to consider roadway maintenance machines that move in both directions. To the extent Loram's comment concerns older equipment, FRA notes that such equipment is not covered by the requirements of this section. Rather, existing on-track roadway maintenance machines are covered by the requirements of § 214.517(d), below, which permits the use of reflective material instead of brake lights. Of course, new on-track roadway maintenance machines must be equipped with brake lights, and those new machines that move in both directions will need to have brake lights on both ends of the machines. Even if a machine that moves in both directions is wired so that the brake lights apply on both ends at the same time, FRA does not believe that this creates an operational problem that needs to be addressed as FRA has done in this rule for change-of-direction alarms. *See* § 214.511(b). In fact, this may even enhance safety in certain situations. Nevertheless, as was noted in the Task Group's discussions, a machine may be equipped with a toggle switch to allow the operator to indicate the direction of the machine's travel so that the brake lights operate only on the trailing end of the machine's movement. For the foregoing reasons, the text of paragraph (d) remains unchanged from the NPRM.

Paragraph (e) requires that new on-track roadway maintenance machines be equipped with operative rearward viewing devices, such as rearview mirrors or their functional equivalent, to enable machine operators to better see other machines or roadway workers within their immediate work zone. Video cameras and monitors may be used to comply with the requirements of this paragraph.

*Section 214.511 Required Audible Warning Devices for New On-Track Roadway Maintenance Machines*

This section requires audible warning devices on new on-track roadway maintenance machines to provide additional safety for roadway workers and other machine operators.

Paragraph (a) requires audible warning devices, such as horns, that produce sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the audible warning device must be clearly identifiable and within easy reach of the machine operator.

Paragraph (b) requires automatic change-of-direction alarms that produce an audible signal that is at least three seconds long and uniquely distinguishable from any surrounding noise. Except as noted below, the change-of-direction alarm must sound automatically in each instance when the on-track roadway maintenance machine changes its designated forward direction to a reverse direction.

In commenting on the proposed rule, Loram stated that some machines, by their work function on the track, move back and forth at intervals so short that their change-of-direction alarms would sound almost continually while they are performing track work. Such a result could effectively hamper the safety of track work rather than enhance it. In

response to this comment, FRA has added language to paragraph (b) permitting operators of such machines to interrupt or turn off the change-of-direction alarms on those machines when they are performing functions that would cause the alarms to sound constantly or almost constantly. Nevertheless, FRA has not found it possible to specify a precise list of machines that would typically fit these criteria. Therefore, FRA has added a sentence to paragraph (b) to indicate that FRA will presume that all machines must engage their change-of-direction alarms, unless the employer can show that the alarm on a particular machine would sound constantly or almost constantly while the machine is performing its work function. Of course, the employer has to make such a showing only in the event that FRA inquires about a particular machine.

In developing the requirement as to how loud the audible warning devices and change-of-direction alarms must be, the Task Group rejected proposing a decibel standard, choosing instead to propose simply that the warning devices be ''loud enough to be heard by roadway workers and other machine operators within the immediate work area.'' However, FRA invited comment on whether or not the requirement should specify a particular decibel level, and if so, what level. Two commenters, AAR and Loram, stated that a standard decibel level would remove flexibility needed to address varying noise levels in different situations. Transtar disagreed, however, stating that the varying sound levels of different warning devices could result in excess noise and confusion for the work crews, especially as machines repeatedly change direction to perform their functions, and employees may ignore the warning alarms if they hear them all day long. Transtar also noted that the proposal did not specify minimum distances at which the audible warning devices need to be heard, or whether different tones should be used to help employees distinguish between different machines.

After discussing the comments, the Task Group concluded that different work situations require different decibel levels for the audible warnings and recommended that the language of the final rule not specify a decibel level for these warning devices. FRA agrees with the Task Group's reasoning and also notes that no comment was received recommending what decibel level(s) should be set. Accordingly, the final rule does not specify any decibel level(s). In regard to the concern that the rule may lead to excessive noise and confusion for work crews, the final rule provides, as noted above, that change of direction alarms may be interrupted by the machine operator when operating a machine in the work mode if the function of the machine would result in a constant, or almost constant, sounding of the device.

*Section 214.513 Retrofitting of Existing On-Track Roadway Maintenance Machines; General*

This section specifies a schedule of retrofit items applicable to all existing on-track roadway maintenance machines. Pursuant to § 214.7, an *existing* on-track roadway maintenance machine is defined as any on-track roadway maintenance machine other than a new on-track roadway maintenance machine. Consequently, an *existing* on-track roadway maintenance machine is any on-track roadway maintenance machine in existence or on order on or before December 26, 2003, or completed on or before September 27, 2004.

Paragraph (a) states that each roadway worker transported on an existing on-track roadway maintenance machine shall have a safe and secure position that also provides protection from moving machine parts that could entangle clothing or body extremities. These positions may include seats or foot platforms with handholds so that the roadway worker can maintain a stable and balanced position on the machine as it is moving down the track. Roadway workers are prohibited from being transported on machines on which it is not possible to provide safe and secure positions for them. In the final rule, FRA notes that it has modified paragraph (a) in the same way it has modified § 214.507(a)(2) to make clear that moving parts of the machine which could entangle clothing or body extremities are not located only inside of the cab. *See* discussion of § 214.507(a)(2), above.

In the NPRM, FRA proposed requiring in paragraph (b) that each existing machine be stenciled or have documentation on the machine to clearly identify the location of safe and secure positions for the machine operator and any roadway workers transported on the machine. In the final rule, that requirement has been revised from the NPRM and re-designated as § 214.518. Discussion of this revised requirement is included under the heading for that section in this portion of the preamble, below.

In paragraph (b) of the final rule, formerly paragraph (c) of the proposed rule, each existing on-track roadway maintenance machine is required to have a permanent or portable horn or other audible warning device by March 28, 2005. The audible warning device shall be easily accessible to the machine operator and shall produce a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area.

As in the case of the similar requirement for new on-track roadway maintenance machines in § 214.511, the Task Group recommended not setting a decibel standard to address how loud the audible warning devices on existing roadway maintenance machines must be. In addition, comments received in response to the proposed requirement were the same as those received in response to § 214.511. Consequently, this paragraph's requirements are the same as those proposed in the NPRM.

Paragraph (c), formerly paragraph (d) in the proposed rule, states that by March 28, 2005, each existing on-track roadway maintenance machine shall be equipped with a permanent illumination device, such as a headlight, or a portable light source securely placed on the machine and not hand-held. The portable light does not have to be permanently affixed to the vehicle, however. FRA will consider the light source to be securely placed on the machine if it is held in place through any arrangement of screws, bolts, mounting clips, or heavy-duty magnets that maintains the light steadily in place without requiring a person to hold it. Lights are required if the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dimly lit areas such as tunnels. The illumination device or portable light source must be capable of illuminating obstructions on the track ahead for a distance of at least 300 feet under normal weather and atmospheric conditions.

The regulation affords employers up to twenty months after the date of publication of the final rule to retrofit existing on-track roadway maintenance machines with audible warning and illumination devices on those machines not so equipped. This is sufficient time for employers to order these safety appurtenances and fit them on machines not so equipped, and FRA expects all machines to be in compliance by the retrofit date.

*Section 214.515 Overhead Covers for Existing On-Track Roadway Maintenance Machines*

This section addresses the reinstallation and maintenance of overhead covers on existing on-track roadway maintenance machines, as well as the feasibility of providing overhead

covers on certain machines not originally designed and manufactured with such protection.

Paragraph (a) states that for those existing on-track roadway maintenance machines either currently or previously equipped with overhead covers for the operator's position, defective covers shall be repaired, and missing covers shall be reinstalled, by March 28, 2005, and thereafter maintained in accordance with the provisions of § 214.531. FRA has modified the text of this paragraph from that proposed in the NPRM. In the NPRM, FRA proposed that ''[o]verhead covers on existing on-track roadway maintenance machines will be repaired by * * * and thereafter maintained in accordance with the provisions of § 214.531.'' FRA has clarified the text by stating what had been implicit: a cover does not have to be repaired if it is not defective. Further, FRA has made clear that if a machine has previously been equipped with an overhead cover that has since been removed, that cover must be reinstalled. In addition, FRA has made clear that the cover is for the operator's position. FRA believes that this paragraph more accurately reflects the intent of the Task Group as it has been revised.

Many older on-track roadway maintenance machines were not designed with overhead covers, although machine operators could greatly benefit from their presence. Paragraph (b) allows an operator assigned to operate a particular on-track roadway maintenance machine, or that operator's designated representative, to request in writing that the employer evaluate the feasibility of providing an overhead cover for the operator's position where original design specifications did not provide for one or where the overhead cover was an option that was not purchased. Under paragraph (b), the employer must respond in writing within 60 days to each such request.

If the employer finds that the addition of an overhead cover is not feasible for a particular machine, the written response must state why. There may be a number of reasons why an employer would find that the addition of an overhead cover is not feasible. There may be no room on the machine to install an effective cover or canopy to protect the operator's position, or the machine may not provide a safe place on which a cover may be mounted or attached. Employers must proceed with caution in retrofitting a cover that is supported by an additional pole or stanchion. A roadway worker may try to use a stanchion as a handhold, depending on its location. Consequently, if a stanchion is in a location identified as a safe and secure location for a roadway worker to ride on the machine, the stanchion must be securely attached to the machine so that it may serve as a handhold.

In preparing the final rule, FRA has modified the text of paragraph (b) from that proposed in the NPRM to make the requirement clearer and consistent with the changes made to paragraph (a), noted above.

As provided in paragraph (c), for purposes of this section the covers or canopies must be capable of shielding the operator from overhead sunlight, but are not expected to offer complete protection from the sun when the sun is relatively low in the sky, soon after sunrise or just before sunset. The covers must also be capable of shielding the operator from ordinary rainfall or snowfall, but are not expected to shield the operator from the effects of windblown precipitation. For clarity, FRA has added paragraph (c) to place in the rule text what FRA had proposed the covers protect against, as stated in the preamble discussion in the NPRM. In addition, FRA has used the same rule text contained in § 214.505(h), which is the counterpart to this section for new on-track roadway maintenance machines.

*Section 214.517 Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured on or After January 1, 1991*

This section specifies requirements for existing on-track roadway maintenance machines manufactured on or after January 1, 1991. Consequently, on-track roadway maintenance machines manufactured prior to 1991 are exempt from these requirements. Existing on-track roadway maintenance machines that are subject to the requirements of this section must conform to these requirements after March 28, 2005. As a result, such machines that are not already equipped with the safety appurtenances required by this section must have those appurtenances installed and comply with the other requirements of this section after this date.

Under paragraph (a), existing on-track roadway maintenance machines covered by this section must have a change-of-direction alarm, or rearview mirror or other rearward viewing device, if adding the device is feasible from an engineering standpoint and promotes operational safety. Among the wide variety of roadway maintenance machines, there exist some machines for which such a retrofit would be useless, unnecessary, impossible, or impractical. Under this regulation, the feasibility and usefulness of retrofitting a change-of-direction alarm or rearward viewing device to a particular roadway maintenance machine will be determined by the employer after considering available compliance options and the durability and functional quality of the proposed retrofit.

A change-of-direction alarm notifies workers near the roadway maintenance machine that its movement is about to change. A rearward viewing device assists the operator in safeguarding roadway workers in the vicinity of the machine. Both devices offer protection for roadway workers, but from two different perspectives. In the NPRM, FRA sought comment regarding whether this standard should require both a change-of-direction alarm and a rearward viewing device in order to afford adequate protection for roadway workers working in the vicinity of a roadway maintenance machine. The BMWE responded that a requirement for both devices would offer roadway workers a higher level of protection. The AAR noted that installation of a rearward viewing device may be impracticable on some older machines and, in particular, that some older machines may not have the proper electrical system to sustain a change-of-direction alarm. According to the AAR, by requiring either one device or the other, rather than both, the rule would provide employers with the kind of flexibility they may need in retrofitting old machines. The AAR also stated that either device by itself would provide an adequate level of protection for roadway workers.

Loram commented that the proper choice of either a rearward viewing device or a change-of-direction alarm, or both, depends on the particular machine. For example, Loram believed that rearward viewing devices would be of little use on large machine consists in protecting workers alongside the machines. Loram also stated that automatic change-of-direction alarms may not work on large machine consists in protecting workers alongside the machines or on certain roadway maintenance machines, such as ballast vacuum machines, which, by the nature of the work they do, move back and forth on the track at very short intervals. A change-of-direction alarm would sound almost constantly on such a machine.

The Task Group recommended that FRA add language to the regulation that would exclude certain machines for which change-of-direction alarms and rearward viewing devices would make

no safety sense. FRA agrees that such an exclusion is reasonable, and as explained further the final rule includes the caveat that a change-of-direction alarm or rearward viewing device needs to add some value to the operational safety of the machine, given its function on the roadway. In other words, an employer does not have to retrofit an existing on-track roadway maintenance machine with either a change-of-direction alarm or a rearward viewing device if the machine's design or function is such that a retrofit of this nature would provide no safety value. However, FRA will presume that all existing on-track roadway maintenance machines may be retrofitted with either device in such a way that safety is enhanced. An employer who reaches a different conclusion about retrofitting a particular machine will have to demonstrate, if asked by FRA, that such a retrofit would not improve safety.

Under paragraph (b), an existing on-track roadway maintenance machine covered by this section must also have an operative heater when the ambient temperature is less than 50 degrees Fahrenheit, if the machine is or has been equipped with a heater. Roadway workers typically dress in seasonal clothes appropriate to perform work outdoors, unlike locomotive cab employees who expect to spend most of the workday inside the cab of a locomotive. Therefore, the threshold ambient temperature may be as low as 49 degrees Fahrenheit before triggering the requirement for an operative heater in a roadway maintenance machine.

In preparing the final rule, FRA modified the text of paragraph (b) to make clear that this requirement applies to machines that have previously been equipped with heaters that have since been removed. Heaters that have been removed must be reinstalled. Further, FRA has removed the text that limited the application of this section to heaters equipped by the manufacturers of the on-track roadway maintenance machines. Heaters could have been installed after the machines were manufactured, and it is not evident why heaters installed after manufacturer should not be subject to the requirements of this paragraph.

Paragraph (c) requires that the light weight of an existing on-track roadway maintenance machine covered by this section be stenciled or otherwise clearly displayed on the machine, if the light weight is known. The light weight of a machine is calculated when the machine is not loaded with passengers or extraneous equipment not part of the machine itself. It should be displayed in a conspicuous location on the machine. The light weight will identify the machine's proper category for the purposes of this regulation, as well as provide essential information to crane operators in the event the machine is lifted on to—or loaded off of—a flatbed truck or rail car for movement from one work site to another. FRA received no comment on the proposed requirement; therefore, paragraph (c) remains as proposed.

Paragraph (d) requires existing on-track roadway maintenance machines covered by this section to be retrofitted with operable brake lights or other reflective devices or material, if not already so equipped. The purpose of this requirement is to enhance the visibility of a machine to operators of other machines and to other rail traffic. FRA received no comment on the proposed requirement; therefore, paragraph (d) remains as proposed.

Paragraph (e) of the NPRM proposed that existing on-track roadway maintenance machines covered by this section be equipped with safety glass when glass is normally replaced on the machines. Because there may be a large number of existing roadway maintenance machines that do not have safety glass, FRA's approach in this paragraph is to enhance the safety of the roadway maintenance machines without creating an onerous burden in retrofitting such existing machines with safety glass. It is not the intent of the regulation to require employers to immediately replace all the glass on all existing machines covered by this section. Rather, the existing glass may remain in place until such time as it would normally be replaced, and then it must be replaced with safety glass. However, if the employer has on hand as of the effective date of this rule replacement glass that is other than safety glass and is specifically intended for use on these machines, the employer may utilize the supply of that replacement glass until it is exhausted.

Although the proposed rule did not specify standards for safety glass, FRA requested comment as to whether the final rule should include specific standards, such as requirements similar to those delineated in 49 CFR part 223 (Safety Glazing Standards) for passenger rail cars, locomotives, and cabooses. Commenters responding to this request were unanimous in believing that this final rule should not require standards similar to those contained in the Safety Glazing Standards. The AAR and Loram suggested that if any safety glass standards were set, or recommendations made, they should be restricted to automotive safety glass or its equivalent, such as Lexan. The AAR pointed out that not all roadway maintenance machines have the structural strength to accommodate the type of glass required under 49 CFR part 223. The BMWE concurred, stating that a similar OSHA standard at 29 CFR 1926.600(a)(5) requires safety glass ''or equivalent.'' The BMWE also stated that manufacturers likely follow ANSI recommendations for safety glass. After discussing these comments, the Task Group recommended that FRA not change the requirement as proposed in the NPRM. FRA has elected to follow that recommendation and paragraph (e) remains as proposed. As noted, OSHA has a similar requirement that is no more specific, and FRA does not believe that additional requirements are necessary at this time.

Paragraph (f) of the proposed rule stated that an existing roadway maintenance machine covered by this section that is equipped with a turntable must have a turntable restraint device, such as an arrangement of pins and hooks designed to prevent an undesired lowering of the turntable device, or a warning light that would indicate to the machine operator that the turntable device is not in a normal travel position. In commenting on this proposal and its counterpart for new on-track roadway maintenance equipment in § 214.507, Loram stated that the proposed rule neglected to address other types of roadway maintenance equipment that may also encroach on the track area below the rail. As explained above in the discussion of § 214.507, FRA has not adopted Loram's comment. Yet, as a separate matter, FRA has revised paragraph (f) to make clear that the paragraph applies only to those machines equipped with turntables.

In paragraph (g) of the NPRM FRA proposed to require handholds, handrails, or a secure seat or bench for each roadway worker transported on an existing roadway maintenance machine subject to the requirements of this section. FRA also noted that it was considering specifying regulatory standards for these handholds, handrails, seats and benches, and sought comment on the need for such additional standards. None of the commenters favored the addition of such standards. The AAR stated that the wide variety of roadway maintenance machines would make it very difficult to design standards suitable for all machines, and that standards for handholds and other such safety appliances on freight cars would not be appropriate because roadway maintenance machines are typically constructed of much thinner metal. Without stating a belief that such

standards are necessary, Loram pointed out that OSHA has standards defining a good handhold or handrail, but noted that they are vague about the best means of attachment. Separately, the BMWE commented that a safe and secure position should have a minimum of three points of contact for each roadway worker riding on a roadway maintenance machine. An example of three-point contact is two feet securely positioned and one hand on a structurally sound handhold or handrail.

FRA has examined whether OSHA's regulations provide a definition of what is a good handhold or handrail for application to the requirements of this paragraph. OSHA regulations do address handrails for various work sites. However, FRA does not believe it appropriate at this time to refer to any specific OSHA regulation for application to this paragraph, and, in light of the comments received in response to this section, the paragraph remains unchanged.

*Section 214.518 Safe and Secure Positions for Riders*

In discussing the NPRM and the comments received on it, the Task Group noted that while § 214.513(b) of the NPRM proposed requiring employers to stencil or document the safe and secure positions for roadway workers to ride on *existing* roadway maintenance machines, no such requirement was expressly proposed for new machines. Consequently, the requirement proposed as § 214.513(b) in the NPRM has been moved here so that it may apply to any on-track roadway maintenance machine, new or existing.

Some members of the Track Working Group suggested that a systemwide operating rule prohibiting the transport of roadway workers on certain roadway maintenance machines, rather than stenciling or documentation, could serve as a more effective and efficient means of conveying information as to when it is prohibited to transport roadway workers on roadway maintenance machines. FRA expressly invited comment on this suggestion in the NPRM.

The BMWE responded to the request for comment by stating that employers should not be given the option of using an operating rule to identify those roadway maintenance machines prohibited from transporting roadway workers because it would create too great a potential for error in its application. According to the BMWE, the wide variety of types and configurations of roadway maintenance machines would cause confusion about the proper application of a broad operating rule, especially for roadway workers encountering a particular machine with which they are unfamiliar. In addition, the BMWE stated that roadway workers do not have instant or easy access to operating rules, in case a question arises about the applicability of such a rule to a particular machine.

The AAR stated that stenciling and documentation could be overlooked easily by busy roadway workers. According to the AAR, a more effective way to address the issue would be for the employers to emphasize training of employees as to operating rule restrictions on roadway maintenance machines. Transtar agreed with the AAR, as did Loram, which cautioned that an operating rule should also specify the speeds and distances workers are permitted to be transported.

In extensive discussion about the language of the proposed rule and the comments received in response to the proposal, the Task Group noted that the rule as proposed would have required that all existing roadway maintenance machines be stenciled or documented, even if the stenciling and documentation merely stated, ''No riders.'' The Task Group concluded that a simpler way to reach the same result would be for the regulation to prohibit roadway workers, other than the machine operator(s), from riding on roadway maintenance machines (new and existing) unless the machines were stenciled or documented with information about the safe and secure riding positions.

FRA has elected to adopt the Task Group's suggestion by adding this new section to indicate this prohibition. Under the new language, employers need only identify those machines intended to carry roadway workers, in addition to the machine operator(s), by stenciling, marking, or other written notice on the machines. Roadway workers, for their part, will know that they are prohibited from riding on a machine unless it has the required stenciling, marking, or other written notice. Any employer who allows its roadway workers to ride on a roadway maintenance machine that has neither stenciling, marking, nor other written notice identifying safe and secure riding positions will be deemed in violation of the regulation.

Under § 214.513(b) as proposed, employers would have had to document or stencil each and every existing roadway maintenance machine to indicate whether riders would be permitted on each machine and, if so, where the safe and secure positions were located. The proposed rule afforded employers one year from the effective date of the final rule to accomplish this requirement. Under this final rule, however, the requirement is less burdensome, with stenciling, marking, or other written notice required only for those machines permitted to transport riders. FRA therefore has concluded that the additional one-year interval for compliance is not necessary. This requirement becomes effective on the effective date of this final rule, and any machine that is not stenciled, marked, or otherwise has written notice indicating it can accept riders will not be permitted to carry riders until that indication is in place.

FRA notes that in preparing the final rule it has clarified how the safe and secure position on each machine will be identified. The rule text provides that each such position shall be identified by ''stenciling, marking, or other written notice on the machine,'' instead or stating by ''stenciling or documentation on the machine'' as proposed in the NPRM. FRA believes that the proposed language could possibly have been too restrictive in limiting the manner in which a safe and secure position is identified. FRA makes clear that a safe and secure position may certainly be identified by documentation on the machine, but such a position may also be identified by other written notice on the machine.

*Section 214.519 Floors, Decks, Stairs, and Ladders for On-Track Roadway Maintenance Machines*

All new and existing on-track roadway maintenance machines shall have floors, decks, stairs, and ladders that are of appropriate design. The purpose of this requirement is to provide secure footing for the machine operator and any roadway workers transported on the machine. Current industry standards specifying material such as diamond plate, rubber tile, or other slip-resistant material design will be considered appropriate for the purposes of this regulation. Accumulations of oil, grease, or other contaminants or obstructions that could create a slipping, falling, or fire hazard must be promptly removed from floors, decks, stairs, and ladders.

FRA received no comment on this section in the NPRM; therefore, the language of the final rule remains as proposed.

*Section 214.521 Flagging Equipment for On-Track Roadway Maintenance Machines and Hi-Rail Vehicles*

This section requires that flagging kits be available when on-track roadway maintenance machines and hi-rail vehicles are operated over trackage subject to a railroad operating rule requiring flagging. Flagging kits must comply with the requirements specified in the operating rules of the railroads over which the equipment is operated. This requirement applies to each on-track roadway maintenance machine and hi-rail vehicle that is operated alone or as the leading or trailing piece of equipment in a roadway work group operating under the same occupancy authority. Flagging kits are not required for roadway maintenance machines and hi-rail vehicles that are operated in the middle of a single roadway work group. However, the vehicles must be under the same occupancy authority to be considered part of a single group.

In commenting on the proposed rule, Transtar inquired whether employers are already required to equip roadway maintenance machines with flagging kits under the Roadway Worker Protection regulations in subpart C of this part. FRA notes that flagging kits required under this final rule are for operating rule purposes only and do not relate to any requirements under the Roadway Worker Protection regulations in subpart C. FRA received no other comments on this section; therefore, the language of the section remains as proposed.

*Section 214.523 Hi-Rail Vehicles*

This section prescribes certain inspection and record keeping requirements for all hi-rail vehicles, new as well as existing. It also prescribes specific requirements applicable only to new hi-rail vehicles.

By definition, hi-rail vehicles have retractable flanged wheels giving them the ability to operate over the general highway system as well as on railroad track. Operation of these vehicles over the general highway system requires them to be manufactured to meet Federal motor vehicle safety standards.

Paragraph (a) requires that all hi-rail vehicles have the safety-critical components of their hi-rail gear inspected at least once per year. At a minimum, pursuant to this inspection requirement, tram, wheel wear and gage measurements must be checked and adjusted, if necessary, to provide for continued safe operation. This requirement is not necessarily intended to coincide with a calendar year, January to December. Further, FRA has added language to this final rule that allows up to 14 months between annual inspections. What this means is that the first annual inspection of all existing hi-rail vehicles is due under this rule within one year from the effective date of this final rule. Thereafter, the inspection of such existing hi-rail vehicles comes due each year on the anniversary date of its first inspection required under this rule. However, employers are allowed up to a two-month window in which to perform the inspection once it becomes due. As new hi-rail vehicles enter service, the inspection required by this paragraph is due within one year of the date the vehicles enter service. Thereafter, the inspection of such new hi-rail vehicles comes due each year on the anniversary date of the first inspection required under this rule. Again, employers are allowed up to a two-month window in which to perform the inspection once it becomes due. Any hi-rail vehicle that has not received an annual inspection within the previous 14 months will be deemed in violation of this paragraph.

Wisconsin Central provided the only comment on this paragraph. The operator of Class II and Class III carriers in the Midwest stated that the requirement for an annual inspection of hi-rail vehicles is unnecessary because most such vehicles are assigned to one employee who knows the vehicle and immediately notices when a defect develops. The Task Group disagreed that this requirement is burdensome to railroads and it further noted that the Task Group discussed the provision at length when the proposed rule was being developed. The Group recommended that the language in the final rule remain as proposed. FRA believes that the inspection requirement is necessary as a minimum requirement to provide for the safety of hi-rail vehicles, and has not adopted the Wisconsin Central's comment.

Paragraph (b) specifies a record keeping requirement to document safety inspections. Records may be retained on paper forms devised by the employer, or they may be stored electronically in a computer database. The employer must maintain the record of the last inspection of each vehicle until the next inspection is performed. The employer may choose to keep the record on the hi-rail vehicle itself or at a designated location. In either case, the records must be made available for inspection and copying during normal business hours by representatives of FRA and States participating under part 212 of this chapter.

The requirements specific only to new hi-rail vehicles are contained in paragraph (c). Each new hi-rail vehicle shall be equipped with an automatic change-of-direction alarm or backup alarm which produces an audible signal that is at least three seconds long and uniquely distinguishable from any surrounding noise. Paragraph (c) does not specify what particular decibel level is required for the change-of-direction or backup alarms on new hi-rail vehicles. In the preamble of the NPRM, FRA proposed that these devices be ''loud enough to be heard by roadway workers and other machine operators within the immediate area.'' Noting in the NPRM that such a standard could invite too many variables, making it difficult for FRA to enforce, FRA requested comment as to whether or not a decibel standard should be required for these devices, and, if so, what that decibel level should be. Consistent with §§ 214.511 and 214.513, the Task Group recommended not setting a decibel standard to address how loud the audible warning devices on new hi-rail vehicles must be, and comments received on this paragraph were the same as those for the other sections cited. As in those other sections, the language of this paragraph in the final rule is the same as that proposed in the NPRM.

Paragraph (c)(2) requires each new hi-rail vehicle to be equipped with an operative warning light or beacon mounted to the roof of the vehicle. The light or beacon must be designed to flash intermittently while rotating 360 degrees or otherwise emitting light in a 360-degree field.

In the NPRM, FRA requested comment about whether or not the final rule should specify a color for the warning light and, if so, what color would be appropriate. In response, the BMWE noted that orange would be an appropriate color for warning lights on hi-rail vehicles because it is the color associated with ''caution.'' The BMWE suggested that if no color is specified, the final rule should require that equipment warning lights be uniform for each railroad. The AAR responded that the rule need not specify a color for hi-rail vehicle warning lights. According to the AAR, some lights cannot display colors as well as others, and sometimes railroads find the use of two colors to be more effective. The AAR believed that the rule should allow the marketplace to experiment and determine which color(s) would work best. In addition, Loram suggested the following specific colors to correspond to the following specific functions: blue would signify ''parked'; yellow would signify ''operating'; white would designate ''front'; and red would designate ''rear.''

FRA has elected not to change the language of this paragraph from that in the proposed rule. The agency could detect no clear consensus among the commenters about which color(s) would work best. Different railroads utilize different colors. FRA can point to no clear safety benefit from a new requirement that would force railroads to change a large number of light bulbs.

Paragraph (d)(1) requires the operator of each hi-rail vehicle to inspect the vehicle for compliance with this subpart prior to using the vehicle at the start of the operator's work shift. The intent of the inspection of hi-rail equipment prior to use is to identify a condition that inhibits the safe operation of the vehicle. For hi-rail vehicles that are in constant use, such as during a construction project, it is expected that each designated employee at the beginning of his or her shift will inspect the hi-rail gear. If multiple employees use the same equipment during the same work shift, it is expected that only the first employee will inspect the equipment for that shift.

In preparing the final rule, FRA recognized that this paragraph did not expressly cover the inspection of existing hi-rail vehicles. Yet, it is not evident to FRA why only new hi-rail vehicles should be made subject to an inspection requirement for compliance with this subpart. Consequently, FRA has modified the rule to make clear that existing hi-rail vehicles must be inspected for compliance with this subpart, such as checking for flagging kits when required by § 214.521. FRA would also expect that a hi-rail vehicle operator conduct at least a visual inspection following a derailment or accident involving the hi-rail vehicle to ensure that the vehicle remains safe to operate.

In commenting on the NPRM, Transtar noted that the paragraph included no requirement for recording the performance of these inspections. Although Transtar's observation is accurate, the omission was deliberate. FRA believes that the chief purpose of a requirement for keeping records of these checks of hi-rail vehicles would be to strengthen the enforceability of this paragraph. In this regard, paragraph (d)(2) requires that each non-complying condition not immediately repaired following an inspection be tagged and reported to the employer's designated official. (Paragraph (d)(2) was formerly proposed as paragraph (e) in the NPRM.) If FRA finds a hi-rail vehicle operating with a non-complying condition that has not been properly tagged or reported, FRA will presume that the hi-rail has not received a proper inspection prior to operation that shift, unless the operator or employer can show that the defect developed after the inspection was performed. FRA believes that this presumption will provide the agency with adequate ability to enforce the provisions of the paragraph without further burdening the employer with daily record keeping requirements.

This same rationale underlies the requirements of § 214.527. Section 214.527 requires a pre-work inspection of roadway maintenance machines and the tagging and reporting of any discovered defects, but no record keeping of the inspections themselves. Of course, nothing in this paragraph or in § 214.527 prohibits an employer from maintaining records of these inspections for its own purposes.

Paragraph (d)(3) states that defective automatic change-of-direction or backup alarms and 360-degree intermittent warning lights or beacons must be repaired or replaced as soon as practicable within seven calendar days. This paragraph is consistent with § 214.531, and was formerly proposed as paragraph (f) in the NPRM.

*Section 214.525 Towing With On-Track Roadway Maintenance Machines or Hi-Rail Vehicles*

This section prescribes the manner in which on-track roadway maintenance machines or hi-rail vehicles may be used to tow pushcars or other on-track maintenance-of-way equipment. Paragraph (a) specifies that whenever an on-track roadway maintenance machine or hi-rail vehicle is used to tow such equipment, it must be equipped with a towing bar or other coupling device designed for that purpose that provides a safe and secure attachment.

The towing of pushcars or other on-track maintenance-of-way equipment is prohibited under paragraph (b) when it would exceed the braking capabilities of the on-track roadway maintenance machine or hi-rail vehicle doing the towing. When determining whether or not the braking capability of a machine or vehicle would be exceeded, the employer must consider the track gradient or slope in the area, as well as the number and weight of pushcars or other equipment to be towed. Paragraph (b) does not cover locomotives hauling conventional rail cars used in track maintenance work, such as ballast cars. Such locomotives must comply with the requirements in 49 CFR part 229 (Railroad Locomotive Safety Standards).

Transtar commented that the requirement for towing equipment under this section would force railroads to keep multiple towing apparatuses for towing different types of equipment. Transtar suggested that the final rule provide some relief from the requirements of this section for towing performed on an emergency basis, such as by including an exception that under emergency circumstances equipment may be towed by any safe method. In considering this comment, the Task Group believed that the language of this section is general enough to adequately cover all types of towing situations, including emergency situations. FRA agrees, and the text of the final rule remains as proposed.

*Section 214.527 On-Track Roadway Maintenance Machines; Inspection for Compliance and Schedule for Repairs*

This section prescribes the manner in which on-track roadway maintenance machines are to be inspected and repaired. The title of this section has been modified to make clear that it applies only to on-track roadway maintenance machines.

Paragraph (a) requires the operator of an on-track roadway maintenance machine to perform an inspection of that machine for compliance with the requirements of this subpart. The operator must perform the inspection prior to using the machine at the start of the operator's work shift. As is the case for the inspection of hi-rail vehicles pursuant to § 214.523, if multiple employees use the same equipment during the same work shift, it is expected that only the first employee will inspect the equipment for that shift.

Under paragraph (b), any non-complying condition that cannot be immediately repaired must be tagged and dated according to established employer procedures and reported to the designated official. As in § 214.523, this section does not require an employer to maintain records of each daily inspection. However, should FRA find an on-track roadway maintenance machine operating with a defect that has not been properly tagged or reported to the employer's designated official, FRA will presume that the daily inspection was not properly performed—a presumption the employer or operator may rebut by showing that the defect occurred after the inspection was performed.

Paragraph (c) allows for the continued operation of an on-track roadway maintenance machine with a reported non-complying condition subject to certain requirements:

(1) A machine with non-complying headlights or work lights may be operated only between the period from one-half hour before sunrise to one-half hour after sunset for no more than seven calendar days. In other words, it may

not be operated during the darkness between sunset and sunrise. The thirty-minute periods both before sunrise (dawn) and after sunset (dusk) are thought to provide enough light for safe operation on a temporary basis.

(2) A portable horn may be substituted for a non-complying or missing horn or other audible warning device for no more than seven calendar days.

(3) A temporary, portable fire extinguisher that is readily available for use may replace a missing, defective, or discharged permanent fire extinguisher on a new on-track roadway maintenance machine for no more than seven calendar days, after which time the permanent fire extinguisher must be replaced or repaired.

(4) Non-complying change-of-direction alarms or backup alarms, and 360-degree intermittent warning lights or beacons, shall be repaired or replaced as soon as practicable within seven calendar days.

(5) A structurally defective or missing operator's seat shall be replaced or repaired within 24 hours, or by the start of the machine's next tour of duty, whichever is later. This paragraph provides flexibility for the employer in cases such as where the operator's seat is found to be defective on a Thursday afternoon and the next tour of duty for that machine is not scheduled until the following Monday. If the operator's seat becomes defective during the machine operator's tour of duty, the machine may be operated for the remainder of the operator's duty tour only if it is determined that the operation may continue in a safe manner.

In commenting on the proposed rule's requirement for repairs to be made within seven calendar days, Transtar suggested that the provision should be changed to require repairs to be made within seven working days to allow employers adequate time to contact suppliers and perform the work around weekends and holidays. The Task Group considered this comment and recommended that the language of this section remain the same as that in the proposed rule. The provisions in this section were discussed at length by the Task Group when the proposed rule was being developed, and the resulting proposal was endorsed by the RSAC. FRA does not believe that this requirement is burdensome for the railroad industry, and has not modified the final rule in response to Transtar's comment.

*Section 214.529 In-Service Failure of Primary Braking System*

Paragraph (a) states that in the event of a total in-service failure of an on-track roadway maintenance machine's primary braking system, the machine may be operated for the remainder of its tour of duty through the use of a secondary braking system, if the machine is so equipped, or by coupling to another on-track roadway maintenance machine. In either case, the employer must determine that continued operation of the machine is safe.

In the NPRM, FRA stated that it was considering adding to this section criteria to be used by the employer in determining the safety of continuing to use an on-track roadway maintenance machine after its primary braking system has experienced a total in-service failure. FRA sought comment about the need for such criteria and what the criteria should include. The AAR was the only commenter to respond to this request. The railroad organization stated that the judgment as to the safety of the machine's continued operation is best left to the employer in the situation and that more specific criteria is not required. FRA therefore has decided that the language in this paragraph of the final rule should remain as proposed in the NPRM.

Paragraph (b) states that in the event of a total in-service failure of an on-track roadway maintenance machine's primary braking system, when no secondary braking system is available and no other machine is available for coupling, the machine may, if it is determined to be safe to do so, travel to a clearance or repair point where it shall be placed out of service until repaired. The BMWE observed in its comments on the proposed rule that this provision would permit a roadway maintenance machine to be operated to a clearance or repair point with no braking system whatsoever. FRA notes, however, that the machine may be moved only if it is determined that such movement can be done safely. For instance, the wings and broom on a ballast regulator or the rail clamps on a tamping machine could be used to slow or stop the machine, if the operator determines that it is safe to do so in his or her particular situation. A roadway machine operator operating a machine with failed brakes may, in accordance with § 214.503, challenge in good faith the safety of any instruction to move the machine to a clearance or repair point. The good-faith challenge provision should provide the machine operator protection from an improper order by the employer to operate a machine that has no braking capability when it is unsafe to do so.

*Section 214.531 Schedule of Repairs; General*

This section specifies a general schedule of repairs for all on-track roadway maintenance machines and hi-rail vehicles. If an on-track roadway maintenance machine or hi-rail vehicle does not meet all of the requirements of this subpart, it shall be repaired as soon as practicable within seven calendar days.

More restrictive requirements for repairs to on-track roadway maintenance machines apply to missing or defective operator seats as prescribed in § 214.527(c)(5), and a total in-service failure of a primary braking system as prescribed in § 214.529. In the event a part necessary for the repair of a non-complying on-track roadway maintenance machine or a hi-rail vehicle is not in the employer's inventory and must be ordered, the repair schedule is governed by the requirements specified in § 214.533, which addresses the availability of repair parts.

FRA has modified the rule text in this section to make clear that it applies to both existing and new hi-rail vehicles. This is consistent with the preamble discussion of this section in the NPRM, which made no distinction between existing and new hi-rail vehicles. Further, this subpart imposes requirements on existing hi-rail vehicles. For example, § 214.521 requires hi-rail vehicles to have flagging kits as specified in that section, and makes no distinction between whether the machine is new or existing.

In commenting on the NPRM, Transtar observed that this section requires hi-rail vehicles to be removed from service if non-complying conditions are not repaired within seven days. Noting that hi-rail vehicles are frequently used off the track, Transtar suggested that the language of the rule specify that the hi-rail should be removed from track service only, since the defect may not prevent the vehicle from being safely used off the track. FRA notes that the requirements of this rule apply to roadway maintenance machines as they are used for on-track maintenance; they do not apply to service performed by the machines in another capacity off the track. To clarify this point, FRA has followed Transtar's suggestion and revised this section to read that on-track roadway maintenance machines and hi-rail vehicles must be kept out of on-track service if not repaired within seven calendar days. Consistent with this change, FRA has

modified paragraphs (b) and (c) of § 214.533, below, to read that on-track roadway maintenance machines and hi-rail vehicles not repaired in accordance with the requirements of that section must be removed from on-track service.

*Section 214.533 Schedule of Repairs Subject to Availability of Parts*

Under paragraph (a) of this section, when a part needed to repair a non-complying condition on an on-track roadway maintenance machine or hi-rail vehicle is not in the employer's inventory, the employer must order the necessary part by the end of the next business day following the report of the non-complying condition.

In commenting on the proposed rule, Transtar stated that, as long as a piece of equipment is removed from service so that it poses no risk to an operator, there should be no requirement that repair parts be ordered within a specified period of time. In declining to adopt this comment, FRA notes that the requirement to order repair parts is integral to the structure of this section, which provides flexibility to the employer, and cannot be viewed in isolation. By taking the step of ordering a necessary repair part that is not held in the employer's inventory, the employer is permitted to keep the machine or vehicle in on-track service if safe to do so until the part arrives. Thereafter, as specified in paragraph (b), below, the employer must repair the machine or vehicle within seven calendar days after receiving the necessary part(s). The employer may simply choose to remove the machine or vehicle from on-track service altogether. Yet, FRA does not intend to withdraw the flexibility provided to the employer to keep the machine or vehicle in on-track service by ordering the necessary part(s). Of course, if the employer wishes to remove the machine or vehicle from service altogether, it is free to forgo ordering a necessary repair part, and the machine or vehicle must be kept out of service until brought into compliance with this subpart, pursuant to paragraph (c), below.

FRA notes that, in preparing this final rule, it has modified the text of this section by using the term repair ''part'' in the singular, rather than as repair ''parts'' as proposed in the NPRM. The use of the word ''parts'' suggests that more than one part is necessary to repair each non-complying condition, which may not necessarily be the case. As modified, the rule text better effectuates FRA's intent. Further, as in § 214.531, FRA has modified the rule text in this section to make clear that the section applies to both existing and new hi-rail vehicles.

Paragraph (b) requires the employer to repair the non-complying on-track roadway maintenance machine or hi-rail vehicle within seven calendar days after receiving the necessary part(s). However, if the non-complying condition still exists 30 days after the initial report of the condition, regardless of the reason, the employer must remove the on-track roadway maintenance machine or hi-rail vehicle from service until the condition is brought into compliance. FRA realizes that there may be times when a part needed to repair the condition is difficult or impossible for the employer to obtain. In such case the employer may continue to use the on-track roadway maintenance machine or hi-rail vehicle with a non-complying condition until the necessary part or parts are received, subject to the requirements of § 214.503. Yet, the defective machine or hi-rail vehicle must be removed from on-track service 30 days after the defect is reported, if it is still not repaired. This provision prevents the use of a defective on-track roadway maintenance machine or hi-rail vehicle for a protracted and undetermined length of time.

In commenting on the NPRM, Wisconsin Central suggested that this provision of the regulation is overly complicated and would impose an administrative burden on employers to track the arrival of replacement parts and repair dates. Wisconsin Central recommended that the provision simply state that repairs must be made within 30 days of discovery, or the on-track roadway maintenance machine or hi-rail vehicle must be removed from track service. As an alternative, Wisconsin Central suggested that the employer be given seven days to repair an on-track roadway maintenance machine or hi-rail vehicle once the part is received where the machine is located, noting that machines may break down when they are far away from their home locations.

The Task Group disagreed with both of Wisconsin Central's suggestions. The Group found that the second (alternative) suggestion is unnecessary because machine parts can be delivered overnight to most locations. Seven days is ample time within which to repair a machine once the necessary part or parts are with the employer. The Task Group further noted that the proposed provisions of this paragraph were discussed at length when the Task Group was developing the proposed rule, and the proposed rule was endorsed by the RSAC. FRA agrees with the Task Group's reasoning and has elected not to change the rule in response to Wisconsin Central's comments.

Paragraph (c) states that if the employer fails to order a necessary repair part as required in paragraph (a) of this section, or fails to install such a repair part within seven days after receiving it as required in paragraph (b) of this section, it must remove the on-track roadway maintenance machine or hi-rail vehicle from on-track service until the equipment is brought into compliance. Of course, the equipment may continue in other service off the track, as in the case of hi-rail vehicles that may be defective for work on the track but may still operate on streets and highways.

To ensure that the provisions of this section are followed, FRA must be able to review records concerning the ordering and installation of parts necessary to repair roadway maintenance machines and hi-rail vehicles. Paragraph (d) requires the employer to maintain records for one year relating to the ordering and installation of repair parts for on-track roadway maintenance machines and hi-rail vehicles. The records must be made available to FRA and State inspectors for inspection and copying during normal business hours, yet the employer may decide how and where the records are kept. For example, the records may be kept electronically or on paper and may be stored on the machines and vehicles or in a location chosen and designated by the employer.

In commenting on the NPRM, Loram stated that the record keeping made necessary by this rule will detract from machine crews' ability to complete assigned objectives and will be costly to employers. FRA is aware of the added costs related to record keeping. However, the record keeping requirements are needed in order for FRA to enforce the rule. The additional costs created by the record keeping requirements have been factored into the cost/benefit analysis performed for this final rule. Accordingly, FRA has declined to modify the record keeping requirement in response to the comment.

*Appendix A to Part 214—Schedule of Civil Penalties*

Pursuant to 49 U.S.C. 20111, this final rule includes amendments to the penalty schedule contained in Appendix A to part 214. The amendments consist of the addition of penalties associated with violations of the regulations under new subpart D to part 214.

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation specific dollar amounts for initial penalty assessments. For each regulation, the schedule typically shows two amounts within the $500 to $11,000 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals).

The penalty schedule constitutes a statement of agency policy, and the schedule amounts are meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant. Accordingly, under this revised schedule, and regardless of the fact that a lesser amount may be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to $22,000 per violation where a grossly negligent violation has created an imminent hazard of death or injury. (*See* Footnote 1 in appendix A to part 214.) This authority to assess a penalty for a single violation above $11,000 and up to $22,000 is used only in very exceptional cases to penalize egregious behavior. Where FRA avails itself of this right to use the higher penalties in place of the schedule amount, it will so indicate in a penalty demand letter.

**Regulatory Impact/Notices**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-significant under both Executive Order 12866 and DOT policies and procedures (*see* 44 FR 11034, February, 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., Seventh Floor, Washington, DC. Photocopies also may be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590.

This rule will cost about $1,500,000 per year. About 45 percent of that or $675,000 per year will go into safety enhancements which serve to prevent accidents and acute injuries of the type usually reported to FRA. That portion will generate benefits of about $1,900,000 per year. The remainder of the rule will address long-term risks like skin cancer and chronic diseases related to silica exposure, or address event mitigation, through requiring first-aid kits and fire extinguishers. FRA does not have a good way to quantify that portion of the benefit, although existing industry practices, and the willing participation of the representatives of the railroads are substantial evidence that the burden is likely not to be very great. The almost infinite variety of equipment involved, combined with limited information collection resources and reporting detail, make it impossible to measure more accurately the problem without a substantial expenditure of resources. But in consultation with our industry partners, we have agreed that there is a risk reduction opportunity. We have, together, come up with a reasonable minimum set of precautions and measures, at a reasonable level of costs, that we believe will achieve the desired reduction in risk. Our industry partners will willingly absorb these new costs because they believe it is justified to do so.

A significant portion of the costs of environmental controls will be offset by productivity enhancements. The vast majority of new roadway maintenance machines are ordered with air conditioning because it enhances productivity. There may be some cases in which the additional productivity does not offset the cost of the environmental controls, but the there will be a safety benefit in terms of reduced long term exposure to silica dust.

FRA found one fatal accident in the years 1996–2000 which would have been prevented by the rule. In that case a contract employee fell off a crane, which then rolled over him. The rule would have required a safe place to ride on the crane and likely would have prevented the fatality. See FRA accident file CFE–4–97, June, 23, 1997, Fort Worth, Texas.

*Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket a Regulatory Flexibility Assessment (RFA) which assesses the small entity impact by this rule. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://dms.dot.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Washington, DC 20590.

''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a railroad business ''line-haul operation'' that has fewer than 1,500 employees and a ''switching and terminal'' establishment with fewer than 500 employees. SBA's ''size standards'' may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority, FRA has published a policy which formally establishes ''small entities'' as being railroads which meet the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA uses this alternative definition of ''small entity'' for this rulemaking.

FRA took steps during the proceedings for this rulemaking to minimize the adverse effects of the rule on small entities. FRA invited the American Short Line and Regional Railroad Association (ASLRRA) to be a member of the Task Group. ASLRRA declined, securing representation by the individual also representing the AAR. It appears the rule will have a minimal effect on small entities as the overwhelming majority of roadway maintenance machines owned by small entities were manufactured before 1991, and would be exempt from most of the rule's requirements. FRA was careful to limit retrofit requirements, which might have imposed an undue burden on small entities. There appears to be no substantial impact on a significant number of small entities.

FRA sought comments on the effect of the proposed rule on small entities, but received only one comment relative to small businesses. Transtar noted that small railroads would bear an onerous

burden from the requirement in Section 214.505 that personal respiratory protective equipment be supplied to employees in the event of a failure of the environmental controls in a pressurized cab. However, this requirement does not present a new burden on small entities, as it simply mirrors OSHA regulations already in effect.

The RFA concludes that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this final rule is not expected to have a ''significant'' economic impact on a ''substantial'' number of small entities under the Regulatory Flexibility Act and Executive Order 13272.

*Paperwork Reduction Act*

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. The sections that contain the new information collection requirements for Subpart D, which will be added to those of the Railroad Workplace Safety regulations (49 CFR part 214), and the estimated time to fulfill each requirement are as follows:

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 214.503—Good-Faith Challenges; Procedures for Notification and Resolution. | 50,000 Roadway Workers. | 250 notifications | 10 minutes | 42 | $1,428 |
| —Resolution Procedures | 579 Railroads | 20 procedures | 2 hours | 40 | 1,400 |
| 214.505—Required Environmental Control and Protection Systems For New On-Track Roadway Maintenance Machines with Enclosed Cabs. | 579 Railroads | 30 lists | 2.5 hours | 75 | 2,625 |
| —Designated Machines | 579 Railroads | 60 designations | 5 minutes | 5 | 175 |
| 214.507—Required Safety Equipment For New On-Track Roadway Maintenance Machines. | 579 Railroads | 1,000 Stickers | 5 minutes | 83 | 2,822 |
| —Display of Light Weight in Conspicuous Location | | | | | |
| 214.511—Required Audible Warning Devices For New On-Track Roadway Maintenance Machines. | 579 Railroads | 3,700 mechanisms | 5 minutes | 308 | 10,472 |
| 214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines; General. | 579 Railroads | 2,300 mechanisms | 5 minutes | 192 | 6,528 |
| —Identification of Triggering Mechanism—Horns | | | | | |
| 214.515—Overhead Covers For Existing On-Track Roadway Maintenance Machines. | 579 Railroads | 1,050 requests + 1,050 responses. | 10 minutes + 20 minutes. | 525 | 18,200 |
| 214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured After 1990. | 579 Railroads | 6,000 stencils | 5 minutes | 500 | 17,000 |
| 214.518—Safe and Secure Position For Riders. | 579 Railroads | 7,500 stencils | 5 minutes | 625 | 21,250 |
| 214.523—Hi-Rail Vehicles—Inspections—Records. | 579 Railroads | 2,000 records | 30 minutes | 1,000 | 34,000 |
| —Non-Complying Conditions | 579 Railroads | 250 tags + 250 reports. | 5 min. + 15 min | 84 | 2,856 |
| 214.527—On Track Roadway Maintenance Machines; Inspection for Compliance and Repair Schedules. | 579 Railroads | 550 tags + 550 reports. | 5 min. + 15 min | 184 | 6,256 |
| 214.533—Schedule of Repairs Subject to Availability of Parts. | 579 Railroads | 250 records | 15 minutes | 63 | 2,205 |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicited comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. FRA received no replies in response to this request for comments. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan, FRA Information Clearance Officer, at (202) 493–6292.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be

announced by separate notice in the **Federal Register**.

*Environmental Impact*

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This final rule meets the criteria that establish this as a non-major action for environmental purposes.

*Federalism Implications*

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255. In the NPRM, FRA acknowledged that the rule as proposed could have federalism implications. The governance of safety of hi-rail vehicles could have an unintended effect on State laws addressing the safety of these vehicles as they are operated over roads and highways, even though the rule is meant to cover the safety of hi-rail vehicles only while they are operated on railroad tracks. Although the requirements for hi-rail vehicles are not intended to preempt any State laws addressing motor vehicles, FRA requested comment concerning what State laws, if any, could be impacted by this rule. FRA received no comment in response to the request.

The RSAC, which recommended the proposed rule, has as permanent members two organizations representing State and local interests: the American Association of State Highway and Transportation Officials (AASHTO) and the Association of State Rail Safety Managers (ASRSM). The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. From the absence of further comment from these representatives, or of any other representatives of State government, FRA concludes that this final rule has no federalism implications.

*Unfunded Mandates Reform Act of 1995*

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law.'' (See Section 201). Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. The final rule issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

*Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' *See* 66 FR 28355; May 22, 2001. Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

*Privacy Act*

Anyone is able to search the electronic form of all public submissions to any of our dockets by the name of the individual making the submission (or signing the submission, if made on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or by visiting *http://dms.dot.gov.*

**List of Subjects in 49 CFR Part 214**

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

**The Final Rule**

■ In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

## PART 214—[AMENDED]

■ 1. The authority citation for part 214 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

■ 2. Section 214.7 is amended by adding in alphabetical order the following definitions:

### § 214.7 Definitions.

* * * * *

*Designated official* means any person(s) designated by the employer to receive notification of non-complying conditions on on-track roadway maintenance machines and hi-rail vehicles.

* * * * *

*Hi-rail vehicle* means a roadway maintenance machine that is manufactured to meet Federal Motor Vehicle Safety Standards and is equipped with retractable flanged wheels so that the vehicle may travel over the highway or on railroad tracks.

*Hi-rail vehicle, new* means a hi-rail vehicle that is ordered after December 26, 2003 or completed after September 27, 2004.

* * * * *

*On-track roadway maintenance machine* means a self-propelled, rail-mounted, non-highway, maintenance machine whose light weight is in excess of 7,500 pounds, and whose purpose is not for the inspection of railroad track.

*On-track roadway maintenance machine, existing* means any on-track roadway maintenance machine that does not meet the definition of a ''new on-track roadway maintenance machine.''

*On-track roadway maintenance machine, new* means an on-track roadway maintenance machine that is ordered after December 26, 2003, and completed after September 27, 2004.

* * * * *

■ 3. Subpart D is added to part 214 reading as follows:

### Subpart D—On-Track Roadway Maintenance Machines and Hi-Rail Vehicles

Sec.

214.501 Purpose and scope.

214.503 Good-faith challenges; procedures for notification and resolution.
214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.
214.507 Required safety equipment for new on-track roadway maintenance machines.
214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines.
214.511 Required audible warning devices for new on-track roadway maintenance machines.
214.513 Retrofitting of existing on-track roadway maintenance machines; general.
214.515 Overhead covers for existing on-track roadway maintenance machines.
214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991.
214.518 Safe and secure positions for riders.
214.519 Floors, decks, stairs, and ladders of on-track roadway maintenance machines.
214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles.
214.523 Hi-rail vehicles.
214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles.
214.527 On-track roadway maintenance machines; inspection for compliance and schedule for repairs.
214.529 In-service failure of primary braking system.
214.531 Schedule of repairs; general.
214.533 Schedule of repairs subject to availability of parts.

### § 214.501 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties caused by the lawful operation of on-track roadway maintenance machines and hi-rail vehicles.

(b) This subpart prescribes minimum safety standards for on-track roadway maintenance machines and hi-rail vehicles. An employer may prescribe additional or more stringent standards that are consistent with this subpart.

(c) Any working condition that involves the protection of employees engaged in roadway maintenance duties covered by this subpart but is not within the subject matter addressed by this subpart, including employee exposure to noise, shall be governed by the regulations of the U.S. Department of Labor, Occupational Safety and Health Administration.

### § 214.503 Good-faith challenges; procedures for notification and resolution.

(a) An employee operating an on-track roadway maintenance machine or hi-rail vehicle shall inform the employer whenever the employee makes a good-faith determination that the machine or vehicle does not comply with FRA regulations or has a condition that inhibits its safe operation.

(b) Any employee charged with operating an on-track roadway maintenance machine or hi-rail vehicle covered by this subpart may refuse to operate the machine or vehicle if the employee makes a good-faith determination that it does not comply with the requirements of this subpart or has a condition that inhibits its safe operation. The employer shall not require the employee to operate the machine or vehicle until the challenge resulting from the good-faith determination is resolved.

(c) Each employer shall have in place and follow written procedures to assure prompt and equitable resolution of challenges resulting from good-faith determinations made in accordance with this section. The procedures shall include specific steps to be taken by the employer to investigate each good-faith challenge, as well as procedures to follow once the employer finds a challenged machine or vehicle does not comply with this subpart or is otherwise unsafe to operate. The procedures shall also include the title and location of the employer's designated official.

### § 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.

(a) The following new on-track roadway maintenance machines shall be equipped with enclosed cabs with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems:

(1) Ballast regulators;
(2) Tampers;
(3) Mechanical brooms;
(4) Rotary scarifiers;
(5) Undercutters; and
(6) Functional equivalents of any of the machines identified in paragraphs (a)(1) through (a)(5) of this section.

(b) New on-track roadway maintenance machines, and existing on-track roadway maintenance machines specifically designated by the employer, of the types identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, shall be capable of protecting employees in the cabs of the machines from exposure to air contaminants, in accordance with 29 CFR 1910.1000.

(c) An employer shall maintain a list of new and designated existing on-track roadway maintenance machines of the types identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto. The list shall be kept current and made available to the Federal Railroad Administration and other Federal and State agencies upon request.

(d) An existing roadway maintenance machine of the type identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, becomes ''designated'' when the employer adds the machine to the list required in paragraph (c) of this section. The designation is irrevocable, and the designated existing roadway maintenance machine remains subject to paragraph (b) of this section until it is retired or sold.

(e) If the ventilation system on a new on-track roadway maintenance machine or a designated existing on-track roadway maintenance machine of the type identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, becomes incapable of protecting an employee in the cab of the machine from exposure to air contaminants in accordance with 29 CFR 1910.1000, personal respiratory protective equipment shall be provided for each such employee until the machine is repaired in accordance with § 214.531.

(f) Personal respiratory protective equipment provided under paragraph (e) of this section shall comply with 29 CFR 1910.134.

(g) New on-track roadway maintenance machines with enclosed cabs, other than the types identified in paragraphs (a)(1) through (a)(5) of this section or functionally equivalent thereto, shall be equipped with operative heating and ventilation systems.

(h) When new on-track roadway maintenance machines require operation from non-enclosed stations outside of the main cab, the non-enclosed stations shall be equipped, where feasible from an engineering standpoint, with a permanent or temporary roof, canopy, or umbrella designed to provide cover from normal rainfall and midday sun.

### § 214.507 Required safety equipment for new on-track roadway maintenance machines.

(a) Each new on-track roadway maintenance machine shall be equipped with:

(1) A seat for each operator, except as provided in paragraph (b) of this section;

(2) A safe and secure position with handholds, handrails, or a secure seat for each roadway worker transported on the machine. Each position shall be

protected from moving parts of the machine;

(3) A positive method of securement for turntables, on machines equipped with a turntable, through engagement of pins and hooks that block the descent of turntable devices below the rail head when not in use;

(4) A windshield with safety glass, or other material with similar properties, and power windshield wipers or suitable alternatives that provide the operator an equivalent level of vision if windshield wipers are incompatible with the windshield material;

(5) A machine braking system capable of effectively controlling the movement of the machine under normal operating conditions;

(6) A first-aid kit that is readily accessible and complies with 29 CFR 1926.50(d)(2); and

(7) An operative and properly charged fire extinguisher of 5 BC rating or higher which is securely mounted and readily accessible to the operator from the operator's work station.

(b) Each new on-track roadway maintenance machine designed to be operated and transported by the operator in a standing position shall be equipped with handholds and handrails to provide the operator with a safe and secure position.

(c) Each new on-track roadway maintenance machine that weighs more than 32,500 pounds light weight and is operated in excess of 20 mph shall be equipped with a speed indicator that is accurate within ±5 mph of the actual speed at speeds of 10 mph and above.

(d) Each new on-track roadway maintenance machine shall have its as-built light weight displayed in a conspicuous location on the machine.

**§ 214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines.**

Each new on-track roadway maintenance machine shall be equipped with the following visual illumination and reflective devices:

(a) An illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions;

(b) Work lights, if the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dark areas such as tunnels, unless equivalent lighting is otherwise provided;

(c) An operative 360-degree intermittent warning light or beacon mounted on the roof of the machine. New roadway maintenance machines that are not equipped with fixed roofs and have a light weight less than 17,500 pounds are exempt from this requirement;

(d) A brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions; and

(e) Rearward viewing devices, such as rearview mirrors.

**§ 214.511 Required audible warning devices for new on-track roadway maintenance machines.**

Each new on-track roadway maintenance machine shall be equipped with:

(a) A horn or other audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device shall be clearly identifiable and within easy reach of the machine operator; and

(b) An automatic change-of-direction alarm which provides an audible signal that is at least three seconds long and is distinguishable from the surrounding noise. Change of direction alarms may be interrupted by the machine operator when operating the machine in the work mode if the function of the machine would result in a constant, or almost constant, sounding of the device. In any action brought by FRA to enforce the change-of-direction alarm requirement, the employer shall have the burden of proving that use of the change-of-direction alarm in a particular work function would cause a constant, or almost constant, sounding of the device.

**§ 214.513 Retrofitting of existing on-track roadway maintenance machines; general.**

(a) Each existing on-track roadway maintenance machine shall have a safe and secure position for each roadway worker transported on the machine and protection from moving parts of the machine.

(b) By March 28, 2005, each existing on-track roadway maintenance machine shall be equipped with a permanent or portable horn or other audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device shall be clearly identifiable and within easy reach of the machine operator.

(c) By March 28, 2005, each existing on-track roadway maintenance machine shall be equipped with a permanent illumination device or a portable light that is securely placed and not hand-held. The illumination device or portable light shall be capable of illuminating obstructions on the track ahead for a distance of 300 feet under normal weather and atmospheric conditions when the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dark areas such as tunnels.

**§ 214.515 Overhead covers for existing on-track roadway maintenance machines.**

(a) For those existing on-track roadway maintenance machines either currently or previously equipped with overhead covers for the operator's position, defective covers shall be repaired, and missing covers shall be reinstalled, by March 28, 2005 and thereafter maintained in accordance with the provisions of § 214.531.

(b) For those existing on-track roadway maintenance machines that are not already equipped with overhead covers for the operator's position, the employer shall evaluate the feasibility of providing an overhead cover on such a machine if requested in writing by the operator assigned to operate the machine or by the operator's designated representative. The employer shall provide the operator a written response to each request within 60 days. When the employer finds the addition of an overhead cover is not feasible, the response shall include an explanation of the reasoning used by the employer to reach that conclusion.

(c) For purposes of this section, overhead covers shall provide the operator's position with cover from normal rainfall and midday sun.

**§ 214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991.**

In addition to meeting the requirements of § 214.513, after March 28, 2005 each existing on-track roadway maintenance machine manufactured on or after January 1, 1991, shall have the following:

(a) A change-of-direction alarm or rearview mirror or other rearward viewing device, if either device is feasible, given the machine's design, and if either device adds operational safety value, given the machine's function. In any action brought by FRA to enforce this requirement, the employer shall have the burden of proving that neither device is feasible or adds operational safety value, or both, given the machine's design or work function.

(b) An operative heater, when the machine is operated at an ambient temperature less than 50 degrees

Fahrenheit and is equipped with, or has been equipped with, a heater.

(c) The light weight of the machine stenciled or otherwise clearly displayed on the machine, if the light weight is known.

(d) Reflective material, or a reflective device, or operable brake lights.

(e) Safety glass when its glass is normally replaced, except that replacement glass that is specifically intended for on-track roadway maintenance machines and is in the employer's inventory as of September 26, 2003 may be utilized until exhausted.

(f) A turntable restraint device, on machines equipped with a turntable, to prevent undesired lowering, or a warning light indicating that the turntable is not in the normal travel position.

(g) Handholds, handrails, or a secure seat or bench position for each roadway worker transported on the machine.

**§ 214.518 Safe and secure positions for riders.**

A roadway worker, other than the machine operator(s), is prohibited from riding on any on-track roadway maintenance machine unless a safe and secure position for each roadway worker on the machine is clearly identified by stenciling, marking, or other written notice.

**§ 214.519 Floors, decks, stairs, and ladders of on-track roadway maintenance machines.**

Floors, decks, stairs, and ladders of on-track roadway maintenance machines shall be of appropriate design and maintained to provide secure access and footing, and shall be free of oil, grease, or any obstruction which creates a slipping, falling, or fire hazard.

**§ 214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles.**

When being operated over trackage subject to a railroad operating rule requiring flagging, each on-track roadway maintenance machine and each hi-rail vehicle shall have on board a flagging kit that complies with the operating rules of the railroad, if the equipment is not part of a roadway work group or is the lead or trailing piece of equipment in a roadway work group operating under the same occupancy authority.

**§ 214.523 Hi-rail vehicles.**

(a) The hi-rail gear of all hi-rail vehicles shall be inspected for safety at least annually and with no more than 14 months between inspections. Tram, wheel wear, and gage shall be measured and, if necessary, adjusted to allow the vehicle to be safely operated.

(b) Each employer shall keep records pertaining to compliance with paragraph (a) of this section. Records may be kept on forms provided by the employer or by electronic means. The employer shall retain the record of each inspection until the next required inspection is performed. The records shall be made available for inspection and copying during normal business hours by representatives of FRA and States participating under part 212 of this chapter. The records may be kept on the hi-rail vehicle or at a location designated by the employer.

(c) A new hi-rail vehicle shall be equipped with:

(1) An automatic change-of-direction alarm or backup alarm that provides an audible signal at least three seconds long and distinguishable from the surrounding noise; and

(2) An operable 360-degree intermittent warning light or beacon mounted on the outside of the vehicle.

(d)(1) The operator of a hi-rail vehicle shall check the vehicle for compliance with this subpart, prior to using the vehicle at the start of the operator's work shift.

(2) A non-complying condition that cannot be repaired immediately shall be tagged and dated in a manner prescribed by the employer and reported to the designated official.

(3) Non-complying automatic change-of-direction alarms, backup alarms, and 360-degree intermittent warning lights or beacons shall be repaired or replaced as soon as practicable within seven calendar days.

**§ 214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles.**

(a) When used to tow pushcars or other maintenance-of-way equipment, each on-track roadway maintenance machine or hi-rail vehicle shall be equipped with a towing bar or other coupling device that provides a safe and secure attachment.

(b) An on-track roadway maintenance machine or hi-rail vehicle shall not be used to tow pushcars or other maintenance-of-way equipment if the towing would cause the machine or hi-rail vehicle to exceed the capabilities of its braking system. In determining the limit of the braking system, the employer must consider the track grade (slope), as well as the number and weight of pushcars or other equipment to be towed.

**§ 214.527 On-track roadway maintenance machines; inspection for compliance and schedule for repairs.**

(a) The operator of an on-track roadway maintenance machine shall check the machine components for compliance with this subpart, prior to using the machine at the start of the operator's work shift.

(b) Any non-complying condition that cannot be repaired immediately shall be tagged and dated in a manner prescribed by the employer and reported to the designated official.

(c) The operation of an on-track roadway maintenance machine with a non-complying condition shall be governed by the following requirements:

(1) An on-track roadway maintenance machine with headlights or work lights that are not in compliance may be operated for a period not exceeding 7 calendar days and only during the period between one-half hour before sunrise and one-half hour after sunset;

(2) A portable horn may be substituted for a non-complying or missing horn for a period not exceeding seven calendar days;

(3) A fire extinguisher readily available for use may temporarily replace a missing, defective or discharged fire extinguisher on a new on-track roadway maintenance machine for a period not exceeding 7 calendar days, pending the permanent replacement or repair of the missing, defective or used fire extinguisher;

(4) Non-complying automatic change-of-direction alarms, backup alarms, and 360-degree intermittent warning lights or beacons shall be repaired or replaced as soon as practicable within 7 calendar days; and

(5) A structurally defective or missing operator's seat shall be replaced or repaired within 24 hours or by the start of the machine's next tour of duty, whichever is later. The machine may be operated for the remainder of the operator's tour of duty if the defective or missing operator's seat does not prevent its safe operation.

**§ 214.529 In-service failure of primary braking system.**

(a) In the event of a total in-service failure of its primary braking system, an on-track roadway maintenance machine may be operated for the remainder of its tour of duty with the use of a secondary braking system or by coupling to another machine, if such operations may be done safely.

(b) If the total in-service failure of an on-track roadway maintenance machine's primary braking system occurs where other equipment is not available for coupling, the machine

may, if it is safe to do so, travel to a clearance or repair point where it shall be placed out of service until repaired.

**§ 214.531 Schedule of repairs; general.**

Except as provided in §§ 214.527(c)(5), 214.529, and 214.533, an on-track roadway maintenance machine or hi-rail vehicle that does not meet all the requirements of this subpart shall be brought into compliance as soon as practicable within seven calendar days. If repairs are not made within seven calendar days, the on-track roadway maintenance machine or hi-rail vehicle shall be placed out of on-track service.

**§ 214.533 Schedule of repairs subject to availability of parts.**

(a) The employer shall order a part necessary to repair a non-complying condition on an on-track roadway maintenance machine or a hi-rail vehicle by the end of the next business day following the report of the defect.

(b) When the employer cannot repair a non-complying condition as required by § 214.531 because of the temporary unavailability of a necessary part, the employer shall repair the on-track roadway maintenance machine or hi-rail vehicle within seven calendar days after receiving the necessary part. The employer may continue to use the on-track roadway maintenance machine or hi-rail vehicle with a non-complying condition until receiving the necessary part(s) for repair, subject to the requirements of § 214.503. However, if a non-complying condition is not repaired within 30 days following the report of the defect, the employer shall remove the on-track roadway maintenance machine or hi-rail vehicle from on-track service until it is brought into compliance with this subpart.

(c) If the employer fails to order a part necessary to repair the reported non-complying condition, or if it fails to install an available part within the required seven calendar days, the on-track roadway maintenance machine or hi-rail vehicle shall be removed from on-track service until brought into compliance with this subpart.

(d) Each employer shall maintain records pertaining to compliance with this section. Records may be kept on forms provided by the employer or by electronic means. The employer shall retain each record for at least one year, and the records shall be made available for inspection and copying during normal business hours by representatives of FRA and States participating under part 212 of this chapter. The records may be kept on the on-track roadway maintenance machine or hi-rail vehicle or at a location designated by the employer.

■ 4. Appendix A to part 214 is amended with the addition of the following new entries for subpart D:

**Appendix A to Part 214—Schedule of Civil Penalties [1]**

* * * * *

| Section | Violation | Willful violation |
|---|---|---|
| * * * * * * * | | |
| **Subpart D—On-Track Roadway Maintenance Machines and Hi-Rail Vehicles** | | |
| 214.503 Good-faith challenges; procedures for notification and resolution: | | |
| (a) Failure of employee to notify employer that the machine or vehicle does not comply with this subpart or has a condition inhibiting safe operation | | 4,000 |
| (b) Roadway worker required to operate machine or vehicle when good-faith challenge not resolved | 5,000 | 10,000 |
| (c) Failure of employer to have or follow written procedures to resolve good-faith challenges | 5,000 | 10,000 |
| 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs: | | |
| (a) Failure to equip new machines with required systems | 5,000 | 10,000 |
| (b) Failure of new or existing machines to protect employees from exposure to air contaminants | 5,000 | 10,000 |
| (c) Failure of employer to maintain required list of machines or make list available | 2,000 | 4,000 |
| (d) Removal of ''designated machine'' from list before retired or sold | 2,000 | 4,000 |
| (e) Personal respiratory protective equipment not provided when ventilation system fails | 5,000 | 10,000 |
| (f) Personal respiratory protective equipment fails to meet required standards | 5,000 | 10,000 |
| (g) Other new machines with enclosed cabs not equipped with operable heating and ventilation systems | 5,000 | 10,000 |
| (h) Non-enclosed station not equipped with covering, where feasible | 5,000 | 10,000 |
| 214.507 Required safety equipment for new on-track roadway maintenance machines: | | |
| (a)(1)–(5) Failure to equip new machine or provide protection as specified in these paragraphs | 5,000 | 10,000 |
| (a)(6)–(7) Failure to equip new machine with first-aid kit or operative and charged fire extinguisher | 2,500 | 5,000 |
| (b) Position for operator to stand not properly equipped to provide safe and secure position | 5,000 | 10,000 |
| (c) New machine not equipped with accurate speed indicator, as required. | 2,500 | 5,000 |
| (d) As-built light weight not conspicuously displayed on new machine | 2,500 | 5,000 |
| 214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines | 2,500 | 5,000 |
| 214.511 Required audible warning devices for new on-track roadway maintenance machines | 5,000 | 10,000 |
| 214.513 Retrofitting of existing on-track roadway maintenance machines; general: | | |
| (a) Failure to provide safe and secure position and protection from moving parts 2,000 4,000 inside cab for each roadway worker transported on machine | 5,000 | 10,000 |
| (b) Horn or other audible warning device is missing, inoperable, or has non-compliant triggering mechanism | 2,500 | 5,000 |
| (c) Illumination device or portable light missing, inoperable, improperly secured, or incapable of illuminating track as required | 2,500 | 5,000 |
| 214.515 Overhead covers for existing on-track roadway maintenance machines: | | |
| (a) Failure to repair, reinstall, or maintain overhead cover as required | 5,000 | 10,000 |
| (b) Failure to provide written response to operator's request within 60 days | 2,000 | 4,000 |
| 214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991: | | |
| (a) Failure to equip machine with change-of-direction alarm or rearward viewing device. | 5,000 | 10,000 |

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

| Section | Violation | Willful violation |
|---|---|---|
| (b) Failure to equip machine with operative heater | 5,000 | 10,000 |
| (c) Failure to display light weight of machine as required | 2,500 | 5,000 |
| (d) Failure to equip machine with reflective material, reflective device, or operable brake lights | 5,000 | 10,000 |
| (e) Failure to install or replace safety glass as required | 5,000 | 10,000 |
| (f) Failure to equip machine with turntable restraint device or warning light as required | 5,000 | 10,000 |
| (g) Failure to equip machine with handholds, handrails, or secure seat or bench position as required | 5,000 | 10,000 |
| 214.518 Safe and secure position for riders | 5,000 | 10,000 |
| 214.519 Floors, decks, stairs, and ladders for on-track roadway maintenance machines | 5,000 | 10,000 |
| 214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles | 2,500 | 5,000 |
| 214.523 Hi-rail vehicles: | | |
| (a) Failure to inspect hi-rail gear annually | 5,000 | 10,000 |
| (b) Failure to maintain inspection record or make record available to FRA | 2,000 | 4,000 |
| (c) Failure to equip new hi-rail vehicle with alarm and light or beacon as required | 2,500 | 5,000 |
| (d)(2) Failure of operator to tag, date or report non-complying condition | 2,000 | 4,000 |
| (d)(3) Failure to repair or replace non-complying alarms, lights or beacons as required | 2,500 | 5,000 |
| 214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles | 5,000 | 10,000 |
| 214.527 On-track roadway maintenance machines; inspection for compliance and schedule for repairs: | | |
| (a) Failure of operator to check on-track roadway maintenance machine for compliance | 2,000 | 4,000 |
| (b) Failure of oeprator to tag, date, or report noncomplying condition | 2,000 | 4,000 |
| (c)(1)–(4) Failure to meet requirements for operating on-track roadway maintenance machine with non-complying headlights, work lights, horn, fire extinguisher, alarm, warning light, or beacon | 2,500 | 5,000 |
| (c)(5) Failure to repair or replace defective or missing operator's seat within required time period | 5,000 | 10,000 |
| 214.529 In-service failure of primary braking system | 5,000 | 10,000 |
| 214.531 Schedule of repairs; general | 2,500 | 5,000 |
| 214.533 Schedule of repairs subject to availability of parts: | | |
| (a)–(c) Failure to order necessary part(s), make repair(s), or remove on-track roadway maintenance machine or hi-rail vehicle from service as required | 2,500 | 5,000 |
| (d) Failure to maintain record or make record available to FRA | 2,000 | 4,000 |

Issued in Washington, DC, on July 18, 2003.

**Allan Rutter,**

*Federal Railroad Administrator.*

[FR Doc. 03–18912 Filed 7–25–03; 8:45 am]

**BILLING CODE 4910–06–P**

Federal Register

Monday,
July 28, 2003

# Part III

# Department of Health and Human Services

## Food and Drug Administration

## 21 CFR Part 884

## Classification of the Breast Lesion Documentation System and Notice of Availability of Guidance Document; Final Rule and Notice

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 884**

**[Docket No. 2003P–0301]**

## Medical Devices; Obstetrical and Gynecological Devices; Classification of the Breast Lesion Documentation System

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the breast lesion documentation system into class II (special controls). The special controls that will apply to this device are discussed later in this document. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that is the special control for this device.

**DATES:** This rule is effective August 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Colin Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

On May 28, 2002, FDA received a petition submitted under section 513(f)(2) of the act by Assurance Medical, Inc., through Hogan & Hartson, L.L.P., seeking an evaluation of the automatic class III designation of its BREASTVIEW Visual Mapping System. In accordance with section 513(f)(1) of the act, FDA issued an order on April 30, 2002, automatically classifying the BREASTVIEW Visual Mapping System in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or II. After reviewing information submitted in the petition, FDA determined that the BREASTVIEW Visual Mapping System can be classified in class II with the establishment of special controls. This device is intended for use in producing a surface map of the breast as an aid to document palpable breast lesions identified during a clinical breast exam. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the following risks to health associated specifically with this type of device: (1) Failure to produce an appropriate map, (2) misinterpretation of displayed images, (3) improper use, (4) skin irritation or toxicity, (5) electrical shock, (6) electromagnetic interference, and (7) tissue trauma from mechanical injury. Therefore, in addition to the general controls of the act, the device is subject to a special controls guidance document entitled ''Class II Special Controls Guidance Document: Breast Lesion Documentation System.''

The class II special controls guidance provides information on how to meet premarket (510(k)) submission requirements for the device, including recommendations for labeling, information on material safety, performance characteristics, bench testing, and software information. FDA believes that adherence to the class II special controls addresses the risks to health identified previously and provides a reasonable assurance of the safety and effectiveness of the device. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a breast lesion documentation system will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, the device is not exempt from the premarket notification requirements. The device is used in producing a surface map of the breast as an aid to document palpable breast lesions identified during a clinical breast exam. FDA review of key design features, data sets from bench studies and clinical trials, other relevant performance data, and labeling will ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the breast lesion documentation system before marketing the device.

On January 31, 2003, FDA issued an order classifying the BREASTVIEW Visual Mapping System and substantially equivalent devices of this generic type into class II under the generic name, breast lesion documentation system. FDA identifies this generic type of device as a breast lesion documentation system, which is intended for use in producing a surface map of the breast as an aid to document

palpable breast lesions identified during a clinical breast exam.

FDA is codifying this device by adding § 884.2990. The order also identifies a special control applicable to this device, a guidance document entitled ''Class II Special Controls Guidance Document: Breast Lesion Documentation System'' For the convenience of the reader, FDA is also adding § 884.1(e) to inform the reader where to find guidance documents referenced in 21 CFR part 884.

## II. Electronic Access

In order to receive the guidance entitled ''Class II Special Controls Guidance Document: Breast Lesion Documentation System'' via your fax machine, call the CDRH Facts-on-Demand 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. Enter the document number (1202) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared/approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh*.

## III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so it is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA knows of only one manufacturer of this type of device. Classification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

## V. Federalism

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

## VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## List of Subjects in 21 CFR Part 884

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

## PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 884 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 884.1 is amended by adding paragraph (e) to read as follows:

### § 884.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html.*

■ 3. Section 884.2990 is added to subpart C to read as follows:

### § 884.2990 Breast lesion documentation system.

(a) *Identification.* A breast lesion documentation system is a device for use in producing a surface map of the breast as an aid to document palpable breast lesions identified during a clinical breast examination.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance entitled ''Class II Special Controls Guidance Document: Breast Lesion Documentation System.'' See § 884.1(e) for the availability of this guidance document.

Dated: July 17, 2003.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 03–19029 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**[Docket No. 2003D–0299]**

## Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Breast Lesion Documentation System; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Breast Lesion Documentation System.'' This guidance document describes a means by which breast lesion documentation systems may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify the breast lesion documentation system into class II (special controls). This guidance document is immediately in effect as the special control for the breast lesion documentation system, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

**DATES:** Submit written or electronic comments on this guidance at any time.

**ADDRESSES:** Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Class II Special Controls Guidance Document: Breast Lesion Documentation System'' 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 Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments 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:** Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

**SUPPLEMENTARY INFORMATION:**

### I. Background

This guidance describes FDA recommendations to manufacturers of breast lesion documentation systems, which are devices that are intended for use in producing a surface pressure map of the breast as an aid to document palpable breast lesions identified during a clinical breast exam. The guidance details FDA's recommendations about software, materials, bench testing, and performance characteristics of these devices.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the breast lesion documentation system into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for the breast lesion documentation system. Following the effective date of the final classification rule any firm submitting a 510(k) premarket notification for a breast lesion documentation system will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

### 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 breast lesion documentation systems. 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

To receive ''Class II Special Controls Guidance Document: Breast Lesion Documentation System'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1202) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared or approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

### IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part

807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

## V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 2003.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 03–19028 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

Federal Register

Monday,
July 28, 2003

# Part IV

# Department of Education

## 34 CFR Part 99

## Family Educational Rights and Privacy Act; Proposed Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Part 99**

**RIN 1855–AA00**

## Family Educational Rights and Privacy Act

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend 34 CFR part 99 to implement the Department's interpretation of the Family Educational Rights and Privacy Act (FERPA) identified through administrative experience as necessary for proper program operation. These regulations would provide general guidelines for accepting ''signed and dated written consent'' under FERPA in electronic format.

**DATES:** We must receive your comments on or before September 26, 2003.

**ADDRESSES:** Address all comments about these proposed regulations to LeRoy Rooker, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W119, Washington, DC 20202–4605. If you prefer to send your comments through the Internet, use the following address: *FERPA.Comments@ED.Gov.*

**FOR FURTHER INFORMATION CONTACT:** Kathleen Wolan, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W115, Washington, DC 20202–4605. Telephone: (202) 260–3887.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:**

### Invitation To Comment

We invite you to submit comments regarding these proposed regulations. We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 2W115, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

### Background

The Department has developed these proposed regulations in accordance with its ''Principles for Regulating,'' which are intended to ensure that the Department regulates in the most flexible, equitable, and least burdensome way possible. The Secretary proposes these regulations and believes they are necessary to implement the law and give the greatest flexibility to local governments and schools. In addition, these regulations minimize burden while protecting the rights of parents and students.

### Significant Proposed Regulations

The following is a summary of the regulatory provisions the Secretary proposes. These provisions interpret statutory text. The Secretary is not authorized to change statutory requirements. Commenters are asked to direct their comments to the regulatory provisions that would implement or interpret the statute.

*Statute:* FERPA provides that an agency or institution may not have a policy or practice of disclosing personally identifiable information from education records without the ''written consent'' of the parent or eligible student, subject to specified exceptions. 20 U.S.C. 1232g(b)(1).

*Current Regulations:* Regulations codified at 34 CFR 99.30 provide that written consent must be ''signed and dated'' and must specify the records to be disclosed, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made.

*Proposed Regulations:* Proposed § 99.30(d) provides general guidelines for educational agencies and institutions that choose to meet the requirements of § 99.30 with records and signatures in electronic format.

*Reasons:* The Department has received numerous inquiries whether some form of electronic consent and signature, including e-mail, satisfies FERPS's written consent requirement.

The requirements of a valid signature, including various forms of electronic signature, are generally established under State rather than Federal law. However, Congress has enacted at least two Federal statutes to encourage the use of electronic signatures and records. The Government Paperwork Elimination Act (GPEA), Pub. L. 105–277 (effective October 21, 1998) applies to filing forms electronically with Federal agencies. The Electronic Signatures in Global and National Commerce Act (E-Sign), Pub. L. 106–229 (effective October 1, 2000) validates and establishes general standards for use of electronic signatures and records in interstate commerce that remain in place pending a State's adoption of some form of the Uniform Electronic Transactions Act (UETA).

E-Sign, UETA (where enacted in State law), and the GPEA validate the use of electronic records and signatures in contracts and other legal transactions. The Department concludes that educational agencies and institutions may use electronic records and signatures for written consents governed by FERPA to the extent that the procedures used for creating and storing the electronic records and signatures comply with these proposed regulations.

This discussion, as well as the proposed amendment to § 99.30, constitutes general guidance for the use of electronic communications in meeting certain FERPA requirements. The proposed amendment does not specify desired methods but instead contains general guidelines, adapted from concepts contained in E-Sign, GPEA, and UETA, to help ensure that FERPA's privacy protections are not compromised when records are disclosed pursuant to electronic communications. The Family Policy Compliance Office may issue further guidance concerning electronic records and signatures.

FERPA is technology-neutral with respect to how to meet disclosure and signature requirements. In cases where FERPA requires a signed and dated written consent under § 99.30 for a disclosure, such as issuance of a transcript to an employer, there proposed regulations specify that an agency or institution may accept electronic consents and signatures when reasonable security is provided for the process. In particular, the process must:

• Establish a reasonable way to identify the individual and authenticate the identity of the particular eligible student or parent as the source of the electronic message or record requesting access or consenting to the disclosure of education records (authentication);

• Attribute the electronic signature to the unaltered message or document to prevent repudiation by the sender (attribution);

• Verify the integrity of the signed message or document in transmission and upon receipt (integrity or security of transmission); and

• Document the requester's approval of the text contained in the electronic message.

While agencies and institutions are not limited to any particular technology or method, the Department considers electronic signature standards established under the Federal student loan programs to satisfy the written consent requirement in FERPA. You may view those standards on the Internet at the following Web site: *http://www.ifap.ed.gov/dpcletters/gen0106.html*

*Executive Order 12866*

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of these regulatory actions.

The potential costs associated with these proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulatory actions, we have determined that the benefits would justify the costs.

*Summary of Potential Costs and Benefits*

FERPA requires an educational agency or institution to obtain ''written and signed'' consent from a parent or eligible student before the educational agency or institution discloses education records. These proposed regulations would provide additional flexibility for educational institutions and agencies in meeting the existing consent requirement. These proposed regulations would not require that an educational institution or agency participate in the electronic format option.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

• Are the requirements in these proposed regulations clearly stated?

• Do these proposed regulations contain technical terms or other wording that interferes with their clarity?

• Does the format of these proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

• Would these proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol '' § '' and a numbered heading; for example, § 99.30 Under what conditions is prior consent required to disclose information?)

• Could the description of these proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making these proposed regulations easier to understand? If so, how?

• What else could we do to make these proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) receiving Federal funds from the Department and certain 4- and 2-year colleges and for-profit postsecondary trade and technical schools with small enrollments that receive Federal funds, such as student aid programs under Title IV of the Higher Education Act of 1965. However, these regulations would not have a significant economic impact on the small LEAs affected because these regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. These regulations would provide an electronic format option for records and signatures and impose minimal requirements to ensure that LEAs comply with the educational privacy protection requirements in FERPA.

*Paperwork Reduction Act of 1995*

These proposed regulations do not contain any information collection requirements.

*Intergovernmental Review*

These proposed regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

*Assessment of Educational Impact*

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

*Electronic Access to This Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

**List of Subjects in 34 CFR Part 99**

Administrative practice and procedure, Education, Information, Parents, Privacy, Records, Reporting and recordkeeping requirements, Students.

Dated: June 9, 2003.

**Rod Paige,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend part 99 of title 34 of the Code of Federal Regulations as follows:

1. The authority citation for part 99 continues to read as follows:

**Authority:** 20 U.S.C. 1232g, unless otherwise noted.

## PART 99—[AMENDED]

2. Section 99.30 is amended by adding a new paragraph (d) to read as follows:

**§ 99.30 Under what conditions is prior consent required to disclose information?**

* * * * *

(d) ''Signed and dated written consent'' under this part may include a record and signature in electronic form provided the educational agency or institution follows a process to—

(1) Identify the individual and authenticate the identity of the individual requesting disclosure of education records;

(2) Attribute the signature to the consent;

(3) Secure and verify the integrity of the consent in transmission and upon receipt; and

(4) Document and record the signed message.

[FR Doc. 03–19082 Filed 7–25–03; 8:45 am]

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Federal Register

Monday,
July 28, 2003

# Part V

# Department of the Interior

## Fish and Wildlife Service

## Fiscal Year 2003 Tribal Landowner Incentive Program and Tribal Wildlife Grants; Request for Grant Proposals and Final Policy and Implementation Guidelines; Notice

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**RIN 1018–AI59**

## Fiscal Year 2003 Tribal Landowner Incentive Program; Request for Grant Proposals and Final Policy and Implementation Guidelines

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

**ACTION:** Notice of request for proposals; final policy, and implementation guidelines.

**SUMMARY:** We, the Fish and Wildlife Service (Service) are soliciting project proposals for Federal assistance under the Tribal Landowner Incentive Program (TLIP). This document describes how you can apply for funding under the TLIP and how we will determine which project proposals will be funded. The Department of the Interior and Related Agencies Appropriations Act of 2002 allocated $39,740,000 from the Land and Water Conservation Fund for conservation grants to States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and Tribes under a Landowner Incentive Program. This notice sets forth guidance for the dissemination of $3,974,000 which is the amount designated for TLIP.

**DATES:** Project proposals must be received by the appropriate Regional Office (*see* Table 1 in **ADDRESSES**) no later than September 11, 2003.

**ADDRESSES:** For information regarding collection requirements, applicants should contact the Native American Liaison in the Service's Regional Office for the State in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 below. Information on the TLIP is also available from the U.S. Fish and Wildlife Service, Office of the Native American Liaison, 1849 C Street, NW., Mail Stop 3251, Washington, DC 20240, and electronically at *http://grants.fws.gov/tribal.html.*

Project proposals should be submitted to the Service's Regional Office for the State in which the proposed project would occur (*see* Table 1 under this section). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

| Service region | States where the project will occur | Where to send your project proposal | Regional Native American liaison and phone No. |
|---|---|---|---|
| Region 1 | Hawaii, Idaho, Oregon, Washington, Nevada, and California. | Regional Director, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232–4181. | Scott L. Aikin (503) 231–6123. |
| Region 2 | Arizona, New Mexico, Oklahoma, and Texas | Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW, P.O. Box 1306, Albuquerque, NM 87103–1306. | John Antonio (505) 248–6810. |
| Region 3 | Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. | Regional Director, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, MN 55111. | John Leonard (612) 713–5108. |
| Region 4 | Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. | Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Rm. 410, Atlanta, GA 30345. | James D. Brown (404) 679–7125. |
| Region 5 | Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. | Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589. | D.J. Monette (413) 253–8662. |
| Region 6 | Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. | Regional Director, U.S. Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver, CO 80225–0486. | David Redhorse (303) 236–7905. |
| Region 7 | Alaska | Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199. | Tony DeGange (907) 786–3492. |

**FOR FURTHER INFORMATION CONTACT:** For further information, contact the Native American Liaison in the appropriate Regional Office (*see* Table 1 under **ADDRESSES**) or Patrick Durham, Office of the Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, Mail Stop 3012 MIB, Washington, DC 20240, 202/208–4133.

**SUPPLEMENTARY INFORMATION:**

### I. Request for Proposals

The Service invites submission of grant proposals from federally recognized Indian tribal governments (including Alaska Native Villages) for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species. This program supports the efforts of tribal governments in programs that develop or augment the capacity to manage, conserve, or protect fish and wildlife species of concern through the provision of funding and technical support.

### II. Definitions

The following definitions apply:

1. *At-Risk Species*—Any plant or animal species recognized as a species of conservation concern, such as species listed or identified by a State or a tribe.

2. *Biological Opinion*—Any document that includes: (1) The opinion of the Fish and Wildlife Service or the National Marine Fisheries Service as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat under the provisions of the Endangered Species Act.

3. *Candidate Species*—Plant and animal taxa considered for possible addition to the List of Endangered and Threatened Species.

4. *Conservation Recommendation*—The Fish and Wildlife Service's non-binding suggestions resulting from

formal or informal consultation, under the Endangered Species Act, that: (1) Identify discretionary measures a Federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or candidate species, or designated critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or candidate species, or designated critical habitat; and (3) include suggestions on how an agency can assist species conservation as part of their action and in furtherance of its authorities under section 7(a)(1) of the Endangered Species Act.

5. *Habitat*—The area that provides direct support for a given species, population, or community. It includes all environmental features that comprise an area such as air quality, water quality, vegetation and soil characteristics, and water supply.

6. *Listed Species*—Any species of fish, wildlife, or plant that has been determined to be endangered or threatened under section 4 of the Endangered Species Act.

7. *Mitigation*—Activities carried out under National Environmental Policy Act regulations, for the purpose of moderating, reducing, or alleviating the impacts of a proposed activity, including (a) avoiding the impact by not taking a certain action; (b) minimizing impacts by limiting the degree or magnitude of the action; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by undertaking preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments.

8. *Proposed Species*—Any species of fish, wildlife, or plant that is proposed in the **Federal Register** to be listed under Section 4 of the Endangered Species Act.

9. *Tribal Lands*—Lands held by the United States in trust for a tribe or an individual Indian; or lands legally owned in fee simple by a tribe or an individual Indian that are subject to Federal restrictions against alienation or encumbrance. Also lands for which a tribe or an individual Indian retained specific right-of-way or uses as defined by treaty or other binding agreement (including Alaska Native Corporation lands).

## III. Background

The Department of the Interior and Related Agencies Appropriations Act of 2002 allocated $39,740,000 from the Land and Water Conservation Fund for conservation grants to States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and Tribes under the Landowner Incentive Program. The Service herein provides the implementation guidance for the tribal component of the program.

In recent years, natural resource managers have increasingly recognized that private lands play a pivotal role in linking or providing important habitats for fish, wildlife, and plant species. To protect and enhance these habitats through incentives for private landowners, Congress appropriated $39,740,000 for the Service to administer a new Landowner Incentive Program (LIP) for States and tribes. The Service will award grants for actions and activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on private lands. A primary objective of LIP is to establish, or supplement existing, landowner incentive programs that provide technical and financial assistance, including habitat protection and restoration, to private landowners for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands as stated in the appropriations language. LIP complements other Federal private lands conservation programs that focus on conservation of habitat.

The Service is providing guidance to the public and, particularly, to federally recognized tribes, in the administration of the $3,974,000 allocated for TLIP. This program will provide conservation monies to federally recognized tribes for actions and activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands. TLIP was created because of the unique relationship between the Federal Government and tribes and because tribal lands are not private lands and would not be eligible for funding under a State-administered LIP with a private lands grant distribution system. Because the tribes directly administer the funds rather than distribute them further to individual landowners, the criteria used in evaluating program proposals differ to some extent from those used in the LIP. The results of both the LIP and TLIP would be similar in effect, because both encourage voluntary conservation of natural resources. A series of questions and answers follows and describes the guidelines in some detail.

## IV. Implementation Guidelines

### *A. Eligibility*

1. Who May Participate in the TLIP?

Federally recognized tribes in all parts of the United States, including: federally recognized tribes, pueblos, rancherias, and Alaska native villages or traditional councils as defined by the Alaska Native Claims Settlement Act.

2. Are State-Recognized Tribes or Petitioning Tribes Eligible To Receive Grants Under This Program?

No. Only federally recognized tribes are eligible to receive grants under this program. Federally recognized tribes are listed in the **Federal Register** (67 FR 46238; July 12, 2002).

3. Can Tribal Organizations or Other Entities (Including Individual Indian Allottees) Receive Grants Under This Program?

No. However, organizations or entities may participate as subgrantees or contractors to federally recognized tribes.

4. What Process Will the Service Use To Solicit and Receive Proposals for Funding?

The Service will request proposals through a **Federal Register** notice, direct contact, and other forms of outreach to eligible applicants. The Service's Regional Directors will receive all proposals.

5. Who Will Coordinate the Scoring of Grant Application Submissions?

The Regional Native American Liaisons of the Service will coordinate the process to screen proposals to ensure that they are complete and to score them according to nationally uniform criteria. Tribes are encouraged to contact the Native American Liaison in the appropriate Regional Office identified in Table 1 under **ADDRESSES** for additional assistance in submitting proposals.

6. How Will the Various Grant Application Submissions Be Reviewed for Funding?

A national panel will review regionally ranked proposals for recommendations to the Director of the Service (Director).

7. Who Will Serve as the National Review Panel?

The Regional Native American Liaisons will serve on the panel in addition to other Service and other Federal agency personnel, as appropriate, and as may be identified by the Director.

8. Will Tribal Representatives Be Involved in Reviewing or Ranking Proposals?

No, only Federal employees will review and rank proposals in this initial year.

9. Who Will Make the Final Determination for Grant Approval?

The Director will make the final determination for grant award.

10. How Will the Tribes Be Notified Whether or Not They Have Been Awarded Grants?

Applicants will be notified by the Director through the Regional Native American Liaison as to whether or not they have been awarded grants.

*B. Application Requirements*

1. Is TLIP Exempt From Federal Grant Program Compliance?

No, the TLIP program must comply with all Federal grant program compliance requirements as specified in 43 CFR part 12; OMB Circulars A–133, A–102, and A–87; and Service Manual Chapters 522 FW1 and 523 FW1, except where specifically exempted. Tribal grantees are responsible for ensuring that subgrantees and contractors adhere to these requirements.

2. What Must Proposals Include for Participation in TLIP?

Proposals must include a cover letter, program summary, program narrative, budget narrative, a completed Standard Form 424 Application for Federal Assistance (SF–424), and tribal resolution of support as described herein.

—A *cover letter* briefly states the main features of the proposed program.

—A *program summary* describes, in one-half page, the type of activity that would take place if the Service funds the proposal.

—A *program narrative* clearly identifies the problems that the proposal will correct or help solve for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands, and the expected results or benefits. It must contain a needs assessment, objectives, timeline, methodology, geographic location (with maps), monitoring plan, and identification of clear, obtainable, and quantifiable goals and performance measures that will help achieve the management goals and objectives of the TLIP and relevant Service and tribal performance goals. The relevant Service goals are Goal 1 Sustainability of Fish and Wildlife Populations, including Migratory Bird Conservation (Goal 1.1), Imperiled Species (Goal 1.2), Interjurisdictional Fish (Goal 1.3), Marine Mammal Management (Goal 1.4), Species of International Concern (Goal 1.5), and Invasive Species (Goal 1.6); Goal 2, Habitat Conservation including; Habitat Conservation of Service Lands (Goal 2.3); and Mission Goal 4, Partnerships in Natural Resources, including Tribal Governments (Goal 4.1) all of which can be found in the Service's Long-Term Strategic Plan for 2000 to 2005 at *http://planning.fws.gov/USFWStrategicPlanv3.pdf.* Related Service planning and results can be found at *http://planning.fws.gov/.*

—A *budget narrative* clearly justifies all proposed costs and indicates that the grantee will provide adequate management systems for fiscal and contractual accountability, including annual monitoring and evaluation of progress toward desired project objectives, goals, and performance measures. It should include discussion of direct cost items such as salaries, equipment, consultant services, subcontracts, and travel, as well as program matching or cost sharing information. If some partners will provide in-kind matching, they must be listed in the grant proposal with a letter of commitment from each. Applicants may cover new project administrative costs and the Tribal Indirect Cost Rate, but they cannot include pre-existing administrative costs.

—An *SF–424* form will be included with the Grant Application Package and is available on the internet at *http://training.fws.gov/fedaid/toolkit/sf424-f.pdf.*

—A *resolution of support* from the appropriate tribal governing body or from an individual with delegated tribal authority stating support for the proposal. If a resolution of support is not submitted with the proposal, one will be required prior to awarding the grant.

3. Where Can Applicants Obtain a Grant Proposal Package?

Applicants can obtain a grant proposal package from the Native American Liaison in the appropriate Regional Office (*see* Table 1 under **ADDRESSES**) or at the Service's Grants Web site *http://grants.fws.gov/tribal.html.*

4. Are Matching Funds Required?

Yes, the Service requires a minimum of 25 percent non-Federal matching funds for participation in this program. This is the same matching contribution requirement States must make under the LIP.

5. Are In-Kind Contributions Eligible as Matching Funds?

Yes, in-kind contributions provided by the tribe or a third party may be counted towards the required 25 percent non-federal matching requirement. Any in-kind contributions in excess of the required 25 percent may be used as a match to improve the potential ranking of a proposal. The Federal Government has defined ''in-kind'' as non-cash contributions made by the tribe. In-kind contributions must be necessary and reasonable for carrying out the project, and must represent the same value that the Service would have paid for similar services or property if purchased on the open market. Allowable in-kind contributions are defined in 43 CFR 12.64. Additional information can be found at *http://training.fws.gov/fedaid/toolkit/inkind.pdf.*

6. Can a Tribe Submit More Than One Grant Proposal?

Tribes are encouraged to submit a single comprehensive grant proposal but multiple proposals are allowable.

7. What Maximum Level of Project Funding Will Be Considered Under TLIP?

The Service will award grants up to a maximum of $200,000. If more than one proposal is submitted by any one tribe, no more than $200,000 total can be awarded to that tribe. This amount is approximately 5 percent of the annual appropriation, and it allows for grants that are large enough to make a significant impact and be widely distributed.

8. What Minimum Level of Project Funding Will Be Considered Under TLIP?

There is no proposal or grant award minimum, but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

*C. Ranking Criteria*

What Ranking Criteria Will the Service Use?

The Service will score proposals based on the following criteria: the Proposed Guidelines we assigned (67 FR 79131; December 27, 2002), specific point values to these criteria for the purpose of gaining public comment. Based on public comments and our understanding of Congressional intent in creating this program, the following

criteria were assigned relative values from 1 (lowest) to 5 (highest).

*Benefit:* What are the probable significant outcomes to protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands if this program is successfully completed? The Service requires that the tribe articulate how the benefits of its proposal support the goals and objectives of the TLIP and Service and tribal Performance Goals in its proposal narratives. *Relative Value:* 5.

*Performance Measures:* To what extent does the proposal provide obtainable and quantifiable performance measures and means to monitor, evaluate, and report on these measures compared to an initial baseline? The measures should be specific and clear and should provide demonstrable benefits to the target species of the action. These actions must support the goals and objectives of the TLIP, the Service, and the tribe. *Relative Value:* 4.

*Work Plan:* Are the program activities and objectives well-designed and achievable? *Relative Value:* 3.

*Budget:* Are all major budget items justified in relation to the program objectives and clearly explained in the narrative description? *Relative Value:* 3.

*Capacity Building:* To what extent does the program increase the grantee's capacity to implement actions and activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands? *Relative Value:* 3.

*Contributions and Partnerships:* To what extent does the applicant display commitment to the project proposal through in-kind contribution or matching funds and to what extent does it incorporate contributions from other non-Federal partners in the form of either cash or in-kind services? *Relative Value:* 3.

*D. TLIP Operations and Management*

1. Can Grantees Use TLIP Funds To Cover Costs of Environmental Review, Habitat Evaluation, Permit Review (*e.g.*, Section 404), and Other Environmental Compliance Activities Associated With a TLIP Project or Program?

Yes, the TLIP funds can cover these activities, provided they are directly related to the TLIP project or program being funded and are included in the budget and discussed in the program and budget narratives.

2. What Activities Are Eligible Under TLIP?

Eligible programs include those that improve, preserve, or maintain habitat for endangered, threatened, candidate, or other at-risk species. Examples of the types of projects within identified tribal programs that the Service may fund include using prescribed burning to restore grasslands that support imperiled species, fencing to exclude animals from sensitive habitats, or planting native vegetation to restore degraded habitat. Tribes may implement TLIP projects on a variety of lands, including reservations, individual allotments, fee-lands, and village corporation and regional corporation lands in Alaska. Only activities that result in the protection and management of habitat that benefit listed, proposed, candidate, or other at-risk species are eligible for funding.

3. Are Any Specific Activities Not Allowable Under the Guidance of TLIP?

A proposal cannot include activities required to comply with a Biological Opinion under the Endangered Species Act or include activities required to comply with a permit (*e.g.*, mitigation responsibilities). However, a proposal can include activities that implement conservation recommendations or to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities that are required because of the TLIP project, provided they are included in the budget and discussed in the Program and Budget Narratives. Research projects or archeological projects are not eligible.

4. What Species Are Considered Endangered, Threatened, Candidate, or At-Risk?

Those species federally listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or species proposed or candidates for such listing, or at-risk species (*e.g.*, species recognized as a species of conservation concern, such as species listed or identified by a State or a tribe).

5. Does the Term ''Private Lands'' in the Landowner Incentive Program Appropriation Language Exclude Tribal Trust Lands From Participation in TLIP?

No, tribal trust lands are not ''public lands.'' For the purposes of inclusion under TLIP, federally recognized tribes are considered landowners and are eligible.

6. Is the TLIP Program a Continuous Revenue Source for Tribal Wildlife Programs?

No, there is no authorization for appropriation of funds beyond FY 2003. Funds appropriated in FY 2003 are available until spent.

7. Can the Grantee Hold TLIP Funds in an Interest-Bearing Account?

Funds can be held in an interest-bearing account, although any interest earned in excess of $100 must be returned to the fiscally responsible Federal agency (43 CFR 12.64).

*E. Grant Award Procedures*

1. What Additional Information Must Be Provided to the Service by the Grantees Once Awards Are Announced?

Once the Director notifies grantees that their proposal was selected for funding, the recipient must submit a grant agreement and attachments as required by Federal regulations. As with our other Federal programs, TLIP agreements must comply with 43 CFR part 12, the National Environmental Policy Act, Section 7 of the Endangered Species Act, the National Historic Preservation Act, and all other applicable Federal laws and regulations. This grant program is also subject to provisions of Office of Management and Budget Circulars No. A–87, A–102, and A–133 (*see http://www.whitehouse.gov/omb/circulars*).

2. Once Grants Are Awarded, Who Should the Grantee Consider as the Lead Contact Person?

Once grants have been awarded, the grantee should consider the appropriate Regional Native American Liaison as the lead contact person for all matters pertaining to the particular award. Financial matters will be delegated to the Division of Federal Aid through the Native American Liaison.

3. When Will the Service Award TLIP Grants?

Once the Service has reviewed and ranked all eligible TLIP grant proposals, the Director will make his final decision within 30 days of receiving the recommendations of the national review panel.

4. How Will Funds Be Disbursed Once the Service Has Awarded TLIP Grants?

Subsequent to funding approval, grant funds are electronically provided through the Department of Health and Human Services' SMARTLINK payment management system. Through this electronic funds transfer (EFT), grantees will be able to receive funds as needed. Some of the tribal grantees may not be EFT compliant. In order for us to ensure optimal service to potential grantees within the current Federal Aid process, grantees will need to obtain EFT capabilities compatible with the

SMARTLINK payment management system. Grantees may request an advance of no more than 25 percent of the total grant if the advance is documented in the grant agreement.

5. What Reporting Requirements Must Tribes Meet Once Funds Are Obligated Under a TLIP Grant Agreement?

Quarterly Financial Status Reports (SF–272) which can be found at *http://www.whitehouse.gov/omb/grants/sf272.pdf,* must be submitted electronically. A final Financial Status Report (SF–269) which can be found at *http://www.whitehouse.gov/omb/grants/sf269.pdf,* will be due to the Regional Office within 90 days of the grant agreement ending date. An annual performance report—including a list of project accomplishments relative to those which were planned in the grant agreement—will also be required within 90 days of the end of each 12-month period. The effectiveness of each tribe's program, as reported in the annual performance reports, will be an important factor considered during the grant award selection process in subsequent years.

6. Is There a Limitation on the Amount of Funds That May Be Used for Administrative Costs?

Yes, no more than 12 percent of program funds can be used for staff and related administrative costs. If more than 12 percent is necessary to properly and efficiently operate the program, a waiver of this limitation may be provided by the Regional Director based on a written justification explaining why such a waiver is necessary.

## V. Procedural Requirements

### *A. Regulatory Planning and Review (Executive Order 12866)*

This policy document identifies proposed eligibility criteria and selection factors that may be used to award grants under TLIP. The Service developed this policy to ensure consistent and adequate evaluation of grant proposals that are voluntarily submitted and to help prospective applicants understand how the Service will award grants. According to Executive Order 12866, this policy document is significant and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

1. TLIP will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State or local communities. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 allowed the Secretary to create TLIP. In addition, grants that are funded will generate other, secondary benefits, including benefits to natural systems (*e.g.*, air, water) and local economies. All of these benefits are widely distributed and are not likely to be significant in any single location. It is likely that some residents where projects are initiated will experience some level of benefit, but quantifying these effects at this time is not possible. We do not expect the sum of all the benefits from this program, however, to have an annual effect on the economy of $100 million or more.

2. We do not believe the TLIP would create inconsistencies with other agencies' actions. Congress has given the Service the responsibility to administer this program.

3. As a new grant program, the TLIP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. This policy document establishes a new grant program, authorized by Pub. L. 107–63, which should make greater resources available to applicants. The submission of grant proposals is completely voluntary, but necessary to receive benefits. When an applicant decides to submit a grant proposal, the proposed eligibility criteria and selection factors identified in this policy can be construed as requirements placed on the awarding of the grants. Additionally, we will place further requirements on grantees who are selected to receive funding under the TLIP program in order to obtain and retain the benefit they are seeking. These requirements include specific Federal financial management and reporting requirements as well as specific habitat improvements or other management activities described in the applicant's grant proposal.

4. OMB has determined that this policy raises novel legal or policy issues, and, as a result, this document has undergone OMB review.

### *B. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*e.g.*, small businesses, small organizations, and small government jurisdictions). Indian tribes are not considered to be small entities for purposes of the Act and, consequently, no regulatory flexibility analysis has been done.

### *C. Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996*

This implementation guidance is not considered a major rule under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 804(2)) because it does not have an annual effect on the economy of $100 million or more. The yearly amount of TLIP program funds is limited to $3,974,000.

This implementation guidance will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this implementation guidance will distribute Federal funds to Indian tribal governments and tribal entities for purposes consistent with activities similar to other Service programs designed to enable landowners to protect and conserve species as may be protected under the Endangered Species Act and the habitat that supports such species.

This implementation guidance does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

### *D. Unfunded Mandates Reform Act*

This implementation guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This guidance 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 (2 U.S.C. 1532).

### *E. Takings Implication Assessment (Executive Order 12630)*

This implementation guidance does not have significant ''takings'' implications. This implementation guidance does not pertain to ''taking'' of private property interests, and its impact on private property would be an incentive that is totally landowner driven.

### *F. Executive Order 13211—Energy Effects*

On May 18, 2001, the President issued Executive Order 13211, which speaks to regulations that significantly affect

energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This implementation guidance is not expected to significantly affect energy supplies, distribution, or use. Therefore, no Statement of Energy Effects has been prepared.

*G. Executive Order 13132—Federalism*

This implementation guidance does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of States.

*H. Civil Justice Reform (Executive Order 12988)*

This implementation guidance does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the Executive Order 12988.

*I. National Environmental Policy Act (NEPA)*

This implementation guidance does not constitute a Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the implementation guidance is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1, and 516 DM 6, Appendix 1. The Service will be responsible for ensuring that grants funded through TLIP are in compliance with NEPA.

*J. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

Pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' we have committed to consulting with tribal representatives in the finalization of the implementation guidance for the TLIP. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects. This guidance expands tribal participation in Service programs and allows for opportunities for tribal wildlife management and conservation initiatives across Indian Country. We will continue to consult with tribal governments and tribal entities as a part of the policymaking process, and beyond in furthering our mutual goals for the TLIP.

*K. Paperwork Reduction Act (44 U.S.C. 3501)*

The information collection requirements of this program will be largely met through the Federal Aid Grants Application Booklet. Federal Aid has OMB approval for this information collection under Control Number 1018–1019. This approval applies to grants managed by the Division of Federal Aid, even if these grants are for other Divisions of the Service. We are collecting this information relevant to the eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We are collecting financial and performance information to track costs and accomplishments of these grant 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.

**VI. Summary of Comments and Recommendations**

On December 27, 2002, the Fish and Wildlife Service (Service) published the proposed guidelines for the Tribal Wildlife Grant program (TLIP) with an open comment period of 1 month (67 FR 79133). On January 27, 2003, the Service had received a total of 41 comment submissions. Thirty tribes, 4 tribal organizations, 2 private enterprises, 1 organization, and 4 Federal entities provided suggestions for these proposed guidelines. These comments are addressed below.

In *part I,. Background*, we asked several questions of particular concern to the Service regarding a limit on the amount of funding to be made available to any one tribe, our adherence to Congressional intent in the proposed guidelines, and what type of entities were eligible to participate in the TLIP. The responses for comments are summarized in the corresponding sections below.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (1–3)*, we proposed a competitive program in which only federally recognized tribes would be able to apply for funding, but stipulated that tribal organizations and other non-Federal entities may enter into grant agreements as contractors or subgrantees to federally recognized tribes. It was also proposed that non-federally recognized tribes be excluded from submitting proposals.

Seven comments specifically stated that only federally recognized tribes should be eligible to enter into grant agreements, with one asking that the term, ''federally recognized tribe'' be fully explained by incorporating the inclusion of federally recognized tribes; pueblos; rancherias; Alaska native villages or traditional councils as defined by the Alaska Native Claims Settlement Act; and tribal governing bodies as recognized by the Bureau of Indian Affairs (BIA), such as Indian Reorganization Act councils or tribal entities that have received Self Governance status under the Self Governance Act. No comments advocated for the inclusion of tribes that are not recognized by the Federal Government, although nine noted their agreement with their exclusion from participating in TLIP. Two comments advocated for the inclusion of individual Indian trust land allotment owners as eligible direct participants.

Five comments agreed that tribal organizations may participate as contractors or subgrantees but not as direct applicants to TLIP. Two stated that only federally recognized tribes should be eligible. Three comments advocated for the inclusion of consortia of federally recognized tribes as eligible participants in TLIP as direct applicants.

*Response:* Congress specified the TLIP is only for federally recognized Indian tribes, which includes Alaskan Native Villages, but Congress did not include tribal organizations or consortia. Tribal organizations, consortia, commissions, or other non-tribal entities are not directly eligible to receive grants, but may participate as subgrantees or contractors to federally recognized Indian tribes. Individual Indian allottees are not eligible grantees through TLIP but are encouraged to work with States and tribes as subgrantees or contractors.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (4)*, it was proposed that the Service would request proposals through a **Federal Register** notice and other forms of outreach and that proposals be received by the respective Regional Directors. One comment suggested that proposals should be ranked and selected for approval at the Regional level, and two others simply agreed with the proposed system.

*Response:* The delivery of TLIP will be conducted by the Regional Native American Liaisons at the Regional level. The submission of proposals to the Regional Directors is consistent with the Regional delivery process. However, because this is a national program, the national review and screening of proposals is appropriate. The authority to make final decisions on proposals to be funded lies with the Director of the Service.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (5–9)*, the Service proposed that the Native American Liaisons in each Regional Office coordinate the screening and ranking of project proposals on the basis of nationally uniform criteria. A national panel would then review the Regionally-ranked proposals for recommendation to the Director for selection. The proposed panels would be made up of Service and other Federal personnel. The Director will make the final proposal selections on the basis of these recommendations.

Four respondents noted their agreement with nationally uniform ranking criteria, and two favored regional ranking. Three advocated for a geographic or population based component to the selection of proposals.

*Response:* TLIP is a competitive program for federally recognized Indian tribes regardless of geographic, land, or population based components. All tribes are equally eligible to submit proposals. Therefore, the use of nationally uniform criteria is appropriate for ranking proposals at both the Regional and National levels.

The Service will screen and score proposals in the Regional Offices. A national panel will then make recommendations to the Director based on these outcomes.

The Service examined various possible formulas for selecting proposals based on land area and other factors but was unable to identify any formula that adequately considered the wide variability among tribes, including their land base, population, and distribution across the United States.

Of the comments received on the proposed makeup of the panel, 21 agreed and provided suggestions as to which other Service or other Federal personnel should be involved. One respondent stated that the Regional Native American Liaisons should act in an advisory capacity to the ranking team, and one stated that Regional Native American Liaisons should be excused from ranking Regional proposals. Fourteen submissions advocated for the inclusion of tribal representation in the ranking process; of these, two specifically identified the Native American Fish and Wildlife Society as an appropriate resource to serve this purpose.

*Response:* The Regional and National panels will consist of Service fish and wildlife professionals and other Federal agency personnel knowledgeable of Native American natural resource issues. The comments received will be considered in the selection of panel members. Regional Native American Liaisons will coordinate the screening and scoring of proposals and will act in an advisory capacity to the Regional panels. They will not participate in the actual screening or scoring of proposals. The Regional Native American Liaisons will serve on the national review panel along with other Service personnel to make recommendations to the Director for selection.

TLIP Proposed Guidelines state that ''the Director will make the final determination for grant approval.'' Six respondents stated their agreement with this language. Three suggested that the national review team be capable of making the final decision on accepting proposals through consensus, and one stated that the Regional Native American Liaisons should rank and award proposals in their respective Regions. In addition to these comments, it was suggested that an appeal process should be included for proposals that are not selected.

*Response:* Because this is a nationally competitive program, the Secretary's authority is delegated solely to the Director, who will review recommendations and make final selections. Proposals which are not selected will receive information to improve their chances of future selection.

*Part II., Proposed Implementation Guidelines, section B., Application Requirements (1)*, states that TLIP is not exempt from any of the Federal grant program compliance requirements as specified in 43 CFR part 12, OMB Circulars A–102 and A–87, and Service Manual Chapters 522 FW1 and 523 FW1. Two comments addressed this issue, both in agreement, but one called for the inclusion of language that identified the tribe's fiduciary responsibility over contractees.

*Response:* The language in the proposed notice will be amended to indicate Tribal grantees' responsibility for ensuring that subgrantees and contractors adhere to these requirements.

In *part II., Proposed Implementation Guidelines, section B,. Application Requirements (2)*, general inclusions for proposals in the TLIP program are addressed. They include a Cover Letter, Program Summary, Program Narrative, Budget Narrative, and Resolution of Support. Two general comments on this section were received; one stated approval of the proposed components of the grant proposal, and another noted the necessity of keeping the process as simple as possible to alleviate the administrative burden on the applicant.

*Response:* Comments noted.

No comments were received on the requirement of a *Cover Letter* or *Program Summary.*

Nine respondents commented on the requirement of a *Program Narrative.* Eight advocated for the inclusion and/or prioritization of tribal goals rather than ''relevant Service Performance Goals.'' Two asked that Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1 be included, and one respondent stated that the Service should delete this criterion or incorporate tribal goals.

*Response:* TLIP funding is to establish, or supplement existing, landowner incentive programs that provide technical and financial assistance, including habitat protection and restoration, to private landowners for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands as stated in the appropriations language. The care and maintenance of the nation's fish and wildlife resources is dependent on cooperative efforts of partners. The Service's performance goals articulate the importance of tribal partnerships in Mission Goal 4.1 and the broad range of mutually beneficial resource accomplishments that can result from partnership actions. The final guidance has been modified to include Mission Goal 4.1 Tribal Partnerships, and resource-related goals, including 1.1; 1.2; 1.3; 1.4; 1.5; 1.6, Sustainability of Fish and Wildlife Populations *http://planning.fws.gov/tableofcon.html.*

No comments were received on the material under the heading *Budget Narrative.*

Seven comments were submitted regarding the requirement of a *Resolution of Support* from the appropriate tribal governing body that supports the proposed project. One expressly opposed this requirement. Six said that often it is not reasonable to expect a tribal governing body to meet during the open period for submitting grant proposals. Several comments proposed remedies that would allow for a letter of support from the ''duly elected leader of the tribe'' or the ''tribal Chair or Councilperson.''

*Response:* The requirement for a *Resolution of Support* is an assurance that the tribal governing body supports the proposed project and the actions necessary to realize the natural resource benefits identified in the proposal. The Service recognizes that there could be times when a tribal resolution of support for a proposal may not be logistically possible. The Service will amend the requirement to accept a letter or signed endorsement from an

individual with delegated tribal authority. If a resolution of support is not submitted with the proposal, one will be required from the tribal governing body prior to the Service's awarding of the grant.

*Part II., Proposed Implementation Guidelines, section B.,* Application Requirements (3), states that the proposal package will be made available through the Service's Regional Native American Liaisons. Two comments pointed out that they would like to be able to download the proposal package from the Internet and one comment noted support for the proposed process.

*Response:* The Service is required to provide access to application packages through as many sources as available. Therefore, application guidelines and packages for this grant program can be obtained through Regional Native American Liaisons as well as through the Service's Web site at *http://grants.fws.gov/tribal.html.*

*Part II., Proposed Implementation Guidelines, section B., Application Requirements (4)*, states that matching funds are required in the amount of 25 percent derived from non-Federal sources. One respondent stated that tribal support is nonenforceable and could be used as a tool by applicants to unfairly weight their proposals (either unwittingly or intentionally) and that this criterion is not meaningful and should be waived. Fourteen comments asked that the Service eliminate or decrease matching funds requirement and cited the Service Policy on Waivers for tribal governments as justification for doing so. One asked that we implement a provision to waive this criterion for tribes with demonstrated hardship, and three agreed with the 25 percent match.

*Response:* The Service has identified those costs that are considered allowable as in-kind contributions or matching funds in Service Manual 522 FW 1 and in 43 CFR 12.64. A grantee can provide materials, equipment, or other services as a noncash match for portions of the grantee's matching share. The value of land may be provided, including the land proposed for restoration, enhancement, or management as a non-cash match, provided that the land or associated costs are necessary and reasonable for completing the project. We will keep the match requirement to encourage partnerships and leverage funds whenever possible.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (5)*, the Service outlines the proposed allowance for in-kind contributions as meeting a matching funds requirement and provides additional information as to how it defines in-kind Contributions. One respondent agreed, and one disagreed, stating that doing so would add no value to a proposal. Three asked that funds derived from Pub. L. 93–638 be considered as allowable for matching funds, in accordance with established BIA protocol.

*Response:* The Service, recognizes the benefits of partnering with private, local, or State agencies, and wishes to encourage the efforts of those that do provide partnership opportunities for the benefit of fish and wildlife resources. Funds derived from Pub. L. 93–638 can be identified to meet the matching funds requirement.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (6)*, the Service indicated that tribes are encouraged to submit a single proposal but may submit additional proposals if all of the funds are not expended. Three comments agreed that one proposal is sufficient long as the tribe can bundle, several projects, with the understanding that portions may be rejected. One stated that a single proposal is a good target but should not exclude multiple proposals outright. Two advocated for multiple proposals and one asked the Service to definitively state whether one or multiple proposals are allowable. A final comment noted that one proposal is reasonable but should not preclude a tribe from participating if it is part of a consortium (if allowed) that has been awarded funds as a subgrantee or contractor.

*Response:* Tribes are encouraged to submit one proposal, but multiple proposals are allowable.

*Part II., Proposed Implementation Guidelines, section B., Application Requirements (7 and 8)*, recommends no minimum and that a maximum of approximately 5 percent of available funds ($200,000) be implemented. Depending upon the number of proposals submitted and the relative merit of each, some applicants may receive greater amounts. One recommendation stated that a $5,000 minimum be placed on proposals to relieve administrative burden on the Service. Sixteen comments supported 5 percent as a nonbinding target but not as a strict cap. Other comments suggested a 1, 2 or 2.5 percent or a $75,000 cap on proposals. One comment advocated for a cap based on the land base of projects, but did not offer any further explanation. Three disagreed with the proposed 5 percent and advocated for no cap at all. It was also suggested that the Service state clearly if a limit is an actual cap or simply a target. Another agreed that a maximum needs to be established but offered no recommendation.

*Response:* The Service will award grants up to a maximum of $200,000 per proposal with no more than $200,000 total awarded to any one tribe. There is no proposal or grant award minimum but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

*Part II., Proposed Implementation Guidelines, section C., Ranking Criteria* offers a proposed weighting system by which the Service can determine a relative score for proposals, including Benefit, Performance Measures, Work Plan, Budget, Capacity Building, Commitment, Partnerships, and Administrative Costs. One general comment on the Ranking Criteria was to make them as close as possible to those of the Service's Landowner Incentive Program (LIP). An additional comment asks that the Service better define what this program's priorities are.

*Response:* TLIP funds are handled differently from LIP funds because tribal lands are not predominantly private lands and because tribes are inherently different from States. Congress included tribes in the LIP program but did not provide further guidance in accounting for these inherent differences. TLIP accommodates these differences as necessary but is similar to LIP where possible. Ranking criteria will be more clearly defined in the TLIP guidance.

Regarding the *Benefit* of proposals, 13 comments advocated adding emphasis to this criterion. Two agreed, provided tribes are permitted to set their own goals and priorities to determine which species are to benefit. Two respondents stated that tribal priorities should take precedence over the Service's. One comment favored increasing the emphasis on federally listed endangered species (as identified in the Endangered Species Act), and another specifically suggested that no special preference be placed upon them. A final comment stated that preference should be given to tribes with Integrated Resource Management Plans or Natural Resource Management Plans.

*Response:* The cumulative maximum of 25 points for *Benefit* (0–25) and 20 points for *Performance Measures* (0–20) already places high value on the extent to which the project will benefit fish and wildlife resources. Together these criteria measure value or benefit, for a total score of 30 points. The Service agrees that benefits will be measured against tribal fish and wildlife goals. The Service requires that tribes

articulate how their proposals help support the goals and objectives of the TLIP and Service Performance Goals in their proposal narratives.

By including ''activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species'' tribes are provided with discretion to implement projects that benefit species of conservation concern and species of cultural importance. Special emphasis will not be placed on federally listed endangered species as this is not the focus of this grant program.

Under the heading *Performance Measures*, five comments called for an emphasis to this criterion. Two suggested that the Service de-emphasize it. Three comments suggested that tribal goals be included, and three others called for the inclusion of Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1.

*Response:* The Service believes that quantifiable performance measures are an important ranking criterion. This criterion is weighted adequately in the ranking process. Tribes are required to articulate how their proposals help support the goals and objectives of the TLIP and Service and tribal Performance Goals in their proposal narratives in the *Benefit* criterion. Four comments suggested an added emphasis to the *Work Plan* criterion, and one supported the proposed emphasis on the *Budget* criterion.

*Response:* The Service believes these criteria are adequately emphasized in the ranking process.

Six respondents felt that emphasis should be added to the *Capacity Building* criterion, and one stated further that such projects should be favored in future funding periods. Two asked that the Service remove or de-emphasize this criterion, and two agreed with it as proposed.

*Response:* The Service believes that this criterion is adequately emphasized. Many tribes have limited capacity to develop and implement programs for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species, and TLIP provides an excellent opportunity to increase their capacity. The Service believes that TLIP can enhance the capacity for all tribes to implement programs for the benefit of fish and wildlife, even tribes with relatively sophisticated fish and wildlife departments.

Under the heading *Commitment*, 17 respondents asked that the Service remove or de-emphasize this criterion, 1 agreed with it and 1 advocated for further emphasis. One final respondent suggested that if this match is a ''requirement,'' we should consider lessening the commitment or waiving it in cases of demonstrated hardship.

*Response:* The Service is sensitive to the concerns expressed by many of those commenting on the matching requirements for TLIP. However, Congress specifically requires that tribes make a commitment to their projects and provide a match for these funds in order to leverage Federal dollars. The Service specifically set a low match requirement (25 percent) relative to other Federal grant programs to address this. Many grant programs now require a 100 percent match. In addition, the Service will accept a variety of forms of support from the tribes to meet the match requirement, including cash, in-kind support, equipment, and materials.

Eighteen comments on the *Partnerships* criterion ask that the Service remove or de-emphasize this criterion as proposed. One suggested that letters of support should be considered if funds for a match are not available, and one advocated for an allowance for ''partnerships'' that include non-Federal partners.

*Response:* Partnerships are an increasingly essential tool in the management of natural resources. The Service believes that tribes developing partnerships with other organizations to implement projects under TLIP should be rewarded in the proposal ranking process. The Service agrees that this criterion should be de-emphasized and has reduced the relative value of this criterion. Tribes are especially encouraged to partner with non-Federal entities in order to better leverage Federal dollars and provide greater benefit to Federal taxpayers. In the final guidance *Partnerships* and *Commitment* criteria have been combined into a new category, *Contributions and Partnerships*.

Five comments asked that the Service remove or de-emphasize the proposed *Administrative Costs* criterion, and two agreed with this criterion as proposed. Four comments advocated for not considering the tribal indirect cost rate as administrative cost, and one suggested that the Service specify an allowable amount for indirect cost rates. One comment suggested a limit on allowable administrative costs. Nine comments advocated for making an allowance for staff or seasonal employees by removing the word ''staff'' from the proposed language. Two agreed with the proposed emphasis on Administrative Costs.

*Response: Administrative Costs* is eliminated from the ranking criteria. We have, however, limited the total amount of the grant that can be used for administrative costs to 12 percent unless a waiver is granted by the Regional Director.

Under *Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (1),* proposes that TLIP funds can be used to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities associated with a TLIP project, provided they are included in the budget and discussed in the Program and Budget Narratives. Two comments agreed with this language, and one asked that the allowable activities further specify that TLIP funds may be used to address the costs of adhering to tribal environmental compliance activities.

The Service concurs and does not specify at what level of environmental compliance (Federal, State, tribal, etc.) TLIP funds can be used, so long as they are directly related to the TLIP project or program being funded and are included in the budget and discussed in the program and budget narratives.

*Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (2),* broadly defines the activities that are eligible for funding under TLIP. Three comments called for greater detail in definitions and explanation of the intent of TLIP and provided suggested language to better define tribal lands, wildlife, conservation, Tribal Fish and Game department or Tribal Fish and Wildlife department and wildlife restoration project. One other comment called for the allowance of research projects, and another advocated for the inclusion of archeological surveys by Tribal Historic Preservation Officers.

*Response:* Congress specified that TLIP grants are to be used to establish or supplement programs that provide technical and financial assistance, including habitat protection and restoration, to tribes for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands. The Service believes that tribes may implement TLIP projects on a variety of lands in ''Indian Country,'' including reservations, individual allotments, fee-lands, and village corporation and regional corporation lands in Alaska. Only activities that result in the protection and management of habitat and benefit listed, proposed, candidate, or other at-risk species are eligible for funding. Research projects or archeological projects are not eligible.

*Part II., Proposed Implementation Guidelines, section D., TLIP Operations*

*and Management (3),* defines which activities are not allowable under TLIP. It states that inclusion of activities required to comply with a Biological Opinion or activities required to comply with a permit (*e.g.,* mitigation activities) is not allowable. However, a proposal can include activities that implement conservation recommendations. Two comments expressed concern that no TLIP funds should be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility. One comment asked that ''Biological Opinion'' be further defined. Two comments advocated for allowing for mitigation costs associated with compliance activities related to the Endangered Species Act.

*Response:* All TLIP funds will be awarded to Tribes and will not be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility. The Service appreciates the proposed language but disagrees with the inclusion of ''court directive and Federal agency mandate or directive'' to excluded activities because it would place additional restrictions on tribal proposals. ''Biological Opinion'' refers to Biological Opinions with regard to the Endangered Species Act and this is clarified in the ''Definitions'' section.

*Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (4),* defines what species are considered endangered, threatened, candidate or, at risk. Seven respondents asked that ''species at risk'' be further defined. One of these suggested that the Service define ''species at risk'' as any federally listed, proposed, candidate animal or plant species or other species of concern as determined by a tribe or a State and, further, that species classified as such should be identified in the proposal. One respondent asked that it should be made clear whether plant species are included.

*Response:* For the purposes of TLIP, the Service defines ''species at risk'' as any federally listed, proposed, candidate animal or plant species or other species of concern as determined by a tribe or a State and, further, that species classified as such should be identified in the proposal.

*Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (5),* indicates that tribal trust lands are not public lands and that federally recognized tribes are, for the purposes of participation in TLIP, considered the ''landowners.'' Two comments stated that all tribal (land) interests be eligible for projects.

*Response:* TLIP project funds may be expended on all ''Tribal Lands'' as defined in Section II. Of this Notice.

*Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (6),* states that TLIP is not a continuous revenue source. Two comments advocated for making the TLIP program a continuing source for funding.

*Response:* Because TLIP is an annual Congressional allocation, it is subject to further actions by Congress and cannot be considered a continuing source for funding.

*Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (7),* states that TLIP funds cannot be held in an interest-bearing account. Two comments suggested otherwise.

*Response:* Federal law allows funds to be held in an interest-bearing account, although any interest earned on such funds in excess of $100 must be returned to the fiscally responsible Federal agency (43 CFR 12.64).

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (1),* defines what additional information must be included by the grantees once awards are announced. One comment supported the proposed language.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (2),* states that the lead contact after award announcements should be the Native American Liaison in the grantee's respective Region. One comment advocated for a contact in the Service's Division of Federal Aid to be identified as the initial contact, and one comment agreed with the proposed language.

*Response:* The Native American Liaison will be the lead contact for technical implementation assistance, and the Division of Federal Aid will serve as the principal financial contact.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (3),* states that the Service will award grants within 30 days of the recommendations provided by the national review panel. One comment suggested that a timeline be provided for acceptance and selection of awards, and one comment simply agreed with the stipulated language.

*Response:* A timeline for acceptance and selection of awards is included in the Grant Application Package.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (4),* states that funds will be disbursed, subsequent to funding approval, through the Department of Health and Human Services' SMARTLINK electronic funds transfer (EFT) system. And, that in the instance of demonstrated hardship or need, grantees may request up to 25 percent of the grant award.

One comment said that the Service's Division of Federal Aid be contacted for guidance on compliance with Cash Management Act regarding ''Reimbursable'' as stated in the complete text. Six comments stated that if the Service has the ability to allocate 25 percent of the project funds up front, given demonstrated hardship or need, then all grantees should be eligible without demonstrating hardship or need. Two comments advocated for increasing the initial draw down, one suggested 40 percent, and the other was nonspecific.

*Response:* The Service will advance up to 25 percent of the total award upon request by the grantee.

Three disagreed with the proposed reimbursable mechanism, saying it presents an undue burden on tribes, and asked to have access to funds quarterly or as a lump sum transfer at the onset of a project. Two comments asked if all tribes are EFT compliant, and one suggested that the Service explore a similar process for allocating funds through contracting as in Pub. L. 93–638.

*Response:* Further clarification of the proposed EFT is necessary to explain that funds will be ''reimbursed'' as needed, rather than upon receipt of proof of expenditure. We feel that this does not place a financial burden on the tribes. All Tribes are capable of EFT. Pub. L. 93–638 is a unique mechanism that transfers funds to a tribe for programs that are specifically established for a tribe because of its status as a tribe and enables the recipient tribe to allocate such funds to address other relevant needs and is therefore not consistent with Congressional intent to use such a device.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (5),* addresses the reporting requirements tribes must meet once funds are obligated under a TLIP grant agreement. One comment suggested that language be included to indicate that tribes will be obligated to comply with NEPA, ESA, National Historic Preservation Act, and other relevant Acts. Another comment suggested that the benefits and outcomes of the TWG program be reported to Congress.

*Response:* TLIP projects are subject to legal requirements of Federal regulatory Acts in the context of established Federal/Tribal protocol.

*Response:* A summary of benefits and outcomes of the TWG program will be made available to interested Congressional representatives.

*Part III., Procedural Requirements, sections A., Regulatory Planning and Review; B., Regulatory Flexibility Act; C., Small Business Regulatory Enforcement Fairness Act; D., Unfunded Mandates Reform Act; E., Takings Implications Order; F., Energy Effects; G., Federalism; and H., Civil Justice Reform,* received no comments, although two pertinent general comments suggested that a section be added to clarify how the Freedom of Information Act (FOIA) will apply to information submitted by tribes.

*Response:* The Service will work with the Tribes to ensure that sensitive information is protected.

*Part III., Procedural Requirements, sections I., National Environmental Policy Act,* drew one comment that asked the Service to better determine what is meant in the proposed guidelines by the phrase ''Service will ensure that grants funded through the TLIP program are in compliance with NEPA.''

*Response:* A completed NEPA Checklist and appropriate environmental information will be required in the Grant Narrative from the grantee for review and concurrence by the Service.

*Part III., Procedural Requirements, section J., Consultation and Coordination with Indian Tribal Governments, and K., Paperwork Reduction Act,* were not commented on.

*Part IV., Native American Liaisons for the Fish and Wildlife Service,* was not commented upon.

*General Comments:* Several comments did not readily fit into the above categories. The Service has responded to these comments below.

1. Three comments asked that the Service distinguish between treaty and nontreaty rights.

*Response:* The Service recognizes that treaty rights involve unique responsibilities defining specific rights to treaty-recognized tribes and will work to address them where appropriate within the grant processes.

2. Two general comments stated that there should be no Service administrative cost associated with implementation of this program.

*Response:* There is no provision to fund the Service's administrative costs incurred in the implementation of this program elsewhere. Therefore, 3 percent of the available funds may be used to cover these costs.

3. One comment suggested that the funds for FY 02 and FY 03 be lumped into one proposal period. This same comment recommends that the Service allow for multiyear projects.

*Response:* In the adoption of the Department of the Interior and Related Agencies Appropriations Act of 2003, FY 02 funds under the Landowner Incentive Program (including TLIP) were rescinded by Congress.

4. One respondent advocated for increasing the amount of available funds in TLIP, and three advocated for future funding.

*Response:* TLIP is a 10 percent internal earmark by the Service on the Landowner Incentive Program, which is a Congressional appropriation. The Service is committed under current funding conditions to continue to support the TLIP program.

5. One respondent asked that the Service define the role of public opinion in ranking/selection of proposals.

*Response:* The Service will work to address public comments with the intent of enhancing the administration of TLIP for the benefit of federally recognized tribes.

6. One comment suggested that the Service allow for proposals that combine TLIP and Tribal Wildlife Grant funds.

*Response:* The Service must administer each grant as directed by Congress, and each program differs to some degree, limiting our ability to establish identical criteria.

7. Two respondents stated that there should be no time limit on expenditure of funds.

*Response:* After appropriation, TLIP funds are available until expended. However, grant agreements will be written for an appropriate amount of time to complete the project. Grant agreement periods are negotiable, and funds must be expended within 90 days following the end date of the grant agreement.

8. Two respondents suggested that the Service require postmarks on proposals showing the due date.

*Response:* Proposals postmarked, hand-delivered or otherwise sent in by the due date will be accepted for the grant review process.

9. One comment advocated allowing funds to roll over into the next fiscal year.

*Response:* This is allowable under Service guidelines and is recognized as a necessary option for the success of project initiatives.

10. One comment suggested that the Service allow for an 8-week response period for the Request For Proposals (RFP).

*Response:* In order to address the need to expedite the selection and awarding of proposals, the Service has set the RFP period for the TLIP 45 days. The Service feels that this period is sufficient for tribes to prepare proposals.

11. One comment suggested that the Service allocate funds as quickly as possible after awards are made.

*Response:* It is the Service's intent to accomplish this task, and a timeline will be provided in the Grant Application Kit.

12. One comment suggested that the Service apply the same criteria to both TLIP and TWG.

*Response:* The Service must administer each grant as directed by Congressional appropriation language which differ to some degree for each grant, thus limiting our ability to establish identical criteria for the two grant processes.

Dated: May 3, 2003.

**H. Craig Manson,**

*Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. 03–19120 Filed 7–25–03; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[RIN 1018–AI58]**

### Fiscal Year 2003 Tribal Wildlife Grants; Request for Grant Proposals and Final Policy and Implementation Guidelines

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

**ACTION:** Notice of request for proposals; final policy, and implementation guidelines.

**SUMMARY:** We, the Fish and Wildlife Service (Service) are soliciting project proposals for Federal assistance under the Tribal Wildlife Grants program (TWG). This document describes how you can apply for funding under the TWG and how we will determine which project proposals will be funded. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 authorized an appropriation of $84,800,000 for wildlife conservation grants to States and to the District of Columbia, U.S. Territories, and tribes under provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. The Act further specified that the Service use $5 million of the funds to establish a competitive grant program available to federally recognized Indian

tribes. This language allows the Secretary, through the Director of the Service, to establish a separate tribal grant program that would not be subject to the provisions of the formula-based State Wildlife Grants program, or other requirements of the State Wildlife Grants portion of Pub. L. 107–63. In FY 2003, Congress appropriated $59,800,000 for wildlife conservation grants and specified that the Service use $4,967,500 for the TWG program as well, and we will be combine this latter amount with FY 2002 funds in a single grant cycle. The Service is providing implementation guidance for this combined $9,967,500 TWG program.

**DATES:** Project proposals must be received by the appropriate Regional Office (see Table 1 in **ADDRESSES**) no later than September 11, 2003.

**ADDRESSES:** For information regarding collection requirements, applicants should contact the Native American Liaison in the Service's Regional Office for the State in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 below. Information on the TWG is also available from the U.S. Fish and Wildlife Service, Office of the Native American Liaison, 1849 C Street, NW., Mail Stop 3251, Washington, DC 20240, and electronically at *http://grants.fws.gov/tribal.html.*

Send your project proposal to the Service's Regional Office for the State in which the proposed project would occur (see Table 1 under **ADDRESSES**). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

| Service region | States where the project will occur | Where to send your project proposal | Regional Native American liaison and phone No. |
|---|---|---|---|
| Region 1 | Hawaii, Idaho, Oregon, Washington, Nevada, and California. | Regional Director, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232–4181. | Scott L. Aikin (503) 231–6123. |
| Region 2 | Arizona, New Mexico, Oklahoma, and Texas. | Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW, P.O. Box 1306, Albuquerque, NM 87103–1306. | John Antonio (505) 248–6810. |
| Region 3 | Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. | Regional Director, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, MN 55111. | John Leonard (612) 713–5108. |
| Region 4 | Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. | Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Rm. 410, Atlanta, GA 30345. | James D. Brown (404) 679–7125. |
| Region 5 | Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. | Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589. | D.J. Monette (413) 253–8662. |
| Region 6 | Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. | Regional Director, U.S. Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver, CO 80225–0486. | David Redhorse (303) 236–7905. |
| Region 7 | Alaska | Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199. | Tony DeGange (907) 786–3492. |

**FOR FURTHER INFORMATION CONTACT:** For further information, contact the Native American Liaison in the appropriate Regional Office (see Table 1 under **ADDRESSES**) or Patrick Durham, Office of the Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, Mail Stop 3012 MIB, Washington, DC 20240, 202/208–4133.

**SUPPLEMENTARY INFORMATION:**

## I. Request For Proposals

The Service invites submission of grant proposals from federally recognized Indian tribal governments (including Alaska Native Villages) for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. This program supports the efforts of federally recognized tribal governments in projects that develop or augment the capacity to manage, conserve, or protect fish and wildlife resources through the provision of funding and technical support.

## II. Definitions

The following definitions apply:

1. *Conservation Recommendation*—The Fish and Wildlife Service's non-binding suggestions resulting from formal or informal consultation, under the Endangered Species Act, that: (1) Identify discretionary measures a Federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or candidate species, or designated critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or candidate species, or designated critical habitat; and (3) include suggestions on how an agency can assist species conservation as part of their action and in furtherance of its authorities under section 7(a)(1) of the Endangered Species Act.

2. *Biological Opinion*—Any document that includes: (1) The opinion of the Fish and Wildlife Service or the National Marine Fisheries Service as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed

discussion of the effects of the action on listed species or designated critical habitat under the provisions of the Endangered Species Act.

3. *Habitat*—The area that provides direct support for a given species, population, or community. It includes all environmental features that comprise an area such as air quality, water quality, vegetation and soil characteristics, and water supply.

4. *Mitigation*—Activities carried out under National Environmental Policy Act regulations, for the purpose of moderating, reducing, or alleviating the impacts of a proposed activity, including (a) avoiding the impact by not taking a certain action; (b) minimizing impacts by limiting the degree or magnitude of the action; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by undertaking preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments.

## III. Background

The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 (Pub. L. 107–63) authorized an appropriation of $84,800,000 for wildlife conservation grants to States and to the District of Columbia, U.S. Territories, and tribes under provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. The Act further specified that the Service use $5 million of the funds to establish a competitive grant program available to federally recognized tribes. This language allows the Secretary, through the Director of the Service, to establish a separate tribal grant program that would not be subject to the provisions of the formula-based State Wildlife Grant program, or other requirements of the State Wildlife Grants portion of Pub. L. 107–63. In FY 2003, Congress appropriated $59,800,000 for wildlife conservation grants and specified that the Service use $4,967,500 for the TWG program. We will combine this latter amount with FY 2002 funds in a single grant cycle. The Service is providing guidance in the administration of this combined $9,967,500 Tribal Wildlife Grant program. The Service proposed guidance in a previous **Federal Register** notice (67 FR 79136; December 27, 2002), with the intent of gathering input from the affected communities. The public comments have been carefully considered and incorporated into the following guidelines where appropriate. A series of questions and answers follows and describes the guidelines.

## IV. Implementation Guidelines

### *A. Eligibility*

1. Who May Participate in the TWG Program?

Federally recognized tribes in all parts of the United States, including federally recognized tribes, pueblos, rancherias, and Alaska native villages or traditional councils as defined by the Alaska Native Claims Settlement Act.

2. Are State-Recognized Tribes or Petitioning Tribes Eligible To Receive Grants Under This Program?

No, only federally recognized tribes are eligible to receive grants under this program. Federally recognized tribes are listed in the **Federal Register** (67 FR 46328; July 12, 2002).

3. Can Tribal Organizations or Other Entities (Including Individual Indian Allottees) Receive Grants Under This Program?

No. However, organizations or entities may participate as subgrantees or contractors to federally recognized tribes.

4. What Process Will the Service Use To Solicit and Receive Proposals for Funding?

The Service will request proposals through a **Federal Register** notice, direct contact, and other forms of outreach to eligible applicants. The Service's Regional Directors will receive all proposals.

5. Who Will Coordinate the Scoring of Grant Application Submissions?

The Regional Native American Liaisons of the Service will coordinate the process to screen proposals to ensure that they are complete and to score them according to nationally uniform criteria. Tribes are encouraged to contact the Native American Liaison in the appropriate Regional Office identified in Table 1 under **ADDRESSES** for additional assistance in submitting proposals.

6. How Will Grant Application Submissions Be Reviewed for Funding?

A national panel will review regionally scored proposals for recommendations to the Director of the Service (Director).

7. Who Will Serve as the National Review Panel?

The Regional Native American Liaisons will serve on the panel in addition to other Service and other Federal agency personnel, as appropriate and as may be identified by the Director.

8. Will Tribal Representatives Be Involved in Reviewing or Ranking Proposals?

No, only Federal employees will review and rank proposals in this initial year.

9. Who Will Make the Final Determination for Grant Approval?

The Director will make the final determination for grant award.

10. How Will the Tribes Be Notified Whether or Not They Have Been Awarded Grants.

Applicants will be notified by the Director through the Regional Native American Liaison as to whether or not they have been awarded grants.

### *B. Application Requirements*

1. Is the TWG Program Exempt From Federal Grant Program Compliance?

No, the TWG program must comply with all Federal grant program compliance requirements as specified in 43 CFR part 12: OMB Circulars A–133, A–102, and A–87; and Service Manual Chapters 522 FW1 and 523 FW1, except where specifically exempted. Tribal grantees are responsible for ensuring that subgrantees and contractors adhere to these requirements.

2. What Must Proposals for Participation in the TWG Program Include?

Proposals must include a cover letter, program summary, program narrative, budget narrative, a completed Standard Form 424 Application for Federal Assistance (SF–424), and tribal resolution of support as described herein.

—*A cover letter* briefly states the main features of the proposed project.

—*A program summary* describes, in one-half page, the type of activity that would take place if the Service funds the proposal.

—*A program narrative* clearly identifies the problems that the proposal will correct or help solve as they relate to the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished, and the expected results or benefits. It must contain a needs assessment, objectives, timeline, methodology,

geographic location (with maps), monitoring plan, and identification of clear, obtainable, and quantifiable goals and performance measures that will help achieve the management goals and objectives of the TWG and relevant Service and tribal performance goals. The relevant Service goals are *Goal 1,* Sustainability of Fish and Wildlife Populations, including Migratory Bird Conservation (Goal 1.1), Imperiled Species (Goal 1.2), Interjurisdictional Fish (Goal 1.3), Marine Mammal Management (Goal 1.4), Species of International Concern (Goal 1.5), and Invasive Species (Goal 1.6); *Goal 2,* Habitat Conservation; including Habitat Conservation off Service Lands (Goal 2.3); and Mission *Goal 4,* Partnerships in Natural Resources, including Tribal Governments (Goal 4.1), all of which can be found in the Service's Long-Term Strategic Plan for 2000 to 2005 at *http://planning.fws.gov/USFWStrategicPlanv3.pdf.* Related Service planning and results can be found at *http://planning.fws.gov/.*

—*A budget narrative* clearly justifies all proposed costs and indicates that the grantee will provide adequate management systems for fiscal and contractual accountability, including annual monitoring and evaluation of progress toward desired project objectives, goals, and performance measures. It should include discussion of direct cost items such as salaries, equipment, consultant services, subcontracts, and travel, as well as program matching or cost sharing information. If some partners will provide in-kind matching, they must be listed in the grant proposal with a letter of commitment from each. Applicants may cover new project administrative costs and the Tribal Indirect Cost Rate, but they cannot include pre-existing administrative costs.

—*An SF–424 form* will be included with the Grant Application Package and is available on the internet at *http://training.fws.gov/fedaid/toolkit/sf424-f.pdf.*

—*A resolution of support* from the appropriate tribal governing body or from an individual with delegated tribal authority stating support for the proposal. If a resolution of support is not submitted with the proposal, one will be required prior to awarding the grant.

3. Where Can Applicants Obtain a Grant Proposal Package?

Applicants can obtain a grant proposal package from the Native American Liaison in the appropriate Regional Office (*see* Table 1 under **ADDRESSES**) or at the Service's Grants Web site *http://grants.fws.gov/tribal.html.*

4. Are Matching Funds Required?

No, Congress did not require matching funds for this appropriation. However, the Service will consider matching funds as an indication of tribal commitment to the program and to encourage partnerships.

5. Are In-Kind Contributions Eligible as Matching Funds?

Yes, in-kind contributions provided by the tribe or a third party may be used as a match to improve the potential ranking of a proposal. The Service has defined ''in-kind'' as noncash contributions made by the tribe. In-kind contributions must be necessary and reasonable for carrying out the program, and must represent the same value that the Service would have paid for similar services or property if purchased on the open market. Allowable in-kind contributions are defined in 43 CFR 12.64. Additional information can be found at *http://training.fws.gov/fedaid/toolkit/inkind.pdf.*

6. Can a Tribe Submit More Than One Grant Proposal?

Tribes are encouraged to submit a single comprehensive grant proposal, but multiple proposals are allowable.

7. What Maximum Level of Project Funding Will Be Considered Under the TWG Program?

The Service will award grants up to a maximum of $250,000. If more than one proposal is submitted by any one tribe, no more than $250,000 total can be awarded to that tribe. This amount is approximately 5 percent of the annual appropriation, and it allows for grants that are large enough to make a significant impact and be widely distributed.

8. What Minimum Level of Project Funding That Will Be Considered Under the TWG Program?

There is no proposal or grant award minimum, but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

*C. Ranking Criteria*

What Ranking Criteria Will the Service Use?

The Service will score proposals based on the following criteria: The Proposed Guidelines (FR 79136; December 27, 2002) assigned specific point values to these criteria for the purpose of gaining public comment. On the basis of public comments and our understanding of Congressional intent in creating this program, we assigned the following criteria relative values from 1 (lowest) to 5 (highest).

*Benefit:* What are the expected benefits to fish and wildlife resources, including species that are not hunted or fished, and their habitat if this program is successfully completed? The Service requires that the tribe articulate how the benefits of its proposal support the goals and objectives of the TWG and Service and tribal Performance Goals in their proposal narratives. *Relative Value:* 5.

*Performance Measures:* To what extent does the proposal provide obtainable and quantifiable performance measures and a means to monitor, evaluate, and report on these measures compared to an initial baseline? The measures should be specific and clear, and should provide demonstrable benefits to the target species of the action. These actions must support the goals and objectives of the TWG, the Service and the tribe. *Relative Value:* 4.

*Work Plan:* Are the program activities and objectives well-designed and achievable? *Relative Value:* 3.

*Budget:* Are all major budget items justified in relation to the program objectives and clearly explained in the narrative description? *Relative Value:* 3.

*Capacity Building:* To what extent does the program increase the grantee's capacity to provide for the benefit of wildlife and their habitat? *Relative Value:* 4.

*Contributions and Partnerships:* To what extent does the applicant display commitment to the project proposal through in-kind contribution or matching funds and to what extent does it incorporate contributions from other non-Federal partners in the form of either cash or in-kind services? *Relative Value:* 2.

*D. TWG Operations and Management*

1. In the Course of Implementing a TWG Project or Program, Can Grantees Use TWG Funds to Pay for Costs of Conservation Law Enforcement or Education?

Yes, if the law enforcement or education component is a minor or incidental activity that is considered critical to the success of a project which directly contributes to the conservation of wildlife species and their habitats with the greatest conservation need and is consistent with the development or implementation of the tribe's proposal.

2. What Activities Are Included in the ''Development and Implementation of Programs for the Benefit of Wildlife,'' as Referenced in the Department of the Interior and Related Agencies Appropriations Act for FY 2002?

Activities may include, but are not limited to, planning for wildlife and habitat conservation, ongoing and/or new fish and wildlife management actions, fish and wildlife related laboratory and field research; natural history studies, habitat mapping, field surveys and population monitoring, habitat preservation, land acquisition, conservation easements, and outreach efforts. Priority for funding from the TWG Program shall be for those species with the greatest conservation need identified by the tribe.

3. Can Grantees Use TWG Funds To Cover Costs of Environmental Review, Habitat Evaluation, Permit Review (*e.g.,* section 404), and Other Environmental Compliance Activities Associated With a TWG Project?

Yes, they can fund these activities provided they are directly related to the TWG program or project being funded and are included in the budget and discussed in the program and budget narratives.

4. Are There Any Specific Activities That Are Not Allowable Under the Guidance of TWG?

A proposal cannot include activities required to comply with a Biological Opinion under the Endangered Species Act or include activities required to comply with a permit (*e.g.*, mitigation responsibilities). However, a proposal can include activities that implement conservation recommendations or to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities that are required because of the TWG project, provided they are included in the budget and discussed in the Program and Budget Narratives. Research projects or archeological projects are not eligible.

5. Is the TWG Program a Continuous Revenue Source for Tribal Wildlife Programs?

No, there is no authorization for appropriation of funds beyond FY 2003. Funds appropriated in FY 2002 and FY 2003 are available until spent.

6. Can the Grantee Hold TWG Funds in an Interest-Bearing Account?

Funds can be held in an interest-bearing account, although any interest earned in excess of $100 must be returned to the fiscally responsible Federal agency (43 CFR 12.64).

*E. Grant Award Procedures*

1. What Additional Information Must Be Provided to the Service by the Grantees Once Awards Are Announced?

Once the Director notifies a grantee that their proposal was selected for funding, the recipient must submit a grant agreement and attachments as required by Federal regulations. As with our other Federal programs, TWG agreements must comply with 43 CFR part 12, the National Environmental Policy Act, Section 7 of the Endangered Species Act, the National Historic Preservation Act, and all other applicable Federal laws and regulations. This grant program is also subject to provisions of Office of Management and Budget Circulars No. A–87, A–102, and A–133 (*see http://www.whitehouse.gov/omb/circulars*).

2. Once Grants Are Awarded, Who Should the Grantee Consider as the Lead Contact Person?

Once grants have been awarded, the grantee should consider the appropriate Regional Native American Liaison as the lead contact person for all matters pertaining to the particular award. Financial matters will be delegated to the Division of Federal Aid through the Native American Liaison.

3. When Will the Service Award TWG Grants?

Once the Service has reviewed and ranked all eligible TWG grant proposals, the Director will make his final decision within 30 days of the recommendations of the national review panel.

4. How Will Funds Be Disbursed Once the Service Has Awarded TWG Grants?

Subsequent to funding approval, grant funds are electronically provided through the Health and Human Services' SMARTLINK payment management system. Through this electronic funds transfer (EFT), grantees will be able to receive funds as needed. Some of the tribal grantees may not be EFT compliant. In order to ensure optimal service to potential grantees within the current Federal Aid process, grantees will need to obtain EFT capabilities compatible with the SMARTLINK payment management system. Grantees may request an advance of no more than 25 percent of the total grant if the advance is documented in the grant agreement.

5. What Reporting Requirements Must Tribes Meet Once Funds Are Obligated Under a TWG Grant Agreement?

Quarterly Financial Status Reports (SF–272), which can be found at *http://www.whitehouse.gov/omb/grants/sf272.pdf* must be submitted electronically. A final Financial Status Report (SF–269), which can be found at *http://www.whitehouse.gov/omb/grants/sf269.pdf,* will be due to the Regional Office within 90 days of the grant agreement ending date. An annual performance report—including a list of project accomplishments relative to those which were planned in the grant agreement—will also be required within 90 days of the end of each 12 month period. The effectiveness of each tribe's program, as reported in the annual performance reports, will be an important factor considered during the grant award selection process in subsequent years.

6. Is There a Limitation on the Amount of Funds That May Be Used for Administrative Costs?

Yes, no more than 12 percent of program funds can be used for staff and related administrative costs. If more than 12 percent is necessary to properly and efficiently operate the program, a waiver of this limitation may be provided by the Regional Director based on a written justification explaining why such a waiver is necessary.

**V. Procedural Requirements**

*A. Regulatory Planning and Review (Executive Order 12866)*

This policy document identifies eligibility criteria and selection factors that may be used to award grants under the TWG program. The Service developed this policy to ensure consistent and adequate evaluation of grant proposals that are voluntarily submitted and to help prospective applicants understand how the Service will award grants. According to Executive Order 12866, this policy document is significant and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

1. The TWG will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State or local communities. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 allowed the Secretary to create the TWG program. In addition, grants that are funded will generate

other, secondary benefits, including benefits to natural systems (*e.g.,* air, water) and local economies. All of these benefits are widely distributed and are not likely to be significant in any single location. It is likely that some residents where projects are initiated will experience some level of benefit, but quantifying these effects at this time is not possible. We do not expect the sum of all the benefits from this program, however, to have an annual effect on the economy of $100 million or more.

2. We do not believe the TWG program would create inconsistencies with other agencies' actions. Congress has given the Service the responsibility to administer this program.

3. As a new grant program, the TWG program would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. This policy document establishes a new grant program, authorized by Pub. L. 107–63, which should make greater resources available to applicants. The submission of grant proposals is completely voluntary, but necessary to receive benefits. When an applicant decides to submit a grant proposal, the proposed eligibility criteria and selection factors identified in this policy can be construed as requirements placed on the awarding of the grants. Additionally, we will place further requirements on grantees that are selected to receive funding under the TWG program in order to obtain and retain the benefit they are seeking. These requirements include specific Federal financial management and reporting requirements as well as specific habitat improvements or other management activities described in the applicant's grant proposal.

4. OMB has determined that this policy raises novel legal or policy issues, and, as a result, this document has undergone OMB review.

*B. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*e.g.*, small businesses, small organizations, and small government jurisdictions). Indian tribes are not considered to be small entities for purposes of the Act and, consequently, no regulatory flexibility analysis has been done.

*C. Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996*

This implementation guidance is not considered a major rule under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 804(2)) because it does not have an annual effect on the economy of $100 million or more. The yearly amount of TWG program funds is limited to $5 million in FY 2002 and $4,967,500 in FY 2003.

This implementation guidance will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this implementation guidance will distribute Federal funds to Indian tribal governments and tribal entities for purposes consistent with activities similar to programs under the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act.

This implementation guidance does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

*D. Unfunded Mandates Reform Act*

This implementation guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This guidance 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 (2 U.S.C. 1532).

*E. Takings Implication Assessment (Executive Order 12630)*

This implementation guidance does not have significant ''takings'' implications. This implementation guidance does not pertain to ''taking'' of private property interests, nor does it impact private property.

*F. Executive Order 13211CEnergy Effects*

On May 18, 2001, the President issued Executive Order 1321,1 which speaks to regulations that significantly affect energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This implementation guidance is not expected to significantly affect energy supplies, distribution, or use. Therefore, no Statement of Energy Effects has been prepared.

*G. Executive Order 13132CFederalism*

This implementation guidance does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of States.

*H. Civil Justice Reform (Executive Order 12988)*

This implementation guidance does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the Executive Order 12988.

*I. National Environmental Policy Act (NEPA)*

This implementation guidance does not constitute a Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the implementation guidance is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1, and 516 DM 6, Appendix 1. The Service will be responsible for ensuring that grants funded through the TWG program are in compliance with NEPA.

*J. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

Pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' we have committed to consulting with tribal representatives in the finalization of the implementation guidance for the TWG program. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects. This guidance expands tribal participation in Service programs and allows for opportunities for tribal wildlife management and conservation initiatives across Indian Country. We will continue to consult with tribal governments and tribal entities as a part of the policymaking process and beyond in furthering our mutual goals for the TWG program.

*K. Paperwork Reduction Act (44 U.S.C. 3501)*

The information collection requirements of this program will be largely met through the Federal Aid Grants Application Booklet. Federal Aid has OMB approval for this information collection under Control Number 1018–1019. This approval applies to grants managed by the Division of Federal Aid, even if these grants are for other Divisions of the Service. We are collecting this information relevant to

the eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We are collecting financial and performance information to track costs and accomplishments of these grant 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.

**VI. Summary of Comments and Recommendations**

On December 27, 2002, the Service published the proposed guidelines for the TWG with an open comment period of 1 month (67 FR 79136). On January 27, 2003, we had received a total of 48 comment submissions. Thirty five tribes, 4 tribal organizations, 2 private enterprises, 1 organization, 5 Federal entities, and 1 unaffiliated individual provided suggestions for these proposed guidelines. These comments are addressed below.

In *part I., Background,* we asked several questions of particular concern to the Service regarding a limit on the amount of funding to be made available to any one tribe, our adherence to Congressional intent in the proposed guidelines, and what type of entities were eligible to participate in the TWG. The responses for comments are summarized in the corresponding sections below.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (1–3),* we proposed a competitive program in which only federally recognized tribes would be able to apply for funding but stipulated that tribal organizations and other non-Federal entities may enter into grant agreements as contractors or subgrantees to federally recognized tribes. It was also proposed that non-federally recognized tribes be excluded from submitting proposals.

Eleven comments specifically stated that only federally recognized tribes should be eligible to enter into grant agreements, with one asking that the term ''federally recognized tribe'' be fully explained by including federally recognized tribes; pueblos; rancherias; Alaska Native villages or traditional councils as defined by the Alaska Native Claims Settlement Act; and tribal governing bodies as recognized by the Bureau of Indian Affairs (BIA) such as Indian Reorganization Act councils or tribal entities that have received Self Governance status under the Self Governance Act. No comments advocated for the inclusion of tribes that are not recognized by the Federal Government, although ten noted their agreement with their exclusion from participating in TWG. Two comments advocated for the inclusion of individual Indian trust land allotment owners as eligible direct participants.

Ten comments agreed that tribal organizations may participate as contractors or subgrantees but not as direct applicants to TWG. Four comments advocated for the inclusion of consortia of federally recognized tribes to be eligible participants in TWG as direct applicants. One final suggestion was to clarify the inclusion of Alaska Native Villages and to state that when there exists an agreement with Native corporation landowners to manage their properties, these lands should be eligible for TWG projects.

*Response:* Congress specified the TWG program is only for federally recognized Indian tribes, which includes Alaskan Native Villages, but Congress did not include tribal organizations or consortia. Tribal organizations, consortia, commissions, or other nontribal entities are not directly eligible to receive grants, but may participate as subgrantees or contractors to federally recognized Indian tribes. When an agreement to manage Native corporation lands has been approved by the corporation, these lands will be eligible for TWG projects. Individual Indian allottees are not eligible grantees through TWG but are encouraged to work with States and tribes as subgrantees or contractors.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (4),* it was proposed that the Service would request proposals through a **Federal Register** notice and other forms of outreach and that proposals be received by the respective Regional Directors. There were no comments suggesting an alternative process.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (5–9),* we proposed that the Native American Liaisons in each Regional Office coordinate the screening and ranking of project proposals on the basis of nationally uniform criteria. A national panel would then review the regionally ranked proposals for recommendation to the Director for selection. The proposed panels would be made up of Service and other Federal personnel. The Director will make the final proposal selections on the basis of these recommendations.

Six respondents noted their agreement with nationally uniform ranking criteria, and two favored regional ranking. Eleven advocated for a geographic, land, or population based component to the disbursement of funds or the selection of proposals.

*Response:* The Tribal Wildlife Grants Program is a competitive program for federally recognized Indian tribes regardless of geographic, land, or population based components. All tribes are equally eligible to submit proposals. Therefore, the use of nationally uniform criteria is appropriate for ranking proposals at both the Regional and National levels.

The Service will screen and score proposals in the Regional Offices. A national panel will then make recommendations to the Director based on these outcomes.

The Service examined various possible formulas for selecting proposals based on land area and other factors but was unable to identify any formula that adequately considered the wide variability among tribes, including their land base, population, and distribution across the United States.

Of the comments received on the proposed makeup of the panel, 18 agreed and provided further suggestions as to what other Service or other Federal personnel should be involved. One respondent stated that the Regional Native American Liaisons should act in an advisory capacity to the ranking team, and another stated that Regional Liaisons should be excused from ranking Regional proposals. Eleven comments advocated the inclusion of tribal representation in the ranking process; of these, two specifically identified the Native American Fish and Wildlife Society as an appropriate resource to serve this purpose.

*Response:* The Regional and National panels will consist of Service fish and wildlife professionals and other Federal agency personnel knowledgeable of Native American natural resource issues. The comments received will be considered in the selection of panel members. Regional Native American Liaisons will coordinate the screening and scoring of proposals and will act in an advisory capacity to the regional panels. They will not participate in the actual screening or scoring of proposals. The Regional Native American Liaisons will serve on the national review panel along with other Service personnel to make recommendations to the Director for selection.

The Service has not developed a process for identifying participation of tribal representatives in the ranking process and did not receive specific comments on ways to involve tribal representatives. However, the Service will use the knowledge and experience gained in this initial year and public comments to consider changing the guidelines in future years to include

tribal representatives in the ranking process.

TWG proposed guidelines state that ''the Director will make the final determination for grant approval.'' Six respondents stated their agreement with this language. One respondent disagreed. Three suggested that the national review team be capable of making the final decision on accepting proposals, and two others would like the Regional Native American Liaisons to rank and award proposals in their respective Regions. In addition to these comments, it was suggested that an appeal process should be included for proposals that are not selected.

*Response:* Because this is a nationally competitive program, the Secretary's authority is delegated solely to the Director, who will review recommendations and make final selections. Submitters of proposals not selected will receive information to improve their chances of future selection.

*Part II., Proposed Implementation Guidelines, section B., Application Requirements (1),* states that TWG is not exempt from any of the Federal grant program compliance requirements as specified in 43 CFR part 12, OMB Circulars A–102 and A–87, and Service Manual Chapters 522 FW1 and 523 FW1. Two comments addressed this issue, both in agreement, but one called for the inclusion of language that identified the tribe's fiduciary responsibility over subgrantees and contractors.

*Response:* The language in the proposed notice will be amended to indicate Tribal grantees' responsibility for ensuring that subgrantees and contractors adhere to these requirements.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (2),* general inclusions for proposals in the TWG program are addressed. They include a Cover Letter, Program Summary, Program Narrative, Budget Narrative, and Resolution of Support. Two general comments on this section were received: one stated approval of the proposed components of the grant proposal, and another noted the necessity of keeping the process as simple as possible to alleviate the administrative burden on the applicant.

*Response:* Comments noted.

No comments were received on the requirement of a *Cover Letter* or *Program Summary.*

Sixteen respondents commented on the requirement of a *Program Narrative.* Eleven advocated for the inclusion and/or prioritization of tribal goals rather than ''relevant Service performance goals''; three asked that Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1 be included; and one respondent would like the inclusion of fish to be clearly articulated.

*Response:* The Service recognizes that the tribal grant funding is for the benefit of wildlife and their habitat, including species that are not hunted or fished. The care and maintenance of the nation's fish and wildlife resources is dependent on cooperative efforts of partners. The Service's performance goals articulate the importance of tribal partnerships in Mission Goal 4.1 and the broad range of mutually beneficial resource accomplishments that can result from partnership actions. The final advice is modified to include Mission Goal 4.1, Tribal Partnerships and resource-related goals, including 1.1; 1.2; 1.3; 1.4; 1.5; 1.6, Sustainability of Fish and Wildlife Populations (*http://planning.fws.gov/tableofcon.html*).

Under the heading *Budget Narrative,* one respondent asked the Service to clarify the meaning of ''administrative costs'' to include or exclude indirect costs, and advocated excluding indirect costs. Another comment suggested a 15 percent maximum for Indirect Cost Rates.

*Response:* The Service determined that administrative costs are those that can be directly related to allowable costs as defined in 43 CFR 12.62, as well as in OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments). Indirect costs are also explained in OMB Circular A–87; indirect costs are allowable as direct costs if the applicant has an approved indirect cost agreement with its cognizant agency. All costs, whether direct or indirect, must be included in the grant proposal and are subject to the grant award maximum of 25 percent.

Nine comments were submitted regarding the requirement of a *Resolution of Support* from the appropriate tribal governing body that supports the proposed project. One expressly opposed this requirement. Nine said that often it is not reasonable to expect a tribal governing body to meet during the open period for submitting grant proposals. Several comments proposed remedies that would allow for a letter of support from the ''duly elected leader of the tribe'' or the ''Tribal Chair or Councilperson.'' Another suggested alternative was to allow for an extended open period to account for varying meeting schedules for tribal councils.

*Response:* The requirement for a *Resolution of Support* is an assurance that the tribal governing body supports the proposed project and the actions necessary to realize the natural resource benefits identified in the proposal. The Service recognizes that there could be times when a tribal resolution of support for a proposal may not be logistically possible. The Service will amend the requirement to accept a letter or signed endorsement from an individual with delegated tribal authority. If a resolution of support is not submitted with the proposal, one will be required from the tribal governing body prior to the Service's awarding of the grant.

*Part II., Proposed Implementation Guidelines, section B., Application Requirements (3),* states that the proposal package will be made available through the Service's Regional Native American Liaisons. Two comments pointed out that they would like to be able to download the proposal package from the Internet.

*Response:* The Service is required to provide access to application packages through as many sources as available. Therefore, application guidelines and packages for this grant program can be obtained through Regional Native American Liaisons as well as through the Service's Web site at *http://grants.fws.gov/tribal.html.*

*Part II., Proposed Implementation Guidelines, section B., Application Requirements (4),* states that matching funds are not required. However, they are encouraged and the proposed ranking criteria will consider them as an indication of commitment and to encourage partnerships. Two comments asked that the Service eliminate or decrease the value of this requirement.

*Response:* These comments are addressed in part II., C., Ranking Criteria.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (5),* the Service outlines the proposed allowance for in-kind contributions as meeting a matching funds requirement and provides additional information as to how it defines in-kind contributions. One respondent agreed, and one disagreed, pointing out that this would add no value to a proposal. Another asked that the Service clarify whether or not funds may be expended in multiyear projects and, if so, for how many years. One comment indicated that if matching funds are not required, then it is not fair to use them in ranking proposals for selection.

*Response:* The Service has identified those costs that are considered allowable as in-kind contributions or matching funds. These have been identified in Service Manual 522 FW 1

and in 43 CFR 12.64. A grantee can provide materials, equipment, or other services as a noncash match for portions of the grantee's matching share. Congress did not require matching funds for this appropriation. However, the Service will consider matching funds as an indication of tribal commitment to the program and to encourage partnerships.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (6),* the Service indicates that tribes are encouraged to submit a single proposal but may submit additional proposals if all of the funds are not expended. Three comments agreed that one proposal is sufficient as long as the tribe can bundle several projects, with the understanding that portions may be rejected. Two stated that a single proposal is a good target but that the Service should not exclude multiple proposals outright. Three advocated for multiple proposals, and one asked the Service to definitively state whether one or multiple proposals are allowable. One comment asks the Service to explain how excess funds will be handled.

*Response:* Tribes are encouraged to submit one proposal, but multiple proposals are allowable. The Service does not anticipate that excess funds will be available.

*Part II., Proposed Implementation Guidelines, section B., Application Requirements (7 and 8),* recommends no minimum and that a maximum of approximately 5 percent of available funds ($250,000) be implemented. Depending upon the number of proposals submitted and the relative merit of each proposal, some applicants may receive greater amounts. One recommendation stated that a $5,000 minimum be placed on proposals to relieve administrative burden on the Service. Eighteen comments supported 5 percent as a non-binding target but not as a strict cap. Other comments recommended a $75,000 and $100,000 limit on proposals, and four advocated for no cap at all. Others suggested a 1, 2, or 2.5 percent cap on proposals. One comment advocated for a cap based on the land base of projects but did not offer any further explanation. It was also suggested that the Service state clearly whether a suggested limit is an actual cap or simply a target.

*Response:* The Service will award grants up to a maximum of $250,000 per proposal with no more than $250,000 total awarded to any one tribe. There is no proposal or grant award minimum but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

Several other comments were received that offered additional feedback. One suggested allowance for partial funding of proposals. Another offered that the TWG could be divided into a large and small grants program to ensure greater participation.

*Response:* Proposals will be scored and ranked on the relative merit of each proposal. The Service may need to partially fund one or more proposals to fully allocate the funds. Small-grant and large-grant programs may be considered in the future.

*Part II., Proposed Implementation Guidelines, section C., Ranking Criteria,* offers a proposed weighting system by which the Service can determine a relative score for proposals including Benefit, Performance Measures, Work Plan, Budget, Capacity Building, Commitment, Partnerships, and Administrative Costs. Two general comments on the Ranking Criteria advised the Service to make them as close as possible to those of the State Wildlife Grants program. One agreed with the proposed criteria but, encouraged consultation with tribes to ensure adequate knowledge of Service goals and strategies. An additional comment asked that the Service better define this program's priorities.

*Response:* Ranking criteria will be clearly defined in the TWG guidance. The State Wildlife Grants Program is not a competitive grant program and has no ranking criteria.

Regarding the *Benefit* of proposals, 12 comments advocate for adding emphasis to this criterion. Four agreed with this criterion if tribes set their own goals and priorities to determine which species are to benefit. Two respondents asked further that the Service define what is meant by the language ''including species that are not hunted or fished,'' and stated that tribal priorities should take precedence over the Service's. One comment favored increasing the emphasis on federally listed endangered species (Endangered Species Act), and another specifically suggested that no special preference be placed on them. A final comment stated that preference should be given to tribes with Integrated Resource Management Plans (IRMPs) or Natural Resource Management Plans.

*Response:* The cumulative maximum of 25 points for *Benefit* (0–25) and 20 points for *Performance Measures* (0–20) already places high value on the extent to which the project will benefit fish and wildlife resources. The Service agrees that benefits will be measured against Tribal fish and wildlife goals. The Service requires that tribes articulate how their proposals help support the goals and objectives of the TWG and Service and tribal Performance Goals in their proposal narratives.

By including species that are not hunted or fished, the Service provides tribes with discretion to implement projects that benefit species of conservation concern and species of cultural importance. Special emphasis will not be placed on federally listed endangered species, as this is not the purpose of this grant program. These funds may be used to develop IRMPs (or equivalent); therefore, to give preference to those tribes that already have IRMPs is not appropriate.

Under the heading *Performance Measures,* four comments call for an emphasis to this criterion. Two suggested that the Service de-emphasize or delete it, but suggested that if tribal goals rather than the Service's goals were prioritized, ''Performance Measures'' would be an acceptable criterion. Four additional comments suggested that tribal goals be included, and three others call for the inclusion of Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1.

*Response:* The Service believes that quantifiable performance measures are an important ranking criterion. This criterion is weighted adequately in the ranking process. Tribes are required to articulate how their proposals help support the goals and objectives of the TWG and Service and tribal Performance Goals in their proposal narratives in the *Benefit* criterion.

Seven comments suggested an added emphasis to the *Work Plan* criterion, and one supported the proposed emphasis on the *Budget* criterion.

*Response:* The Service believes these criteria are adequately emphasized in the ranking process.

Six respondents felt that emphasis should be added to the *Capacity Building* criterion, and one stated further that such projects should be favored in future funding periods. Two asked that the Service remove or de-emphasize this criterion, and one agrees with it as proposed.

*Response:* The Service believes that this criterion is adequately emphasized. Many tribes have limited capacity to develop and implement programs to benefit fish, wildlife, and their habitats, and the TWG program provides an excellent opportunity to increase their capacity. The Service believes that the TWG program can enhance the capacity for all tribes to implement programs for the benefit of fish and wildlife, even tribes with relatively sophisticated fish and wildlife departments.

Under the heading *Commitment,* the Service asks to what extent the applicant displays commitment to the proposed project through in-kind or matching funds. Sixteen respondents asked that the Service remove or de-emphasize this criterion, and two agreed with it as proposed.

*Response:* Although Congress did not include a matching requirement for the TWG program, the Service believes that tribes making a commitment in their proposals to provide a match should be rewarded in the competitive ranking process. In addition, the Service will accept other forms of support from the tribes to meet the match requirement including cash, in-kind support, equipment, and materials. Matching contributions are non-Federal (tribal or partner) cash or in-kind contributions. Funds derived from Pub. L. 93–638 contracts are allowable as matching funds.

Eighteen comments on the *Partnerships* criterion asked that the Service remove or de-emphasize this criterion, and one agreed with it as proposed. One suggested that letters of support should be considered if funds for a match are not available, and one advocated for an allowance for ''partnerships'' that includes non-Federal partners.

*Response:* Partnerships are an increasingly essential tool in the management of natural resources. The Service believes that tribes developing partnerships with other organizations to implement projects under TWG should be rewarded in the proposal ranking process. The Service agrees that this criterion should be de-emphasized and has reduced the relative value of this category. Tribes are especially encouraged to partner with non-Federal entities in order to better leverage Federal dollars and provide greater benefit to Federal taxpayers. In the final guidance, *Partnerships* and *Commitment* criteria have been combined into a new category, *Contributions and Partnerships.*

Two comments asked that the Service remove, and six asked that the Service de-emphasize, the proposed *Administrative Costs* criterion. One agreed with it as proposed. Seven comments advocated not considering tribal indirect cost rate as administrative cost, with one seeking to place a 15 percent maximum allowable for indirect cost rates. One comment suggested a limit on allowable administrative costs. Eight comments advocated making an allowance for staff or seasonal employees by removing the word ''staff'' from the proposed language.

*Response: Administrative Costs* is eliminated from the ranking criteria. We have, however, limited the total amount of the grant that can be used for administration costs to 12 percent unless a waiver is granted by the Regional Director.

*Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (1),* allows that TWG funds can be used to cover the costs of Conservation Law Enforcement. The Service received no comments.

*Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (2),* broadly outlines the activities that are eligible for funding under TWG. Three comments proposed language to better define wildlife, conservation, Tribal Fish and Game Department or Tribal Fish and Wildlife Department, and wildlife-restoration project. The respondent advocated for inserting the following: ''Priority for funding from the TWG Program shall be for those species with the greatest conservation need identified by the tribe.'' Another comment suggested that the Service better define the purpose of the TWG program.

*Response:* The Service appreciates these thorough and constructive comments, and has used them in revising the program guidance and in developing a *Definitions* section. The Service agrees with and has incorporated the proposed statement.

As defined by Congress, the intent of the TWG program is ''for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished.''

One comment suggested that the Service consider a cap on land purchase and that projects with land acquisitions in the match category should be encouraged. One comment proposed that research projects should receive equal consideration in the ranking process. One requested clarification on whether TWG funds can be used for conducting archeological surveys by Tribal Historic Preservation Officers to comply with the NHPA for a TWG project; one advocated for habitat improvement projects; and one advocated ''culturally acceptable projects.''

*Response:* Land acquisition is an eligible activity under TWG. The Service has capped all projects under TWG, including lands acquired with TWG funds, at $250,000. The associated value of certain land acquisitions can be used as match to aid in the scoring of the proposal.

Research, habitat improvement, and ''culturally acceptable'' projects are eligible for funding given their relative applicability to the guidelines established for TWG.

Under Section 106 of the National Historic Preservation Act, projects must comply with the Act. If it is known before project implementation that an archaeological investigation is warranted, then the cost for such investigation or survey can be included in the overall project proposal when submitted to the Service.

*Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (3),* proposes that TWG funds can be used to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities associated with a TWG project, provided they are included in the budget and discussed in the Program and Budget Narratives. One comment agreed with this proposed explanation, and two asked that the allowable activities further specify that TWG funds may be used to address the costs of adhering to tribal environmental compliance activities.

*Response:* TWG funds can be used to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities associated with a TWG project provided they are included in the budget and discussed in the Program and Budget Narratives of the project proposal.

*Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (4),* defines which activities are not allowable under TWG. It states that a proposal may not include activities required to comply with a Biological Opinion or activities required to comply with a permit (*e.g.*, mitigation activities). However, a proposal can include activities that implement conservation recommendations. Several comments said that no TWG funds should be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility and suggested that this section be strengthened by indicating so. Two comments agreed with this section, with the inclusion of ''court directive and Federal agency mandate or directive'' to those activities that cannot be included in a proposal. Some respondents agreed that mitigation under a Biological Opinion should not be funded through TWG. Recommended language from one comment: ''A proposal cannot include activities required to comply with a BO, court directive, Federal agency mandate or directive, or include activities required to comply with a permit (mitigation

responsibilities). However, a proposal can include activities to implement conservation recommendations.'' One comment asked that ''Biological Opinion'' be further defined.

*Response:* All TWG funds will be awarded to tribes and will not be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility. The Service appreciates the proposed language but disagrees with the inclusion of ''court directive and Federal agency mandate or directive'' as excluded activities in a grant project, because doing so would place additional restrictions on tribal proposals. ''Biological Opinion'' refers to Biological Opinions with regard to the Endangered Species Act and this is clarified in the ''Definitions'' section.

*Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (5),* states that TWG is not a continuous revenue source, and one comment advocated for making the TWG program a continuing source for funding.

*Response:* Because TWG is an annual Congressional allocation, it is subject to further actions by Congress and cannot be considered a continuing source of funding.

*Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (6),* stated that TWG funds cannot be held in an interest-bearing account. Two comments suggested otherwise.

*Response:* Federal law allows funds to be held in an interest-bearing account although any interest earned on such funds in excess of $100 must be returned to the fiscally responsible Federal agency (43 CFR 12.64).

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (1),* defines which additional information must be included by the grantees once awards are announced. The Service received no comments.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (2),* states that the lead contact after award announcements should be the Native American Liaison in the grantee's respective Region. One comment advocated for a contact in the Service's Division of Federal Aid to be identified as the initial contact.

*Response:* The Native American Liaison will be the lead contact for technical implementation assistance, and the Division of Federal Aid will serve as the principle financial contact.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (3),* stated that the Service will award grants within 30 days of the recommendations provided by the national review panel. One comment suggested that a timeline be provided for acceptance and selection of awards, and one comment simply agreed with the stipulated language.

*Response:* A timeline for acceptance and selection of awards is included in the Grant Application Package.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (4),* states that funds will be disbursed, subsequent to funding approval, through the Department of Health and Human Services' SMARTLINK electronic funds transfer system (EFT). And, that in the instance of demonstrated hardship or need, grantees may request up to 25 percent of the grant award.

Four comments stated that if the Service has the ability to advance 25 percent of the project funds up front, given demonstrated hardship or need, then all grantees should be eligible without demonstrating hardship or need. Two comments advocated for increasing the initial draw down, one suggests 40 percent and the other is nonspecific.

*Response:* The Service will advance up to 25 percent of the total award upon request by the tribe.

Four disagreed with the proposed reimbursable mechanism, saying it presents an undue burden on tribes, and asked to have access to funds quarterly or as a lump sum transfer at the onset of a project. One comment asked if all tribes are electronic funds transfer (EFT) compliant.

*Response:* Further clarification of the proposed EFT is necessary to explain that funds will be ''reimbursed'' as needed rather than upon receipt of proof of expenditure. We feel that this does not place a financial burden on the tribes. All tribes are capable of EFT. As a grantee incurs expenses, funds to pay these can be drawn down via SMARTLINK.

*Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (5),* addresses the reporting requirements tribes must meet once funds are obligated under a TWG grant agreement. One comment suggested that language be included to indicate that tribes will be obligated to comply with NEPA, ESA, National Historic Preservation Act, and other relevant Acts. Another comment suggested that the benefits and outcomes of the TWG program be reported to Congress.

*Response:* TWG projects are subject to legal requirements of Federal regulatory Acts in the context of established Federal/Tribal protocol.

*Response:* A summary of benefits and outcomes of the TWG program will be made available to interested Congressional representatives.

*Part III., Procedural Requirements, sections A., Regulatory Planning and Review; B., Regulatory Flexibility Act; C., Small Business Regulatory Enforcement Fairness Act; D., Unfunded Mandates Reform Act; E., Takings Implications Order; F., Energy Effects; G., Federalism; and H., Civil Justice Reform,* received no comments, although two pertinent general comments suggested that a section be added to clarify how the Freedom of Information Act will apply to information submitted by the tribes.

*Response:* The Service will work with the tribes to ensure that sensitive information is protected.

*Part III., Procedural Requirements, section I. National Environmental Policy Act,* drew one comment asking that the Service better determine what is meant by the phrase ''Service will ensure (that grants funded through TWG are in compliance with the National Environmental Policy Act)'' in the proposed guidelines.

*Response:* A completed NEPA Checklist and appropriate environmental information will be required in the Grant Narrative from the grantee for review and concurrence by the Service.

*Part III., Procedural Requirements, section J., Consultation and Coordination with Indian Tribal Governments, and K., Paperwork Reduction Act* were not commented upon.

*Part IV., Native American Liaisons for the Fish and Wildlife Service,* was not commented upon.

*General Comments:* We received several comments that did not readily fit into the above categories. The Service has responded to these comments below.

1. Three comments asked that the Service distinguish between treaty and nontreaty rights.

*Response:* The Service recognizes that treaty rights involve unique responsibilities defining specific rights to treaty-recognized tribes and will work to address them where appropriate within the grant processes.

2. One respondent advocated for the inclusion of nontrust tribal lands in TWG projects.

*Response:* This is an allowable request under TWG.

3. Four general comments stated that there should be no Service administrative cost associated with implementation of this program's $5 million allocation.

*Response:* Service administrative costs will not be charged against the $5 million allocation.

4. One comment suggested that the funds for FY02 and FY03 be combined into one proposal period. This same comment recommended that the Service allow for multiple-year projects.

*Response:* FY02 and FY03 funds will be combined and disbursed through one proposal period. A grant award can provide for multiple-year projects. Multiple-year projects still require annual performance and financial reports. The performance reports should be submitted to the Native American Liaison and the financial reports to the Federal Aid Office.

5. One respondent asked that the Service define the role of public opinion in ranking/selection of proposals.

*Response:* The Service will work to address public comments with the intent of enhancing the administration of the Tribal Wildlife Grants as Congress intended for the benefit of federally recognized tribes.

6. Two respondents suggested that the Service require postmarks on proposals showing the due date.

*Response:* Proposals postmarked, hand-delivered, or otherwise sent in by the due date will be accepted for the grant review process.

7. A comment suggested that the Service allow for proposals that combine TWG and the Tribal-Landowner Incentive Program (TLIP) and apply the same criteria to both TLIP and TWG.

*Response:* The Service must administer each grant as directed by Congress, and each program differs to some degree, thus limiting our ability to establish identical criteria.

8. Three comments advocated for future funding of the TWG program and one respondent advocated for increasing the amount of available funds in the TWG program.

*Response:* The President's budget request to Congress for FY04 includes $5 million for TWG.

9. One respondent suggested that there should be no time limit on expenditure of funds, and a similar response advocated for allowance for rollover into the next fiscal year.

*Response:* After appropriation, TWG funds are available until expended. However, grant agreements will be written to allow an appropriate amount of time to complete the project. Grant agreement periods are negotiable, and funds must be expended within 90 days following the end date of the grant agreement.

10. One respondent asked that an 8 week response period be invoked for the open Request For Proposals period (RFP).

*Response:* In order to address the need to expedite the selection and awarding of proposals, the Service has set the RFP period for the TWG program at 45 days. The Service feels that this period is sufficient for tribes to prepare proposals.

11. One respondent asked that the Service allocate funds as quickly as possible after awards are made.

*Response:* It is the Service's intent to accomplish this task, and a timeline will be provided in the Grant Application Kit.

Dated: May 2, 2003.

**H. Craig Manson,**

*Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. 03–19121 Filed 7–25–03; 8:45 am]

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Federal Register

Monday,
July 28, 2003

# Part VI

# The President

## Proclamation 7692—National Korean War Veterans Armistice Day, 2003

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7692 of July 24, 2003**

## National Korean War Veterans Armistice Day, 2003

**By the President of the United States of America**

**A Proclamation**

When North Korean troops invaded South Korea on June 25, 1950, the United States took immediate action to defend the freedom of a people unjustly attacked. Leading a coalition of 20 other countries, American and South Korean troops fought to advance liberty and opportunity and to overcome cruelty and repression. More than 1.7 million Americans faced forbidding terrain and harsh combat in battles such as Pork Chop Hill, Heartbreak Ridge, the Pusan Perimeter, and the Chosin Reservoir. Throughout the conflict, the members of our Armed Forces demonstrated extraordinary honor, skill, and courage.

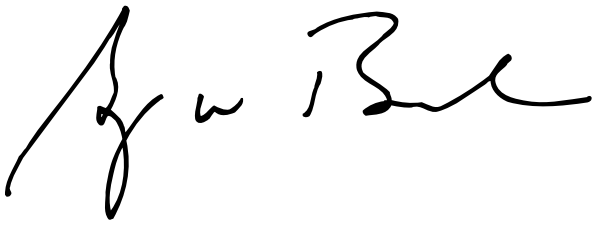
The Military Armistice Agreement of July 27, 1953, ended 3 years of bitter warfare on the Korean Peninsula and stopped the spread of Communism in Korea, signaling to the world America's resolve to stand against tyranny and totalitarian regimes. Fifty years later, our Nation remains grateful for the bravery and sacrifice of our Korean War veterans. They defended human freedom, liberated the oppressed, and selflessly protected the democratic ideals that made our Nation strong. Their efforts reflect the honorable and decent spirit of America. More than 34,000 of America's service men and women gave their lives in battle in the Korean War. As we continue our fight to extend freedom today, we remember and honor their sacrifices and those of their families.

Thanks in large measure to the veterans of the Korean War, South Korea today stands as a shining example of the economic and social benefits of democracy. As we observe the 50th anniversary of the Armistice, America looks forward to the day when the stability of the Korean Peninsula is built on peaceful reconciliation of North and South. We pledge to work with the Republic of Korea to further our shared values of democracy, human rights, and free enterprise. And we will continue to build upon the comprehensive and dynamic relationship between our two nations to promote peace and prosperity on the Korean Peninsula and in Northeast Asia.

The Congress, by Public Law 104–19 as amended (36 U.S.C. 127), has designated July 27, 2003, as ''National Korean War Veterans Armistice Day'' and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 27, 2003, as National Korean War Veterans Armistice Day. I call upon all Americans to observe this day with appropriate ceremonies and activities that honor and give thanks to our distinguished Korean War veterans. I also ask Federal departments and agencies and interested groups, organizations, and individuals to fly the flag of the United States at half-staff on July 27, 2003, in memory of the Americans who died as a result of their service in the Korean War.

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



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**S. 709/P.L. 108–60**

To award a congressional gold medal to Prime Minister Tony Blair. (July 17, 2003; 117 Stat. 862)

**Last List July 16, 2003**

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

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