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U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

8–7–03 Thursday
Vol. 68 No. 152 August 7, 2003

Pages 46919–47200

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 996

[Docket No. FV03–996–2 IFR]

Change in Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes peanut quality and handling standards for domestic and imported peanuts marketed in the United States. These changes are based on comments received from the Peanut Standards Board (Board) and other industry sources. The standards and the Board were established by the Department of Agriculture (USDA), pursuant to section 1308 of the Farm Security and Rural Investment Act of 2002. This rule changes screen sizes specified in the outgoing quality standards to allow smaller peanut kernels of all varieties to be used in edible markets; specifies in the text of the regulations that financially interested persons may appeal quality inspection results and that ''holders of the title'' to any lot of peanuts may appeal aflatoxin test results; allows peanut lots which meet minimum damage and minor defect standards prior to blanching, but fail for some other reason, to be exempt from damage and minor defect standards upon re-inspection after blanching; and increases to 10 percent the quantity of sound whole kernels that may be contained in lots of splits for specified peanut varieties. These changes are intended to maximize handling efficiency and to provide the producers, handlers, and importers with flexibility to meet current and new market demands, while maintaining peanut quality and wholesomeness for consumers.

DATES: Effective August 8, 2003; comments received by September 8, 2003 will be considered prior to issuance of a final rule.

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.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made 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: Jim Wendland or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, suite 2A04, Unit 155, Riverdale, Maryland 20737; telephone (301) 734–5243, Fax: (301) 734–5275 or George J. 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; or E-mail: *james.wendland@usda.gov*, *kenneth.johnson@usda.gov* or *george.kelhart@usda.gov.*

Small businesses may request information on complying with this rule by contacting Jay Guerber, at the same address as above, or E-mail: *jay.guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171), 7 U.S.C. 7958, hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this interim final rule in conformance with Executive Order 12866 and has determined it to be non-significant.

This 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.

There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

Section 1308 of the Act requires that USDA take several actions with regard to peanuts marketed in the United States: ensure mandatory inspection on all peanuts marketed in the United States; establish the Board comprised of industry representatives to advise USDA; and develop peanut quality and handling standards; and to modify those quality and handling standards when needed. An interim final rule was published in the **Federal Register** (67 FR 57129) on September 9, 2002, terminating the previous peanut programs and establishing standards in Part 996 to insure the continued inspection of 2002 crop year peanuts and subsequent crop year peanuts, 2001 crop year peanuts not yet inspected, and 2001 crop year failing peanuts that had not yet met disposition standards. The initial Board was selected and announced on December 5, 2002. A final rule finalizing the interim final rule was published in the **Federal Register** (68 FR 1145) on January 9, 2003, to continue requiring all domestic and imported peanuts marketed in the United States to be handled consistent with the handling standards and officially inspected against the quality standards of the new program. The provisions of this new program continue in force and effect until modified, suspended, or terminated.

Pursuant to the Act, USDA has consulted with Board members in the review of the handling and quality standards for the 2003 and subsequent crop years. USDA conducted a meeting with Board members on April 30, 2003. The changes were raised and supported by Board members. In addition to the meeting, USDA received written comments from Board members and others on recommended changes to the peanut handling and quality standards.

This rulemaking action: (1) Changes screen sizes specified in the outgoing

quality standards to allow smaller peanut kernels of all varieties to enter edible channels; (2) specifies in the text of the regulations that financially interested persons may appeal quality inspection and that ''holders of the title'' to any lot of peanuts may appeal aflatoxin test results; (3) allows peanut lots which meet minimum damage and minor defect standards, but fail for other reasons, prior to blanching, to be exempt from minimum damage and minor defect standards upon re-inspection after blanching; and (4) increases to 10 percent the quantity of sound whole kernels that may be contained in lots of splits for specified peanut varieties. These changes are intended to maximize handling efficiency and to provide the producers, handlers, and importers with flexibility to meet current and new market demands, while maintaining peanut quality and wholesomeness for consumers.

The quality and handling standards are intended to assure that satisfactory quality and wholesome peanuts are used in domestic markets. All peanuts intended for human consumption must be officially inspected and graded by the Federal or Federal-State Inspection Service and undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA. The maximum allowable presence of aflatoxin is 15 parts per billion (ppb), the same standard as required under the three previous peanut programs. This tolerance has been in effect for more than 15 years and was in effect at the time the previous peanut programs were terminated. Once certified as meeting outgoing quality standards, peanuts may not be commingled with any other peanuts that have failed outgoing quality standards or any residual peanuts from reconditioning operations.

Small Kernel Usage

Prior to establishing the quality standards that were applied during the 2002–03 crop year, a few peanut handler members of the Board suggested changing the shape and size of the holes in screens used to sort out small kernels. The changes discussed would have increased the number of smaller kernels that rode the screens and that could have entered edible channels.

The shape of the opening, slotted vs. round, is a significant factor in the number of smaller kernels that fall through or ride the screens. Slotted screens resemble the shape of peanuts and allow kernels to fall through as they bounce down the screen during the sorting process. Kernels fall through round openings only when striking the opening on end or ''standing up'' as they bounce down the screen. When more kernels ride the screen, more are available for edible channels.

Proponents of smaller kernel use claimed that end-product manufacturers now have markets for smaller, whole kernels. They also claimed that modern, electronic color sorting technologies can sort out smaller kernels that are moldy or defective. Opponents, including some handlers and grower representatives, claimed that the benefits of increased use of small kernels were not worth the increased risk of aflatoxin contamination. Based on studies conducted by the Agricultural Research Service (ARS) going back to at least 1979, the industry was aware that there is a higher incidence of aflatoxin contamination in smaller peanut kernels.

Most Board members agreed that new research was needed on small kernel sizes and aflatoxin contamination before any change was made. USDA decided not to change screen sizes for the 2002–03 crop year and asked ARS to conduct another analysis of the incidence of aflatoxin in small peanut kernels. ARS peanut size and aflatoxin studies using 2002 crop farmers stock runner type peanuts from the Southeast (the peanuts and region most likely to have aflatoxin contamination) measured the contamination of kernels that fell through a 16/64 inch slotted screen and those that rode a 17/64 inch round screen. The completed results, received by Fruit and Vegetable Programs on January 21, 2003, indicated that there was a small, but not significant, increase of aflatoxin associated with the smaller peanut kernel size.

Past research demonstrated that three farmers stock grade components are associated with aflatoxin. These are damage, loose-shelled kernels, and small and other kernels. Very little aflatoxin is associated with high quality farmers stock peanuts associated with the farmers stock grade referred to as sound mature kernels and sound splits. Studies conducted by sampling 120 contaminated farmers stock lots, published in 1998, showed that these three risk components accounted for 93.1 percent of the total aflatoxin in a farmers stock lot, but only 18.4 percent of the lot kernel mass. Aflatoxin in sound mature kernels and sound splits, small and other kernels, loose shelled kernels, and damaged kernels represented 6.9, 7.9, 33.3, and 51.9 percent of the total aflatoxin. The small kernels had the lowest risk of the components. The findings of research performed in previous years were similar.

ARS believes that the results of the past studies are consistent with the current study presented to the Board in April 2003. The peanuts that rode the 17/64 inch round screen were a mix of sizes from small to large (not only small kernels as in the past studies). The mix of sizes was used to better duplicate sheller milling lines and processing practices. The aflatoxin impact was minimal because small and other kernels have the lowest aflatoxin risk of the three risk components and the small kernels composed a small percentage of the different sizes riding the 17/64 inch round screen. The higher the percentage of small kernels riding a 17/64 inch round screen, the greater the aflatoxin impact that small kernels will have on the lot in question. The percentage of small kernels that fell through the 16/64 inch slotted screen and rode the 17/64 inch round screen varied greatly from lot to lot in the study presented to the Board. They averaged about 7 and 21 percent in the current study, respectively. In the final analysis, the aflatoxin impact of the smaller kernels was not significant according to ARS.

The Board discussed the peanut size and aflatoxin study at its April 30, 2003, meeting, and recommended relaxation of quality standards to allow smaller peanut kernels to be used for human consumption because the increase in aflatoxin in small kernels was not determined to be significant. All Board members agreed that quality and wholesomeness are paramount for producers, handlers, and importers, but the industry believes that it can continue to provide buyers with high quality and wholesome peanuts with changed screen size.

Compliance officers report that out of 77 shellers, a total of 62 have electronic sorting technology to sort out defective small kernels and further improve peanut quality and wholesomeness. The 15 shellers without sorting technology in their plants only shell seed peanuts, which are not shipped to the edible market.

Several industry representatives at last year's Board meeting also cited the pungent taste of small kernels as a quality factor that should weigh against the use of smaller peanut kernels. No such concerns were mentioned or discussed at this year's Board meeting, or in the comments received subsequent to the Board meeting.

The screen size changes are shown in the table in § 996.31(a) Minimum Quality Standards: Peanuts for Human Consumption—Whole Kernels and Splits: Maximum Limitations, under the column for Sound Whole Kernels. Under the ''Excluding lots of splits''

category, this action changes the screen size for Runner peanuts from a 16/64 inch × 3/4 inch slotted opening to a 17/64 inch round opening. These were the screen sizes and peanut variety used in the study.

Because the Virginia, Spanish, and Valencia varieties do not routinely experience high aflatoxin content, smaller kernels of those varieties also are not expected to have significantly increased aflatoxin contamination. Therefore, corresponding changes in screen sizes for these varieties are also made in this rule. For Virginia variety peanuts, the screen size changes from a 15/64 inch × 1 inch slotted opening to a 17/64 inch round opening. For Spanish and Valencia varieties, the change is from a 15/64 inch × 3/4 inch slotted opening to a 16/64 inch round opening.

Corresponding changes are made under the ''Lots of splits'' category for ''Sound whole kernels.'' For Runner variety split lots, the screen opening would change from a 14/64 inch × 3/4 inch slotted opening to a 17/64 inch round opening. For Virginia variety split lots, the 14/16 × 1 inch slotted opening would be changed to a 17/64 inch round opening. For Spanish and Valencia varieties, the 13/64 inch × 3/4 inch slotted opening would be changed to a 16/64 inch round opening.

Currently, the table includes three columns for fall through. One column includes a maximum 3 percent tolerance for ''Sound Split and Broken Kernels''. The second column includes a 3 percent tolerance for ''Sound Whole Kernels'', and the third column includes a total tolerance of 4 percent for these categories of peanuts. A comment received from a handler association subsequent to the Board meeting suggested combining the three columns into one column and establishing a total tolerance of 6 percent for sound split, broken, and small kernels allowed in any lot. The association recommended this tolerance change to bring the tolerances into conformity with the U.S. Grade Standards for the various types of shelled peanuts grown and marketed in the United States.

Thus, this rule implements a relaxation in the utilization of small peanut kernels only by changing the screens from slotted to round holes for sound whole kernels and splits as noted above. This change is expected to increase market share for U.S. peanuts by enabling handlers to sell smaller peanuts to buyers who purchase less expensive peanuts from other origins for manufacturing into peanut butter and paste, or similar products.

This change will be implemented at shelling facilities with minimal or no additional cost to the shellers—either large or small. The screens with smaller openings for this change are currently used for split lots and no additional investment for screens will be necessary. Any adjustments to the packing line as far as screens are concerned should be easily implemented.

According to Federal-State Inspection Service (Inspection Service), all plants in Georgia are currently using 17/64 round screens on Runners and 16/64 screens on Spanish peanut varieties. The Inspection Service has a supply of screens for smaller peanut kernels to cover five new shelling plants scheduled to begin operation during the 2003 crop year. In addition, the Inspection Service will provide screens for peanut shellers in other States. The cost per screen is $55.00 plus shipping.

Appeal Procedures

The Board recommended adding an additional paragraph in the handling standards specifying that the ''holder of the title'' to any lot of peanuts may request an appeal inspection if it is believed that the orginal aflatoxin analysis is in error. Appeals for aflatoxin are currently handled following procedures specified in the Inspection Service's Instructions for Milled Peanuts. The ''holder of the title'' to any lot of peanuts may request such an appeal. The aflatoxin sample would be drawn by Federal or Federal-State Inspection inspectors and the appeal analysis would be performed, and the aflatoxin certificate issued, by USDA or USDA-approved laboratories.

This action also specifies that any financially interested person may request an appeal inspection if it is believed that the original quality inspection was in error. These appeals would continue to be handled following procedures specified in the Inspection Service's Instructions for Milled Peanuts. Federal or Federal-State Inspection Service inspectors would sample and inspect the peanuts following procedures in the milled peanut instructions.

All costs involved in conducting appeal inspections are for the account of the ''holder of the title'' or the financially interested person requesting the appeal. Under the appeal process, appeals may be requested verbally. A written request is not necessary.

Re-inspection of Blanched Lots

Peanut lots which meet quality (grade) standards, including damage and minor defects, but which fail on aflatoxin may be blanched to remove the contaminated kernels. Under the current standards, blanched lots must be re-inspected for damage and minor defects. In some cases, a blanched lot will pass aflatoxin but fail damage and minor defect tolerances because the removal of the skins in the blanching process may expose additional instances of damage or minor defects.

Currently, § 996.50(d) provides that lots failing quality standards specified in the table in § 996.31(a), which are blanched, do not have to meet the ''fall through'' standards upon re-inspection. The Board recommends that the same exception be applied to the damage and minor defects standard in the second column of the table in § 996.31(a). The primary benefit of this change would be to reduce handler-operating costs and avoid a possible loss of peanuts.

Allow Handlers To Purchase High Moisture Peanuts

Under § 996.30(b) *Moisture,* farmers stock peanuts with more than 10.49 percent moisture content must be dried by the producer at the buying point or moved to another location and facility for drying. Virginia type peanuts for seed may contain up to 11.49 percent moisture. The drying is accomplished on individual wagons, prior to incoming inspection. Not all buying points, in very rural locations, have drying facilities.

The Board requested that the 10.49 percent moisture standard be changed to allow handlers to acquire farmers stock peanuts with a moisture content up to 25 percent. They also recommended the addition of a provision that the handler would have to agree to such acquisition and also to agree to dry the peanuts to meet the 10.49 percent standard prior to storage or milling. The moisture requirements for Virginia type peanuts for seed were not recommended for change. According to Board members, such a change could make a significant difference in the efficient acquisition and warehousing of farmers stock peanuts each fall. The Board indicated that this change could speed up the drying, grading, and movement of peanuts at harvest.

After considering this request and input from the Inspection Service, USDA believes that the Board's recommendation needs further review and analysis. The Inspection Service indicated that its current shelling equipment cannot properly shell peanuts with a moisture content higher than 16 to 18 percent, and that it would have difficulty grading such peanuts. Under current inspection procedures, such peanuts would be further dried by the producer.

USDA believes that the current standards and procedures should continue during the 2003–04 crop year. This will allow the peanut industry to study this issue further.

Increase Sound Whole Kernel Tolerance

The Minimum Quality Standards table in § 996.31(a) provides standards for split kernel lots. Historically, lots of split kernels may contain a maximum percentage of sound whole kernels in the lot. For Virginia variety peanuts, sound whole kernel content is limited to 10 percent of the lot by weight. For Runner, Spanish, and Valencia varieties, the sound whole kernel content is limited to 4 percent. The Board recommended that the sound whole tolerance for Runner, Spanish, and Valencia peanuts be relaxed to 10 percent, to bring the tolerance into conformity with the tolerance for Virginia variety peanuts. This rule change is expected to result in fewer split lot rejections for Runner, Spanish, and Valencia variety peanuts, which should reduce handler-reconditioning costs. No adverse impact is expected from making this standard uniform for all four varieties.

Effective Time

Section 996.75, Effective time, also is revised so that these changes apply to 2003–04 and subsequent crop year peanuts, to 2002 and 2001 crop year peanuts not yet inspected, and to failing peanuts that have not yet met disposition standards.

Initial Regulatory Flexibility Analysis

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

There are currently 77 peanut handlers (shellers) and 25 importers subject to regulation under the peanut program. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on the documents and reports received by USDA. Small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (13 CFR 121.201), as those having annual receipts of less than $5,000,000.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition (less than $750,000 in annual receipts from agricultural sales) can be obtained from the 1997 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 10,505 peanut farms with sales valued at less than $500,000 in 1997, representing 86 percent of the total number of peanut farms in the U.S. (12,221). Since the Agricultural Census does not use $750,000 in sales as a category, $500,000 in sales is the closest approximation. Assuming that most of the sales from those farms are attributable to peanuts, the percentage of small peanut farms in 1997 (less than $750,000 in sales) was likely a few percentage points higher than 86 percent, and may have shifted a few percentage points since then. Thus, the proportion of small peanut farms is likely to be between 80 and 90 percent.

The two-year average peanut production for the 2001 and 2002 crop years was 3.799 billion pounds, harvested from 1.354 million acres, yielding 2,806 pounds per acre. The average value of production for the two-year period was $797.469 million, as reported on the National Agricultural Statistics Service (NASS) Web site as of February 2003 (*http://www.nass.usda.gov:81/idepd/report.htm*). The average grower price over the two-year period was $0.21 per pound, and the average value per harvested acre was $611. Dividing the two-year average value of production ($797.5 million) by the estimated 12,221 farms yields an estimated revenue per farm of approximately $65,254.

The Agricultural Census presents farm sizes in ranges of acres, and median farm size in 1997 was between 50 and 99 acres. The median is the midpoint ranging from the largest to the smallest. Median farm size in terms of annual sales revenue was between $100,000 and $250,000.

Several producers may own a single farm jointly, or, conversely, a producer may own several farms. In the peanut industry, there is, on average, more than one producer per farm. Dividing the two-year average value of production of $948.8 million by an estimated 23,000 commercial producers (2002 Agricultural Statistics, USDA, Table 11–10) results in an estimate of average revenue per producer of approximately $41,250.

The current 14 custom blanchers, 8 custom remillers, 4 oilmill operators, 4 USDA and 15 USDA-approved private chemical (aflatoxin) testing laboratories are subject to the peanut standards to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71. These requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection programs (Inspection Service) that will perform inspection under this peanut program.

Importers of peanuts cover a broad range of business entities, including fresh and processed food handlers and commodity brokers who buy agricultural products on behalf of others. Under the 2003 import quotas, approximately 25 business entities have only imported approximately 40 percent of the 126 million pounds of low duty quota peanuts (sometimes called duty free quota peanuts) compared with 37 entities which had imported 100 percent of the quotas by April 5, 2002. The current import quota period began January 2, 2003, for Mexico, and April 1, 2003, for Argentina, and ''other countries.'' Some large, corporate handlers are also importers of peanuts. AMS is not aware of any peanut producers who imported peanuts during any of the recent quota years. The majority of peanut importers have annual receipts under $5,000,000. Some importers use customs brokers' import services and brokers are regulated under this rule to the extent that they must comply with entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71. These requirements are not applied disproportionately to small customs brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, importers, and above-mentioned entities may be classified as small businesses. Also, financially interested persons who may appeal quality inspection results, and ''holders of the title'' to any lot of peanuts who may appeal aflatoxin test results may include small entities.

This rulemaking action: (1) Changes screen sizes specified in the outgoing quality standards to allow smaller peanut kernels of all varieties to be used for edible purposes; (2) specifies in the text of the regulations that financially interested persons may appeal quality inspection results and ''holders of the title'' may appeal aflatoxin test results; (3) allows peanut lots which meet minimum damage and minor defect standards, but fail for other reasons, prior to blanching, to be exempt from the damage and minor defect standards upon re-inspection after blanching; and

(4) increases to 10 percent, the quantity of sound whole kernels that may be contained in lots of splits for specified peanut varieties. These changes are intended to maximize handling efficiency and to provide peanut producers, handlers, and importers with flexibility to meet new market demands, while maintaining peanut quality and wholesomeness for consumers.

Smaller Kernel Sizes

Changing screen sizes used in handling peanuts will allow smaller kernels of all varieties to be used for edible purposes. Proponents of smaller kernel use claim that manufacturers of peanut products now have markets for smaller whole kernels, and that this rule change will enable them to take advantage of this recent shift in the marketplace. Market share for U.S. peanuts is expected to rise because the rule enables handlers to sell smaller peanuts to buyers who would otherwise purchase less expensive peanuts from other origins for manufacturing into peanut butter and paste, and other similar products.

This rule implements a relaxation in the utilization of small peanut kernels by changing the screens used for sorting sound whole kernels and kernels with splits from a slotted screen to one with round holes. The equipment for this change (smaller screen sizes) is currently in use for split lots in most shelling facilities. This change should therefore require little or no additional investment for most shellers, large or small.

The Inspection Service has a supply of screens for smaller peanut kernels to cover five new shelling plants scheduled to begin operation for the 2003 crop year. In addition, the Inspection Service will provide screens for peanut shellers that need them at a cost per screen of $55.00 plus shipping.

Although the chances of aflatoxin contamination in small kernels is not significant, proponents of the rule change claim that modern electronic color sorting technologies can sort out the moldy or defective kernels, thus ensuring that the new screens will not have a negative impact on the quality and wholesomeness of peanuts entering edible food channels.

Shellers that have already have this technology will have little or no additional cost. Compliance officers report that out of 77 shellers only 15 do not have electronic sorting technology in their shelling plants. These firms only shell seed peanuts, which are not shipped to the edible market.

Re-inspection of Blanched Lots

This rule change allows shelled lots that are being reconditioned to be excluded from re-inspection for damage or minor defects if the lot originally passed based on those standards. Peanut lots which meet quality (grade) standards, including damage and minor defects, but which fail on aflatoxin, may be blanched to remove the aflatoxin-contaminated kernels.

Under the current standards, the lot must be re-inspected for damage and minor defects after blanching. In some cases, the result of the re-inspection is that the blanched lot exceeds tolerances for damage and minor defects, even though the original lot did not fail to meet the standard. This result can occur because the removal of the skins in the blanching process may expose instances of damage or minor defects not previously detected.

The primary benefit of this rule change would be to reduce handler operating costs and avoid an additional loss of peanuts. The impact of this change is not expected to be different between large and small entities.

Increased Sound Whole Kernel Tolerance

The Minimum Quality Standards table in 996.31(a) provides standards for split kernel lots by specifying the maximum percentage of sound whole kernels permitted in a lot. For Virginia variety peanuts, sound whole kernel content is currently limited to 10 percent of the lot by weight. For Runner, Spanish, and Valencia varieties, the sound whole kernel content is currently limited to 4 percent. This rule change accepts the Board recommendation that the Sound Whole Kernel tolerance for Runner, Spanish and Valencia be relaxed to 10 percent, the same tolerance that applies to Virginia variety peanuts. The primary benefit of this rule change would be to lower costs and increase sales revenue by rejecting fewer lots of the Runner, Spanish, and Valencia varieties for splits. No adverse financial impact is expected from making this standard uniform for all four varieties. The impact of this change is not expected to be different between large and small entities.

Appeal Procedures

The addition of provisions specifying that financially interested persons may appeal quality inspection results and ''holders of the title'' to any lot of peanuts may request appeals of aflatoxin test results will benefit all persons involved.

USDA has considered alternatives to the suggested changes to the quality and handling standards. The Act requires USDA to consult with the Board on these standards. An alternative would be to continue the 2002–03 crop year standards for the 2003–04 crop year without implementing the recommended relaxations made by the Board at its April 30, 2003, meeting. Because of the anticipated benefits of the recommended changes, USDA believes that implementation of the Board's suggested changes is preferable to continuing without change. The Board's meeting was a public meeting and all interested persons were able to attend and provide input.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. A small business guide on complying with AMS' fresh fruit, vegetable, and specialty crop programs similar to this peanut program may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide or compliance with this program should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the Board's recommendations to change the quality and handling standards. Any comments received will be considered prior to finalization. Interested persons also are invited to submit information on the regulatory and economic impact of this action on small businesses.

Information Collection

The Act specifies in section 1601(c)(2)(A) that the standards established pursuant to the Act, may be implemented without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Furthermore, this rule does not change the existing information collection burden.

Section 1601 also specifies that promulgation of the standards and administration of the program shall be made without regard to the statement of policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notice of proposed rulemaking and public participation in rulemaking and the notice and comment provisions of section 553 of title 5, United States Code.

Nonetheless, USDA may find, upon good cause, that it would be impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because (1) This rule relaxes quality and

handling standards under the program; (2) the 2003 peanut harvest is expected to begin around August 15 and these relaxations should be in place as soon as possible; (3) the Board supported the changes; and (4) this rule provides a 30-day comment period and any comments will be considered prior to finalization of this rule. A 30-day comment period is appropriate for these reasons.

List of Subjects in 7 CFR Part 996

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 996 is amended as follows:

PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETED IN THE UNITED STATES

■ 1. The authority citation for 7 CFR part 996 is revised to read as follows:

Authority: 7 U.S.C. 7958.

■ 2. In § 996.31, the table in paragraph (a) is revised to read as follows:

§ 996.31 Outgoing quality requirements.

(a) * * *

MINIMUM QUALITY STANDARDS—PEANUTS FOR HUMAN CONSUMPTION

[Whole kernels and splits: Maximum limitations]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts and damaged kernels and defects (percent)	Total fall through Sound whole kernels and/or sound split and broken kernels	Foreign materials (percent)	Moisture (percent)
Excluding Lots of "Splits"					
Runner	1.50	2.50	6.00%; 17/64 inch round screen	.20	9.00
Virginia (except No. 2)	1.50	2.50	6.00%; 17/64 inch round screen	.20	9.00
Spanish and Valencia	1.50	2.50	6.00%; 16/64 inch round screen	.20	9.00
No. 2 Virginia	1.50	2.50	6.00%; 17/64 inch round screen	.20	9.00
Runner with splits (not more than 15% sound splits).	1.50	2.50	6.00%; 17/64 inch round screen	.20	9.00
Virginia with splits (not more than 15% sound splits).	1.50	2.50	6.00%; 17/64 inch round screen	.20	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.50	2.50	6.00%; 16/64 inch round screen	.20	9.00
Lots of "splits"					
Runner (not less than 90% splits)	2.00	2.50	6.00%; 17/64 inch round screen	.20	9.00
Virginia (not less than 90% Splits)	2.00	2.50	6.00%; 17/64 inch round screen	.20	9.00
Spanish and Valencia	2.00	2.50	6.00%; 16/64 inch round screen	.20	9.00

* * * * *

■ 3. In § 996.40, a new paragraph (c) is added to read as follows:

§ 996.40 Handling standards.

* * * * *

(c) *Appeal inspections.* Any "holder of the title" to any lot of peanuts may request an appeal inspection if it is believed that the original aflatoxin test results were in error. Appeal inspections would be conducted in accordance with Federal or Federal-State inspection procedures for milled peanuts. The aflatoxin appeal sample would be drawn by Federal or Federal-State Inspection Service officials and the appeal analysis would be conducted by USDA or USDA-approved laboratories. Any financially interested person may request an appeal inspection if it is believed that the original quality inspection is in error. Quality appeals would be conducted by Federal or Federal-State Inspection Service inspectors in accordance with the Federal or Federal-State inspection procedures for milled peanuts. The person requesting the appeal inspection would pay the cost of such appeals. The appeal inspection results shall be issued to the person requesting the appeal inspection and a copy shall be mailed to USDA or its agent.

■ 4. In § 996.50, paragraph (d) is revised to read as follows:

§ 996.50 Reconditioning failing quality peanuts.

* * * * *

(d) *Blanching.* Handlers and importers may blanch, or cause to have blanched, shelled peanuts failing to meet the outgoing quality standards specified in the table in § 996.31(a). If after blanching, such peanut lot meets the quality standards in § 996.31(a), the lot may be moved for human consumption under positive lot identification procedures and accompanied by applicable grade and aflatoxin certificates. Peanut lots certified as meeting the fall through standard or the damaged kernels and minor defects standard as specified in § 996.31(a), prior to blanching shall be exempt from fall through, damaged kernels and minor defects standards after blanching.

* * * * *

■ 5. Section 996.75 is revised to read as follows:

§ 996.75 Effective time.

The provisions of this part, as well as any amendments, shall apply to 2003–04 and subsequent crop year peanuts, to 2002–03 and 2001–02 crop year peanuts not yet inspected, or failing peanuts that have not met disposition standards, and shall continue in force and effect until modified, suspended, or terminated.

Dated: August 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20158 Filed 8–4–03; 3:11 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 204

[CIS No. 2288–03]

RIN 1615–AB07

Extension of Validity Period of Approved Form I–600A, Application for Advance Processing of Orphan Petition

AGENCY: Department of Homeland Security.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Department of Homeland Security (DHS) regulations governing the processing of applications and petitions relating to the immigration of alien orphans. The amendment to the rule establishes that the Director of the Bureau of Citizenship and Immigration Services (BCIS) may, at his or her discretion, extend the validity period for a decision approving an Application for Advanced Processing of Orphan Petition (Form I–600A), either in an individual case or for any case within a designated class of cases because of delays in completing the adoption process due to public health concerns relating to the incidence of Severe Acute Respiratory Syndrome (SARS). On May 15, 2003 the China Center for Adoption Affairs (CCAA) of the Peoples Republic of China (PRC) suspended its processing of international adoptions because of the SARS outbreak. While this suspension was in force, the prospective adoptive parents were unable to complete the adoption process in the PRC. The CCAA lifted the suspension on June 24, 2003. This amendment will permit the BCIS to more readily accommodate prospective adoptive parents who have been unable to comply with the requirement to file a Petition to Classify Orphan as an Immediate Relative (Form I–600) within 18 months of the Form I–600A approval date.

DATES: *Effective date:* This interim rule is effective August 7, 2003.

Comment date: Written comments must be submitted on or before October 6, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference CIS No. 2288–03 on your correspondence. The public may also submit comments electronically to the DHS at *rfs.regs@dhs.gov*. When submitting comments electronically you must include CIS No. 2288–03 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Stephen Heller, Adjudications Officer, Bureau of Citizenship and Immigration Services, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Background

The first step for many United States citizens who decide to adopt a child from abroad is to file an Application for Advanced Processing of Orphan Petition (Form I–600A) with the Bureau of Citizenship and Immigration Services (BCIS). In support of this Form I–600A, the prospective adoptive parents (applicants) must submit, among other documents, a home study prepared by a party licensed or otherwise authorized under the law of the State of the orphan's proposed residence. The home study is a process for screening and preparing applicants who are interested in adopting an orphan from another country. The applicants, and all adult members of the applicants' household, must also be fingerprinted by BCIS after receipt of a properly filed Form I–600A (8 CFR 204.3(c)(3)). Fingerprint clearances from the Federal Bureau of Investigation (FBI) are considered to be valid for a period of 15 months.

If BCIS is satisfied that the applicants will provide proper care for an orphan, BCIS approves the Form I–600A. The approved Form I–600A is valid for 18 months from its approval date (8 CFR 204.3(h)(3)). During this 18-month validity period, the applicants must identify an orphan that they wish to adopt and file a Petition to Classify Orphan as an Immediate Relative (Form I–600). If the applicants fail to file a Form I–600 during the 18-month validity period, the approved Form I–600A is deemed abandoned (8 CFR 204.3(h)(7)) and any Form I–600 that is then filed shall be denied (8 CFR 204.3(h)(13)).

What This Rule Accomplishes

This rule provides in new 8 CFR 204.3(h)(3)(ii) that the BCIS Director, or a designated officer, may, at his or her discretion, extend the validity period for a Form I–600A approval, either in an individual case or for a group of similarly situated individual cases where prospective adoptive parents have been unable to comply with the requirement to file a Petition to Classify Orphan as an Immediate Relative (Form I–600) within 18 months of the Form I–600A approval date as a result of delays in the adoption process resulting from the SARS outbreak. This amendment will ensure that the BCIS is able to respond to this unusual or extraordinary situation that may have impeded the ability of prospective adoptive parents to comply with the requirement to file the Form I–600 by the expiration date of the Form I–600A. For example, in May 2003, the Peoples Republic of China (PRC) suspended its own processing of international adoption cases, due to public health concerns related to the outbreak of Severe Acute Respiratory Syndrome. During that suspension period, some prospective adoptive parents' I–600A approvals expired. Under existing regulations, the BCIS was unable to extend the validity of those I–600As so that the prospective adoptive parents could complete the adoption process once the PRC lifted the suspension. New 8 CFR 204.3(h)(3)(ii) provides BCIS the ability to accommodate prospective adoptive parents with expired or soon to expire I–600. In making a decision to extend the validity period for a Form I–600A approval, the BCIS Director, or a designated officer, may set conditions for the extension that may include, but are not limited to: an explanation of the reasons necessitating an extension, the updating of the home study, renewal of fingerprints, and any other factor relevant to initial approval of a Form I–600A.

Good Cause Exception

This interim rule is effective August 7, 2003, though the Department of Homeland Security (DHS) invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the DHS finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553(b)(B) and (d)(3). First, this rule is a rule of agency practice and procedure, and so may be adopted without prior notice and comment. Additionally, this rule will benefit the parties affected by the rule by permitting the BCIS to accommodate parents who have been unable to meet the Form I–600 filing deadline because of the SARS outbreak.

Accordingly, the DHS finds that it is impracticable and contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), I have reviewed this rule and, by approving it, certify that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors. This rule applies to individuals and allows individuals to extend the validity period of a Form I–600A during the process of adopting a child. It does not have an effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Homeland Security, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

■ Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

■ 2. Section 204.3 is amended by:

■ a. Adding an ''(i)'' immediately after the paragraph (h)(3) heading to designate existing text as paragraph (h)(3)(i);

■ b. Revising the fourth sentence in the newly designated paragraph (h)(3)(i); and

■ c. Adding new paragraph (h)(3)(ii).

■ The revisions and additions read as follows:

§ 204.3 Orphans.

* * * * *

(h) * * *

(3) * * * The approved application shall be valid for 18 months from its approval date, unless the approval period is extended as provided in paragraph (h)(3)(ii) of this section.

* * *

(ii) If the BCIS Director, or an officer designated by the BCIS Director, determines that the ability of a prospective adoptive parent to timely file a Form I–600 has been adversely affected by the outbreak of Severe Acute Respiratory Syndrome (SARS) in a foreign country, such Director or designated officer may extend the validity period of the approval of the Form I–600A, either in an individual case or for a class of cases. An extension of the validity of the Form I–600A may be subject to such conditions as the BCIS Director, or officer designated by the BCIS Director may establish.

* * * * *

Dated: July 31, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–20173 Filed 8–6–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 212, 214, 231 and 233

[CBP DEC. 03–14]

RIN 1515–AD36

Suspension of Immediate and Continuous Transit Programs

AGENCY: Department of Homeland Security (DHS).

ACTION: Interim rule with request for comments.

SUMMARY: The Immediate and Continuous Transit program, also known as the Transit Without Visa (TWOV) program and the International-to-International (ITI) program allow an alien to be transported in-transit through the United States to another foreign country without first obtaining a nonimmigrant visa from the Department of State overseas, under section 212(d)(4) of the Immigration and Nationality Act (Act), provided the carrier has entered into an Immediate and Continuous Transit Agreement on Form I–426, pursuant to section 233(c) of the Act. This rule suspends immediate and continuous transit provisions for both the TWOV and ITI programs. The current regulations provide that an alien may be transported through the United States in accordance with the provisions of section 233(c) of the Act. The recent receipt of credible intelligence concerning a threat specific to the TWOV program and additional increased threats of activities against the interests and the security of the United States, has led to the decision to suspend this program.

DATES: This interim rule is effective August 2, 2003; written comments must be submitted on or before September 22, 2003.

ADDRESSES: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at the Bureau of Customs and Border Protection at 799 9th Street, NW., Washington, DC 20229. Comments are available for public inspection at the above address by calling (202) 572–8768 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Kenneth Sava, Director, Air and Sea Passenger Operations, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.4–0, Washington, DC 20229, telephone number (202) 927–0530.

SUPPLEMENTARY INFORMATION:

What Are the TWOV and ITI Programs?

The Transit Without Visa (TWOV) and International-to-International (ITI) programs were established under authority now vested with the Secretary of Homeland Security (and since delegated to the Commissioner, Customs and Border Protection (CBP)) in 8 U.S.C. 1182(d)(4) and 1223, among other authorities. *See also,* 6 U.S.C. 251(5) (transfer of former Immigration and Naturalization Service (INS) inspection functions to DHS); Department of Homeland Security Reorganization Plan of January 30, 2003, (transfer of former INS inspection functions to Commissioner of Customs, renamed Bureau of Customs and Border Protection), H.R. Doc. 108–32 (2003).

The TWOV and ITI programs allow aliens to transit through the United States without a nonimmigrant visa while en route from one foreign country to a second foreign country with one or more stops in the United States. Air carriers who enter into the TWOV or both the TWOV and lTl agreements, depending on the circumstances, transport these aliens to the United States.

What Is the Authority for Participation in the TWOV and ITI Program?

Section 212(d)(4)(C) of the Immigration and Nationality Act (Act) provides authority for the Secretary of Homeland Security acting jointly with the Secretary of State to waive nonimmigrant visa requirements for aliens who are proceeding in immediate and continuous transit through the United States and are using a carrier which has entered into a contract authorized under section 233(c) of the Act. The required contract for participation in the TWOV program is an Immediate and Continuous Transit Agreement, Form I–426 (known as a TWOV Agreement). The required contracts for participation in the ITI program are (1) a TWOV Agreement and (2) an Immediate and Continuous Transit Agreement with provisions for use of an In-Transit Lounge (known as an ITI Agreement).

Why Is DHS Suspending the Immediate and Continuous Transit Provisions?

In light of the importance of preventing terrorist acts, and as set forth in Executive Order No. 13284 of January 23, 2003, 68 FR 4075, that grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, pose an immediate threat of further attacks on United States nationals or the United States and constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, it is necessary to suspend the TWOV and ITI programs to protect the security interests of the United States. By this interim rule, the Secretaries of State and Homeland Security will immediately suspend the TWOV and ITI programs while they evaluate the security risks involved in these programs over the next 60 days.

The provisions for aliens eligible for the TWOV program preclude prescreening of passengers prior to their arrival at a port of entry in the United States, by permitting the waiver of nonimmigrant visa requirements for such persons. Accordingly, such provisions shall be suspended immediately to safeguard the interests of the United States by controlling the entry or attempted entry of persons transiting through the United States. Suspension of these provisions will require aliens in immediate and continuous transit to be in possession of valid nonimmigrant visas unless such a requirement is otherwise waived. DHS has established procedures for the handling of passengers in transit to the United States when this rule takes effect and will be working with carriers to minimize disruption.

The suspension of these regulations does not preclude the use of ITI lounges for any other authorized purpose. Foreign government officials may continue to transit the United States pursuant to 8 CFR 212.1(f)(3). During the 60 day review period, DHS will be working with the airlines, airports, foreign governments, and others to develop plans that will ensure security, as well as reviewing comments submitted in conjunction this interim rule.

DHS and the Department of State have received specific, credible intelligence, including from intelligence and law enforcement sources, including the Central Intelligence Agency (CIA) and Federal Bureau of Investigation (FBI), that certain terrorist organizations have identified this exemption from the normal visa issuance procedures as a means to gain access to the United States, or to gain access to aircraft en route to or from the United States, to cause damage to infrastructure, injury, or loss of life in the United States or on board aircraft en route to or from the United States.

Due to this credible security threat, it is necessary to implement certain measures to restrict the transit of aliens through the United States. The waiver of visa requirements for aliens in the TWOV program precludes prescreening of passengers prior to their arrival at a port of entry in the United States. Accordingly, such provisions are suspended immediately to safeguard the national security interest of the United States by restricting the transit of such persons.

The Secretaries of State and Homeland Security may waive passport and visa requirements for certain categories of non-immigrants jointly. These regulations are promulgated jointly with the Secretary of State.

Comments

Consideration will be given to any written comments timely submitted. The shortened comment period of 45 days is necessary to receive and consider comments prior to DHS reevaluation of this suspension in 60 days.

Administrative Procedures Act

The immediate implementation of this rule as an interim rule, with a 45-day provision for post-promulgation public comments, is based on findings of ''good cause'' pursuant to 5 U.S.C. 553(b) and 553(d)(3). Making the effective date of this rule on the date of signature is necessary for the national security of the United States and to prevent the TWOV and ITI programs from being used to conduct terrorist acts against the United States.

DHS has received credible intelligence that certain terrorist organizations have identified this exemption from the normal visa issuance procedures as a means to gain access to the United States or an aircraft en route to the United States to cause serious damage, injury, or death in the United States. Due to this credible security threat, it is necessary to implement measures immediately to control the entry of persons arriving in the United States.

For these reasons, there is substantial basis for concern that prior publication of a proposed rule for public comment, and the requirement for a 30-day delayed effective date after publication of a final rule, would leave the United States seriously and unnecessarily vulnerable to a specific terrorist threat against persons in the United States during the period of time before the final rule could become effective after

the end of the public comment period and the further 30-day delay.

Accordingly, DHS has determined that prior notice and public comment on this rule, and a delay in the effective date, would be impracticable and contrary to the public interest. Moreover, DHS is making this rule effective upon signature, prior to publication in the **Federal Register**, in view of the urgency of the threats posed to the public safety and security of the United States. Upon signature, DHS will provide actual notice of the suspension of the TWOV and ITI programs to all affected air carriers, and has also provided widespread publicity of this change to the traveling public. Accordingly, there is good cause to publish this interim rule and to make it effective upon its signature. DHS welcomes post-promulgation public comment on this interim rule.

Regulatory Flexibility Act

Since this document is not subject to the prior notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This interim final rule will not impose additional reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Executive Order 12866

This rule is considered by the Department of Homeland Security to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department, however, concludes at this time that this regulatory action is not economically significant under section 3(f)(1), and specifically requests comments regarding this determination. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

DHS has assessed both the costs and benefits of this rule, as required by Executive Order 12886, section 3(f), and has made a reasoned determination that the benefits justify the costs. Suspending the Transit Without Visa program will safeguard the homeland security interests of the United States by controlling the entry of persons permitted to travel to and through the United States. DHS and the Department of State have received credible intelligence that certain terrorist organizations have identified this exemption from the normal visa issuance procedures to gain access to the United States or an aircraft en route to the United States to cause injury to United States infrastructure or its citizens. We cannot at this time present any quantifiable information regarding this threat.

Costs include the potential for lost airline revenue for those air carriers who have historically carried Transit Without Visa passengers. The air carriers transported 381,065 TWOV passengers and 233,434 ITI passengers to the United States in fiscal year 2002. For the purposes of this analysis, DHS assumes an average price per flight of $800 for TWOV passengers, and requests comments on this assumption. Therefore, the total revenue the airlines earn from these passengers is approximately $300 million per year. With this program suspended, passengers that would otherwise be able to travel through the United States without visas would now be required to obtain visas, which may result in some travelers re-routing their trips away from the United States and fewer travelers transiting through the United States. The re-routing may affect demand for travel on U.S. airlines versus foreign airlines. The diminished number of travelers transiting the United States may also adversely affect retail businesses at certain airports. Note that DHS does not at this time know for how long this program will be suspended, and therefore what fraction of this yearly revenue may be affected by any activity attributable to this rulemaking. This rule calls for a suspension and 60 day review and possible permanent modifications to the program. When DHS has determined the possible permanent impact of these modifications, we will reassess all assumptions and estimations regarding costs.

For the purposes of the Executive Order, costs also include the lost consumer surplus of passengers participating in the TWOV program. This impact, however, depends crucially on the price elasticity of TWOV program flights and the characteristics of reasonable substitutes for these flights, such as obtaining a visa for an otherwise identical itinerary, switching travel out of the United States, or not traveling at all. This cost should be bounded by the time and convenience of obtaining a visa for an otherwise identical flight, which is a viable alternative for these passengers. Currently, the State Department charges approximately $100 per visa application. Without quantifying convenience costs, if passengers simply obtained a visa and did not otherwise alter their flight plans, the cost of the rule to passengers would be approximately $40 million per year. Again, DHS does not know for how long this program will be suspended. Note that this would also be the total cost of the rule, since airlines would not lose any of their revenue under this scenario. We encourage the submission of comments further quantifying the potential economic impact.

Executive Order 13132: Federalism

The interim final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Reporting and record keeping requirements.

8 CFR Part 231

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements.

8 CFR Part 233

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements.

Amendment of the Regulations

■ Accordingly, chapter 1 of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227.

§ 212.1 [Amended]

■ 2. The text of § 212.1 paragraphs (f)(1) through (f)(2) are removed and reserved.

PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1162, 1182, 1184, 1186a, 1187, 1221, 1223, 1281, 1282, 1301–1305 and 1372; section 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively.

§ 214.2 [Amended]

■ 4. In § 214.2, paragraph (c)(1) is removed and reserved.

PART 231—ARRIVAL–DEPARTURE MANIFESTS

■ 5. The authority citation for part 231 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1221, 1223 and 1229.

§ 231.1 [Amended]

■ 6. In § 231.1, paragraph (b) is removed and reserved.

PART 233—CONTRACTS WITH TRANSPORTATION LINES

■ 7. The authority citation for part 233 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1223.

§ 233.3 [Removed and Reserved]

■ 8. Section 233.3 is removed and reserved.

Dated: August 2, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–20130 Filed 8–6–03; 4:18 pm]

BILLING CODE 4820–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

RIN 3150–AH23

Adjustment of the Maximum Retrospective Deferred Premium

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to increase the maximum secondary retrospective deferred premium for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more. Currently established at $83.9 million per reactor per incident (but not to exceed $10 million in any 1 year), the maximum secondary retrospective deferred premium is being increased to $95.8 million per reactor per incident (but not to exceed $10 million in any 1 year). The change is based on the aggregate percentage change of 14.2 percent in the Consumer Price Index (CPI) from December 1997 through March 2003. The Price-Anderson Amendments Act of 1988 requires that this inflation adjustment be made at least once each 5 years. The increase in the primary nuclear liability insurance layer, which was increased on January 1, 2003, to $300 million, is also reflected in this rule.

EFFECTIVE DATE: August 20, 2003.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1289, e-mail *ipd1@nrc.gov.*

SUPPLEMENTARY INFORMATION: Part 140, ''Financial Protection Requirements and Indemnity Agreements,'' provides requirements and procedures for implementing the financial protection requirements for certain licensees and other persons pursuant to section 170 of the Atomic Energy Act (AEA) of 1954, as amended. Section 140.11(a)(4) specifies the amount of financial protection required of a licensee for a nuclear reactor that is licensed to operate, is designed for the production of electrical energy, and has a rated capacity of 100,000 kW or more. This amount is currently set at the sum of $300 million (which, as the statute requires, reflects the maximum commercial insurance available effective January 1, 2003) and the amount available as secondary financial protection in the form of private liability insurance under an industry retrospective rating plan. The limits on secondary financial protection are currently $83.9 million per reactor per incident (plus any surcharge assessed under subsection 170o.(1)(E) of the AEA) for the maximum standard deferred premium and $10 million per reactor per incident per calendar year.

Section 15, ''Inflation Adjustment,'' of Public Law 100–408, the Price-Anderson Amendments Act of 1988 (''the Act''), enacted on August 20, 1988, requires the Commission to adjust the amount of the maximum standard deferred premium (currently $83.9 million) based on inflation. Section 15 of the Act added a new Section 170t to the AEA, which provides as follows:

t. *Inflation Adjustment.*—(1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection b(1) [Section 170b(1) of the AEA] not less than once during each 5-year period following the date of the enactment of the Price-Anderson Amendments Act of 1988 in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) such date of enactment, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) For purposes of this subsection, the term ''Consumer Price Index'' means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

The inflation adjustment required by section 170t (1)(B) of the AEA must be made at least once during the period from August 20, 1998, to August 20, 2003, and must be in accordance with the aggregate percentage change (since December 1997) in the CPI for all urban consumers, as published by the Secretary of Labor. The aggregate percentage increase in the CPI from December 1997 through March 2003 is 14.2 percent. When the percentage increase is applied to the current $83.9 million maximum retrospective deferred premium, the new maximum retrospective deferred premium will increase to $95.8 million per reactor per incident. The limit of $10 million per reactor per incident per year will be unchanged.

To implement this inflation adjustment, the Commission is revising 10 CFR 140.11(a)(4), effective August 20, 2003, to require large nuclear power plant licensees to maintain, in addition to $300 million in primary financial protection, a new maximum standard deferred premium of $95.8 million per reactor per incident (but not to exceed $10 million in any 1 year). Because this inflation adjustment by the Commission is essentially ministerial in nature, the Commission finds that there is good cause for omitting notice and public comment (in the form of a proposed rule) on this action as unnecessary, in accordance with the Administrative Procedure Act of 1946 (5 U.S.C. 553b).

The next inflation adjustment in the amount of the standard deferred premium will be made not later than August 20, 2008, and will be based on the incremental change in the CPI since March 2003.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L.

104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. The NRC is amending its regulations to increase the maximum secondary retrospective deferred premium for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

Because this inflation adjustment is required by statute, no other alternatives were considered. See also the discussion in the Regulatory Flexibility Certification for this rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule. A backfit analysis is not required for this final rule because this amendment is mandated by the Price-Anderson Amendments Act of 1988 (Pub. L. 100–408).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 140

Criminal penalty, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 1. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

■ 2. In § 140.11, paragraph (a)(4) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) * * *

(4) In an amount equal to the sum of $300,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by section 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, that under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $95,800,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than $10,000,000 per incident within one calendar year shall be charged.

* * * * *

Dated at Rockville, Maryland, this 24th day of July, 2003.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Acting Executive Director for Operations.

[FR Doc. 03–20144 Filed 8–6–03; 8:45 am]

BILLING CODE 7590–01–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1304

RIN 3316–AA19

Approval of Construction in the Tennessee River System; Regulation of Structures; Residential Related Use on TVA-Controlled Residential Access Shoreland and TVA Flowage Easement Shoreland

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This rule amends TVA's regulations under section 26a of the TVA Act governing the construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations along or in the Tennessee River or any of its tributaries. The rule generally updates the existing section 26a regulations to include new sections governing underground and aboveground storage tanks, marina sewage pump-out stations and holding tanks, wastewater outfalls, development within flood control storage zones of TVA reservoirs, and requests for waivers or variances. The sections governing the application process and the handling of appeals are revised for clarity. The rules for nonnavigable houseboats are clarified, and a provision governing sanitation for nonnavigable houseboats is added. In addition, new subparts incorporate into rules the ''Shoreline Management Policy'' (SMP) that was adopted by the TVA Board of Directors on April 21, 1999, and became effective on November 1, 1999.

DATES: This rule is effective September 8, 2003, except for paragraphs (b), (c), and (d) of § 1304.2, which contain information collection requirements that

have not yet been approved by OMB. TVA will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Tennessee Valley Authority, Post Office Box 1589, 17 Ridgeway Road, Norris, Tennessee 37828.

FOR FURTHER INFORMATION CONTACT: Robert L. Curtis at the above address. Mr. Curtis also may be contacted by telephone ((865) 632–1552) or by e-mail (*rlcurtis@tva.gov*).

SUPPLEMENTARY INFORMATION:

I. Legal Authority

These regulations are promulgated under the authority of section 26a of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831y–1), and TVA's property rights under certain deeds and flowage easement instruments.

II. Background

Section 26a of the TVA Act provides that no dam, appurtenant works, or other obstruction affecting navigation, flood control or public lands or reservations shall be constructed, and thereafter operated or maintained across, along, or in the Tennessee River system or any of its tributaries until the plans for such construction, operation, or maintenance shall have been submitted to and approved by the TVA Board of Directors, or its delegate. Commencement of construction, operation, or maintenance of such structures without such approval is prohibited.

On October 22, 1971, TVA promulgated regulations setting forth the approval process for and establishing a number of policies regarding the exercise of TVA's section 26a authority. The regulations have since been amended from time to time. In the September 20, 2000, issue of the **Federal Register** (65 FR 56,821), TVA published a proposed rulemaking to further amend the section 26a regulations by adding new sections regarding underground and aboveground storage tanks, marina sewage pump-out stations and holding tanks, wastewater outfalls and septic systems, and development within flood control storage zones of TVA reservoirs. TVA also proposed to add new sections providing for the handling of requests for waivers and variances, and to revise for clarity the sections governing the application process and the handling of appeals.

In addition, TVA proposed to add new subparts C and D regarding residential-related use of TVA-controlled residential access shoreland and TVA flowage easement shoreland in order to incorporate into rules the SMP policy that was adopted by TVA's Board of Directors on April 21, 1999, and became effective on November 1, 1999. A detailed analysis of the proposed rulemaking is contained in the preamble to the proposed rule.

III. Discussion of Public Comments

In response to the September 20, 2000, **Federal Register** notice of proposed rulemaking, TVA received eleven letters and e-mail messages commenting on the proposed rule. Some commenters applauded aspects of the proposed regulations that they considered to be environmentally beneficial. Some urged TVA to take additional actions that they said would be even more protective of the environment. Others criticized parts of the proposed rule as overly restrictive. The following discussion addresses the major points raised by the commenters.

One commenter objected to the 50-foot-deep shoreline management zone (SMZ) described in proposed § 1304.203 as a taking of private property without due process of law. This is not the case, however, because § 1304.203 clearly applies only to land already owned by TVA. This commenter also objected to the size limitation for enclosed storage space (32 square feet) and to the prohibitions against enclosing or placing a roof on the second story of certain facilities that are contained in proposed § 1304.204. Enclosed storage space on a dock or a pier is approved solely for the storage of equipment used in boating and water recreation, such as skis, life vests, fishing equipment, etc. TVA's experience is that 32 square feet is sufficient for this storage need. Other equipment not directly related to boating or water recreation should be stored elsewhere. Second story structures and roofs create a visual obstruction and are not a necessary component of a dock or pier having the primary purpose of allowing water access. The commenter also questioned the proposed channel excavation rule (§ 1304.207). Channel excavation can adversely affect shoreline aquatic habitats and animal communities, and can create problems in placement and stabilization of the spoil material. TVA's policy is to minimize dredging and channel excavation, especially in shallow water areas. The provisions addressing depth of excavation, channel slope, and spoil placement are necessary to minimize siltation, adverse water quality impacts, and the need for frequent dredged channel maintenance.

The previous commenter also disagreed with the prohibition against the use of broken concrete for retaining walls. The commenter stated that he intended to build a wall by neatly stacking broken concrete sections of uniform four-inch thickness salvaged from floors and sidewalks. This is not the type of broken concrete typically proposed for retaining walls, and TVA did not intend to prohibit the use of such concrete. Rather, TVA intended to prohibit the use of the irregular and crumbling concrete pieces that it has found to be unsightly and often ineffective for construction of retaining walls. To make clear that TVA would consider proposals to erect retaining walls from the type of concrete mentioned by the commenter, a parenthetical phrase has been added to § 1304.208(c)(2).

Some commenters suggested that the rule should contain an external appeals process providing that disputes about permitting of water-use facilities would ultimately be resolved by some entity other than TVA. These comments are inconsistent with section 26a of the TVA Act, which makes TVA responsible for determinations regarding the construction, operation, and maintenance of obstructions in the Tennessee River and its tributaries.

Some commenters stated that a permit should not expire simply because construction is not initiated within 18 months after a permit is issued (§ 1304.9). TVA does not agree. Eighteen months is a more than reasonable amount of time after the issuance of a permit to initiate construction. Conditions may change over time such that different permit terms would be appropriate. Adjacent landowners who wish to apply for water-use facility permits should not have their options limited by the existence of approved permits for facilities that may never be built.

Some commenters suggested a need for the rule to more clearly indicate the circumstances under which TVA would approve new owners' applications to continue using a permitted facility or conducting a permitted activity. It also was suggested that the rule should make clear that a new owner who had applied for a permit could continue using an existing facility pending TVA's decision on the new owner's application. TVA agrees with these suggestions and has changed the rule accordingly. Consistent with these changes, TVA also has revised § 1304.10 to refer to ''facilities'' and ''activities'' rather than structures.

A number of commenters objected to the proposed applicability section for TVA-owned residential access shoreland (§ 1304.201). These commenters stated that TVA is seeking

to eliminate deeded rights to construct a water-use facility on TVA land. This is not correct. TVA is not seeking to eliminate any deeded rights. Rather, TVA is specifically defining the categories of TVA-owned land where private, residential water-use facilities will be considered. TVA-owned land subject to deed provisions for ingress and egress is one such general category. Thus, the rule recognizes that deeded rights of ingress and egress may imply a right to build a water-use facility in some cases (but not where the applicable real estate documents specifically exclude the erection of structures), and it generally allows water-use facilities in such cases. It must be recognized, however, that the exercise of such rights is subject to TVA approval under section 26a of the TVA Act if a proposed facility would be an obstruction in the Tennessee River system, and TVA may deny or require modifications to any permit application.

Some commenters suggested that § 1304.211 should be revised to make it more clear that certain pre-existing lawns could continue to be mowed even though such activities were previously conducted without a permit. TVA agrees, and the section has been revised to provide the requested clarification.

A comment objected to the requirement to apply for and obtain a permit before engaging in vegetation management on TVA-owned land. The final rule retains this requirement as a reasonable means for TVA to monitor vegetation management activities by private parties on TVA-owned land. There also were objections to a number of other rule provisions implementing TVA's SMP for vegetation management. TVA believes the SMP vegetation management provisions were well considered after substantial public input and comment received in connection with the SMP environmental impact statement (EIS), and that no information developed during this rulemaking provides any basis for changing those provisions. Specifically, TVA does not agree with the suggestion that an unreasonable fire hazard risk is created by requiring the forest floor to remain undisturbed.

In response to a commenter's question as to how certain plants may be eradicated if herbicides are not allowed, both the proposed and final rules allow for the use of herbicides in accordance with an approved plan. TVA has not identified the pesticides considered to be ''restricted use'' because the classification of pesticides as restricted use is the responsibility of other regulatory authorities.

There was an objection to TVA's considering the potential effect of a proposed dock on boater access into a cove. This, however, is the kind of navigation issue specifically committed to TVA's discretion under section 26a of the TVA Act.

It was argued in one comment that the requirement to obtain a permit in order to locate a septic tank on TVA flowage easement property was unfair because it would require existing septic system owners to relocate, and it was suggested that a grandfather clause should be included for existing owners. The final rule has been revised to delete septic tank permitting requirements and specifications. Except in the case of approved, nonnavigable houseboats, toilets and sinks are not allowed on water-use facilities. TVA will continue to address matters related to septic tanks on flowage easements on a case-by-case basis in accordance with the terms of particular flowage easements. TVA intends to use its land management authority to prohibit septic tanks and drainfields on TVA land below the maximum shoreline contour.

In response to comments that the rule does not discuss the permitting fee and that there should not be a permitting fee, TVA refers to the TVA administrative cost recovery regulations, which are separately codified at 18 CFR part 1310 (2003). TVA establishes standard charges that are approximately equal to TVA's actual average administrative costs for the category of action.

A comment objected to the requirement to number structures. TVA has decided to delete this requirement.

A comment stated that the entire section related to flowage easement property should be deleted because it is an improper attempt to assert TVA authority over property it does not own. TVA disagrees. TVA's authority over flowage easement property is derived both from section 26a of the TVA Act and from the language of the various documents establishing TVA's flowage easement rights. TVA recognizes, however, that its rights as a property owner are in some circumstances broader than its authority over flowage easement property. This distinction is the basis for having separate rule sections governing these two types of property.

Two groups with an expressed interest in protecting the Norris Reservoir watershed provided comments to the effect that the proposed rule should be revised to provide for better enforcement of houseboat sewage rules and other environmental regulations. TVA appreciates these comments and expresses its general agreement with many of the groups' stated aims. Some of the requested actions, however, may exceed TVA's authority and the scope of this rule. TVA is not the primary environmental regulator on TVA reservoirs. TVA has, however, included a number of provisions directly addressing many of the concerns raised by the commenters (*e.g.*, §§ 1304.401, 1304.402, and 1304.403). TVA also has undertaken a number of other activities in addition to this rulemaking (such as the Clean Marina Initiative and the development of cooperative relationships with State and Federal agencies having jurisdiction over enforcement of marine sanitation requirements) to address environmental issues such as those raised by the commenters.

A commenter writing on behalf of the Melton Hill Lake Association raised several specific issues. First, the commenter described the vegetation management provisions as a method for TVA to deny dock permits when there are no other reasons to deny one. TVA disagrees. The vegetation management provisions, which only apply to TVA-owned land, reflect TVA's best judgment as to how the vegetation on reservoir-related TVA land should be managed. They are designed to accommodate the construction of water-use facilities on TVA-owned residential access shoreline. There may, of course, be specific cases where the presence of wetlands, threatened or endangered plants, or other vegetation-related sensitive resources might provide a basis for denying a permit or requiring mitigation measures or adoption of other vegetation management requirements.

Second, the commenter generally praised the provisions related to shoreline stabilization, wastewater outfalls, and septic systems. With respect to shoreline stabilization, however, it was suggested that appropriate techniques for particular reservoirs should be independently evaluated to account for specific circumstances. TVA agrees and intends to consider specific requests for approval of shoreline stabilization activities on a case-by-case basis. The commenter requested additional action with respect to livestock animals being allowed in the water. TVA appreciates the commenter's concern, but this issue is beyond the scope of this rule.

Third, the commenter described TVA's discussion of the Regulatory Flexibility Act in the preamble to the proposed rule as legalese, misleading, and not reflective of actual economic

impacts. TVA does not agree with these characterizations. A regulatory flexibility analysis is required only when there will be a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). These words are taken directly from the Regulatory Flexibility Act. The statute defines ''small entity'' as a ''small business,'' ''small organization'' (further defined as a ''not-for-profit enterprise''), or a ''small governmental jurisdiction.'' Most applications for water-use facilities are submitted by residential landowners for personal use. Since residential landowners are not businesses, not-for-profit enterprises, or small governmental jurisdictions, there are relatively few ''small entities'' affected by today's rule. Moreover, nothing in today's rule significantly adds to the cost of applying for and constructing any regulated facility. Accordingly, this rule will not have a significant impact on a substantial number of small entities, and no regulatory flexibility analysis is required.

One commenter submitted comments focused on alleged errors in sections of the Melton Hill Land Management Plan (MHLMP) governing use of TVA land on Melton Hill Reservoir. Specifically, the commenter objected to certain subcategories of TVA-owned residential access shoreland in the MHLMP, stating that TVA failed to consider the impacts on the value of adjacent private property, and requesting that today's rule be revised to make clear that applications for water-use facilities will be considered on all TVA-owned residential access shoreland. TVA does not agree that it should manage its property in such a way as to enhance the value of adjacent private property at the expense of protecting sensitive ecological resources on the TVA property. Moreover, the MHLMP was adopted after a public process that included, among other things, full opportunity for public comment on the environmental assessment (EA) that was prepared in connection with the plan.

The previous commenter also suggested that five specific aspects of the MHLMP are invalid because they implement ''concepts'' that should not be implemented until this rulemaking is complete. TVA does not understand this comment. Except for shoreline categorization of TVA-owned property (which is addressed above, in no way depends on this rulemaking, and is exempt from rulemaking requirements because it deals with management of public property), the concepts to which the commenter objects are not part of the MHLMP. Three of the concepts mentioned by the commenter (grandfathering, design limitations, and the implementation of a shoreline management zone) were subject to public notice and comment as part of the SMP EIS. Moreover, these matters involve management of TVA property and/or changes in TVA internal policies and guidance regarding processing of permit applications, and thus are not dependent on this rulemaking. The fifth ''concept'' mentioned by the commenter, the ''appeals process,'' has not yet been implemented. TVA has continued to use the appeals process in the existing regulation pending finalization of this rule.

One commenter objected that requiring dock permits to be requested by a landowner does not facilitate fair and equitable real estate transactions. TVA believes this requirement is a necessary and appropriate means for TVA to avoid entanglement in disputes among landowners. Any landowner who wants to know whether a dock could be permitted at a particular location may obtain a determination by applying for a permit. This commenter suggested a number of policies TVA should impose on itself in connection with the management of TVA land. These matters exceed the scope of this rulemaking. The commenter also objected to the use of November 1, 1999, as the effective grandfather date for preexisting shoreline uses and structures. This is the effective date of the policy changes approved by the TVA Board as part of the publicly reviewed SMP. As discussed above, many of these policy changes related to management of TVA property and/or existing TVA management guidelines and practices which were not previously addressed in TVA's rules (size limitations, vegetation management, etc.), and which are not required to be codified in rules. The implementation of these changes consistent with the effective date of the SMP is appropriate. Among other things, this rule incorporates such policies, guidelines, and practices into TVA's section 26a rules for the first time.

A group of university environmental science graduate students submitted comments in several categories. The student group commented that the proposed amendments were inadequate because they did not provide for the phasing out of previously permitted nonnavigable houseboats. The final rule adds new provisions governing sanitation, and it requires nonnavigable houseboats to be maintained in a good state of repair. These requirements are adequate to address nonnavigable houseboats.

The student group raised numerous issues and questions related to shoreline stabilization plans. The comments contain many helpful suggestions, but they are generally beyond the scope of this rule, which, for the most part, only describes the types of stabilization that may be allowed. TVA will consider applications for shoreline stabilization permits on a case-by-case basis.

The student group requested an explanation regarding the area of site disturbance to be indicated on the location map submitted with a permit application. The area of physical disturbance to land and water by the facility footprint is the area that must be indicated on the location map. TVA agrees that other information mentioned in the comment would be relevant in some circumstances. Accordingly, TVA has added a sentence to § 1304.2(c) providing that TVA may request additional information where necessary for adequate review of a particular application.

The student group submitted extensive comments about the use of pesticides on TVA-owned land along the reservoirs. The comments are in four general categories. First, it was argued that pesticide use should only be approved on a case-by-case basis. TVA agrees. This is why § 1304.203(l) provides that herbicides shall not be applied on TVA land except as specifically approved by TVA in a vegetative management plan. Second, the student group argued that restricted use pesticides should never be allowed. TVA does not agree. There may be some situations where a restricted use pesticide would be appropriate. TVA believes the requirement for case-by-case TVA approval, together with the requirements that any application of restricted use pesticides on TVA-owned shoreland be conducted by a State certified applicator, and that all herbicides and pesticides be applied in accordance with all applicable label requirements, provide reasonable protection. Third, the students stated that TVA should require pesticides to be applied in accordance with all label requirements. TVA agrees, and the rule so provides. Fourth, the students also proposed a formal notification program to inform water intake operators and others of pesticide application. TVA generally does not expect the application of pesticides on TVA lands to be of such extent or frequency as to warrant the creation of the formal notice system contemplated in the comment. TVA retains the right, however, to require appropriate notification

procedures when approving individual vegetative management plans.

The student group recommended that all grandfathered metal drum flotation devices be required to be replaced within a reasonable period of time. TVA agrees that metal drums are undesirable as flotation devices. That is why TVA prohibits them unless they were properly installed before the date on which TVA first issued the prohibition. As noted in the comment, any flotation devices (including grandfathered metal drums) must be replaced if TVA determines them to no longer be serviceable. Any drum that appears likely to cause an environmental problem would be considered unserviceable. TVA considers this to be adequate protection. It would be unnecessarily restrictive to require removal of previously approved flotation that continues to be serviceable.

The student group also requested consideration of a number of issues related to the access corridors allowed by the rules. TVA believes that matters related to access corridors were carefully and adequately considered during the SMP EIS. This rule, which implements the SMP provisions regarding access, reflects TVA's best judgment as to how TVA can best protect shoreline and aquatic resources while at the same time allowing reasonable access to the water.

In addition to the comments received in response to the September 20, 2000, **Federal Register** notice, TVA also received comments from a number of government agencies in response to the EA TVA prepared for the portions of the rule not covered by TVA's SMP EIS. The major points raised by these comments are discussed below.

The Wildlife Resources Division of the Georgia Department of Natural Resources offered several positive comments. The Department also recommended that the variance provisions be modified to define the ''minor'' variations that could be approved, and to reserve the approval of variances to the TVA Board or the Vice President, Resource Stewardship. It also suggested that variance applications should be required to contain documentation on the affected biotic communities, adequate mitigation to offset any environmental costs of the variance, and why development options short of a variance would not achieve the applicant's goal. TVA appreciates these comments and recommendations. TVA does not consider it feasible, however, to define in advance all of the minor variations that might be appropriate in specific circumstances. With respect to approval authority, the Vice President, Resource Stewardship, will monitor whether delegated authority is improvidently exercised. Regarding variance applications, TVA has decided not to change the proposed rule to specify the documentation that should be included with such applications. Rather, TVA will require information to support variance requests on a case-by-case basis depending upon the particular circumstances. The documentation suggested by the Department, among other things, is the type of information that will be required.

The Alabama Historical Commission, the Tennessee Historical Commission, and the Virginia Department of Historic Resources commented that the draft EA did not mention historic properties or TVA's responsibilities under the National Historic Preservation Act of 1966. TVA is careful to fulfill its responsibilities with respect to historic properties and cultural resources as it processes applications for water-use facility permits. Sections 1304.2(c)(1)(v) and 1304.2(c)(2)(vi) address this requirement.

The Kentucky Natural Resources and Environmental Protection Cabinet pointed out that any bank stabilization or stream disturbance requires a § 401 water quality certification by the Division of Water and a § 404 dredge or fill permit from the U.S. Army Corps of Engineers. TVA concurs, and this is referenced in § 1304.2(c) of the rule.

The U.S. Department of Interior, Fish and Wildlife Service (F&WS) raised issues over TVA's policy regarding development within floodplains and its policy on flood control storage capacity. Specifically the F&WS expressed concerns about the destruction of habitat associated with fills and dredging to offset loss of flood storage capacity caused by fills. These issues were discussed in a meeting between TVA and F&WS representatives in April 2001. TVA has reviewed very few of these actions in recent years. These included two fills for access to islands on Douglas Reservoir, removal of material to compensate for a retaining wall and backfill on Fort Loudoun Reservoir, and a project to offset fill from a Hamilton County school on Chickamauga Reservoir. Based on the small number of these requests received, it does not appear that these actions have had a cumulative adverse effect on shallow-water aquatic habitat in the past. For future proposals, TVA would ensure through its review process that the actions do not adversely affect shallow-water aquatic habitat or unique or unusual aquatic habitats. Removal of material from the flood control storage zone will not take place in shallow-water aquatic habitat or other unique or unusual aquatic habitat, unless there is mitigation to avoid, minimize, rectify, reduce, or compensate for the ecological values affected.

Because the proposed regulations deal with activities in floodplains, the Virginia Department of Environmental Quality and the Virginia Department of Conservation and Recreation recommended consultation with the Federal Emergency Management Agency (FEMA). As a Federal agency, TVA complies with the requirements of Executive Order (E.O.) 11988 in conducting activities and programs affecting land use, including planning, regulating, and licensing (including 26a permitting activities). Section 3(a) of E.O. 11988 States:

> The regulations and procedures established under section 2(d) of this Order shall, at a minimum, require the construction of federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program (NFIP). They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

TVA applies this standard not only to its own facilities, but also to facilities permitted by TVA. Therefore, by fulfilling the requirements of E.O. 11988, TVA complies with the NFIP. Thus, further consultation with FEMA is not necessary.

The Virginia Department of Environmental Quality suggested that pump-out stations be required at commercial marinas. Section 1304.403 establishes design and operating requirements for new pump-out stations, but TVA has decided not to require all commercial marinas to have pump-out stations. TVA also has decided not to require retrofitting of existing pump-out facilities. Generally, with respect to matters related to water pollution, TVA defers to other regulatory agencies having appropriate authority to promulgate and enforce clean water regulations. In addition to these rules, however, TVA has implemented a Clean Marina Initiative program to encourage good sanitation management at commercial marinas, and TVA has developed cooperative relationships with State and Federal agencies having jurisdiction over enforcement of marine sanitation requirements. TVA will continue to consider ways to improve marina sanitation.

IV. Other Changes from the Proposed Rule

In addition to the changes made in response to public comments, the final rule contains several minor clarifications. Also, TVA has decided not to implement two proposed changes to the existing rules governing hearings and appeals. The current rules provide for hearings to be held in certain situations. TVA proposed to change the rule to provide that a hearing would be held when requested by the applicant or any party of record. The final rule continues existing practice under the current rule except that it also provides for hearings to be held when directed by the TVA Investigator (§ 1304.4(c)). The current and proposed rules provide for appeals to the TVA Board of Directors by the applicant and by any party of record. Current rules provide that hearing notices indicate the manner in which an interested person may become a party of record. TVA proposed to change the rule to allow interested persons to become parties of record with right of formal appeal even if no hearing is held. The final rule continues existing practice under the current rule (§ 1304.4(b)). TVA's experience with the section 26a application process since publication of the proposed rule has demonstrated that continuing existing practices in these two respects is the best way for TVA to balance competing interests while continuing to efficiently process applications and appeals.

V. Administrative Requirements

A. Unfunded Mandates Reform Act and Executive Orders: E.O. 12866, Regulatory Planning and Review; E.O. 13045, Protection of Children From Environmental Health Risks; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination With Indian Tribal Governments; and E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

The rule contains no Federal mandates for State, local, or tribal governments or for the private sector. It is not a significant regulatory action. It will not have an annual effect on the economy of $100 million or more, and it will not result in expenditures of $100 million in any one year by State, local, and tribal governments or the private sector. The rule will not have a substantial direct effect on the States or Indian tribes, on the relationship between the Federal Government and the States or Indian tribes, or on the distribution of power and responsibilities between the Federal Government and States or Indian tribes. Unified development and regulation of the Tennessee River system through an approval process for obstructions in or along the river system, and management of United States-owned land entrusted to TVA are Federal functions for which TVA is responsible under the TVA Act. The rule simply codifies policies and requirements regarding the use of TVA land and the size, type, and use of obstructions to be allowed in the Tennessee River system. The rule does not concern an environmental health risk or safety risk that may disproportionately affect children, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) 5 U.S.C. 605, TVA is required to prepare a regulatory flexibility analysis unless the TVA Board certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The TVA Board has approved the following certification:

> [T]he Board of Directors has determined and hereby certifies that this action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

The rule will not significantly add to the costs of any small entity that chooses to use TVA land or construct a new obstruction in the Tennessee River system. Existing obstructions that are permitted under current regulations will not have to be modified to conform to new standards. Any economic impact that will occur will not affect a substantial number of small entities because most applications to construct an obstruction in the Tennessee River system are submitted by residential applicants who do not meet the definition of a small entity.

C. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, TVA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

D. Executive Order 12988—Civil Justice Reform

The rule does not have a retroactive effect prior to the effective date. It does, however, incorporate into rules TVA's SMP (primarily the standards contained in subparts C and D) that have been in effect as internal TVA policy guidance since November 1, 1999. A number of the rule's grandfather provisions are based on the November 1, 1999, date. These situations are clearly identified in the rule. The rule preempts State and local law only to the extent any such law might purport to authorize activities on TVA land or along or in the Tennessee River system that are inconsistent with the rule. The rule's administrative appeal provisions must be exhausted before any action for judicial review of a TVA permitting action may be brought against TVA. (This assumes that such actions are subject to judicial review; nothing herein should be construed as an admission by TVA that its permit decisions under section 26a of the TVA Act or its decisions regarding use of TVA land are judicially reviewable.)

E. Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

TVA expects that most applications to construct obstructions in or along the Tennessee River system or engage in other activities requiring a permit under this rule would be made in connection with land along TVA reservoirs that is owned by TVA or is subject to a TVA flowage easement. TVA's substantial landrights in these situations effectively reduce the likelihood of any takings implications because, even apart from this rule and section 26a of the TVA Act, TVA would have the right to restrict or prohibit the requested activity. In addition, the EIS for TVA's SMP considered the effect on property values along and near the shoreline of TVA reservoirs of the SMP standards incorporated into this rule, and it was determined that property values would be higher under such standards than under any of the other alternatives considered in the EIS.

F. Environmental Review

TVA prepared a detailed draft EIS assessing residential shoreline development impacts in the Tennessee Valley. Copies of the Executive Summary and/or draft EIS were distributed to numerous State agencies and public libraries in the Tennessee Valley and to approximately 8,000 interested individuals. Sixteen public

meetings were held, and numerous oral and written comments were received and considered. A final EIS adopting the residential access policies that would be implemented by this rule has been released, and a record of decision has been issued. This rulemaking reflects the involvement of the interested public during the environmental review process. An EA was prepared and a finding of no significant impact was issued for those aspects of the rule not addressed in the residential shoreline development EIS. The September 20, 2000, **Federal Register** notice mentioned that the EA was being prepared, and copies of the draft EA were mailed to interested members of the public and to Federal and State agencies in the seven-State TVA Watershed for comment.

G. Paperwork Reduction Act

Paragraphs (b), (c) and (d) of § 1304.2 of this rule contain information collection requirements which have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* TVA provided burden information and requested comments on these requirements in the preamble to the proposed rule. No comments specifically directed toward the information collection requirements were received. One commenter objected to the general requirement to apply for and obtain a permit before conducting vegetation management activities on TVA land. TVA responded to this comment in the Discussion of Public Comments at III above.

The only information collection activity contained in the rule is a requirement that persons seeking approval to construct an obstruction along or in the Tennessee River system or authorization to use certain property under TVA's control submit an application to TVA. The application consists of an application form plus, in the case of an obstruction, detailed plans, maps, and other information necessary for TVA to evaluate the request for approval. The estimated time to complete the application form and prepare the supplemental material is from l hour to 1.5 hours per application. The time may vary depending upon the nature and complexity of the proposed action. Comments concerning the accuracy of this burden estimate and suggestions for reducing the burden should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

The majority of information provided in a permit application is not confidential. Most information collected describes construction plans and is not of a sensitive or personal nature. However, since these records are maintained by a personal identifier (name of applicant), they are identified as a Privacy Act System of records. A Privacy Act Statement is included on the permit application.

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. TVA will publish a document in the **Federal Register** announcing OMB's approval.

List of Subjects in 18 CFR Part 1304

Administrative practice and procedure, Natural resources, Navigation (water), Rivers, Water pollution control.

■ For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended by revising part 1304 to read as follows:

PART 1304—APPROVAL OF CONSTRUCTION IN THE TENNESSEE RIVER SYSTEM AND REGULATION OF STRUCTURES AND OTHER ALTERATIONS

Subpart A—Procedures for Approval of Construction

Sec.
1304.1 Scope and intent.
1304.2 Application.
1304.3 Delegation of authority.
1304.4 Application review and approval process.
1304.5 Conduct of hearings.
1304.6 Appeals.
1304.7 Conditions of approvals.
1304.8 Denials.
1304.9 Initiation of construction.
1304.10 Change in ownership of approved facilities or activities.
1304.11 Little Tennessee River; date of formal submission.

Subpart B—Regulation of Nonnavigable Houseboats

1304.100 Scope and intent.
1304.101 Nonnavigable houseboats.
1304.102 Numbering of nonnavigable houseboats and transfer of ownership.
1304.103 Approval of plans for structural modifications or rebuilding of approved nonnavigable houseboats.

Subpart C—TVA-Owned Residential Access Shoreland

1304.200 Scope and intent.
1304.201 Applicability.
1304.202 General sediment and erosion control provisions.
1304.203 Vegetation management.
1304.204 Docks, piers, and boathouses.
1304.205 Other water-use facilities.
1304.206 Requirements for community docks, piers, boathouses, or other water-use facilities.
1304.207 Channel excavation on TVA-owned residential access shoreland.
1304.208 Shoreline stabilization on TVA-owned residential access shoreland.
1304.209 Land-based structures/alterations.
1304.210 Grandfathering of preexisting shoreland uses and structures.
1304.211 Change in ownership of grandfathered structures or alterations.
1304.212 Waivers.

Subpart D—Activities on TVA Flowage Easement Shoreland

1304.300 Scope and intent.
1304.301 Utilities.
1304.302 Vegetation management on flowage easement shoreland.
1304.303 Channel excavation.

Subpart E—Miscellaneous

1304.400 Flotation devices and material, all floating structures.
1304.401 Marine sanitation devices.
1304.402 Wastewater outfalls.
1304.403 Marina sewage pump-out stations and holding tanks.
1304.404 Commercial marina harbor limits.
1304.405 Fuel storage tanks and handling facilities.
1304.406 Removal of unauthorized, unsafe, and derelict structures or facilities.
1304.407 Development within flood control storage zones of TVA reservoirs.
1304.408 Variances.
1304.409 Indefinite or temporary moorage of recreational vessels.
1304.410 Navigation restrictions.
1304.411 Fish attractor, spawning, and habitat structures.
1304.412 Definitions.

Authority: 16 U.S.C. 831–831ee.

Subpart A—Procedures for Approval of Construction

§ 1304.1 Scope and intent.

The Tennessee Valley Authority Act of 1933 among other things confers on TVA broad authority related to the unified conservation and development of the Tennessee River Valley and surrounding area and directs that property in TVA's custody be used to promote the Act's purposes. In particular, section 26a of the Act requires that TVA's approval be obtained prior to the construction, operation, or maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations along or in the Tennessee River or any of its tributaries. By way of example only, such obstructions may include boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluent, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel

excavations, and nonnavigable houseboats as defined in § 1304.101. Any person considering constructing, operating, or maintaining any such obstruction on a stream in the Tennessee River Watershed should carefully review the regulations in this part and the 26a Applicant's Package before doing so. The regulations also apply to certain activities on TVA-owned land alongside TVA reservoirs and to land subject to TVA flowage easements. TVA uses and permits use of the lands and land rights in its custody alongside and subjacent to TVA reservoirs and exercises its land rights to carry out the purposes and policies of the Act. In addition, the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, and the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), 33 U.S.C. 1251 *et seq.*, have declared it to be congressional policy that agencies should administer their statutory authorities so as to restore, preserve, and enhance the quality of the environment and should cooperate in the control of pollution. It is the intent of the regulations in this part 1304 to carry out the purposes of the Act and other statutes relating to these purposes, and this part shall be interpreted and applied to that end.

§ 1304.2 Application.

(a) If the facility is to be built on TVA land, the applicant must, in addition to the other requirements of this part, own the fee interest in or have an adequate leasehold or easement interest of sufficient tenure to cover the normal useful life of the proposed facility in land immediately adjoining the TVA land. If the facility is to be built on private land, the applicant must own the fee interest in the land or have an adequate leasehold or easement interest in the property where the facility will be located. TVA recognizes, however, that in some cases private property has been subdivided in a way that left an intervening strip of land between the upland boundary of a TVA flowage easement and the waters of the reservoir, or did not convey to the adjoining landowner the land underlying the waters of the reservoir. In some of these situations, the owner of the intervening strip or underlying land cannot be identified or does not object to construction of water-use facilities by the adjacent landowner. In these situations, TVA may exercise its discretion to permit the facility, provided there is no objection from the fee owner of the intervening strip or underlying land. A TVA permit conveys no property interest. The applicant is responsible for locating the proposed facility on qualifying land and ensuring that there is no objection from any owner of such land. TVA may require the applicant to provide appropriate verification of ownership and lack of objection, but TVA is not responsible for resolving ownership questions. In case of a dispute, TVA may require private parties requesting TVA action to grant or revoke a TVA permit to obtain a court order declaring respective land rights. TVA may exercise its discretion to permit a facility on TVA land that is located up or downstream from the land which makes the applicant eligible for consideration to receive a permit.

(b) Applications shall be addressed to the Tennessee Valley Authority, at one of the following Watershed Team locations:

(1) P.O. Box 1589, Norris, TN 37828, (865) 632–1539, Reservoir: Norris;

(2) Suite 300, 804 Highway 321, North, Lenoir City, TN 37771–6440, (865) 988–2420, Reservoirs: Ft. Loudoun, Tellico, Fontana;

(3) 221 Old Ranger Road, Murphy, NC 28906, (704) 837–7395, Reservoirs: Hiwassee, Chatuge, Appalachia, Blue Ridge, Nottely, Ocoee;

(4) 2611 W. Andrew Johnson Hwy., Morristown, TN 37814–3295, (865) 632–3791, Reservoirs: Cherokee, Douglas;

(5) P.O. Box 1010, Muscle Shoals, AL 35662–1010, (256) 386–2560, Reservoirs: Tim's Ford, Normandy, Wheeler, Wilson;

(6) 202 West Blythe Street, P.O. Box 280, Paris, TN 38242, (901) 642–2026, Reservoirs: Kentucky, Beech River;

(7) P.O. Box 1010, Muscle Shoals, AL 35662–1010, (256) 386–2228, Reservoirs: Pickwick, Bear Creek;

(8) Suite 218, Heritage Federal Bank Building, 4105 Fort Henry Drive, Kingsport, TN 37662, (423) 239–2000, Reservoirs: Boone, Watauga, Wilbur, Fort Patrick Henry, South Holston;

(9) 1101 Market Street, Chattanooga, TN 37402, (423) 697–6006, Reservoirs: Chickamauga, Nickajack;

(10) 2009 Grubb Road, Lenoir City, TN 37771–6440, (865) 988–2440, Reservoirs: Watts Bar, Melton Hill;

(11) 2325 Henry Street, Guntersville, AL 35976–1868, (256) 571–4280, Reservoirs: Guntersville.

(c) *Submittal of section 26a application.* Applicants must submit certain required information depending upon whether a proposed facility is a minor or major facility. Examples of the two categories are provided in paragraphs (c)(1) and (2) of this section. Most residential related facilities are minor facilities. Commercial or community facilities generally are major facilities. TVA shall determine whether a proposed facility is minor or major. An application shall not be complete until payment of the appropriate fee as determined in accordance with 18 CFR part 1310, and disclosed to the applicant in the materials provided with the application package or by such other means of disclosure as TVA shall from time to time adopt. For purposes of the information required to be submitted under this section and the determination of fees, a request for a variance to the size limitations for a residential-related facility (other than a waiver request under § 1304.212 or § 1304.300(a)) shall be regarded as an application for a major facility. In addition to the information required in paragraphs (c)(1) and (2) of this section, TVA may require the applicant to provide such other information as TVA deems necessary for adequate review of a particular application.

(1) *Information required for review of minor facility.* By way of example only, minor facilities may include: boat docks, piers, rafts, boathouses, fences, steps, and gazebos. One copy of the application shall be prepared and submitted in accordance with the instructions included in the section 26a Applicant's Package. The application shall include:

(i) Completed application form. One (1) copy of the application shall be prepared and submitted. Application forms are available from TVA at the locations identified at the beginning of this section. The application shall include a project description which indicates what is to be built, removed, or modified, and the sequence of the work.

(ii) Project, plan, or drawing. The project plan/drawing shall:

(A) Be prepared on paper suitable for reproduction (8½ by 11 inches);

(B) Identify the kind of structure, purpose/intended use;

(C) Show principal dimensions, size, and location in relation to shoreline;

(D) Show the elevation of the structure above the full summer pool; and

(E) Indicate the river or reservoir name, river mile, locator landmarks, and direction of water flow if known.

(iii) A site photograph. The photograph shall be at least 3 by 5 inches in size and show the location of the proposed structure or alteration and the adjacent shoreline area.

(iv) Location map. The location map shall clearly show the location of the proposed facility and the extent of any site disturbance for the proposed project. An 8½ by 11-inch copy of one

of the following is ideal: a TVA land map, a subdivision map, or a portion of a United States Geological Survey topographic map. The subdivision name and lot number and the map number or name shall be included, if available.

(v) Environmental consultations and permits. To the fullest extent possible the applicant shall obtain or apply for other required environmental permits and approvals before or at the same time as applying for section 26a approvals. Consultations under the National Historic Preservation Act of 1966 and the Endangered Species Act of 1973 shall take place, and permits from the U. S. Army Corps of Engineers and State agencies for water or air regulation shall be obtained or applied for at the same time as or before application for section 26a approval. The applicant shall provide TVA with copies of any such permits or approvals that are issued.

(2) *Information required for a major facility.* One (1) copy of the application shall be prepared and submitted according to instructions included in the section 26a Applicant's Package. By way of example only, major projects and facilities may include: marinas, community docks, barge terminals, utility crossings, bridges, culverts, roads, wastewater discharges, water intakes, dredging, and placement of fill. The application shall include:

(i) Completed application form. Application forms are available from TVA at the locations identified at the beginning of this section. The application shall include a narrative project description which indicates what is to be built, removed, or modified, and the sequence of the work.

(ii) Project plan or drawing. Adequate project plans or drawings shall accompany the application. They shall:

(A) Be prepared on paper suitable for reproduction (no larger than 11 by 17 inches) or contained on a 3½-inch floppy disc in ''dxf'' format.

(B) Contain the date; applicant name; stream; river or reservoir name; river mile; locator landmarks; and direction of water flow, if known;

(C) Identify the kind of structure, purpose/intended use;

(D) Include a plan and profile view of the structure;

(E) Show principal dimensions, size, and location in relation to shoreline;

(F) Show the elevations of the structure above full summer pool if located on a TVA reservoir or above the normal high water elevation if on a free-flowing stream or river; and

(G) Show the north arrow.

(iii) Location map. The location map must clearly indicate the exact location and extent of site disturbance for the proposed project. An 8½- by 11-inch copy of the appropriate portion of a United States Geological Survey topographic map is recommended. The map number or name shall be included. In addition, recent photos of the location are helpful for TVA's review and may be included.

(iv) Other information where applicable. The location of any material laydown or assembly areas, staging areas, equipment storage areas, new access roads, and road/access closure required by the project or needed for construction; the location of borrow or spoil areas on or off TVA land; the extent of soil and vegetative disturbance; and information on any special reservoir operations needed for the project, such as drawdown or water discharge restrictions.

(v) Site plans. Some projects, particularly larger ones, may require a separate site plan which details existing and proposed changes to surface topography and elevations (cut and fill, clearing, etc.), location of all proposed facilities, and erosion control plans.

(vi) Environmental consultations and permits. To the fullest extent possible the applicant shall obtain or apply for other required environmental permits and approvals before or at the same time as applying for section 26a approvals. Consultations under the National Historic Preservation Act of 1966 and the Endangered Species Act of 1973 shall take place, and permits from the U.S. Army Corps of Engineers and State agencies for water or air regulation shall be obtained or applied for at the same time as or before application for section 26a approval. The applicant shall provide TVA with copies of any such permits or approvals that are issued.

(d) *Discharges into navigable waters of the United States.* If construction, maintenance, or operation of the proposed structure or any part thereof, or the conduct of the activity in connection with which approval is sought, may result in any discharge into navigable waters of the United States, applicant shall also submit with the application, in addition to the material required by paragraph (c) of this section, a certification from the State in which such discharge would originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge would originate, or from the Environmental Protection Agency, that such State or interstate agency or the Environmental Protection Agency has determined that there is reasonable assurance that the applicant's proposed activity will be conducted in a manner which will not violate applicable water quality standards. The applicant shall further submit such supplemental and additional information as TVA may deem necessary for the review of the application, including, without limitation, information concerning the amounts, chemical makeup, temperature differentials, type and quantity of suspended solids, and proposed treatment plans for any proposed discharges.

§ 1304.3 Delegation of authority.

The power to approve or disapprove applications under this part is delegated to the Vice President, Resource Stewardship, or the designee thereof, subject to appeal to the Board as provided in § 1304.6. In his/her discretion, the Vice President may submit any application and supporting materials to the Board for its approval or disapproval. Administration of the handling of applications is delegated to Resource Stewardship.

§ 1304.4 Application review and approval process.

(a) TVA shall notify the U.S. Army Corps of Engineers (USACE) and other Federal agencies with jurisdiction of the application as appropriate.

(b) If a hearing is held for any of the reasons described in paragraph (c) of this section, any interested person may become a party of record by following the directions contained in the hearing notice.

(c) Hearings concerning approval of applications are conducted (in accordance with § 1304.5) when:

(1) TVA deems a hearing is necessary or appropriate in determining any issue presented by the application;

(2) A hearing is required under any applicable law or regulation;

(3) A hearing is requested by the USACE pursuant to the TVA/Corps joint processing Memorandum of Understanding; or

(4) The TVA Investigator directs that a hearing be held.

(d) Upon completion of the review of the application, including any hearing or hearings, the Vice President shall issue a decision approving or disapproving the application. The basis for the decision shall be set forth in the decision.

(e) Promptly following the issuance of the decision, the Vice President or the Board, as the case may be, shall furnish a written copy thereof to the applicant and to any parties of record. The Vice President's decision shall become final unless an appeal is made pursuant to § 1304.6. Any decision by the Board on

a matter referred by the Vice President shall be a final decision.

§ 1304.5 Conduct of hearings.

(a) If a hearing is to be held for any of the reasons described in § 1304.4(c), TVA shall give notice of the hearing to interested persons. Such notice may be given by publication in the **Federal Register**, publication in a daily newspaper of general circulation in the area of the proposed structure, personal written notice, posting on TVA's Internet website, or by any other method reasonably calculated to come to the attention of interested persons. The notice shall indicate the place, date, and time of hearing (to the extent feasible), the particular issues to which the hearing will pertain, and the manner of becoming a party of record, and shall provide other pertinent information as appropriate. The applicant shall automatically be a party of record.

(b) Hearings may be conducted by the Vice President and/or such other person or persons as may be designated by the Vice President or the Board for that purpose. Hearings are public and are conducted in an informal manner. Parties of record may be represented by counsel or other persons of their choosing. Technical rules of evidence are not observed although reasonable bounds are maintained as to relevancy, materiality, and competency. Evidence may be presented orally or by written statement and need not be under oath. Cross-examination by parties of witnesses or others providing statements or testifying at a hearing shall not be allowed. After the hearing has been completed, additional evidence will not be received unless it presents new and material matter that in the judgment of the person or persons conducting the hearing could not be presented at the hearing. Where construction of the project also requires the approval of another agency of the Federal Government by or before whom a hearing is to be held, the Vice President may arrange with such agency to hold a joint hearing.

§ 1304.6 Appeals.

(a) Decisions approving or disapproving an application may be appealed as provided in this section. Decisions by the Vice President's designee shall be reviewed by the Vice President; decisions by the Vice President shall be reviewed by the Board.

(b) If a designee of the Vice President disapproves an application or approves it with terms and conditions deemed unacceptable by the applicant, the applicant may, by written request addressed to the Vice President, Resource Stewardship, Tennessee Valley Authority, P.O. Box 1589, 17 Ridgeway Road, Norris, TN 37828–1589, and mailed within thirty (30) days after receipt of the decision, obtain review of the decision by the Vice President. If the Vice President, either initially or as the result of an appeal, disapproves an application or approves it with terms and conditions deemed unacceptable by the applicant, the applicant may, by written request addressed to the Board of Directors, Tennessee Valley Authority, 400 W. Summit Hill Drive, Knoxville, TN 37902, and mailed within thirty (30) days after receipt of the decision, obtain review of the decision by the Board. In either event, the request must contain a signed representation that a copy of the written request for review was mailed to each party of record at the same time as it was mailed to TVA. A decision by the Vice President is a prerequisite for seeking Board review. There shall be no administrative appeal of a Board decision approving or disapproving an application.

(c) A party of record at a hearing who is aggrieved or adversely affected by any decision approving an application may obtain review by the Board or by the Vice President, as appropriate, of such decision by written request prepared, addressed and mailed as provided in paragraph (b) of this section.

(d) Requests for review by the Vice President shall specify the reasons why it is contended that the determination of the Vice President's designee is in error.

(e) The applicant or other person requesting review and any party of record may submit additional written material in support of their positions to the Vice President within thirty (30) days after receipt by TVA of the request for review. Following receipt of a request for review, the Vice President will conduct such review as he or she deems appropriate. If additional information is required of the applicant or other person requesting the review, the Vice President shall allow for at least thirty (30) days in which to provide the additional information. At the conclusion of the review, the Vice President shall render his or her decision approving or disapproving the application.

(f) Requests for review by the Board shall specify the reasons why it is contended that the Vice President's determination is in error and indicate whether a hearing is requested.

(g) The applicant or other person requesting review and any party of record may submit additional written material in support of their positions to the Board within thirty (30) days after receipt by TVA of the request for review. Following receipt of a request for review, the Board will review the material on which the Vice President's decision was based and any additional information submitted by any party of record, or a summary thereof, and may conduct or cause to be conducted such investigation of the application as the Board deems necessary or desirable. In the event the Board decides to conduct an investigation, it shall appoint an Investigating Officer. The Investigating Officer may be a TVA employee, including a TVA Resource Stewardship employee, or a person under contract to TVA, and shall not have been directly and substantially involved in the decision being appealed. The Investigating Officer shall be the hearing officer for any hearing held during the appeal process. At the conclusion of his or her investigation, the Investigating Officer shall summarize the results of the investigation in a written report to the Board. The report shall be provided to all parties of record and made part of the public record. Based on the review, investigation, and written submissions provided for in this paragraph, the Board shall render its decision approving or disapproving the application.

(h) A written copy of the decision in any review proceeding under this section, either by the Vice President or by the Board, shall be furnished to the applicant and to all parties of record promptly following determination of the matter.

§ 1304.7 Conditions of approvals.

Approvals of applications shall contain such conditions as are required by law and may contain such other general and special conditions as TVA deems necessary or desirable.

§ 1304.8 Denials.

TVA may, at its sole discretion, deny any application to construct, operate, conduct, or maintain any obstruction, structure, facility, or activity that in TVA's judgment would be contrary to the unified development and regulation of the Tennessee River system, would adversely affect navigation, flood control, public lands or reservations, the environment, or sensitive resources (including, without limitation, federally listed threatened or endangered species, high priority State-listed species, wetlands with high function and value, archaeological or historical sites of national significance, and other sites or locations identified in TVA Reservoir Land Management Plans as requiring protection of the environment), or

would be inconsistent with TVA's Shoreline Management Policy. In lieu of denial, TVA may require mitigation measures where, in TVA's sole judgment, such measures would adequately protect against adverse effects.

§ 1304.9 Initiation of construction.

A permit issued pursuant to this part shall expire unless the applicant initiates construction within eighteen (18) months after the date of issuance.

§ 1304.10 Change in ownership of approved facilities or activities.

(a) When there is a change in ownership of the land on which a permitted facility or activity is located (or ownership of the land which made the applicant eligible for consideration to receive a permit when the facility or activity is on TVA land), the new owner shall notify TVA within sixty (60) days. Upon application to TVA by the new owner, the new owner may continue to use existing facilities or carry out permitted activities pending TVA's decision on reissuance of the permit. TVA shall reissue the permit upon determining that the facilities are in good repair and are consistent with the standards in effect at the time the permit was first issued.

(b) Subsequent owners are not required to modify existing facilities constructed and maintained in accordance with the standards in effect at the time the permit was first issued provided they:

(1) Maintain such facilities in good repair; and

(2) Obtain TVA approval for any repairs that would alter the size of the facility or for any new construction.

§ 1304.11 Little Tennessee River; date of formal submission.

As regards structures on the Little Tennessee River, applications are deemed by TVA to be formally submitted within the meaning of section 26a of the Act, on that date upon which applicant has complied in good faith with all applicable provisions of § 1304.2.

Subpart B—Regulation of Nonnavigable Houseboats

§ 1304.100 Scope and intent.

This subpart prescribes regulations governing existing nonnavigable houseboats that are moored, anchored, or installed in TVA reservoirs. No new nonnavigable houseboats shall be moored, anchored, or installed in any TVA reservoir.

§ 1304.101 Nonnavigable houseboats.

(a) Any houseboat failing to comply with the following criteria shall be deemed a non-navigable houseboat and may not be moored, anchored, installed, or operated in any TVA reservoir except as provided in paragraph (b) of this section:

(1) Built on a boat hull or on two or more pontoons;

(2) Equipped with a motor and rudder controls located at a point on the houseboat from which there is forward visibility over a 180-degree range;

(3) Compliant with all applicable State and Federal requirements relating to vessels;

(4) Registered as a vessel in the State of principal use; and

(5) State registration numbers clearly displayed on the vessel.

(b) Nonnavigable houseboats approved by TVA prior to February 15, 1978, shall be deemed existing houseboats and may remain on TVA reservoirs provided they remain in compliance with the rules contained in this part. Such houseboats shall be moored to mooring facilities contained within the designated and approved harbor limits of a commercial marina. Alternatively, provided the owner has obtained written approval from TVA pursuant to subpart A of this part authorizing mooring at such location, nonnavigable houseboats may be moored to the bank of the reservoir at locations where the owner of the houseboat is the owner or lessee (or the licensee of such owner or lessee) of the proposed mooring location, and at locations described by § 1304.201(a)(1), (2), and (3). All nonnavigable houseboats must be moored in such a manner as to:

(1) Avoid obstruction of or interference with navigation, flood control, public lands or reservations;

(2) Avoid adverse effects on public lands or reservations;

(3) Prevent the preemption of public waters when moored in permanent locations outside of the approved harbor limits of commercial marinas;

(4) Protect land and landrights owned by the United States alongside and subjacent to TVA reservoirs from trespass and other unlawful and unreasonable uses; and

(5) Maintain, protect, and enhance the quality of the human environment.

(c) All approved nonnavigable houseboats with toilets must be equipped as follows with a properly installed and operating Marine Sanitation Device (MSD) or Sewage Holding Tank and pumpout capability:

(1) Nonnavigable houseboats moored on ''Discharge Lakes'' must be equipped with a Type I or Type II MSD.

(2) Nonnavigable houseboats moored in: ''No Discharge Lakes'' must be equipped with holding tanks and pumpout capability. If a nonnavigable houseboat moored in a ''No Discharge Lake'' is equipped with a Type I or Type II MSD, it must be secured to prevent discharge into the lake.

(d) Approved nonnavigable houseboats shall be maintained in a good state of repair. Such houseboats may be structurally repaired or rebuilt without additional approval from TVA, but any expansion in length, width, or height is prohibited except as approved in writing by TVA.

(e) All nonnavigable houseboats shall comply with the requirements for flotation devices contained in § 1304.400.

(f) Applications for mooring of a nonnavigable houseboat outside of designated harbor limits will be disapproved if TVA determines that the proposed mooring location would be contrary to the intent of this subpart.

§ 1304.102 Numbering of nonnavigable houseboats and transfer of ownership.

(a) All approved nonnavigable houseboats shall display a number assigned by TVA. The owner of the nonnavigable houseboat shall paint or attach a facsimile of the number on a readily visible part of the outside of the facility in letters at least three inches high.

(b) The transferee of any nonnavigable houseboat approved pursuant to the regulations in this subpart shall, within thirty (30) days of the transfer transaction, report the transfer to TVA.

(c) A nonnavigable houseboat moored at a location approved pursuant to the regulations in this subpart shall not be relocated and moored at a different location without prior approval by TVA, except for movement to a new location within the designated harbor limits of a commercial dock or marina.

§ 1304.103 Approval of plans for structural modifications or rebuilding of approved nonnavigable houseboats.

Plans for the structural modification, or rebuilding of an approved nonnavigable houseboat shall be submitted to TVA for review and approval in advance of any structural modification which would increase the length, width, height, or flotation of the structure.

Subpart C—TVA-Owned Residential Access Shoreland

§ 1304.200 Scope and intent.

This subpart C applies to residential water-use facilities, specifically the construction of docks, piers, boathouses (fixed and floating), retaining walls, and other structures and alterations, including channel excavation and vegetation management, on or along TVA-owned residential access shoreland. TVA manages the TVA-owned residential access shoreland to conserve, protect, and enhance shoreland resources, while providing reasonable access to the water of the reservoir by qualifying adjacent residents.

§ 1304.201 Applicability.

This subpart addresses residential-related (all private, noncommercial uses) construction activities along and across shoreland property owned by the United States and under the custody and control of TVA. Individual residential landowners wishing to construct facilities, clear vegetation and/or maintain an access corridor on adjacent TVA-owned lands are required to apply for and obtain a permit from TVA before conducting any such activities.

(a) This subpart applies to the following TVA-reservoir shoreland classifications:

(1) TVA-owned shorelands over which the adjacent residential landowner holds rights of ingress and egress to the water (except where a particular activity is specifically excluded by an applicable real estate document), including, at TVA's discretion, cases where the applicant owns access rights across adjoining private property that borders on and benefits from rights of ingress and egress across TVA-owned shoreland.

(2) TVA-owned shorelands designated in current TVA Reservoir Land Management Plans as open for consideration of residential development; and

(3) On reservoirs not having a current approved TVA Reservoir Land Management Plan at the time of application, TVA-owned shorelands designated in TVA's property forecast system as ''reservoir operations property,'' identified in a subdivision plat recorded prior to September 24, 1992, and containing at least one water-use facility developed prior to September 24, 1992.

(b) Construction of structures, access corridors, and vegetation management activities by owners of adjacent upland residential property shall not be allowed on any TVA-owned lands other than those described in one or more of the classifications identified in paragraph (a) of this section.

(c) Flowage easement shoreland. Except as otherwise specifically provided in subpart D of this part, this subpart C does not apply to shoreland where TVA's property interest is ownership of a flowage easement. The terms of the particular flowage easement and subparts A, B, D, and E of this part govern the use of such property.

§ 1304.202 General sediment and erosion control provisions.

(a) During construction activities, TVA shall require that appropriate erosion and sediment control measures be utilized to prevent pollution of the waters of the reservoir.

(b) All material which accumulates behind sediment control structures must be removed from TVA land and placed at an upland site above the 100-year floodplain elevation or the Flood Risk Profile Elevation (whichever is applicable).

(c) Disturbed sites must be promptly stabilized with seeding, vegetative planting, erosion control netting, and/or mulch material.

§ 1304.203 Vegetation management.

No vegetation management shall be approved on TVA-owned Residential Access Shoreland until a Vegetation Management Plan meeting the vegetation management standards contained in this section is submitted to and approved by TVA.

(a) Except for the mowing of lawns established and existing before November 1, 1999, all vegetation management activities on TVA-owned property subject to this subpart (including all such activities described in paragraphs (b) through (m) of this section as ''allowed'' and all activities undertaken in connection with a section 26a permit obtained before September 8, 2003) require TVA's advance written permission. Special site circumstances such as the presence of wetlands may result in a requirement for mitigative measures or alternative vegetation management approaches.

(b) Vegetation may be cleared to create and maintain an access corridor up to but not exceeding 20 feet wide. The corridor will extend from the common boundary between TVA and the adjacent landowner to the water-use facility.

(c) The access corridor will be located to minimize removal of trees or other vegetation on the TVA land.

(d) Grass may be planted and mowed within the access corridor, and stone, brick, concrete, mulch, or wooden paths, walkways and/or steps are allowed. Pruning of side limbs that extend into the access corridor from trees located outside the access corridor is allowed.

(e) A 50-foot-deep shoreline management zone (SMZ) shall be designated by TVA on TVA property; provided, however, that where TVA ownership is insufficient to establish a 50-foot-deep SMZ, the SMZ shall consist only of all of the TVA land at the location (private land shall not be included within the SMZ). Within the SMZ, no trees may be cut or vegetation removed, except that which is preapproved by TVA within the access corridor.

(f) Within the 50-foot SMZ and elsewhere on TVA land as defined in § 1304.201, clearing of specified understory plants (poison ivy, Japanese honeysuckle, kudzu, and other exotic plants on a list provided by TVA) is allowed.

(g) On TVA land situated above the SMZ, selective thinning of trees or other vegetation under three inches in diameter at the ground level is allowed.

(h) Removal of trees outside of the access corridor but within the SMZ may be approved to make the site suitable for approved shoreline erosion control projects.

(i) Vegetation removed for erosion control projects must be replaced with native species of vegetation.

(j) The forest floor must be left undisturbed, except as specified in this section. Mowing is allowed only within the access corridor.

(k) Planting of trees, shrubs, wildflowers, native grasses, and ground covers within the SMZ is allowed to create, improve, or enhance the vegetative cover, provided native plants are used.

(l) Fertilizers and herbicides shall not be applied within the SMZ or elsewhere on TVA land, except as specifically approved in the Vegetative Management Plan.

(m) Restricted use herbicides and pesticides shall not be applied on TVA-owned shoreland except by a State certified applicator. All herbicides and pesticides shall be applied in accordance with label requirements.

§ 1304.204 Docks, piers, and boathouses.

Applicants are responsible for submitting plans for proposed docks, piers, and boathouses that conform to the size standards specified in this section. Where and if site constraints at the proposed construction location preclude a structure of the maximum size, TVA shall determine the size of

facility that may be approved. Applicants are required to submit accurate drawings with dimensions of all proposed facilities.

(a) Docks, piers, boathouses, and all other residential water-use facilities shall not exceed a total footprint area of greater than 1000 square feet.

(b) Docks, boatslips, piers, and fixed or floating boathouses are allowable. These and other water-use facilities associated with a lot must be sited within a 1000-square-foot rectangular or square area at the lakeward end of the access walkway that extends from the shore to the structure. Access walkways to the water-use structure are not included in calculating the 1000-foot area.

(c) Docks and walkway(s) shall not extend more than 150 feet from the shoreline, or more than one-third the distance to the opposite shoreline, whichever is less.

(d) All fixed piers and docks on Pickwick, Wilson, Wheeler, Guntersville, and Nickajack Reservoirs shall have deck elevations at least 18 inches above full summer pool level; facilities on all other reservoirs, shall be a minimum of 24 inches above full summer pool.

(e) All docks, piers, and other water-use facilities must be attached to the shore with a single walkway which must connect from land to the structure by the most direct route and must adjoin the access corridor.

(f) Docks, piers, and boathouses may be fixed or floating or a combination of the two types.

(g) Roofs are allowed on boatslips, except on Kentucky Reservoir where roofs are not allowed on fixed structures due to extreme water level fluctuations. Roofs over docks or piers to provide shade are allowed on all reservoirs.

(h) Docks proposed in subdivisions recorded after November 1, 1999, must be placed at least 50 feet from the neighbors' docks. When this density requirement cannot be met, TVA may require group or community facilities.

(i) Where the applicant owns or controls less than 50 feet of property adjoining TVA shoreline, the overall width of the facilities permitted along the shore shall be limited to ensure sufficient space to accommodate other property owners.

(j) Covered boatslips may be open or enclosed with siding.

(k) Access walkways constructed over water and internal walkways inside of boathouses shall not exceed six feet in width.

(l) Enclosed space shall be used solely for storage of water-use equipment. The outside dimensions of any completely enclosed storage space shall not exceed 32 square feet and must be located on an approved dock, pier, or boathouse.

(m) Docks, piers, and boathouses shall not contain living space or sleeping areas. Floor space shall not be considered enclosed if three of the four walls are constructed of wire or screen mesh from floor to ceiling, and the wire or screen mesh leaves the interior of the structure open to the weather.

(n) Except for nonnavigable houseboats approved in accordance with subpart B of this part, toilets and sinks are not permitted on water-use facilities.

(o) Covered docks, boatslips, and boathouses shall not exceed one story in height.

(p) Second stories on covered docks, piers, boatslips, or boathouses may be constructed as open decks with railing, but shall not be covered by a roof or enclosed with siding or screening.

(q) In congested areas or in other circumstances deemed appropriate by TVA, TVA may require an applicant's dock, pier, or boathouse to be located on an area of TVA shoreline not directly fronting the applicant's property.

§ 1304.205 Other water-use facilities.

(a) A marine railway or concrete boat launching ramp with associated driveway may be located within the access corridor. Construction must occur during reservoir drawdown. Excavated material must be placed at an upland site. Use of concrete is allowable; asphalt is not permitted.

(b) Tables or benches for cleaning fish are permitted on docks or piers.

(c) All anchoring cables or spud poles must be anchored to the walkway or to the ground in a way that will not accelerate shoreline erosion. Anchoring of cables, chains, or poles to trees on TVA property is not permitted.

(d) Electrical appliances such as stoves, refrigerators, freezers, and microwave ovens are not permitted on docks, piers, or boathouses.

(e) Mooring buoys/posts may be permitted provided the following requirements are met.

(1) Posts and buoys shall be placed in such a manner that in TVA's judgment they would not create a navigation hazard.

(2) Mooring posts must be a minimum 48 inches in height above the full summer pool elevation of the reservoir or higher as required by TVA.

(3) Buoys must conform to the Uniform State Waterway Marking system.

(f) Structures shall not be wider than the width of the lot.

(g) In congested areas, TVA may establish special permit conditions requiring dry-docking of floating structures when a reservoir reaches a specific drawdown elevation to prevent these structures from interfering with navigation traffic, recreational boating access, or adjacent structures during winter drawdown.

(h) Closed loop heat exchanges for residential heat pump application may be approved provided they are installed five feet below minimum winter water elevation and they utilize propylene glycol or water. All land-based pipes must be buried within the access corridor.

§ 1304.206 Requirements for community docks, piers, boathouses, or other water-use facilities.

(a) Community facilities where individual facilities are not allowed:

(1) TVA may limit water-use facilities to community facilities where physical or environmental constraints preclude approval of individual docks, piers, or boathouses.

(2) When individual water-use facilities are not allowed, no more than one slip for each qualified applicant will be approved for any community facility. TVA shall determine the location of the facility and the named permittees, taking into consideration the preferences of the qualified applicants and such other factors as TVA determines to be appropriate.

(3) In narrow coves or other situations where shoreline frontage is limited, shoreline development may be limited to one landing dock for temporary moorage of boats not to exceed the 1000-square-foot footprint requirement, and/or a boat launching ramp, if the site, in TVA's judgment, will accommodate such development.

(b) Private and community facilities at jointly-owned community outlots:

(1) Applications for private or community facilities to be constructed at a jointly-owned community outlot must be submitted either with 100 percent concurrence of all co-owners of such lot, or with concurrence of the authorized representatives of a State-chartered homeowners association with the authority to manage the common lot on behalf of all persons having an interest in such lot. If the community facility will serve five or more other lots, the application must be submitted by the authorized representatives of such an association. TVA considers an association to have the necessary authority to manage the common lot if all co-owners are eligible for membership in the association and a majority are members. TVA may request the association to provide satisfactory evidence of its authority.

(2) Size and number of slips at community water-use facilities lots shall be determined by TVA with consideration of the following:

(i) Size of community outlot;

(ii) Parking accommodations on the community outlot;

(iii) Length of shoreline frontage associated with the community outlot;

(iv) Number of property owners having the right to use the community outlot;

(v) Water depths fronting the community lot;

(vi) Commercial and private vessel navigation uses and restrictions in the vicinity of the community lot;

(vii) Recreational carrying capacity for water-based activities in the vicinity of the community lot, and

(viii) Other site specific conditions and considerations as determined by TVA.

(3) Vegetation management shall be in accordance with the requirements of § 1304.203 except that, at TVA's discretion, the community access corridor may exceed 20 feet in width, and thinning of vegetation outside of the corridor within or beyond the SMZ may be allowed to enhance views of the reservoir.

(c) TVA may approve community facilities that are greater in size than 1000 square feet. In such circumstances, TVA also may establish harbor limits.

§ 1304.207 Channel excavation on TVA-owned residential access shoreland.

(a) Excavation of individual boat channels shall be approved only when TVA determines there is no other practicable alternative to achieving sufficient navigable water depth and the action would not substantially impact sensitive resources.

(b) No more than 150 cubic yards of material shall be removed for any individual boat channel.

(c) The length, width, and depth of approved boat channels shall not exceed the dimensions necessary to achieve three-foot water depths for navigation of the vessel at the minimum winter water elevation.

(d) Each side of the channel shall have a slope ratio of at least 3:1.

(e) Only one boat channel or harbor may be considered for each abutting property owner.

(f) The grade of the channel must allow drainage of water during reservoir drawdown periods.

(g) Channel excavations must be accomplished during the reservoir drawdown when the reservoir bottom is exposed and dry.

(h) Spoil material from channel excavations must be placed in accordance with any applicable local, State, and Federal regulations at an upland site above the TVA Flood Risk Profile elevation. For those reservoirs that have no flood control storage, dredge spoil must be disposed of and stabilized above the limits of the 100-year floodplain and off of TVA property.

§ 1304.208 Shoreline stabilization on TVA-owned residential access shoreland.

TVA may issue permits allowing adjacent residential landowners to stabilize eroding shorelines on TVA-owned residential access shoreland. TVA will determine if shoreline erosion is sufficient to approve the proposed stabilization treatment.

(a) Biostabilization of eroded shorelines.

(1) Moderate contouring of the bank may be allowed to provide conditions suitable for planting of vegetation.

(2) Tightly bound bundles of coconut fiber, logs, or other natural materials may be placed at the base of the eroded site to deflect waves.

(3) Willow stakes and bundles and live cuttings of suitable native plant materials may be planted along the surface of the eroded area.

(4) Native vegetation may be planted within the shoreline management zone to help minimize further erosion.

(5) Riprap may be allowed along the base of the eroded area to prevent further undercutting of the bank.

(b) Use of gabions and riprap to stabilize eroded shorelines.

(1) The riprap material must be quarry-run stone, natural stone, or other material approved by TVA.

(2) Rubber tires, concrete rubble, or other debris salvaged from construction sites shall not be used to stabilize shorelines.

(3) Gabions (rock wrapped with wire mesh) that are commercially manufactured for erosion control may be used.

(4) Riprap material must be placed so as to follow the existing contour of the bank.

(5) Site preparation must be limited to the work necessary to obtain adequate slope and stability of the riprap material.

(c) Use of retaining walls for shoreline stabilization.

(1) Retaining walls shall be allowed only where the erosion process is severe and TVA determines that a retaining wall is the most effective erosion control option or where the proposed wall would connect to an existing TVA-approved wall on the lot or to an adjacent owner's TVA-approved wall.

(2) The retaining wall must be constructed of stone, concrete blocks, poured concrete, gabions, or other materials acceptable to TVA. Railroad ties, rubber tires, broken concrete (unless determined by TVA to be of adequate size and integrity), brick, creosote timbers, and asphalt are not allowed.

(3) Reclamation of land that has been lost to erosion is not allowed.

(4) The base of the retaining wall shall not be located more than an average of two horizontal feet lakeward of the existing full summer pool water. Riprap shall be placed at least two feet in depth along the footer of the retaining wall to deflect wave action and reduce undercutting that could eventually damage the retaining wall.

§ 1304.209 Land-based structures/alterations.

(a) Except for steps, pathways, boat launching ramps, marine railways located in the access corridor, bank stabilization along the shoreline, and other uses described in this subpart, no permanent structures, fills or grading shall be allowed on TVA land.

(b) Portable items such as picnic tables and hammocks may be placed on TVA land; permanent land-based structures and facilities such as picnic pavilions, gazebos, satellite antennas, septic tanks, and septic drainfields shall not be allowed on TVA land.

(c) Utility lines (electric, water-intake lines, etc.) may be placed within the access corridor as follows:

(1) Power lines, poles, electrical panel, and wiring must be installed:

(i) In a way that would not be hazardous to the public or interfere with TVA operations;

(ii) Solely to serve water-use facilities, and

(iii) In compliance with all State and local electrical codes (satisfactory evidence of compliance to be provided to TVA upon request).

(2) Electrical service must be installed with an electrical disconnect that is:

(i) Located above the 500-year floodplain or the flood risk profile, whichever is higher, and

(ii) Is accessible during flood events.

(3) TVA's issuance of a permit does not mean that TVA has determined the facilities are safe for any purpose or that TVA has any duty to make such a determination.

(d) Fences crossing TVA residential access shoreland may be considered only where outstanding agricultural rights or fencing rights exist and the land is used for agricultural purposes. Fences must have a built-in means for easy pedestrian passage by the public and they must be clearly marked.

§ 1304.210 Grandfathering of preexisting shoreland uses and structures.

In order to provide for a smooth transition to new standards, grandfathering provisions shall apply as follows to preexisting development and shoreland uses established prior to November 1, 1999, which are located along or adjoin TVA-owned access residential shoreland.

(a) Existing shoreline structures (docks, retaining walls, etc.) previously permitted by TVA are grandfathered.

(b) Grandfathered structures may continue to be maintained in accordance with previous permit requirements, and TVA does not require modification to conform to new standards.

(c) If a permitted structure is destroyed by fire or storms, the permit shall be reissued if the replacement facility is rebuilt to specifications originally permitted by TVA.

(d) Vegetation management at grandfathered developments shall be as follows:

(1) Mowing of lawns established on TVA-owned residential access shoreland prior to November 1, 1999, may be continued without regard to whether the lawn uses are authorized by a TVA permit.

(2) At sites where mowing of lawns established prior to November 1, 1999, is not specifically included as an authorized use in an existing permit, TVA will include mowing as a permitted use in the next permit action at that site.

(3) The SMZ is not required where established lawns existed prior to November 1, 1999.

(4) Any additional removal of trees or other vegetation (except for mowing of lawns established prior to November 1, 1999) requires TVA's approval in accordance with § 1304.203. Removal of trees greater than three inches in diameter at ground level is not allowed.

§ 1304.211 Change in ownership of grandfathered structures or alterations.

(a) When ownership of a permitted structure or other shoreline alteration changes, the new owner shall comply with § 1304.10 regarding notice to TVA.

(b) The new owner may, upon application to TVA for a permit, continue to use existing permitted docks and other shoreline alterations pending TVA action on the application.

(c) Subsequent owners are not required to modify to new standards existing shoreline alterations constructed and maintained in accordance with the standards in effect at the time the previous permit was first issued, and they may continue mowing established lawns that existed prior to November 1, 1999.

(d) New owners wishing to continue existing grandfathered activities and structures must:

(1) Maintain existing permitted docks, piers, boathouses, and other shoreline structures in good repair.

(2) Obtain TVA approval for any repairs that would alter the size of the facility, for any new construction, or for removal of trees or other vegetation (except for mowing of lawns established prior to November 1, 1999).

§ 1304.212 Waivers.

(a) Waivers of standards contained in this subpart may be requested when the following minimum criteria are established:

(1) The property is within a preexisting development (an area where shoreline development existed prior to November 1, 1999); and

(2) The proposed shoreline alterations are compatible with surrounding permitted structures and uses within the subdivision or, if there is no subdivision, within the immediate vicinity (one-fourth mile radius).

(b) In approving waivers of the standards of this subpart C, TVA will consider the following:

(1) The prevailing permitted practices within the subdivision or immediate vicinity; and

(2) The uses permitted under the guidelines followed by TVA before November 1, 1999.

Subpart D—Activities on TVA Flowage Easement Shoreland

§ 1304.300 Scope and intent.

Any structure built upon land subject to a flowage easement held by TVA shall be deemed an obstruction affecting navigation, flood control, or public lands or reservations within the meaning of section 26a of the Act. Such obstructions shall be subject to all requirements of this part except those contained in subpart C of this part, which shall apply as follows:

(a) All of § 1304.212 shall apply.

(b) Sections 1304.200, 1304.203, 1304.207, and 1304.209 shall not apply.

(c) Section 1304.201 shall not apply except for paragraph (c).

(d) Section 1304.202 shall apply except that TVA shall determine on a case-by-case basis whether it is necessary to remove materials accumulated behind sediment control structures to an upland site.

(e) Section 1304.204 shall apply except that the ''50 feet'' trigger of paragraph (i) of that section shall not apply. TVA may impose appropriate requirements to ensure accommodation of neighboring landowners.

(f) Section 1304.205 shall apply except that the facilities described in paragraph (a) are not limited to locations within an access corridor.

(g) Section 1304.206 shall apply except for paragraph (b)(3).

(h) Section 1304.208 shall apply except that TVA approval shall not be required to conduct the activities described in paragraph (a).

(i) Section 1304.210 shall apply except for paragraph (d).

(j) Section 1304.211 shall apply except to the extent that it would restrict mowing or other vegetation management.

(k) Nothing contained in this part shall be construed to be in derogation of the rights of the United States or of TVA under any flowage easement held by the United States or TVA.

§ 1304.301 Utilities.

Upon application to and approval by TVA, utility lines (electric, water-intake lines, etc.) may be placed within the flowage easement area as follows:

(a) Power lines, poles, electrical panels, and wiring shall be installed:

(1) In a way that would not be hazardous to the public or interfere with TVA operations; and

(2) In compliance with all State and local electrical codes (satisfactory evidence of compliance to be provided to TVA upon request).

(b) Electrical service shall be installed with an electrical disconnect that is located above the 500-year floodplain or the flood risk profile, whichever is higher, and is accessible during flood events.

(c) TVA's issuance of a permit does not mean that TVA has determined the facilities are safe for any purpose or that TVA has any duty to make such a determination.

§ 1304.302 Vegetation management on flowage easement shoreland.

Removal, modification, or establishment of vegetation on privately-owned shoreland subject to a TVA flowage easement does not require approval by TVA. When reviewing proposals for docks or other obstructions on flowage easement shoreland, TVA shall consider the potential for impacts to sensitive plants or other resources and may establish conditions in its approval of a proposal to avoid or minimize such impacts consistent with applicable laws and executive orders.

§ 1304.303 Channel excavation.

(a) Channel excavation of privately-owned reservoir bottom subject to a

TVA flowage easement does not require approval by TVA under section 26a if:

(1) All dredged material is placed above the limits of the 100-year floodplain or the TVA flood risk profile elevation, whichever is applicable, and

(2) The dredging is not being accomplished in conjunction with the construction of a structure requiring a section 26a permit.

(b) Any fill material placed within the flood control zone of a TVA reservoir requires TVA review and approval.

(c) TVA shall encourage owners of flowage easement property to adopt the standards for channel excavation applicable to TVA-owned residential access shoreland.

Subpart E—Miscellaneous

§ 1304.400 Flotation devices and material, all floating structures.

(a) All flotation for docks, boat mooring buoys, and other water-use structures and facilities, shall be of materials commercially manufactured for marine use. Flotation materials shall be fabricated so as not to become water-logged, crack, peel, fragment, or be subject to loss of beads. Flotation materials shall be resistant to puncture, penetration, damage by animals, and fire. Any flotation within 40 feet of a line carrying fuel shall be 100 percent impervious to water and fuel. Styrofoam floatation must be fully encased. Reuse of plastic, metal, or other previously used drums or containers for encasement or flotation purpose is prohibited, except as provided in paragraph (c) of this section for certain metal drums already in use. Existing flotation (secured in place prior to September 8, 2003) in compliance with previous rules is authorized until in TVA's judgment the flotation is no longer serviceable, at which time it shall be replaced with approved flotation upon notification from TVA. For any float installed after September 8, 2003, repair or replacement is required when it no longer performs its designated function or exhibits any of the conditions prohibited by this subpart.

(b) Because of the possible release of toxic or polluting substances, and the hazard to navigation from metal drums that become partially filled with water and escape from docks, boathouses, houseboats, floats, and other water-use structures and facilities for which they are used for flotation, the use of metal drums in any form, except as authorized in paragraph (c) of this section, for flotation of any facilities is prohibited.

(c) Only metal drums which have been filled with plastic foam or other solid flotation materials and welded, strapped, or otherwise firmly secured in place prior to July 1, 1972, on existing facilities are permitted. Replacement of any metal drum flotation permitted to be used by this paragraph must be with a commercially manufactured flotation device or material specifically designed for marine applications (for example, pontoons, boat hulls, or other buoyancy devices made of steel, aluminum, fiberglass, or plastic foam, as provided for in paragraph (a) of this section).

(d) Every flotation device employed in the Tennessee River system must be firmly and securely affixed to the structure it supports with materials capable of withstanding prolonged exposure to wave wash and weather conditions.

§ 1304.401 Marine sanitation devices.

No person operating a commercial boat dock permitted under this part shall allow the mooring at such permitted facility of any watercraft or floating structure equipped with a marine sanitation device (MSD) unless such MSD is in compliance with all applicable statutes and regulations, including the FWPCA and regulations issued thereunder, and, where applicable, statutes and regulations governing ''no discharge'' zones.

§ 1304.402 Wastewater outfalls.

Applicants for a wastewater outfall shall provide copies of all Federal, State, and local permits, licenses, and approvals required for the facility prior to applying for TVA approval, or shall concurrently with the TVA application apply for such approvals. A section 26a permit shall not be issued until other required water quality approvals are obtained, and TVA reserves the right to impose additional requirements.

§ 1304.403 Marina sewage pump-out stations and holding tanks.

All pump-out facilities constructed after September 8, 2003 shall meet the following minimum design and operating requirements:

(a) Spill-proof connection with shipboard holding tanks;

(b) Suction controls or vacuum breaker capable of limiting suction to such levels as will avoid collapse of rigid holding tanks;

(c) Available fresh water facilities for tank flushing;

(d) Check valve and positive cut-off or other device to preclude spillage when breaking connection with vessel being severed;

(e) Adequate interim storage where storage is necessary before transfer to approved treatment facilities;

(f) No overflow outlet capable of discharging effluent into the reservoir;

(g) Alarm system adequate to notify the operator when the holding tank is full;

(h) Convenient access to holding tanks and piping system for purposes of inspection;

(i) Spill-proof features adequate for transfer of sewage from all movable floating pump-out facilities to shore-based treatment plants or intermediate transfer facilities;

(j) A reliable disposal method consisting of:

(1) An approved upland septic system that meets TVA, State, and local requirements; or

(2) Proof of a contract with a sewage disposal contractor; and

(k) A written statement to TVA certifying that the system shall be operated and maintained in such a way as to prevent any discharge or seepage of wastewater or sewage into the reservoir.

§ 1304.404 Commercial marina harbor limits.

The landward limits of commercial marina harbor areas are determined by the extent of land rights held by the dock operator. The lakeward limits of harbors at commercial marinas will be designated by TVA on the basis of the size and extent of facilities at the dock, navigation and flood control requirements, optimum use of lands and land rights owned by the United States, carrying capacity of the reservoir area in the vicinity of the marina, and on the basis of the environmental effects associated with the use of the harbor. Mooring buoys, slips, breakwaters, and permanent anchoring are prohibited beyond the lakeward extent of harbor limits. TVA may, at its discretion, reconfigure harbor limits based on changes in circumstances, including but not limited to, changes in the ownership of the land base supporting the marina.

§ 1304.405 Fuel storage tanks and handling facilities.

Fuel storage tanks and handling facilities are generally either underground (UST) or aboveground (AST) storage tank systems. An UST is any one or combination of tanks or tank systems defined in applicable Federal or State regulations as an UST. Typically (unless otherwise provided by applicable Federal or State rules), an UST is used to contain a regulated substance (such as a petroleum product) and has 10 percent or more of its total volume beneath the surface of the ground. The total volume includes any piping used in the system. An UST may be a buried tank, or an aboveground tank with buried piping if the piping

holds 10 percent or more of the total system volume including the tank. For purposes of this part, an aboveground storage tank (AST) is any storage tank whose total volume (piping and tank) is less than 10 percent underground or any storage tank defined by applicable law or regulation as an AST.

(a) TVA requires the following to be included in all applications submitted after September 8, 2003 to install an UST or any part of an UST system below the 500-year flood elevation on a TVA reservoir, or regulated tailwater:

(1) A copy of the State approval for the UST along with a copy of the application sent to the State and any plans or drawings that were submitted for the State's review;

(2) Evidence of secondary containment for all piping or other systems associated with the UST;

(3) Evidence of secondary containment to contain leaks from gas pump(s);

(4) Calculations certified by a licensed, professional engineer in the relevant State showing how the tank will be anchored so that it does not float during flooding; and

(5) Evidence, where applicable, that the applicant has complied with all spill prevention, control and countermeasures (SPCC) requirements.

(b) The applicant must accept and sign a document stating that the applicant shall at all times be the owner of the UST system, that TVA shall have the right (but no duty) to prevent or remedy pollution or violations of law, including removal of the UST system, with costs charged to the applicant, that the applicant shall at all times maintain and operate the UST system in full compliance with applicable Federal, State, and local UST regulations, and that the applicant shall maintain eligibility in any applicable State trust fund.

(c) An application to install an AST or any part of an AST system below the 500-year elevation on a TVA reservoir or a regulated tailwater is subject to all of the requirements of paragraphs (a) and (b) of this section except that paragraph (a)(1) shall not apply in States that do not require application or approval for installation of an AST. Eligibility must be maintained for any applicable AST trust fund, and the system must be maintained and operated in accordance with any applicable AST regulations. The applicant must notify and obtain any required documents or permission from the State fire marshal's office prior to installation of the AST. The applicant must also follow the National Fire Protection Association Codes 30 and 30A for installation and maintenance of flammable and combustible liquids storage tanks at marine service stations.

(d) *Fuel handling on private, non-commercial docks and piers.* TVA will not approve the installation, operation, or maintenance of fuel handling facilities on any private, non-commercial dock or pier.

(e) *Floating fuel handling facilities.* TVA will not approve the installation of any floating fuel handling facility or fuel storage tank.

(f) *Demonstration of financial responsibility.* Applicants for a fuel handling facility to be located in whole or in part on TVA land shall be required to provide TVA, in a form and amount acceptable to TVA, a surety bond, irrevocable letter of credit, pollution liability insurance, or other evidence of financial responsibility in the event of a release.

§ 1304.406 Removal of unauthorized, unsafe, and derelict structures or facilities.

If, at any time, any dock, wharf, boathouse (fixed or floating), nonnavigable houseboat, outfall, aerial cable, or other fixed or floating structure or facility (including any navigable boat or vessel that has become deteriorated and is a potential navigation hazard or impediment to flood control) is anchored, installed, constructed, or moored in a manner inconsistent with this part, or is not constructed in accordance with plans approved by TVA, or is not maintained or operated so as to remain in accordance with this part and such plans, or is not kept in a good state of repair and in good, safe, and substantial condition, and the owner or operator thereof fails to repair or remove such structure (or operate or maintain it in accordance with such plans) within ninety (90) days after written notice from TVA to do so, TVA may cancel any license, permit, or approval and remove such structure, and/or cause it to be removed, from the Tennessee River system and/or lands in the custody or control of TVA. Such written notice may be given by mailing a copy thereof to the owner's address as listed on the license, permit, or approval or by posting a copy on the structure or facility. TVA may remove or cause to be removed any such structure or facility anchored, installed, constructed, or moored without such license, permit, or approval, whether such license or approval has once been obtained and subsequently canceled, or whether it has never been obtained. TVA's removal costs shall be charged to the owner of the structure, and payment of such costs shall be a condition of approval for any future facility proposed to serve the tract of land at issue or any tract derived therefrom whether or not the current owner caused such charges to be incurred. In addition, any applicant with an outstanding removal charge payable to TVA shall, until such time as the charge be paid in full, be ineligible to receive a permit or approval from TVA for any facility located anywhere along or in the Tennessee River or its tributaries. TVA shall not be responsible for the loss of property associated with the removal of any such structure or facility including, without limitation, the loss of any navigable boat or vessel moored at such a facility. Any costs voluntarily incurred by TVA to protect and store such property shall be removal costs within the meaning of this section, and TVA may sell such property and apply the proceeds toward any and all of its removal costs. Small businesses seeking expedited consideration of the economic impact of actions under this section may contact TVA's Supplier and Diverse Business Relations staff, TVA Procurement, 1101 Market Street, Chattanooga, Tennessee 37402–2801.

§ 1304.407 Development within flood control storage zones of TVA reservoirs.

(a) Activities involving development within the flood control storage zone on TVA reservoirs will be reviewed to determine if the proposed activity qualifies as a repetitive action. Under TVA's implementation of Executive Order 11988, Floodplain Management, repetitive actions are projects within a class of actions TVA has determined to be approvable without further review and documentation related to flood control storage, provided the loss of flood control storage caused by the project does not exceed one acre-foot. A partial list of repetitive actions includes:

(1) Private and public water-use facilities;

(2) Commercial recreation boat dock and water-use facilities;

(3) Water intake structures;

(4) Outfalls;

(5) Mooring and loading facilities for barge terminals;

(6) Minor grading and fills; and

(7) Bridges and culverts for pedestrian, highway, and railroad crossings.

(b) Projects resulting in flood storage loss in excess of one acre-foot will not be considered repetitive actions.

(c) For projects not qualifying as repetitive actions, the applicant shall be required, as appropriate, to evaluate alternatives to the placement of fill or the construction of a project within the flood control storage zone that would result in lost flood control storage. The

alternative evaluation would either identify a better option or support and document that there is no reasonable alternative to the loss of flood control storage. If this determination can be made, the applicant must then demonstrate how the loss of flood control storage will be minimized.

(1) In addition, documentation shall be provided regarding:

(i) The amount of anticipated flood control storage loss;

(ii) The cost of compensation of the displaced flood control storage (how much it would cost to excavate material from the flood control storage zone, haul it to an upland site and dispose of it);

(iii) The cost of mitigation of the displaced flood control storage (how much it would cost to excavate material from another site within the flood control storage zone, haul it to the project site and use as the fill material);

(iv) The cost of the project; and

(v) The nature and significance of any economic and/or natural resource benefits that would be realized as a result of the project.

(2) TVA may, in its discretion, decline to permit any project that would result in the loss of flood control storage.

(d) Recreational vehicles parked or placed within flood control storage zones of TVA reservoirs shall be deemed an obstruction affecting navigation, flood control, or public lands or reservations within the meaning of section 26a of the Act unless they:

(1) Remain truly mobile and ready for highway use. The unit must be on its wheels or a jacking system and be attached to its site by only quick disconnect type utilities;

(2) Have no permanently attached additions, connections, foundations, porches, or similar structures; and

(3) Have an electrical cutoff switch that is located above the flood control zone and fully accessible during flood events.

§ 1304.408 Variances.

The Vice President or the designee thereof is authorized, following consideration whether a proposed structure or other regulated activity would adversely impact navigation, flood control, public lands or reservations, power generation, the environment, or sensitive environmental resources, or would be incompatible with surrounding uses or inconsistent with an approved TVA reservoir land management plan, to approve a structure or activity that varies from the requirements of this part in minor aspects.

§ 1304.409 Indefinite or temporary moorage of recreational vessels.

(a) Recreational vessels' moorage at unpermitted locations along the water's edge of any TVA reservoir may not exceed 14 consecutive days at any one place or at any place within one mile thereof.

(b) Recreational vessels may not establish temporary moorage within the limits of primary or secondary navigation channels.

(c) Moorage lines of recreational vessels may not be placed in such a way as to block or hinder boating access to any part of the reservoir.

(d) Permanent or extended moorage of a recreational vessel along the shoreline of any TVA reservoir without approval under section 26a of the TVA Act is prohibited.

§ 1304.410 Navigation restrictions.

(a) Except for the placement of riprap along the shoreline, structures, land based or water use, shall not be located within the limits of safety harbors and landings established for commercial navigation.

(b) Structures shall not be located in such a way as to block the visibility of navigation aids. Examples of navigation aids are lights, dayboards, and directional signs.

(c) The establishment of ''no-wake'' zones outside approved harbor limits is prohibited at marinas or community dock facilities that are adjacent to or near a commercial navigation channel. In such circumstances, facility owners may, upon approval from TVA, install a floating breakwater along the harbor limit to reduce wave and wash action.

§ 1304.411 Fish attractor, spawning, and habitat structures.

Fish attractors constitute potential obstructions and require TVA approval.

(a) Fish attractors may be constructed of anchored brush piles, log cribs, and/or spawning benches, stake beds, vegetation, or rock piles, provided they meet ''TVA Guidelines for Fish Attractor Placement in TVA Reservoirs'' (TVA 1997).

(b) When established in connection with an approved dock, fish attractors shall not project more than 30 feet out from any portion of the dock.

(c) Any floatable materials must be permanently anchored.

§ 1304.412 Definitions.

Except as the context may otherwise require, the following words or terms, when used in this part 1304, have the meaning specified in this section.

100-year floodplain means that area inundated by the one percent annual chance (or 100-year) flood.

500-year floodplain means that area inundated by the 0.2 percent annual chance (or 500-year) flood; any land susceptible to inundation during the 500-year or greater flood.

Act means the Tennessee Valley Authority Act of 1933, as amended.

Applicant means the person, corporation, State, municipality, political subdivision or other entity making application to TVA.

Application means a written request for the approval of plans pursuant to the regulations contained in this part.

Backlot means a residential lot not located adjacent to the shoreline but located in a subdivision associated with the shoreline.

Board means the Board of Directors of TVA.

Community outlot means a subdivision lot located adjacent to the shoreline and designated by deed, subdivision covenant, or recorded plat as available for use by designated property owners within the subdivision.

Dredging means the removal of material from a submerged location, primarily for deepening harbors and waterways.

Enclosed structure means a structure enclosed overhead and on all sides so as to keep out the weather.

Flood control storage means the volume within an elevation range on a TVA reservoir that is reserved for the storage of floodwater.

Flood control storage zone means the area within an elevation range on a TVA reservoir that is reserved for the storage of floodwater. TVA shall, upon request, identify the contour marking the upper limit of the flood control storage zone at particular reservoir locations.

Flood risk profile elevation means the elevation of the 500-year flood that has been adjusted for surcharge at the dam. Surcharge is the ability to raise the water level behind the dam above the top-of-gates elevation.

Flowage easement shoreland means privately-owned properties where TVA has the right to flood the land.

Footprint means the total water surface area of either a square or rectangular shape occupied by an adjoining property owner's dock, pier, boathouse, or boatwells.

Full summer pool means the targeted elevation to which TVA plans to fill each reservoir during its annual operating cycle. Applicants are encouraged to consult the appropriate TVA Watershed Team or the TVA website to obtain the full summer pool elevation for the reservoir in question at the time the application is submitted.

Land-based structure means any structure constructed on ground entirely

above the full summer pool elevation of a TVA reservoir but below the maximum shoreline contours of that reservoir.

Maximum shoreline contour means an elevation typically five feet above the top of the gates of a TVA dam. It is sometimes the property boundary between TVA property and adjoining private property.

Nonnavigable houseboat means any houseboat not in compliance with one or more of the criteria defining a navigable houseboat.

Owner or landowner ordinarily means all of the owners of a parcel of land. Except as otherwise specifically provided in this part, in all cases where TVA approval is required to engage in an activity and the applicant's eligibility to seek approval depends on status as an owner of real property, the owner or owners of only a fractional interest or of fractional interests totaling less than one in any such property shall not be considered, by virtue of such fractional interest or interests only, to be an owner and as such eligible to seek approval to conduct the activity without the consent of the other co-owners. In cases where the applicant owns water access rights across adjoining private property that borders TVA-owned shoreland, TVA may exercise its discretion to consider such person an owner, taking into account the availability of the shoreline to accommodate similarly situated owners and such other factors as TVA deems to be appropriate. In subdivisions where TVA had an established practice prior to September 8, 2003 of permitting individual or common water-use facilities on or at jointly-owned lots without the consent of all co-owners, TVA may exercise its discretion to continue such practice, taking into account the availability of the shoreline to accommodate similarly situated owners and other factors as TVA deems to be appropriate; provided, however, that the issuance of a TVA permit conveys no property interests, and the objections of a co-owner may be a basis for revocation of the permit.

Shoreland means the surface of land lying between minimum winter pool elevation of a TVA reservoir and the maximum shoreline contour.

Shoreline means the line where the water of a TVA reservoir meets the shore when the water level is at the full summer pool elevation.

Shoreline Management Zone (SMZ) means a 50-foot-deep vegetated zone designated by TVA on TVA-owned land.

TVA means the Tennessee Valley Authority.

TVA property means real property owned by the United States and under the custody and control of TVA.

Vice President means the Vice President, Resource Stewardship, TVA, or a functionally equivalent position.

Water-based structure means any structure, fixed or floating, constructed on or in navigable waters of the United States.

Winter drawdown elevation means the elevation to which a reservoir water level is lowered during fall to provide storage capacity for winter and spring floodwaters.

Winter pool means the lowest level expected for the reservoir during the flood season.

Dated: July 31, 2003.

Kathryn J. Jackson,

Executive Vice President, River Systems Operations and Environment, Tennessee Valley Authority.

[FR Doc. 03–20078 Filed 8–6–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 4434]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Suspension of Transit Without Visa Program

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule suspends the visa and/or passport waiver provisions of Department of State regulations, commonly known as the Transit Without Visa (TWOV) and the International-to-International (ITI) programs. By waiving the passport and/or visa requirements, the provisions of Department of State regulations facilitate travel through the United States of aliens who must transit the United States on direct and continuous travel from one country to another. This waiver, however, indirectly allows this category of aliens to bypass the formal nonimmigrant visa process that includes the prescreening of aliens prior to their arrival at a port of entry in the United States. Recent intelligence indicates a possible terrorist threat specific to the TWOV and ITI programs and additional increased threats of activities against the interests and the security of the United States. Therefore the Department of State and the Department of Homeland Security (DHS) have determined to suspend those programs. The rule is necessary in view of the recent intelligence reports.

DATES: This rule is effective August 2, 2003; written comments must be submitted by September 22, 2003.

ADDRESSES: Please submit written comments to the Chief, Legislation and Regulations Division, Directorate for Visa Services, Department of State, 2401 E Street, NW., Washington, DC 20520–0106, by FAX to (202) 663–3898, or by e-mail to *visaregs@state.gov*.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Legislation and Regulations Division, Directorate for Visa Services, Department of State, 2401 E Street, NW., Washington, DC 20520–0106, (202) 663–1202.

SUPPLEMENTARY INFORMATION:

What Are the TWOV and ITI Programs?

Pursuant to section 212(d)(4) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(4)(C), the Secretary of Homeland Security (previously the Secretary's authority under this section was exercised by the Attorney General) and the Secretary of State, acting jointly, may waive the visa and/or passport requirements for aliens proceeding in immediate and continuous transit through the United States. Therefore, aliens from many nations who desire to travel through the United States in transit from one country to another without the need of obtaining a visa may do so under the Transit Without Visa (TWOV) and International to International (ITI) procedures permitted under the provisions of 22 CFR 41.2(i).

Why Is It Necessary To Suspend the TWOV and ITI Programs?

The waiver of passport and/or visa requirements permitted by these programs precludes the prescreening of participating aliens prior to their arrival at a port of entry in the United States. Because these aliens do not have to apply for a visa and be interviewed by a consular officer, there is no opportunity for U.S. authorities to determine prior to their arrival at the U.S. border whether a participating alien's travel is legitimate and whether the alien poses any threat to the United States. In view of the current intelligence of a possible terrorist threat specific to these programs, the Secretaries of State and Homeland Security have determined that the programs immediately be suspended while they evaluate the security risks involved in these programs over the next 60 days. During the 60 day review period, DHS and the Department of State will be reviewing comments and taking other steps to develop plans that

will ensure security. DHS and the Department of State have received specific, credible intelligence, including intelligence from the FBI and the CIA, that certain terrorist organizations have identified the visa and passport exemptions of the TWOV and ITI programs as a means to gain access to the United States, or to gain access to aircraft en route to or from the United States, to cause damage to infrastructure, injury, or loss of life in the United States or on board the aircraft. Consequently, upon the signing of this rule and the signing of a similar rule by the Secretary of Homeland Security (*see* the Department of Homeland Security rule published elsewhere in this issue of the **Federal Register**) the TWOV and ITI programs immediately will be suspended. The suspension of these programs will require aliens seeking to transit the United States to be in possession of valid passports and visas unless the passport and/or visa requirements may be waived under other provisions of Part 41 and such a waiver has been obtained.

Regulatory Findings

Administrative Procedure Act

The immediate implementation of this rule as an interim rule, with a 45-day provision for post-promulgation public comments, is based on findings of ''good cause'' pursuant to 5 U.S.C. 553(b) and 553(d)(3). The effective date of this rule on August 2, 2003 is necessary for the national security of the United States and to prevent the TWOV and ITI programs from being used to conduct terrorist acts against the United States. There is a reasonable concern that publication of this rule with an effective date 30 to 60 days after publication would leave the United States unnecessarily vulnerable to a specific terrorist threat against persons in the United States during the interval between the publication of the rule and its effective date. To prevent such a result, DHS and the Department of State have determined that prior notice and public comment on this rule would be impractical and contrary to the public interest. Accordingly, there is good cause to publish this interim rule and to make it effective August 2, 2003.

Inapplicability of Prior Public Notice and Comment and Delayed Effect Requirements and the Regulatory Flexibility Act

The Secretaries of State and Homeland Security have concluded that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with prior notice and public comment requirements for these changes to the regulations. DHS and the Department of State have received credible intelligence that certain terrorist organizations have identified this exemption from the normal visa issuance procedures to gain access to the United States or an aircraft en route to the United States to cause serious damage, injury, or death in the United States. Due to this credible security threat, it is necessary to implement certain measures to control the entry of persons arriving in the United States.

Inasmuch as this suspension is predicated on a national security emergency as noted above, pursuant to 5 U.S.C. 553(b)(3)(B), prior notice and public procedure thereon are unnecessary and, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the prior notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*).

The Unfunded Mandates Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

Although this rule may be determined to be a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, it is exempt from review under that section pursuant to sections 801 and 808(2) of that Act. The Department finds good cause in the potential direct threat from terrorists to find that review of this rule under section 804 is impractical and contrary to the public interest.

Executive Order 12866

The Department of State considers this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department, however, in conjunction with DHS, concludes at this time that this regulatory action is not economically significant under section 3(f)(1), and specifically requests comments regarding this determination. The Office of Management and Budget (OMB) and the Department of Justice (DOJ) have reviewed this rule and its companion DHS rule printed elsewhere in this edition of the **Federal Register**, and have provided clearances. The DHS rule contains a DHS-conducted assessment of costs and benefits analysis; The Department of State adopts that analysis, upon which the determination of economic significance of this rule is based, as in the DHS rule.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Passports and visas.

■ Accordingly, for the reasons discussed in the preamble, part 41 is amended as follows:

PART 41—[AMENDED]

■ 1. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104; Public Law 105–277, 112 Stat. 2681 *et seq.*

§ 41.2 [Amended]

■ 2. The text of § 41.2 paragraph (i) is removed and reserved.

Dated: August 2, 2003.

Maura Harty,

Assistant Secretary of State, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–20204 Filed 8–4–03; 4:18 pm]

BILLING CODE 4710–06–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act, minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. This document puts into effect the minimum wage rates recommended for various industry categories by Industry Committee No. 25 (the Committee), which met in public and executive session in Pago Pago, American Samoa, during the week of June 16, 2003.

DATES: This rule shall become effective August 22, 2003.

FOR FURTHER INFORMATION CONTACT: For information specifically about this final rule, contact Nancy Flynn, Director, Office of Planning and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210: telephone (202) 693–0551. (This is not a toll free number.) Copies of the final rule in alternative formats may be obtained by calling (202) 693–0541 or (202) 693–1461 (TTY). The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains no reporting or record keeping requirements which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

II. Background

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 205, 206, 208), and by means of the Administrative Order published in the **Federal Register** on April 23, 2003 (Vol. 68, No. 78 FR 20032), the Secretary of Labor appointed and convened Industry Committee No. 25 for Industries in American Samoa, referred to the Committee the question of the minimum rates of wages to be paid under section 8 of the FLSA to employees within the industries, and gave notice of a hearing to be held by the Committee.

Subsequent to a hearing conducted in Pago Pago pursuant to the notice, the Committee filed with the Administrator of the Wage and Hour Division a report containing its findings of fact and recommendations with respect to minimum wage rates for various industry classifications.[1] The FLSA requires that the Secretary publish the recommendations in the **Federal Register** and further requires that the recommendations in the report be effective 15 days after publication. Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938 and 29 CFR 511.18, this rule hereby revises Secs. 697.2 and 697.4 of 29 CFR part 697 to implement the recommendations of Industry Committee No. 25.

III. Executive Order 12866, Section 202 of the Unfunded Mandates Reform Act of 1995 and Small Business Regulatory Enforcement Fairness Act

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866, and no regulatory impact analysis is required. This document puts into effect the wage rates recommended by Industry Committee No. 25, which met in Pago Pago, American Samoa during the week of June 16, 2003. The Committee recommended no wage rate increases in any of the industry categories. The wage rates that were effective on October 1, 2002 will remain in effect.

This rule is not expected to result in a rule that may (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

For reasons similar to those noted above, the rule does not require a Sec. 202 statement under the Unfunded Mandates Reform Act of 1995.

Finally, the rule is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. Although the rule will impact solely on American Samoa, its impact on costs or prices is not expected to be major, for the reasons discussed above.

IV. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have federalism implications.

The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

V. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 533(b), the requirements of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis, do not apply to this rule. *See* 5 U.S.C. 601(2).

VI. Administrative Procedure Act

Good cause exists for issuance of this rule without publication 30 days in advance of its effective date, as normally required by section 553(d) of the Administrative Procedure Act. As discussed above, Section 8 of the FLSA requires that the rule be effective 15 days after publication.

VII. Document Preparation

This document was prepared under the direction and control of Tammy D. McCutchen, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 697

American Samoa, Minimum wages.

■ Accordingly, part 697 of chapter V of title 29, Code of Federal Regulations is amended as set forth below.

PART 697—INDUSTRIES IN AMERICAN SAMOA

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

Authority: 29 U.S.C. 205, 206, 208.

■ 2. Section 697.2 is revised to read as follows:

§ 697.2 Industry wage rates and effective dates.

Every employer shall pay to each of his employees in American Samoa, who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in any enterprise engaged in commerce or in the production of goods for commerce, as these terms are defined in section 3 of the Fair Labor Standards Act of 1938, wages at a rate not less than the minimum rate prescribed in this section

[1] The Report of Industry Committee No. 25 includes as Attachment A, a written ''Justification for No Minimum Wage Increase,'' which was prepared by the three members of the Committee who are residents of American Samoa. Attachment B is a dissent prepared by the two Committee members who represented employees. Copies of the Report may be obtained by contacting Nancy Flynn at 202–693–0551 or by e-mail at *Flynn.Nancy@dol.gov.*

for the industries and classifications in which such employee is engaged.

Effective date: Oct. 1, 2003

Industry

(a) Government Employees—$2.77
(b) Fish Canning and Processing—$3.26
(c) Petroleum Marketing—$3.85
(d) Shipping and Transportation:
(1) Classification A—$4.09
(2) Classification B—$3.92
(3) Classification C—$3.88
(e) Construction—$3.60
(f) Retailing, Wholesaling, and Warehousing—$3.10
(g) Bottling, Brewing, and Dairy Products—$3.19
(h) Printing—$3.50
(i) Publishing—$3.63
(j) Finance and Insurance—$3.99
(k) Ship Maintenance—$3.34
(l) Hotel—$2.86
(m) Tour and Travel Services—$3.31
(n) Private Hospitals and Educational Institutions—$3.33
(o) Garment Manufacturing—$2.68
(p) Miscellaneous Activities—$2.57

■ 3. Section 697.4 is revised to read as follows:

§697.4 Effective dates.

The wage rates specified in § 697.2 are effective on October 1, 2003.

Signed at Washington, DC, this 1st day of August 2003.

Tammy D. McCutchen,

Administrator, Wage and Hour Division.

[FR Doc. 03–20096 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–27–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7541–7]

Hazardous Waste Management System; Exclusion for Identifying and Listing Hazardous Waste and a Determination of Equivalent Treatment; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting two petitions submitted by the University of California—E.O. Lawrence Berkeley National Laboratory (LBNL). First, EPA is granting the petition to exclude (or ''delist'') its F002, F003, and F005 mixed waste. Second, EPA is granting LBNL's petition which is for a determination of equivalent treatment (DET) for the catalytic chemical oxidation (CCO) technology that LBNL used to treat its original mixed waste.

After careful analysis EPA has concluded that the petitioned waste is no longer hazardous waste and that the CCO treatment is equivalent to combustion. This exclusion applies to approximately 200 U.S. gallons of residues from treatment of low-level mixed waste from the National Tritium Labeling Facility (NTLF), a research facility located within LBNL. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) provided the petitioner meets the delisting conditions which require that the residue be disposed at an authorized low-level radioactive waste facility.

EFFECTIVE DATE: August 7, 2003.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 9 RCRA Records Center, 75 Hawthorne Street, San Francisco, CA 94105, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition. Call the EPA Region 9 RCRA Records Center at (415) 947–4596 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346. For technical information on specific aspects of these petitions, contact Cheryl Nelson at the address above or at 415–972–3291, e-mail address: *nelson.cheryl@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
A. What Rule Is EPA Finalizing?
B. Why Is EPA Approving These Petitions?
C. What Are the Limits of This Exclusion?
D. How Will LBNL Manage the Waste?
E. When Is the Final Rule Effective?
F. How Does This Final Rule Affect States?
II. Background
A. What Is a Delisting Petition?
B. What Regulations Allow Facilities To Delist a Waste?
C. What Information Must the Generator Supply for a Delisting Petition?
D. What Is a Demonstration of Equivalent Treatment?
E. What Regulations Allow Facilities To Request a Demonstration of Equivalent Treatment?
F. What Information Must the Generator Supply for a Demonstration of Equivalent Treatment Petition?
III. EPA's Evaluation of the Waste Information and Data
A. What Waste Did LBNL Petition EPA To Delist?
B. How Did LBNL Sample and Analyze the Waste in the Petitions?
IV. Public Comments Received on the Proposed Rule
A. Who Submitted Comments on the Proposed Rule?
B. What Did the Supportive Comments Say?
C. What Were the Non-Supportive Comments and EPA's Responses?
V. Administrative Requirements

I. Overview Information

A. What Rule Is EPA Finalizing?

After evaluating the petitions, EPA proposed, on July 31, 2002, to exclude the Lawrence Berkeley National Laboratory (LBNL) waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, and to grant the Demonstration of Equivalent Treatment (DET) for LBNL's Catalytic Chemical Oxidation (CCO) technology used to perform the treatment of the original mixed waste. Mixed waste is defined as waste that contains hazardous waste subject to the requirements of RCRA and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA). See 42 U.S.C. 6903 (41), added by the Federal Facility Compliance Act of 1992. LBNL's petitioned waste contains tritium, a radioactive hydrogen isotope (^3H) manufactured for use as a tracer in biomedical research.

The EPA is finalizing:

(1) The decision to grant LBNL's petition to have its F002, F003, and F005 mixed waste excluded from the definition of a hazardous waste, subject to certain conditions; and (2) the decision to grant LBNL's petition for a determination that the CCO technology used to perform the treatment of the original mixed waste is equivalent to combustion as defined in EPA's Land Disposal Restriction (LDR) Program for treatment of high-total organic carbon (TOC) subcategory D001 ignitable wastes. Because LBNL's original mixed waste is also a D001 ignitable waste, it must be treated via a combustion technology prior to disposal to meet the LDR treatment standard.

B. Why Is EPA Approving These Petitions?

LBNL's delisting petition requests a delisting for approximately 200 U.S. gallons of residues from treatment of low-level mixed waste. The petitioned wastes met the definition of listed F002, F003, and F005 RCRA hazardous wastes because they were derived from treatment of mixed wastes that are listed for these waste codes. LBNL does not believe the petitioned waste meets the

criteria for which EPA listed it as a hazardous waste. LBNL also believes no additional constituents or factors could cause the waste to be hazardous.

EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA also evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria.

If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentrations of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability. EPA believes the petitioned waste does not meet these factors or the listing criteria.

LBNL's DET petition requests a determination under 40 CFR 268.42(b) that the CCO technology used to perform the treatment of the original mixed waste is equivalent to combustion as defined in EPA's LDR Program.

We are granting the DET because LBNL has adequately demonstrated that the CCO technology is equivalent to combustion for the treatment of organic wastes. This demonstration is based primarily on the following key factors: (1) The CCO system achieves a destruction and removal efficiency of more than 99.999% at a temperature near or above 500°C; (2) the CCO system does not emit Hydrogen Chloride Vapor (HCl) or particulate matter; and (3) the CCO system was operated in compliance with Federal, State and local hazardous waste and air emission regulations. The treatment residues generated from LBNL's use of the CCO technology have met the applicable LDR technology standard for DOO1 waste. The LDR treatment standards for F002, F003, and F005 wastes are numeric standards. The CCO technology treated the original mixed wastes to below these numeric standards.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petitions only if conditions contained herein are satisfied.

D. How Will LBNL Manage the Waste?

LBNL is currently storing the waste in its permitted mixed waste storage facility. When the delisting exclusion is finalized, LBNL will dispose the waste in an authorized low-level radioactive waste disposal facility.

E. When Is the Final Rule Effective?

This rule is effective August 7, 2003. The Hazardous and Solid Waste Amendments of 1984, amended section 3010 of RCRA, 42 USCA 6930(b)(1), allow rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 USCA 553(d).

F. How Does This Final Rule Affect States?

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (*i.e.*, to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, LBNL must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude, or delist, from the RCRA list of hazardous waste, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities to Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply for a Delisting Petition?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

D. What Is a Demonstration of Equivalent Treatment?

A demonstration of equivalent treatment petition is a request from a generator to EPA or another agency with jurisdiction to grant DETs, asking that EPA approve an alternative treatment method that can achieve a measure of performance equivalent to that achievable by the EPA-specified method in the LDR program.

E. What Regulations Allow Facilities To Request a Demonstration of Equivalent Treatment?

Under 40 CFR 268.42(b), facilities may submit an application to EPA demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in § 268.42.

F. What Information Must the Generator Supply for a Demonstration of Equivalent Treatment Petition?

Petitioners must provide sufficient information to EPA, to allow EPA to determine that the alternative treatment method provides a measure of performance equivalent to that achieved by the EPA-specified method in the LDR program. Such information generally includes: a demonstration that their treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment, and demonstrations of equivalence for an alternative method of treatment based on a comparison of technologies.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did LBNL Petition EPA To Delist?

On June 30, 1999, LBNL petitioned EPA to exclude from the list of hazardous wastes at 40 CFR 261.31, an initial volume of approximately 105 U.S. gallons and an approximate annual volume of 65 U.S. gallons of CCO treatment residues generated at the NTLF and designated as F002, F003, and F005 listed mixed wastes. F002, F003, and F005 wastes are spent halogenated and non-halogenated solvent mixtures from non-specific sources. LBNL also included in this submittal a demonstration of equivalent treatment petition for this same waste as this waste is also high-TOC subcategory D001 ignitable wastes.

Since submitting the petitions, the NTLF has generated an additional approximately 95 gallons of treatment residues. There will be no additional treatment residues from the CCO process. LBNL has closed the NTLF. Therefore, the total amount of waste LBNL has petitioned to delist and for which it has sought demonstration of equivalent treatment approval is a total fixed amount of 200 U.S. gallons.

B. How Did LBNL Sample and Analyze the Waste for the Petitions?

LBNL submitted seven sets of analytical data from mixed waste samples and six sets of analytic data from surrogate waste samples. Because there are no commercially available analytical laboratories with the ability to analyze high activity mixed wastes from NTLF (due to the level of radioactivity), all analytical testing for these mixed wastes was conducted in-house by LBNL and NTLF staff. As a quality control measure, non-radioactive surrogate waste samples were sent for analysis to an offsite commercial laboratory and results were compared to the in-house data.

For the in-house testing data, LBNL provided the experimental data documentation from the operation of the CCO system, and the test results (GC chromatograms). LBNL's in-house testing method used direct liquid injection gas chromatography to minimize the volume of the sample. The LBNL method used two detectors, a Mass Spectrometer and a Flame Ionization Detector. Together, these can detect organic compounds listed in 40 CFR part 261, appendix VIII including those compounds that were present in the original mixed waste and surrogate samples prior to treatment.

LBNL also tested all samples for pH in-house using pH strips. LBNL did not test for inorganic or metal compounds because, based upon the processes and chemicals that LBNL used to produce these wastes, these compounds were not present in the original mixed waste or surrogate samples.

The surrogate samples that were sent to an off-site commercial analytical laboratory were analyzed by EPA Test Methods 8015 (modified) for Industrial Solvents and Method 8260 for Volatile Organic Compounds. Several samples were also tested by Method 8270 for Base Neutral and Acid Extractable Organic Compounds (semivolatile compounds).

IV. Public Comments Received on the Proposed Rule

EPA began accepting public comments just after the original delisting and DET petitions were received in June 1999. At that time, LBNL had just begun treatment of the mixed waste using the CCO process. LBNL operated the CCO system as part of its treatability study in accordance with DTSC regulations (22 CCR 66261.4).

Given the passage of time, many of the public comments that EPA received raised concerns about the treatability study that are no longer pertinent. All the mixed waste has already been treated, the residue is no longer hazardous, and LBNL has closed the NTLF. The remaining residues are radioactive-only and therefore are subject to regulation by NRC. Thus, the potential availability of new treatment technologies has no bearing on EPA's action here.

Other comments raised issues that are not relevant to the Delisting or DET petitions, such as the Superfund status of LBNL and the potential future issuance of treatment permits authorizing CCO technology. While EPA believes that the CCO process is equivalent to, and in some ways superior to combustion, under our regulations, this decision is site-specific. Others who are pursuing this technology will need to submit their own delisting and DET petitions and permit applications.

A. Who Submitted Comments on the Proposed Rule?

A total of 192 comments (letters and oral testimony) were received during the public comment period from a wide variety of industry and trade associations; a local community group; universities and academic institutions; pharmaceutical companies; Department of Energy (DOE) facilities and LBNL; individuals; and government organizations. Of the comments received, one hundred and seventy-two of the comments were supportive of the proposed decisions, six comments were neutral, and fourteen comments were non-supportive of the proposed decisions. A more detailed response to comment document is included in the rulemaking docket.

B. What Did the Supportive Public Comments Say?

The supportive comments came from all of the categories of groups listed above except for the local community group.

In general, the supportive comments cited the small volumes of waste involved, the small scale of the treatment process, treatment onsite by the waste generators, the expertise of the staff involved in the treatment, and the protective controls already in place under DOE regulation. The supportive comments also pointed out the lack of affordable treatment and disposal options for mixed waste and the effectiveness of the CCO method as superior over required large-scale commercial processes (*e.g.* incineration) because it prevents the release of tritium to the environment. Many organizations also mentioned this proposed rule as an important initiative designed to help resolve a national mixed waste problem faced by the DOE, other research organizations, and the pharmaceutical industry.

Several commenters urged EPA to promulgate a broad conditional exemption from RCRA for the use of CCO to all mixed wastes including those containing accelerator produced radionuclides for all sites that are Nuclear Regulatory Commission (NRC) licensees.

EPA Responds: EPA appreciates the viewpoints expressed by these commenters but stresses that our decisions are site-specific and only apply to LBNL's CCO process and waste. Others who may wish to exclude their waste or demonstrate that their particular CCO system or other technology is equivalent to that required for treatment of ignitable wastes as required by our LDR regulations, would be required to submit their own Delisting and DET Petitions to EPA or their authorized state.

C. What Were the Non-Supportive Comments and EPA's Responses?

The non-supportive comments came mostly from a local community group with a few from industry.

(1) One industry representative expressed support for EPA's proposed delisting decision but did not support the DET proposed decision. This commenter was concerned that EPA's decision will give an implied seal of approval by allowing the decision to include any other application of the CCO technology beyond the instance of its practice at LBNL. This commenter was further concerned that EPA's approval is ''sanctioning a thermal technology, not unlike incineration, when other alternatives are available.'' Several local citizens expressed a similar concern that approval of the petition could allow others to utilize the petition and help others ''* * * get their legal status established'' and that approval of the petition will open the use of this process for further application at LBNL.

EPA Responds: EPA disagrees with these commenters. As previously described our final decision is a site-specific, one-time only exclusion, that applies to the approximately 200 US Gallons of residues from treatment of low-level mixed waste from the NTLF at LBNL. The NTLF that generated the original mixed waste is now closed and is not expected to reopen. The CCO unit has been dismantled and stored and is not expected to be reused at the LBNL facility.

LBNL did purposefully share their data from the treatability study and their analysis of the regulatory requirements for treatment of mixed waste to assist others who are interested in developing national capacity for treatment of mixed wastes. However, others who may wish to demonstrate their own particular CCO technology would be required to submit their own DET Petition to EPA or their authorized state.

(2) Another commenter said that the tritium should not be disposed in a landfill. Other commenters agreed and expressed concern that EPA has inaccurate information regarding the availability of mixed waste treatment and disposal facilities. Additionally, several commenters stated that a superior process for CCO is currently being tested under EPA's Project XL and therefore LBNL's Delisting Petition is not necessary.

EPA Responds: EPA disagrees with these commenters that the Delisting Petition is unnecessary or that tritium should not be disposed to a landfill. Tritium is not a regulated hazardous waste constituent under EPA's RCRA program. Approval of the Delisting Petition in no way alters the DOE radioactive material standards applicable to the tritium in the treatment residuals. These wastes must be managed as a low-level radioactive waste.

At this time, EPA is unaware of any available option for recycling of the tritium. EPA believes that the CCO process LBNL used represents the state of the art in capture and recovery of tritium in mixed waste.

The wide geographic use and almost simultaneous development of this technology nationally and the degree of sharing of information among these facilities leads EPA to conclude that catalytic chemical oxidation of mixed wastes is a viable and effective treatment method.

(3) Several commenters requested that EPA postpone its Delisting and DET decision until all the radioactivity in the treated residual waste has decayed, then manage the waste as a hazardous waste. Commenters suggest that this would be the cheapest and safest method of dealing with the waste and less of a health risk than future burning of more radioactive mixed waste.

EPA Responds: EPA disagrees with these commenters. The original mixed waste has already been treated to destroy the hazardous constituents; the remaining treatment residuals are low-level radioactive waste only (tritiated water). The DET and Delisting are necessary administrative steps to facilitate appropriate final disposition of the waste. EPA calculates that the natural decay of these residuals would take several hundred years. The permitted mixed waste storage facility at LBNL is not designed or operated to store radioactive wastes for this long period of time. EPA believes that the treated residual waste is best managed as a low-level radiological waste at a disposal facility designed and operated to safely and permanently manage these wastes.

Our decision to grant LBNL's petitions for a Delisting and DET is site specific and applies only to the 200 gallons of treated residual waste at LBNL. Any other facility that generates and wishes to treat its own mixed waste is subject to its own local, state, and federal regulations for hazardous and for radioactive wastes.

(4) Several commenters expressed a variety of concerns regarding tritium and its release during the CCO process, given that ''the CCO system is still a very highly experimental process'' and believed that it was premature for EPA to make any decisions regarding the use of the process at this time. Commenters also asked numerous questions regarding specific operational details of the CCO system such as the possible formation of deposits or dioxins, and whether any corrosion or safety studies had been done.

EPA Responds: EPA disagrees that consideration of the fate of tritium during the CCO process is relevant to our proposed decisions to grant the Delisting or the DET Petitions or that the CCO process is experimental or our decision premature. As previously described, tritium is not a RCRA hazardous constituent and therefore is not subject to EPA's delisting or DET petition regulations. EPA regulates the hazardous waste portion, while the NRC or DOE regulate the radioactive portion of mixed waste.

In order for EPA to delist a particular waste, the petitioner must demonstrate: (1) The waste does not meet any of the criteria under which the waste was listed, (2) the waste does not exhibit any of the hazardous waste characteristics defined in Secs. 261.21 through 261.24, and (3) there are no additional constituents in the waste other than those for which it was listed, that would cause the waste to be a hazardous waste (40 CFR 260.22(a)). For this petition, EPA believes that LBNL has met the three criteria listed in 40 CFR 260.22(a) because the treatment residuals do not contain any detectable concentrations of RCRA hazardous constituents.

The object of the CCO process was to ensure destruction of the hazardous constituents of the waste while capturing radioactive constituents. The data from the treatability study indicate a greater than 98% trapping efficiency for the tritiated water in the CCO system. EPA believes that the CCO process represents the state of the art in

capture and recovery of tritium and is far more effective in the capture of tritium than combustion in a permitted mixed waste incinerator. Therefore, we maintain that the CCO process provides a superior environmental outcome than destruction of the wastes by incineration.

LBNL did not ''invent'' catalytic chemical oxidation technology nor did they pioneer its use for destroying mixed waste; rather, they adopted this proven technology to their specific type of mixed waste. LBNL operated their CCO process in accordance with State of California regulations (22 CCR 66261.4) for conducting treatability studies, which are designed to insure that treatability studies are conducted in a safe manner. Pre-approval to operate any treatment unit in compliance with these regulations is not required. The regulations do, however, require that LBNL notify the State prior to conducting the study, obtain an EPA identification number, limit the volume of waste treated and the amount of time of treatment, meet certain management standards for both wastes and treatment residues, keep records, and submit annual reports to the State. Additionally, LBNL was also subject to any other applicable regulatory standards from other agencies such as the California State Air Resources Board and DOE. DTSC confirms that LBNL operated the CCO process in accordance with the applicable regulations for treatability studies.

(5) Several commenters asked for an independent peer review of LBNL's treatability study and analytical data and asked how EPA could allow LBNL to choose and submit only 7 sets of analytical data to represent 71 treatment batches.

EPA Responds: EPA disagrees with the commenters that an independent peer review of the treatability study or the analytical data generated in support of the Delisting and DET Petition is necessary. As described below, EPA has full confidence that the procedures followed for generation and review of the data is sufficient to meet the regulatory requirements for Delisting and DET Petitions and are sufficient to support our final decision.

EPA performed both a completeness and technical review of LBNL's Delisting Petition and concludes that LBNL satisfied all of the RCRA regulatory requirements for analytical testing in support of Delisting Petitions and that (1) No RCRA hazardous constituents are likely to be present above detection limits in the treatment residues or the bubbler water on silica gel generated by catalytic chemical oxidation treatment of the original mixed waste at LBNL, and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively.

EPA's Delisting regulations (40 CFR 260.22) require applicants to submit no less than four representative samples of analytical data in support of a petition. The burden of proof that the samples are representative of the overall petitioned waste is on the applicant. LBNL detailed how it determined that the seven sets of analytical data submitted are representative of the overall petitioned waste. The sworn affidavit submitted with the petition binds the petitioner to present truthful and accurate results under penalty of perjury. LBNL submitted a signed Certification of Accuracy and Responsibility required by 40 CFR 260.22(i)(12). EPA reviewed and approved LBNL's rationale for the selection of representative samples. LBNL also made available to EPA all of the remaining analytical data from the treatability study.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 25, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

■ 2. In Table 1, of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * * *	* * *	* * *
Lawrence Berkeley National Laboratory	Berkeley, California	Treated ignitable and spent halogenated and non-halogenated solvent mixed waste (D001, F002, F003, and F005), and bubbler water on silica gel generated during treatment at the National Tritium Labeling Facility (NTLF) of the Lawrence Berkeley National Laboratory (LBNL). This is a one-time exclusion for 200 U.S. gallons of treatment residues that will be disposed of in a Nuclear Regulatory Commission (NRC) licensed or Department of Energy (DOE) approved low-level radioactive waste disposal facility, after August 7, 2003. (1) Waste Management: The treated waste residue and bubbler water on silica gel must be managed in accordance with DOE or NRC requirements prior to and during disposal. (2) Reopener Language: (A) If, anytime after disposal of the delisted waste, LBNL possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any organic constituent from the waste is detected in the leachate or the groundwater, then LBNL must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (2)(A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify LBNL in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing LBNL with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. LBNL shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days LBNL presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (3) Notification Requirements: LBNL must do the following before transporting the delisted waste off-site:(A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if LBNL ships the delisted waste to a different disposal facility. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion.
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[FR Doc. 03–20161 Filed 8–6–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 13 and 80

[WT Docket No. 00–48; FCC 02–102; RM–9499]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission consolidates, revises and streamlines the Commission's rules governing maritime communications. These changes incorporate new international maritime requirements, improve the operational ability of all users of marine radios, and remove unnecessary or duplicative requirements from the rules.

DATES: Effective October 6, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of October 6, 2003.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *jtobias@FCC.gov,* or Ghassan Khalek, *gkhalek@fcc.gov,* Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order,* FCC 02–102, adopted on March 27, 2002, and released on April 9, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. In this Report and Order, we adopt changes to part 80 of the Commission's rules that were either proposed in or suggested in response to the Notice of Proposed Rule Making (''NPRM'') in this proceeding. The NPRM, released on March 24, 2000, 65 FR 21694, April 24, 2000, proposed rule changes that were intended to consolidate, revise and streamline our rules governing maritime communications pursuant to requests from the National GMDSS Implementation Task Force and Globe Wireless, Inc. These changes were proposed to address new international maritime requirements, improve the operational ability of all users of marine radios and remove unnecessary or duplicative requirements from our rules.

2. The significant actions taken in this Report and Order are as follows: (1) The extension of the fishing vessel exemption from Global Maritime Distress and Safety System (GMDSS) requirements until one year after the United States Coast Guard (USCG) establishes Sea Areas A1 and A2; (2) the establishment of a Restricted GMDSS Radio Operator's License; (3) the authorization of the USCG or its designee to issue a Proof of Passing Certificate that would allow operators to obtain an FCC GMDSS Radio Operator's License; (4) the modification of certain sections of our rules to implement international standards; (5) the imposition of a mandatory watch on Channel 70 for voluntary vessels; (6) the allowance of J2B and J2D transmissions on frequencies currently reserved for Morse Code transmissions; (7) the removal of certification for Class S emergency position indicating radiobeacons; and (8) the elimination of subpart Q and the streamlining of subpart R of part 80 of the Commission's rules. In addition, we today decide not to extend the fishing vessel exemption to other vessels.

I. Regulatory Matters

A. Paperwork Reduction Act

3. This Report and Order and Further Notice of Proposed Rule Making does not contain any new or modified information collection.

B. Final Regulatory Flexibility Certification

4. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 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 that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

5. The purpose of this Report and Order and Further Notice of Proposed Rule Making is to streamline and clarify our rules under Parts 13 and 80 governing maritime communications. We believe that the rules adopted in the Report and Order do not impose any additional compliance burden on small entities regulated by the Commission.

6. We have identified those small entities that could conceivably be affected by the rule changes adopted herein. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this certification, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) communications. This definition is that a ''small entity'' for purposes of public coast station licensees, a subgroup of marine radio users, is any entity employing 1,500 or fewer persons. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 513322. Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of marine radio service providers and users that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had at least 1,000 employees.

7. The adopted rules may also affect small businesses that manufacture marine radio equipment. The Commission has not developed a definition of small entities applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of ''Radio and Television Broadcasting and Communications Equipment.'' According to the SBA regulations, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business. 13 CFR § 121.201, North American Industrial Classification

System (NAICS) Code 33422. Census Bureau data indicate that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.

8. We anticipate that these rule changes will not impose any new burdens on small entities, but in fact will reduce regulatory and procedural burdens on small entities. For example, the incorporation by reference into our rules of updated technical requirements for maritime radio equipment, *i.e.*, modified International Electrotechnical Commission (IEC) standards, can be expected to ultimately reduce compliance costs for ship owners and manufacturers because it avoids inconsistency between domestic and international requirements, providing internationally recognized criteria and test procedures for certification of GMDSS equipment. Moreover, to mitigate any potential compliance burden on manufacturers and ship owners that could stem from a sudden change in the standards, we established grandfathering provisions that allow the installation of equipment meeting the old standards for a significant period of time after the effective date of these rules. More broadly speaking, the general effect of the rule changes adopted herein is to streamline the rules, remove duplicative requirements, provide greater operational flexibility, promote spectrum efficiency, and make our rules consistent with international requirements, all of which are measures that should have an overall beneficial effect on the regulated entities. We certified in the NPRM in this proceeding that the rules proposed therein will not, if promulgated, have a significant economic impact upon a substantial number of small entities, as that term is defined by the RFA, and no party has challenged or otherwise commented on that certification.

9. We therefore certify that the requirements of this Report and Order will not have a significant economic impact upon a substantial number of small entities, as that term is defined by the RFA.

10. The Commission will send a copy of this Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

11. To fully ensure that potential compliance burdens on small entities are fully explored, however, we have determined not to act immediately on certain proposals set forth in the NPRM or raised by commenters, but instead to seek further comment on those proposals. These matters are discussed in the Further Notice of Proposed Rule Making.

II. Ordering Clauses

12. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order* including the Regulatory Flexibility Certification to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Parts 2 and 13

Radio.

47 CFR Part 80

Communications equipment, Incorporation by reference, Marine safety, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 2, 13 and 80 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising footnote US296 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

US296 In the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Federal Government stations on a shared basis with Federal Government stations: 2070.5 kHz, 2072.5 kHz, 2074.5 kHz, 2076.5 kHz, 4154 kHz, 4170 kHz, 6235 kHz, 6259 kHz, 8302 kHz, 8338 kHz, 12370 kHz, 12418 kHz, 16551 kHz, 16615 kHz, 18848 kHz, 18868 kHz, 22182 kHz, 22238 kHz, 25123 kHz, and 25159 kHz.

* * * * *

PART 13—COMMERCIAL RADIO OPERATORS

■ 3. The authority citation for part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 4. Section 13.7 is amended by revising paragraph (b) introductory text, redesignating paragraph (b)(9) as (b)(10), and adding a new paragraph (b)(9) to read as follows:

§ 13.7 Classification of operator licenses and endorsements.

* * * * *

(b) There are ten types of commercial radio operator licenses, certificates and permits (licenses). The license's ITU classification, if different from its name, is given in parentheses.

* * * * *

(9) Restricted GMDSS Radio Operator's License (restricted operator's certificate).

* * * * *

■ 5. Section 13.9 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 13.9 Eligibility and application for new license or endorsement.

* * * * *

(b)(1) Each application for a new General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, Ship Radar Endorsement, Six Months Service Endorsement, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator's License, GMDSS Radio Maintainer's License and GMDSS Radio Operator/Maintainer License must be filed on FCC Form 605 in accordance with § 1.913 of this chapter.

* * * * *

(c) Each application for a new General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, Ship Radar Endorsement, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer License must be accompanied by the required fee, if any, and submitted in accordance with § 1.913 of this chapter. The application must include an original PPC(s) from a COLEM(s) showing that the applicant has passed the necessary examination

element(s) within the previous 365 days when the applicant files the application. If a COLEM files the application electronically on behalf of the applicant an original PPC(s) is not required. However, the COLEM must keep the PPC(s) on file for a period of 1 year.

* * * * *

■ 6. Section 13.13 is amended by revising paragraph (a), redesignating paragraph (d) as (e), and adding a new paragraph (d) to read as follows:

§ 13.13 Application for a renewed or modified license.

(a) Each application to renew a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, Marine Radio Operator Permit, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer License must be made on FCC Form 605. The application must be accompanied by the appropriate fee and submitted in accordance with § 1.913 of this chapter.

* * * * *

(d) Provided that a person's commercial radio operator license was not revoked, or suspended, and is not the subject of an ongoing suspension proceeding, a person holding a General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer license, who has an application for another commercial radio operator license which has not yet been acted upon pending at the FCC and who holds a PPC(s) indicating that he or she passed the necessary examination(s) within the previous 365 days, is authorized to exercise the rights and privileges of the license for which the application is filed. This temporary conditional operating authority is valid for a period of 90 days from the date the application is received. This temporary conditional operating authority does not relieve the licensee of the obligation to comply with the certification requirements of the Standards of Training, Certification and Watchkeeping (STCW) Convention. The FCC, in its discretion, may cancel this temporary conditional operating authority without a hearing.

* * * * *

■ 7. Section 13.17 is amended by revising paragraph (b) to read as follows:

§ 13.17 Replacement license.

* * * * *

(b) Each application for a replacement General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer license must be made on FCC Form 605 and must include a written explanation as to the circumstances involved in the loss, mutilation, or destruction of the original document.

* * * * *

■ 8. Section 13.201 is amended by revising paragraph (b)(6), redesignating paragraphs (b)(7) and (b)(8) as paragraphs (b)(8) and (b)(9), and adding a new paragraph (b)(7) to read as follows:

§ 13.201 Qualifying for a commercial operator license or endorsement.

* * * * *

(b) * * *

(6) GMDSS Radio Operator's License: Written Elements 1 and 7, or a Proof of Passing Certificate (PPC) issued by the United States Coast Guard or its designee representing a certificate of competency from a Coast Guard-approved training course for a GMDSS endorsement.

(7) Restricted GMDSS Radio Operator License: Written Elements 1 and 7R, or a Proof of Passing Certificate (PPC) issued by the United States Coast Guard or its designee representing a certificate of competency from a Coast Guard-approved training course for a GMDSS endorsement.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

■ 9. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 10. Section 80.5 is amended by adding an entry for *INMARSAT* in alphabetical order and revising the entries for *Digital selective calling, Distress signal, Distress traffic, Inland waters, Maritime mobile service identities (MMSI), Safety signal,* and *Urgency signal* to read as follows:

§ 80.5 Definitions.

* * * * *

Digital selective calling (DSC). A synchronous system developed by the International Telecommunication Union Radiocommunication (ITU–R) Sector, used to establish contact with a station or group of stations automatically by means of radio. The operational and technical characteristics of this system are contained in Recommendations ITU–R M.493–10, ''Digital Selective-calling System for Use in the Maritime Mobile Service,'' with Annexes 1 and 2, 2000, and ITU–R M.541–8, ''Operational Procedures for the Use of Digital Selective-Calling Equipment in the Maritime Mobile Service,'' with Annexes, 1997. (*see* subpart W of this part.) ITU–R Recommendations M.493–10 with Annexes 1 and 2 and M.541–8 with Annexes are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW. Suite 700, Washington, DC. The ITU–R Recommendations can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

* * * * *

Distress signal. The distress signal is a digital selective call using an internationally recognized distress call format in the bands used for terrestrial communication or an internationally recognized distress message format, in which case it is relayed through space stations, which indicates that a person, ship, aircraft, or other vehicle is threatened by grave and imminent danger and requests immediate assistance.

(1) In radiotelephony, the international distress signal consists of the enunciation of the word ''Mayday'', pronounced as the French expression ''m'aider''. In case of distress, transmission of this particular signal is intended to ensure recognition of a radiotelephone distress call by stations of any nationality.

(2) For GMDSS, distress alerts result in an audible alarm and visual indication that a ship or person is

threatened by grave and imminent danger and requests immediate assistance. These automatic systems contain sufficient information in the distress alert message to identify the vessel, prepare to assist and begin a search. However, except when transmitted via satellite EPIRB, the distress alert is just the initial call for help. Communication between the vessel or person in distress and the Rescue Coordination Center (RCC) or ship assisting should always follow.

Distress traffic. Distress traffic consists of all messages relating to the immediate assistance required by a person, ship, aircraft, or other vehicle in distress, including search and rescue communications and on-scene communications.

* * * * *

Inland waters. This term, as used in reference to waters of the United States, its territories and possessions, means waters that lie landward of the boundary lines of inland waters as contained in 33 CFR 80.01, as well as waters within its land territory, such as rivers and lakes, over which the United States exercises sovereignty.

INMARSAT. INMARSAT Ltd. is a private commercial company licensed in the United Kingdom.

* * * * *

Maritime mobile service identities (MMSI). An international system for the identification of radio stations in the maritime mobile service. The system is comprised of a series of nine digits which are transmitted over the radio path to uniquely identify ship stations, ship earth stations, coast stations, coast earth stations and groups of stations.

* * * * *

Safety signal. (1) The safety signal is the international radiotelegraph or radiotelephone signal which indicates that the station sending this signal is preparing to transmit a message concerning the safety of navigation or giving important meteorological warnings.

(2) In radiotelegraphy, the international safety signals consists of three repetitions of the group ''TTT,'' sent before the call, with the letters of each group and the successive groups clearly separated from each other.

(3) In radiotelephony, the international safety signal consists of three oral repetitions of ''Security,'' pronounced as the French word ''Securite,'' sent before the call.

(4) For GMDSS, safety calls result in an audible alarm and visual indication that the station sending this signal has a very urgent message to transmit concerning the safety of navigation or giving important meteorological warnings.

* * * * *

Urgency signal. (1) The urgency signal is the international radiotelegraph or radiotelephone signal which indicates that the calling station has a very urgent message to transmit concerning the safety of a ship, aircraft, or other vehicle, or of some person on board or within sight.

(2) In radiotelegraphy, the international urgency signal consists of three repetitions of the group ''XXX,'' sent before the call, with the letters of each group and the successive groups clearly separated from each other.

(3) In radiotelephony, the international urgency signal consists of three oral repetitions of the group of words ''PAN PAN'', each word of the group pronounced as the French word ''PANNE'' and sent before the call.

(4) For GMDSS, urgency calls result in an audible alarm and visual indication that the station sending this signal has a very urgent message to transmit concerning the safety of a ship, aircraft, or other vehicle, or of some person on board or within sight.

* * * * *

■ 11. Section 80.15 is amended by removing paragraph (e)(1), redesignating paragraphs (e)(2) and (e)(3) as paragraphs (e)(1) and (e)(2), and revising newly redesignated paragraph (e)(1) introductory text to read as follows:

§ 80.15 Eligibility for station license.

* * * * *

(e) *EPIRB* stations. (1) Class A or Class B EPIRB stations will be authorized for use on board the following types of vessels until December 31, 2006:

* * * * *

■ 12. Section 80.51 is revised to read as follows:

§ 80.51 Ship earth station licensing.

A ship earth station authorized to operate in the INMARSAT space segment must display the Commission license in conjunction with the commissioning certificate issued by the INMARSAT Organization. Notwithstanding the requirements in this paragraph, ship earth stations can operate in the INMARSAT space segment without an INMARSAT issued commissioning certificate provided an appropriate written approval is obtained from the INMARSAT Organization in addition to the Commission's license.

■ 13. Section 80.59 is amended by revising paragraph (c)(1)(x)(C) to read as follows:

§ 80.59 Compulsory ship inspections.

* * * * *

(c) * * *

(1) * * *

(x) * * *

(C) Category 1, 406.0–406.1 MHz EPIRB (GMDSS approved);

* * * * *

■ 14. Section 80.67 is amended by revising paragraph (b) to read as follows:

§ 80.67 General facilities requirements for coast stations.

* * * * *

(b) All coast stations that operate telephony on frequencies in the 1605–3500 kHz band must be able to transmit and receive using J3E emission on the frequency 2182 kHz and at least one working frequency in the band.

§ 80.89 [Amended]

■ 15. Section 80.89 is amended by removing paragraph (e) and redesignating paragraphs (f) and (g) as paragraphs (e) and (f).

■ 16. Section 80.91 is revised to read as follows:

§ 80.91 Order of priority of communications.

(a) All stations in the maritime mobile service and the maritime mobile-satellite service shall be capable of offering four levels of priority in the following order:

(1) Distress calls, distress messages, and distress traffic.

(2) Urgency communications.

(3) Safety communications.

(4) Other communications.

(b) In a fully automated system, where it is impracticable to offer all four levels of priority, category 1 shall receive priority until such time as intergovernmental agreements remove exemptions granted for such systems from offering the complete order of priority.

■ 17. Section 80.93 is amended by redesignating paragraph (d) as paragraph (e), adding a new paragraph (d), and revising paragraph (c) and newly designated paragraph (e) to read as follows:

§ 80.93 Hours of service.

* * * * *

(c) *Compulsory ship stations.* (1) Compulsory ship stations whose service is not continuous may not suspend operation before concluding all traffic originating in or destined for public coast stations situated within their range and mobile stations which have indicated their presence.

(2) For GMDSS ships, radios shall be turned on and set to proper watch channels while ships are underway. If a

ship has duplicate GMDSS installations for DSC or INMARSAT, only one of each must be turned on and keeping watch.

(d) *Ships voluntarily fitting GMDSS subsystems.* For ships voluntarily fitting GMDSS subsystems, radios shall be turned on and set to proper watch channels while ships are underway. If ship has duplicate GMDSS installations for DSC or INMARSAT, only one of each must be turned on and keeping watch.

(e) *Other than public coast or compulsory ship stations.* The hours of service of stations other than those described in paragraphs (b), (c), and (d) of this section are determined by the station licensee.

■ 18. Section 80.101 is amended by revising paragraphs (b) and (c) to read as follows:

§ 80.101 Radiotelephone testing procedures.

* * * * *

(b) Testing of transmitters must be confined to single frequency channels on working frequencies. However, 2182 kHz and 156.800 MHz may be used to contact ship or coast stations as appropriate when signal reports are necessary. Short tests on 4125 kHz are permitted by vessels equipped with MF/HF radios to evaluate the compatibility of the equipment for distress and safety purposes. U.S. Coast Guard stations may be contacted on 2182 kHz or 156.800 MHz for test purposes only when tests are being conducted by Commission employees, when FCC-licensed technicians are conducting inspections on behalf of the Commission, when qualified technicians are installing or repairing radiotelephone equipment, or when qualified ship's personnel conduct an operational check requested by the U.S. Coast Guard. In these cases the test must be identified as ''FCC'' or ''technical.''

(c) Survival craft transmitter tests must not be made within actuating range of automatic alarm receivers.

■ 19. Section 80.102 is amended by redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to read as follows:

§ 80.102 Radiotelephone station identification.

* * * * *

(e) Voice traffic in the INMARSAT system is closed to other parties except the two stations involved and the identification is done automatically with the establishment of the call. Therefore, it is not necessary for these stations to identify themselves periodically during the communication. For terrestrial systems using DSC to establish radiotelephone communications, the identification is made at the beginning of the call. In these cases, both parties must identify themselves by ship name, call sign or MMSI at least once every 15 minutes during radiotelephone communications.

* * * * *

■ 20. Section 80.103 is revised to read as follows:

§ 80.103 Digital selective calling (DSC) operating procedures.

(a) Operating procedures for the use of DSC equipment in the maritime mobile service are as contained in ITU–R M.541–8, ''Operational Procedures for the Use of Digital Selective-Calling Equipment in the Maritime Mobile Service,'' with Annexes, 1997, and subpart W of this part.

(b) When using DSC techniques, coast stations and ship stations must use maritime mobile service identities (MMSI) assigned by the Commission or its designees.

(c) DSC acknowledgement of DSC distress and safety calls must be made by designated coast stations and such acknowledgement must be in accordance with procedures contained in ITU–R M.541–8, ''Operational Procedures for the Use of Digital Selective-Calling Equipment in the Maritime Mobile Service,'' with Annexes, 1997. Nondesignated public and private coast stations must follow the guidance provided for ship stations in ITU–R M.541–8, ''Operational Procedures for the Use of Digital Selective-Calling Equipment in the Maritime Mobile Service,'' with Annexes, 1997, with respect to DSC ''Acknowledgement of distress calls'' and ''Distress relays.'' (*See* subpart W of this part.)

(d) Group calls to vessels under the common control of a single entity are authorized. A group call identity may be created from an MMSI ending in a zero, assigned to this single entity, by deleting the trailing zero and adding a leading zero to the identity.

(e) ITU–R M.541–8 with Annexes, 1997, is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

§ 80.116 [Amended]

■ 21. In § 80.116 remove paragraph (h).

■ 22. Section 80.141 is amended by revising paragraph (c) to read as follows:

§ 80.141 General provisions for ship stations.

* * * * *

(c) *Service requirements for vessels.* Each ship station provided for compliance with Part II of Title III of the Communications Act must provide a public correspondence service on voyages of more than 24 hours for any person who requests the service. Compulsory radiotelephone ships must provide this service for at least four hours daily. The hours must be prominently posted at the principal operating location of the station.

* * * * *

■ 23. Section 80.142 is amended by revising paragraph (b) to read as follows:

§ 80.142 Ships using radiotelegraphy.

* * * * *

(b) *NB–DP operating procedure.* The operation of NB–DP equipment in the maritime mobile service must be in accordance with the operating procedures contained in the latest version of ITU–R Recommendation M.492–6, ''Operational Procedures for the use of Direct-Printing Telegraph Equipment in the Maritime Mobile Service,'' with Annex, 1995, that does not prevent the use of existing equipment. ITU–R Recommendation M.492–6 with Annex is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW, Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW. Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

* * * * *

■ 24. Section 80.143 is amended by revising paragraph (a) to read as follows:

§ 80.143 Required frequencies for radiotelephony.

(a) Except for compulsory vessels, each ship radiotelephone station licensed to operate in the band 1605–3500 kHz must be able to receive and transmit J3E emission on the frequency 2182 kHz. Ship stations are additionally

authorized to receive and transmit H3E emission for communications with foreign coast stations and with vessels of foreign registry. If the station is used for other than safety communications, it must be capable also of receiving and transmitting the J3E emission on at least two other frequencies in that band. However, ship stations which operate exclusively on the Mississippi River and its connecting waterways, and on high frequency bands above 3500 kHz, need be equipped with 2182 kHz and one other frequency within the band 1605–3500 kHz.

* * * * *

§ 80.145 [Removed and Reserved]

■ 25. Remove and reserve § 80.145.

§ 80.146 [Removed and Reserved]

■ 26. Remove and reserve § 80.146.

■ 27. Section 80.147 is revised to read as follows:

§ 80.147 Watch on 2182 kHz.

Ship stations must maintain a watch on 2182 kHz as prescribed by § 80.304.

■ 28. Section 80.148 is amended by removing paragraph (c) and revising the introductory text to read as follows:

§ 80.148 Watch on 156.8 MHz (Channel 16).

Until February 1, 2005, each compulsory vessel, while underway, must maintain a watch for radiotelephone distress calls on 156.800 MHz whenever such station is not being used for exchanging communications. For GMDSS ships, 156.525 MHz is the calling frequency for distress, safety, and general communications using digital selective calling and the watch on 156.800 MHz is provided so that ships not fitted with DSC will be able to call GMDSS ships, thus providing a link between GMDSS and non-GMDSS compliant ships. The watch on 156.800 MHz is not required:

* * * * *

■ 29. Section 80.151 is amended by adding paragraphs (b)(7) and (b)(8) to read as follows:

§ 80.151 Classification of operator licenses and endorsements.

* * * * *

(b) * * *

(7) GOL. GMDSS Radio Operator License (General Operator's Certificate).

(8) ROL. Restricted GMDSS Radio Operator License (Restricted Operator's Certificate).

* * * * *

■ 30. Section 80.159 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 80.159 Operator requirements of Title III of the Communications Act and the Safety Convention.

* * * * *

(d) Each passenger ship equipped with a GMDSS installation in accordance with subpart W of this part shall carry at least two persons holding an appropriate GMDSS Radio Operator License or, if the passenger ship operates exclusively within twenty nautical miles of shore, at least two persons holding either a GMDSS Radio Operator License or a Restricted GMDSS Radio Operator License, as specified in § 13.7 of this chapter.

* * * * *

■ 31. Section 80.165 is revised to read as follows:

§ 80.165 Operator requirements for voluntary stations.

Minimum Operator License

Ship Morse telegraph	T–2.
Ship direct-printing telegraph	MP.
Ship telephone, with or without DSC, more than 250 watts carrier power or 1,000 watts peak envelope power	G.
Ship telephone, with or without DSC, not more than 250 watts carrier power or 1,000 watts peak envelope power	MP.
Ship telephone, with or without DSC, not more than 100 watts carrier power or 400 watts peak envelope power:	
Above 30 MHz	None.[1]
Below 30 MHz	RP.
Ship earth station	RP.

[1] RP required for compulsory ships and international voyages.

■ 32. Section 80.179 is amended by revising paragraph (e)(1) to read as follows:

§ 80.179 Unattended operation.

* * * * *

(e) * * *

(1) The equipment must be using DSC in accordance with ITU–R Recommendation M.493–10, ''Digital Selective-calling System for Use in the Maritime Mobile Service,'' with Annexes 1 and 2, 2000, and ITU–R Recommendation M.541–8, ''Operational Procedures for the Use of Digital Selective-Calling Equipment in the Maritime Mobile Service,'' with Annexes, 1997, as modified by this section. ITU–R Recommendations M.493–10 with Annexes 1 and 2 and M.541–8 with Annexes are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendations can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

* * * * *

■ 33. Section 80.203 is amended by removing and reserving paragraph (e), revising paragraph (g), and adding paragraph (o) to read as follows:

* * * * *

§ 80.203 Authorization of transmitters for licensing.

* * * * *

(g) Manufacturers of ship earth station transmitters intended for use in the INMARSAT space segment must comply with the verification procedures given in part 2 of this chapter. Such equipment must be verified in accordance with the technical requirements provided by INMARSAT and must be type approved by INMARSAT for use in the INMARSAT space segment. The ship earth station input/output parameters, the data obtained when the equipment is integrated in system configuration and the pertinent method of test procedures that are used for type approval of the station model which are essential for the compatible operation of that station in the INMARSAT space segment must be disclosed by the manufacturer upon request of the FCC. Witnessing of the type approval tests and the disclosure of the ship earth station equipment design or any other information of a proprietary nature will be at the discretion of the ship earth station manufacturer.

* * * * *

(o) Existing equipment that does not comply with the rules in this subpart but was properly authorized as compliant with the rules in effect at the time of its authorization, and remains compliant with the rules in effect at the time of its authorization, may continue to be installed until February 1, 2003.

■ 34. Section 80.205 is amended by adding an entry to the table in paragraph (a) immediately following the entry J2C and by adding footnote 14 to read as follows:

§ 80.205 Bandwidths.

(a) * * * *

Class of emission	Emission designator	Authorized bandwidth (kHz)
* * *	*	*
J2D [14]	2K80J2D	3.0
* * *	*	*
* * *	*	*

[14] The information is contained in multiple very low level subcarriers.

* * * * *

■ 35. Section 80.207 is amended by revising the table in paragraph (d) to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * * *

Types of stations	Classes of emission
Ship Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A.
405–525 kHz	A1A, J2A.
1605–27500 kHz:	
Manual [15 16 17]	A1A, J2A, J2B, J2D.
DSC [16]	F1B, J2B.
NB–DP [14 16]	F1B, J2B, J2D.
Facsimile	F1C, F3C, J2C, J3C.
1561–162 MHz [2]	F1B, F2B, F2C, F3C, F1D, F2D.
DSC	G2B.
216–220 MHz [3]	F1B, F2B, F2C, F3C, F1D, F2D.
1626.5–1646.5 MHz	([4])
Radiotelephony:	
1605–27500 kHz [5 16]	H3E, J2D, J3E, R3E.
27.5–470 MHz [6]	G3D, G3E.
1626.5–1646.5 MHz	([4])
Radiodetermination:	
285–325 kHz [7]	A1A, A2A.
405–525 kHz (Direction Finding) [8]	A3N, H3N, J3N, N0N.
154–159 MHz: [12]	A1D, A2D, F1D, F2D, G1D, G2D.
2.4–9.5 GHz	P0N.
14.00–14.05 ghZ	F3N.
Land Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A.
405–525 kHz	A1A, J2A.
1605–2805 kHz:	
Manual	A1A, J2A.
Facsimile	F1C, F3C, J2C, J3C.
Alaska-Fixed	A1A, J2A.
4000–27500 kHz:	
Manual [16]	A1A, J2A, J2B, J2D.
DSC [18]	F1B, J2B.
NB–DP [14 18]	F1B, J2B, J2D.
Facsimile	F1C, F3C, J2C, J3C.
Alaska—Fixed [17 18]	A1A, A2A, F1B, F2B, J2B, J2D.
72–76 MHz	A1A, A2A, F1B, F2B.
156–162 MHz [2]	F1B, F2B, F2C, F3C, F1D, F2D.
DSC	G2B.
216–220 MHz [3]	F1B, F2B, F2C, F3C, F1D, F2D.
Radiotelephony:	
1605–27500 kHz [18 19]	H3E, J2D, J3E, R3E.
72–76 MHz	A3E, F3E, G3E.
156–740 MHz	G3E.
Radiodetermination:	
2.4–9.6 GHz	P0N.
Distress, Urgency and Safety [89]	
2182 kHz [10 11]	A2B, A3B, H2B, H3E, J2B, J3E.
121.500 MHz	A3E, A3X, N0N.
123.100 MHz	A3E.
156.750 and 156.800 MHz [13]	G3E, G3N.
243.000 MHz	A3E, A3X, N0N.
406–406.1 MHz	G1D.

[1] Excludes distress, EPIRBs, survival craft, and automatic link establishment.

[2] Frequencies used for public correspondence and in Alaska 156.425 MHz. See §§ 80.371(c), 80.373(f) and 80.385(b). Transmitters approved before January 1, 1994, for G3E emissions will be authorized indefinitely for F2C, F3C, F1D and F2D emissions. Transmitters approved on or after January 1, 1994, will be authorized for F2C, F3C, F1D or F2D emissions only if they are approved specifically for each emission designator.

[3] Frequencies used in the Automated Maritime Telecommunications System (AMTS). See §80.385(b).
[4] Types of emission are determined by the INMARSAT Organization.
[5] Transmitters type accepted prior to December 31, 1969, for emission H3E, J3E, and R3E and an authorized bandwidth of 3.5 kHz may continue to be operated. These transmitters will not be authorized in new installations.
[6] G3D emission must be used only by one-board stations for maneuvering or navigation.
[7] Frequencies used for cable repair operations. See §80.375(b).
[8] For direction finding requirements see § 80.375.
[9] Includes distress emissions used by ship, coast, EPIRBs and survival craft stations.
[10] On 2182 kHz A1B, A2B, H2B and J2B emissions indicate transmission of the auto alarm signals.
[11] Ships on domestic voyages must use J3E emission only.
[12] For frequencies 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz, authorized for offshore radiolocation and related telecommand operations.
[13] Class C EPIRB stations may not be used after February 1, 1999.
[14] NB–DP operations which are not in accordance with ITU–R Recommendation M.625–3, ''Direct-Printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995, or ITU–R Recommendation M.476–5, ''Direct-Printing Telegraph Equipment in the Maritime Mobile Service,'' with Annex, 1995, are permitted to utilize any modulation, so long as emissions are within the limits set forth in § 80.211(f) of this chapter. ITU–R Recommendations M.476–5 and M.625–3 with Annexes are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards can be inspected at the Federal Communications Commission, 445 12th Street, SW, Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW. Suite 700, Washington, DC. The ITU–R Recommendations can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.
[15] J2B is permitted only on 2000–27500 kHz.
[16] J2D is permitted only on 2000–27500 kHz, and ship stations employing J2D emissions shall at no time use a peak envelope power in excess of 1.5 kW per channel.
[17] J2B and J2D are permitted provided they do not cause harmful interference to A1A.
[18] Coast stations employing J2D emissions shall at no time use a peak envelope power in excess of 10 kW per channel.
[19] J2D is permitted only on 2000–27500 kHz.

■ 36. Section 80.209 is amended by revising the table in paragraph (a) to read as follows.

§ 80.209 Transmitter frequency tolerances.

(a) * * *

Frequency bands and categories of stations	Tolerances [1]
(1) Band 100–525 kHz:	
(i) Coast stations:	
For single sideband emissions	20 Hz.
For transmitters with narrow-band direct printing and data emissions	10 Hz [2]
For transmitters with digital selective calling emissions	10 Hz.
For all other emissions	100.
(ii) Ship stations:	
For transmitters with narrow-band direct printing and data emissions	20 Hz.
For transmitters with digital selective calling emissions	10 Hz [2]
For all other transmitters	10 Hz.
(iii) Ship stations for emergency only:	
For all emissions	20 Hz.
(iv) Survival craft stations:	
For all emissions	20 Hz.
(v) Radiodetermination stations:	
For all emissions	100.
(2) Band 1600–4000 kHz:	
(i) Coast stations and Alaska fixed stations:	
For single sideband and facsimile	20 Hz.
For narrow-band direct printing and data emissions	10 Hz.[2]
For transmitters with digital selective calling emissions	10 Hz.[2]
For all other emissions	50 Hz.
(ii) Ship stations:	
For transmitters with narrow-band direct printing and data emissions	10 Hz.[2]
For transmitters with digital selective calling emissions	10 Hz.[3]
For all other transmitters	20 Hz.
(iii) Survival craft stations:	20 Hz.
(iv) Radiodetermination stations:	
With power 200W or less	20.
With power above 200W	10.
(3) Band 4000–27500 kHz:	
(i) Coast stations and Alaska fixed stations:	
For single sideband and facsimile emissions	20 Hz.
For narrow-band direct printing and data emissions	10 Hz.[2]
For digital selective calling emissions	10 Hz.
For Morse telegraphy emissions	10.
For all other emissions	15 Hz.
(ii) Ship stations:	
For transmitters with narrow-band direct printing and data emissions	10 Hz.[2]
For transmitters with digital selective calling emissions	10 Hz.[3]
For all other transmitters	20 Hz.
(iii) Survival craft stations:	50 Hz.
(4) Band 72–76 MHz:	

Frequency bands and categories of stations	Tolerances [1]
(i) Fixed stations:	
Operating in the 72.0–73.0 and 75.4–76.0 MHz bands	5.
Operating in the 73.74.6 MHz band	50.
(5) Band 156–162 MHz:	
(i) Coast stations:	
For carriers licensed to operate with a carrier power:	
Below 3 watts	10.
3 to 100 watts	5.[7]
(ii) Ship stations	10.[4]
(iii) Survival craft stations operating on 121.500 MHz	50.
(iv) EPIRBs:	
Operating on 121.500 and 243.000 MHz	50.
Operating on 156.750 and 156.800 MHz.[6]	10.
(6) Band 216–220 MHz:	
(i) Coast stations:	
For all emissions	5.
(ii) Ship stations:	
For all emissions	5.
(7) Band 400–466 MHz:	
(i) EPIRBs operating on 406–406.1 MHz	5.
(ii) On-board stations	5.
(iii) Radiolocation and telecommand stations.	5.
(8) Band 1626.5–1646.5 MHz:	
(i) Ship earth stations	5.

[1] Transmitters authorized prior to January 2, 1990, with frequency tolerances equal to or better than those required after this date will continue to be authorized in the maritime services provided they retain approval and comply with the applicable standards in this part.

[2] The frequency tolerance for narrow-band direct printing and data transmitters installed before January 2, 1992, is 15 Hz for coast stations and 20 Hz for ship stations. The frequency tolerance for narrow-band direct printing and data transmitters approved or installed after January 1, 1992, is 10 Hz.

[3] [Reserved].

[4] For transmitters in the radiolocation and associated telecommand service operating on 154.584 MHz, 159.480 MHz, 160.725 MHz and 160.785 MHz the frequency tolerance is 15 parts in 10^6.

[5] [Reserved].

[6] Class C EPIRB stations may not be used after February 1, 1999.

[7] For transmitters operated at private coast stations with antenna heights less than 6 meters (20 feet) above ground and output power of 25 watts or less the frequency tolerance is 10 parts in 10^6.

■ 37. Section 80.213 is amended by revising paragraphs (h), (i) introductory text and (i)(1)(vii) to read as follows:

§ 80.213 Modulation requirements.

* * * * *

(h) Radar transponder coast stations using the 2900–3100 MHz or 9300–9500 MHz band must operate in a variable frequency mode and respond on their operating frequencies with a maximum error equivalent to 100 meters. Additionally, their response must be encoded with a Morse character starting with a dash. The duration of a Morse dot is defined as equal to the width of a space and 1/3 of the width of a Morse dash. The duration of the response code must not exceed 50 microseconds. The sensitivity of the stations must be adjustable so that received signals below −10 dBm at the antenna will not activate the transponder. Antenna polarization must be horizontal when operating in the 9300–9500 MHz band and either horizontal or both horizontal and vertical when operating in the 2900–3100 MHz band. Racons using frequency agile transmitting techniques must include circuitry designed to reduce interference caused by triggering from radar antenna sidelobes.

(i) Variable frequency ship station transponders operating in the 2900–3100 MHz or 9300–9500 MHz band that are not used for search and rescue purposes must meet the following requirements:

(1) * * *

(vii) Antenna polarization must be horizontal when operating in the 9300–9500 MHz band and either horizontal or both horizontal and vertical when operating in the 2900–3100 MHz band.

* * * * *

■ 38. Section 80.215 is amended by revising paragraphs (c)(1), (e)(1) and (g)(1), by removing paragraph (g)(2), redesignating paragraphs (g)(3) through (g)(5) as paragraphs (g)(2) through (g)(4) and revising newly designated paragraphs (g)(2) and (g)(3) to read as follows:

§ 80.215 Transmitter power.

* * * * *

(c) * * *

(1) Coast stations:

156–162 MHz–50W [1, 2, 13]

216–220 MHz [2]

* * * * *

(e) * * *

(1) Ship stations 156–162 MHz—25W [6, 13]

Marine utility stations and hand-held portable transmitters: 156–162 MHz–10W

[1] Maximum authorized power at the input terminals of the station antenna.

[2] See paragraph (h) of this section.

* * * * *

[6] Reducible to 1 watt or less, except for transmitters limited to public correspondence channels and used in an automated system.

* * * * *

[13] The frequencies 156.775 and 156.825 MHz are available for navigation-related port operations or ship movement only, and all precautions must be taken to avoid harmful interference to channel 16. Transmitter output power is limited to 1 watt for ship stations, and 10 watts for coast stations.

(g) * * *

(1) All transmitters and remote control units must be capable of reducing the carrier power to one watt or less;

(2) Except as indicated in paragraph (g)(3) of this section, all transmitters manufactured after January 21, 1987, or in use after January 21, 1997, must automatically reduce the carrier power to one watt or less when the transmitter is tuned to 156.375 MHz or 156.650 MHz, and must be provided with a manual override switch which when

held by an operator will permit full carrier power operation on 156.375 MHz and 156.650 MHz;

(3) Hand-held portable transmitters are not required to comply with the automatic reduction of carrier power in paragraph (g)(2) of this section; and

* * * * *

■ 39. Section 80.219 is revised to read as follows:

§ 80.219 Special requirements for narrow-band direct-printing (NB–DP) equipment.

NB–DP and data transmission equipment installed in ship and coast stations before October 1, 1990, that operates on the frequencies in the 4,000–27,500 kHz bands must be capable of operation in accordance with the technical requirements of either ITU–R Recommendation M.476–5, ''Direct-Printing Telegraph Equipment in the Maritime Mobile Service,'' with Annex, 1995, or ITU–R Recommendation M.625–3, ''Direct-Printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995, and may be used indefinitely. Equipment installed on or after October 1, 1990, must be capable of operation in accordance with the technical requirements of ITU–R Recommendation M.625–3, ''Direct-Printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995. NB–DP and data transmission equipment are additionally permitted to utilize any modulation, so long as emissions are within the limits set forth in § 80.211(f) and the equipment is also capable of operation in accordance with ITU–R Recommendation M.625–3, ''Direct-Printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995. ITU–R Recommendations M. 476–5 and M.625–3 with Annexes are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendations can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

■ 40. Section 80.223 is revised to read as follows:

§ 80.223 Special requirements for survival craft stations.

(a) Survival craft stations capable of transmitting on:

(1) 2182 kHz must be able to operate with A2B and A3E or H2B and H3E and J2B and J3E emissions;

(2) 121.500 MHz must be able to operate with A3E or A3N emission.

(b) Survival craft stations must be able to receive the frequency and types of emission which the transmitter is capable of using.

(c) Any EPIRB carried as part of a survival craft must comply with the specific technical and performance requirements for its class contained in subpart V of this chapter.

■ 41. Section 80.225 is amended by revising the introductory paragraph and paragraphs (a) and (c)(2) to read as follows:

§ 80.225 Requirements for selective calling equipment.

This section specifies the requirements for voluntary digital selective calling (DSC) equipment and selective calling equipment installed in ship and coast stations, and incorporates by reference ITU–R Recommendation M.476–5, ''Direct-Printing Telegraph Equipment in the Maritime Mobile Service,'' with Annex, 1995; ITU–R Recommendation M.493–10, ''Digital Selective-calling System for Use in the Maritime Mobile Service,'' with Annexes 1 and 2, 2000; ITU–R Recommendation M.625–3, ''Direct-Printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995; and RTCM Paper 56–95/SC101–STD, ''RTCM Recommended Minimum Standards for Digital Selective Calling (DSC) Equipment Providing Minimum Distress and Safety Capability,'' Version 1.0, dated August 10, 1995. ITU–R Recommendations M.476–5 with Annex, M.493–10 with Annexes 1 and 2, and M.625–3 with Annex, and RTCM Paper 56–95/SC101–STD are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW. Suite 700, Washington, DC. The ITU–R Recommendations can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland. The RTCM standards can be purchased from the Radio Technical Commission for Maritime Services (RTCM), Suite 600, 1800 Diagonal Road, Alexandria, Virginia 22314–2480.

(a) DSC equipment voluntarily installed in coast or ship stations must meet either the requirements of ITU–R Recommendation M.493–10, ''Digital Selective-calling System for Use in the Maritime Mobile Service,'' with Annexes 1 and 2, 2000 (including only equipment classes A, B, D, and E) or RTCM Paper 56–95/SC101–STD. DSC equipment must not be used with the sensors referred to in § 80.179(e)(2). DSC equipment used on compulsorily fitted ships must meet the requirements contained in subpart W of this part for GMDSS.

* * * * *

(c) * * *

(2) Equipment used to perform a selective calling function during narrow-band direct-printing (NB–DP) operations in accordance with ITU–R Recommendation M.476–5, ''Direct-Printing Telegraph Equipment in the Maritime Mobile Service,'' with Annex, 1995, or ITU–R Recommendation M.625–3, ''Direct-Printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995, ITU–R Recommendation M.493–10, ''Digital Selective-calling System for Use in the Maritime Mobile Service,'' with Annexes 1 and 2, 2000, and

* * * * *

■ 42. Section 80.251 is amended by revising paragraph (a) to read as follows:

§ 80.251 Scope.

(a) This subpart gives the general technical requirements for certification of equipment used on compulsory ships. Such equipment includes automatic-alarm-signal keying devices, survival craft radio equipment, watch receivers, and radar.

* * * * *

§§ 80.253 through 80.267 [Removed]

■ 43. Sections 80.253 through 80.267 are removed.

■ 44. Section 80.269 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 80.269 Technical requirements for radiotelephone distress frequency watch receiver.

* * * * *

(b) * * *

(1) The receiver must be capable of being switched to 2182 kHz and of receiving signals of at least A2A and A2B emissions;

(2) The receiver sensitivity must provide a SINAD of 20 dB at the audio

output when a 30 microvolt signal with A2A or A2B emission modulated 30% at 400 Hz is applied to the receiver RF terminals;

* * * * *

■ 45. Section 80.273 is revised to read as follows:

§ 80.273 Technical requirements for radar equipment.

(a) Radar installations on board ships that are required by the Safety Convention or the U.S. Coast Guard to be equipped with radar must comply with either the document referenced in paragraph (a)(1) of this section or the applicable document referenced in paragraphs (a)(2) through (4) of this section. These documents contain specifications, standards and general requirements applicable to shipboard radar equipment and shipboard radar installations. For purposes of this part the specifications, standards and general requirements stated in these documents are mandatory irrespective of discretionary language. The standards listed in paragraphs (a)(1), (2), (3), and (4) of this section are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW. Suite 700, Washington, DC. The standards referenced in paragraphs (a)(1), (2), and (3) of this section can be purchased from the Radio Technical Commission for Maritime Services (RTCM), Suite 600, 1800 Diagonal Road, Alexandria, Virginia 22314–2480; telephone 703–684–4481; fax 703–684–4229; email *wtadams@rtcm.org*. The standard referenced in section (a)(4) can be purchased from International Maritime Organization (IMO), Publications, 4 Albert Embankment, London SE1 7 SR, United Kingdom; telephone 011 44 71 735 7611.

(1) Radar installed on or after July 1, 1988, on ships of 500 gross tons and upwards that were constructed on or after September 1, 1984, must comply with the provisions of RTCM Paper 133–87–SC 103–33 including Appendix A. Title: ''RTCM Recommended Performance Specification for a General Purpose Navigational Radar Set for Oceangoing Ships of 500 Gross Tons and Upwards for New Radar Installations.'' Title of Appendix A: ''General Purpose Shipborne Navigational Radar Set for Oceangoing Ships Design and Testing Specifications.'' Document originally approved by RTCM August 15, 1985 and revised May 15, 1987.

(2) Radar installed on ships of 1,600 gross tons and upwards on or before April 27, 1981, must comply with the provisions of Volume II of RTCM Special Committee No. 65 Final Report; Part II. Title: ''Performance Specification for a General Purpose Navigational Radar Set for Oceangoing Ships of 1,600 Tons Gross Tonnage and Upwards for Ships Already Fitted.'' Document approved by RTCM July 18, 1978; effective as FCC requirement on April 27, 1981.

(3) Radar installed on ships of 1,600 gross tons and upwards after April 27, 1981 and before July 1, 1988, must comply with the provisions of Volume II of RTCM Special Committee No. 65 Final Report with Change 1 entered; Part I including Appendix A. Title: ''Performance Specification for a General Purpose Navigational Radar Set for Oceangoing Ships of 1,600 Tons Gross Tonnage and Upwards for New Radar Installations.'' Title of Appendix A: ''General Purpose Shipborne Navigational Radar Set for Oceangoing Ships Design and Testing Specifications.'' Document approved by RTCM July 18, 1978; effective as FCC requirement on April 27, 1981.

(4) Ships between 500 and 1,600 gross tons constructed on or after September 1, 1984, with radar installed before July 1, 1988, must comply with Regulation 12, Chapter V of the Safety Convention and with the provisions of Inter-Governmental Maritime Consultative Organization (IMCO) [now International Maritime Organization] Resolution A.477 (XII). Title: ''Performance Standards for Radar Equipment,'' with Annex. Adopted by IMCO November 19, 1981.

(b) For ships of 10,000 gross tons or more and any other ship that is required to be equipped with two radar systems, each of these systems must be capable of operating independently and must comply with the specifications, standards and general requirements established by paragraph (a) of this section. One of the systems must provide a display with an effective diameter of not less than 340 millimeters (13.4 inches), (16 inch cathode ray tube). The other system must provide a display with an effective diameter of not less than 250 millimeters (9.8 inches), (12 inch cathode ray tube).

(c) Recommendations for tools, test equipment, spares and technical manuals are contained in Part IV of Volume III of the RTCM SC–65 Final Report approved by RTCM July 18, 1978.

■ 46. Section 80.302 is amended by revising paragraph (a) to read as follows:

§ 80.302 Notice of discontinuance, reduction, or impairment of service involving a distress watch.

(a) When changes occur in the operation of a public coast station which include discontinuance, reduction or suspension of a watch required to be maintained on 2182 kHz or 156.800 MHz, notification must be made by the licensee to the nearest district office of the U.S. Coast Guard as soon as practicable. The notification must include the estimated or known resumption time of the watch.

* * * * *

§ 80.304 [Amended]

■ 47. Section 80.304 is amended by removing paragraph (a), and redesignating paragraph (b) as the undesignated paragraph.

■ 48. Section 80.305 is amended by revising paragraph (a)(3) to read as follows:

§ 80.305 Watch requirements of the Communications Act and the Safety Convention.

(a) * * *

(3) Until February 1, 2005, keep a continuous and efficient watch on the VHF distress frequency 156.800 MHz from the room from which the vessel is normally steered while in the open sea outside a harbor or port. The watch must be maintained by a designated member of the crew who may perform other duties, relating to the operation or navigation of the vessel, provided such other duties do not interfere with the effectiveness of the watch. Use of a properly adjusted squelch or brief interruptions due to other nearby VHF transmissions are not considered to adversely affect the continuity or efficiency of the required watch on the VHF distress frequency. This watch need not be maintained by vessels subject to the Bridge-to-Bridge Act and participating in a Vessel Traffic Services (VTS) system as required or recommended by the U.S. Coast Guard, when an efficient listening watch is maintained on both the bridge-to-bridge frequency and a separate assigned VTS frequency.

* * * * *

■ 49. Section 80.310 is revised to read as follows:

§ 80.310 Watch required by voluntary vessels.

Voluntary vessels not equipped with DSC must maintain a watch on 156.800 MHz (Channel 16) whenever the vessel

is underway and the radio is not being used to communicate. Noncommercial vessels, such as recreational boats, may alternatively maintain a watch on 156.450 MHz (Channel 9) for call and reply purposes. Voluntary vessels equipped with VHF–DSC equipment must maintain a watch on either 156.525 MHz (Channel 70) or VHF Channel 16 aurally whenever the vessel is underway and the radio is not being used to communicate. Voluntary vessels equipped with MF–HF DSC equipment must have the radio turned on and set to an appropriate DSC distress calling channel or one of the radiotelephone distress channels whenever the vessel is underway and the radio is not being used to communicate. Voluntary vessels equipped with Inmarsat A, B, or C systems must have the unit turned on and set to receive calls whenever the vessel is underway and the radio is not being used to communicate.

■ 50. Section 80.313 is amended by revising the table to read as follows:

§ 80.313 Frequencies for use in distress.

* * * * *

Frequency band	Emission	Carrier frequency
1605–3500 kHz	J3E	2182 kHz.
118–136 MHz	A3E	121.500 MHz.
156–162 MHz	F3E, PON	156.800 MHz 156.750 MHz.
243 MHz	A3N	243.000 MHz.

* * * * *

§ 80.314 [Amended]

■ 51. Section 80.314 is amended by removing paragraph (a), and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

■ 52. Section 80.315 is amended by removing paragraph (a), redesignating paragraph (b) as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 80.315 Distress calls.

* * * * *

(b) The procedures for canceling false distress alerts are contained in § 80.335.

■ 53. Section 80.316 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b), and adding new paragraph (c) to read as follows:

§ 80.316 Distress messages.

* * * * *

(c) The procedures for canceling false distress alerts are contained in § 80.335.

■ 54. Section 80.320 is amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (f) respectively, and adding a new paragraph (b) to read as follows:

§ 80.320 Radiotelephone distress call and message transmission procedure.

* * * * *

(b) The DSC distress procedure consists of:

(1) Transmission by a mobile unit in distress;

(2) Reception;

(3) Acknowledgement of distress calls;

(4) Distress relays.

* * * * *

■ 55. Add § 80.334 to read as follows:

§ 80.334 False distress alerts.

A distress alert is false if it was transmitted without any indication that a mobile unit or person was in distress and required immediate assistance. Transmitting a false distress alert is prohibited and may be subject to the provisions of part 1, subpart A of this chapter if that alert:

(a) Was transmitted intentionally;

(b) Was not cancelled in accordance with § 80.335;

(c) Could not be verified as a result of either the ship's failure to keep watch on appropriate frequencies in accordance with § 80.1123 or subpart G of this part, or its failure to respond to calls from the U.S. Coast Guard;

(d) Was repeated; or

(e) Was transmitted using a false identity.

■ 56. Add § 80.335 to read as follows:

§ 80.335 Procedures for canceling false distress alerts.

If a distress alert is inadvertently transmitted, the following steps shall be taken to cancel the distress alert.

(a) VHF Digital Selective Calling.

(1) Reset the equipment immediately;

(2) Transmit a DSC distress alert cancellation (*i.e.*, own ship's acknowledgment), if that feature is available;

(3) Set to Channel 16; and

(4) Transmit a broadcast message to ''All stations'' giving the ship's name, call sign or registration number, and MMSI, and cancel the false distress alert.

(b) MF Digital Selective Calling.

(1) Reset the equipment immediately;

(2) Transmit a DSC distress alert cancellation (*i.e.*, own ship's acknowledgment), if that feature is available;

(3) Tune for radiotelephony transmission on 2182 kHz; and

(4) Transmit a broadcast message to ''All stations'' giving the ship's name, call sign or registration number, and MMSI, and cancel the false distress alert.

(c) HF Digital Selective Calling;

(1) Reset the equipment immediately;

(2) Transmit a DSC distress alert cancellation (*i.e.*, own ship's acknowledgment), if that feature is available, on each frequency on which the distress alert was transmitted;

(3) Tune for radiotelephony on the distress and safety frequency in each band in which a false distress alert was transmitted; and

(4) Transmit a broadcast message to ''All stations'' giving the ship's name, call sign or registration number, and MMSI, and cancel the false distress alert frequency in each band in which a false distress alert was transmitted.

(d) INMARSAT ship earth station. Immediately notify the appropriate rescue coordination center that the alert is cancelled by sending a distress priority message by way of the same land earth station through which the false distress alert was sent. Provide ship name, call sign or registration number, and INMARSAT identity with the cancelled alert message.

(e) EPIRB. If for any reason an EPIRB is activated inadvertently, immediately contact the nearest U.S. Coast Guard unit or appropriate rescue coordination center by telephone, radio or ship earth station and cancel the distress alert.

(f) General and other distress alerting systems. Notwithstanding paragraphs (a) through (e) of this section, ships may use additional appropriate means available to them to inform the nearest appropriate U.S. Coast Guard rescue coordination center that a false distress alert has been transmitted and should be cancelled.

§ 80.353 [Removed and Reserved]

■ 57. Section 80.353 is removed and reserved.

■ 58. Section 80.355 is amended by removing paragraph (c)(1), redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2), and revising newly designated

paragraph (c)(1) and revising paragraph (d)(2) to read as follows:

§ 80.355 Distress, urgency, safety, call and reply Morse code frequencies.

* * * * *

(c) *Frequencies in the 2000–27500 kHz band*—(1) *Ship station frequencies.* The following table describes the calling frequencies in the 4000–27500 kHz band which are available for use by authorized ship stations equipped with crystal-controlled oscillators for A1A, J2A, J2B, or J2D radiotelegraphy. There are two series of frequencies for worldwide use and two series of frequencies for each geographic region. Ship stations with synthesized transmitters may operate on every full 100 Hz increment in the 0.5 kHz channel for the frequencies listed, except for 100 Hz above and below those designated for worldwide use. During normal business hours when not communicating on other frequencies, all U.S. coast radiotelegraph stations must monitor the worldwide frequencies and the initial calling frequencies for the region in which it is located. The specific frequencies which must be monitored by a coast station will vary with propagation conditions. The calling frequencies which are routinely monitored by specific coast stations can be determined by reference to the ITU publication entitled ''List of Coast Stations.'' Initial calls by ship stations must be made on the appropriate initial calling frequency first. Calls on the worldwide frequencies may be made only after calls on the appropriate initial calling frequency are unsuccessful.

SHIP MORSE CALLING FREQUENCIES (KHZ)

	ITU							ITU	
Region:									
Worldwide	3	4184.0	6276.0	8368.0	12552.0	16736.0	22280.5	C	25172.0
	4	4184.5	6276.5	8369.0	12553.5	16738.0	22281.0	C	25172.0
Atlantic:									
Initial	1	4182.0	6277.0	8366.0	12550.0	16734.0	22279.5	A	25171.5
Alternate	2	4182.5	6277.5	8366.5	12550.5	16734.5	22280.0	A	25171.5
Caribbean:									
Initial	1	4182.0	6277.0	8366.0	12550.0	16734.0	22279.5	A	25171.5
Alternate	2	4182.5	6277.5	8366.5	12550.5	16734.5	22280.0	A	25171.5
Gulf-Mexico:									
Initial	5	4183.0	6278.0	8367.0	12551.0	16735.0	22281.5	A	25171.5
Alternate	6	4183.5	6278.5	8367.5	12551.5	16735.5	22282.0	A	25171.5
N Pacific:									
Initial	7	4185.0	6279.0	8368.5	12552.5	16736.5	22282.5	B	25172.5
Alternate	8	4185.5	6279.5	8369.5	12553.0	16737.0	22283.0	B	25172.5
S Pacific:.									
Initial	9	4186.0	6280.0	8370.0	12554.0	16737.5	22283.5	B	25172.5
Alternate	10	4186.5	6280.5	8370.5	12554.5	16738.5	22284.0	B	25172.5

* * * * *

(d) * * *

(2) EPIRB stations may be assigned 121.500 MHz and 243 MHz using A3E, A3X and NON emission or 406.0–406.1 MHz using G1D emission to aid search and rescue operations. See subpart V of this part.

■ 59. Section 80.357 is amended by revising the section heading, introductory text and the text preceding the table in paragraph (b)(1) to read as follows:

§ 80.357 Working frequencies for Morse code and data transmission.

This section describes the working frequencies assignable to maritime stations for A1A, J2A, J2B (2000–27500 kHz band only), or J2D (2000–27500 kHz band only) radiotelegraphy.

* * * * *

(b) *Coast station frequencies*—(1) *Frequencies in the 100–27500 kHz band.* The following table describes the working carrier frequencies in the 100–27500 kHz band which are assignable to coast stations located in the designated geographical areas. The exclusive maritime mobile HF bands listed in the table contained in § 80.363(a)(2) of this chapter are also available for assignment to public coast stations for A1A, J2A, J2B, or J2D radiotelegraphy following coordination with government users.

* * * * *

■ 60. In § 80.359 remove the number ''4209.5'' and add in its place the number ''4209.0'' in the table of paragraph (a) and revise paragraph (b) to read as follows:

§ 80.359 Frequencies for digital selective calling (DSC).

* * * * *

(b) *Distress and safety calling.* The frequencies 2187.5 kHz, 4207.5 kHz, 6312.0 kHz, 8414.5 kHz, 12577.0 kHz, 16804.5 kHz and 156.525 MHz may be used for DSC by coast and ship stations on a simplex basis for distress and safety purposes. The provisions and procedures for distress and safety calling are contained in ITU–R Recommendation M.541–8, ''Operational Procedures for the Use of Digital Selective-Calling Equipment in the Maritime Mobile Service,'' with Annexes, 1997, as modified by § 80.103(c). ITU–R Recommendation M.541–8 with Annexes is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

* * * * *

■ 61. Section 80.361 is amended by removing paragraph (a)(2), redesignating paragraph (a)(1) as paragraph (a) and by revising the text preceding the table in paragraph (b) to read as follows:

§ 80.361 Frequencies for narrow-band direct-printing (NBDP), radioprinter and data transmissions.

* * * * *

(b) The following table describes the frequencies and Channel Series with F1B, J2B, or J2D emission which are assignable to ship stations for NBDP and data transmissions with other ship stations and public coast stations. Public coast stations may receive only on these frequencies.

* * * * *

■ 62. Section 80.363 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 80.363 Frequencies for facsimile.

(a) * * *

(1) * * *

ASSIGNABLE SHIP FREQUENCIES FOR FACSIMILE (KHZ)

2070.5	4154	6235	8302	12370	16551	18848	22182	25123
2072.5	4170	6259	8338	12418	16615	18868	22238	25159
2074.5	.....	.....	.....	.....	.....	.....	.....	.....
2076.5	.....	.....	.....	.....	.....	.....	.....	.....

* * * * *

■ 63. Section 80.373 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(c) * * *

(2) * * *

(ii) The emissions must be J3E or J2D except that when DSC is used the emission must be F1B or J2B; and

* * * * *

■ 64. Section 80.374 is amended by revising the section heading and the introductory text to read as follows:

§ 80.374 Provisions for frequencies in the 4000–4063 and the 8100–8195 kHz bands shared with the fixed service.

Coast station assignments in the 4000–4063 kHz band deviate from international provisions. Coast station assignments in the 4000–4063 kHz band are permitted provided that such stations must not cause interference to, and must accept interference from, stations operated by other countries in accordance with the Radio Regulations.

* * * * *

■ 65. Section 80.375 is amended by revising paragraph (a), removing paragraphs (d)(2)(vii), (d)(3), and (d)(4) and by revising paragraph (e) to read as follows:

§ 80.375 Radiodetermination frequencies.

* * * * *

(a) *Direction finding frequencies.* The carrier frequencies assignable to ship stations for directional finding operations are:

Carrier Frequency

8364 kHz

121.500 MHz

243.00 MHz

* * * * *

(e) *Search and rescue radar transponder stations.* The technical standards for search and rescue transponder stations are in subpart W of this part.

■ 66. Section 80.401 is revised to read as follows:

§ 80.401 Station documents requirement.

Licensees of radio stations are required to have current station documents as indicated in the following table:

BILLING CODE 6712–01–P

LEGEND:
R = REQUIRED

DOCUMENTS →

	Radio Station Category	Station License	Appropriate Operator Authorization	Station Logs	Appropriate Safety Convention Certificate	Communications Act Safety Certificate	Great Lakes Radio Agreement Safety Certificate	Bridge to Bridge Act Safety Certificate	Part 80; FCC Rules and Regulations	Alphabetical List of Maritime Mobile Call Signs	List of Ship Stations	Manual for Use by Maritime Mobile (M/M) Service & M/M Satellite Service	List of Coast Stations	List of Radiodetermination and Special Services Stations	Station Equipment Records	GMDSS Master Plan	NIMA Publication 117	Admiralty List of Radio Signals	IMO Circ. 7
Shipboard:	Cargo Ships (300 gross tons and up)	R1	R	R	R				R	R	R	R	R	R		R5	R5	R5	R5
	Passenger Vessels – SOLAS	R1	R	R	R				R	R	R	R	R2	R		R5	R5	R5	R5
	Passenger Vessels – Domestic	R1	R	R		R			R										
	Telephone; Great Lakes Radio Agreement	R	R	R4			R4												
	Telephone; Bridge-to-Bridge Act	R	R	R				R											
	Radar	R																	
	On Board	R													R				
	Voluntary	R	R																
Land:	Public Coast (MF)	R	R	R					R	R3	R3	R3							
	Public Coast (HF)	R	R	R					R	R	R	R							
	Public Coast (VHF)	R	R	R					R										
	Private Coast	R	R																
	Radio Determination	R	R																
	Operational Fixed	R	R																
	Maritime Support	R	R																
	Alaska – Public Fixed	R	R	R															
	Alaska – Private Fixed	R	R																
Ship/Coast:	Marine Utility	R	R																

BILLING CODE 6712–01–C

Notes: 1. The expired station license must be retained in the station records until the first Commission inspection after the expiration date.

2. Alternatively, a list of coast stations maintained by the licensee with which communications are likely to be conducted, showing watch-keeping hours, frequencies and charges, is authorized.

3. Required only if station provides a service to ocean-going vessels.

4. Certification of a Great Lakes Agreement inspection may be made by either a log entry or issuance of a Great Lakes Agreement certificate. Radiotelephone logs containing entries certifying that a Great Lakes Agreement inspection has been conducted must be retained and be available for inspection by the FCC for 2 years after the date of the inspection.

5. The requirements for having the GMDSS Master Plan, NIMA Publication 117, Admiralty List of Radio Signals or IMO Circ. 7 are satisfied by having any one of those four documents.

■ 67. Section 80.405 is amended by revising paragraph (a) to read as follows:

§ 80.405 Station license.

(a) *Requirement.* Except as provided in § 80.13(c), stations must have an authorization granted by the Federal Communications Commission.

* * * * *

■ 68. Section 80.409 is amended by revising paragraphs (e)(1) through (e)(8) to read as follows:

§ 80.409 Station logs.

* * * * *

(e) * * *

(1) A summary of all distress communications heard, and urgency communications affecting the station's own ship.

(2) A summary of safety communications on other than VHF channels affecting the station's own ship.

(3) An entry that pre-departure equipment checks were satisfactory and that required publications are on hand. Daily entries of satisfactory tests to ensure the continued proper functioning of GMDSS equipment shall be made.

(4) An entry describing any malfunctioning GMDSS equipment and another entry when the equipment is restored to normal operation.

(5) A weekly entry that:

(i) The proper functioning of digital selective calling (DSC) equipment has been verified by actual communications or a test call;

(ii) The batteries or other reserve power sources are functioning properly;

(iii) The portable survival craft radio gear and radar transponders have been tested; and

(iv) The EPIRBs have been inspected.

(6) The time of any inadvertent transmissions of distress, urgency and safety signals including the time and method of cancellation.

(7) At the beginning of each watch, the Officer of the Navigational Watch, or GMDSS Operator on watch, if one is provided, shall ensure that the navigation receiver is functioning properly and is interconnected to all GMDSS alerting devices which do not have integral navigation receivers, including: VHF DSC, MF DSC, satellite EPIRB and HF DSC or INMARSAT SES. On a ship without integral or directly connected navigation receiver input to GMDSS equipment, the Officer of the Navigational Watch, or GMDSS Operator on watch, shall update the embedded position in each equipment. An appropriate log entry of these actions shall be made.

(8) A GMDSS radio log entry shall be made whenever GMDSS equipment is exchanged or replaced (ensuring that ship MMSI identifiers are properly updated in the replacement equipment), when major repairs to GMDSS equipment are accomplished, and when annual GMDSS inspections are conducted.

* * * * *

■ 69. Section 80.415 is amended by revising the section heading and paragraphs (a)(5) and (b) to read as follows:

§ 80.415 Publications.

(a) * * *

(5) List VII A–Alphabetical List of Call Signs of Stations Used by the Maritime Mobile Service, Ship Station Selective Call Numbers or Signals and Coast Station Identification Numbers or Signals. These publications may be purchased from: International Telecommunication Union, General Secretariat-Sales Section, Place des Nations, CH–1211 Geneva 20, Switzerland

(b) The following publications listed in the table contained in § 80.401 are available as follows:

(1) IMO GMDSS Master Plan may be purchased from International Maritime Organization (IMO), Publications, 4 Albert Embankment, London SE1 7 SR, United Kingdom; telephone 011 44 71 735 7611.

(2) U.S. NIMA Publication 117 may be purchased from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, telephone 202–512–1800.

(3) The Admiralty List of Radio Signals, Volume 5—Global Maritime Distress and Safety System, may be purchased from UK Hydrographic Office, Admiralty Way, Tauton, Somerset TA1 2DN, United Kingdom, telephone +44 (0)1823 337900 x3333.

■ 70. Section 80.417 is revised to read as follows:

§ 80.417 FCC Rules and Regulations.

The Commission's printed publications are described in subpart C of part 0 of this chapter. These publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Commission does not furnish copies of these publications but will furnish a price list, Information Services and Publications—Bulletin No. 1, upon request. Requests for copies of this list may be directed to the Consumer Information Bureau, Consumer Information Network Division. Information bulletins and fact sheets containing information about communications issues and the Federal Communications Commission are also available on the Commission's web site at www.fcc.gov or ftp.fcc.gov.

■ 71. Section 80.605 is amended by revising paragraphs (b) and (c) and removing paragraph (d) to read as follows:

* * * * *

§ 80.605 U.S. Coast Guard coordination.

* * * * *

(b) Coast station transponders (*i.e.*, radar beacons, or racons) operating in the band 2900–3100 or 9300–9500 MHz shall meet the requirements of ITU–R Recommendation M.824–2, ''Technical Parameters of Radar Beacons (RACONS),'' with Annexes, 1995. Applications for certification of these transponders must include a description of the technical characteristics of the equipment including the scheme of interrogation and the characteristics of the transponder response, and test results demonstrating the device meets each applicable requirement of this ITU–R recommendation. ITU–R Recommendation M.824–2 with Annexes is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW, Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW. Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

(c) The use of ship station transponders in the band 2900–3100 or 9300–9500 MHz other than those described in § 80.1065(a)(3) and § 80.1095(b) is prohibited.

§§ 80.801 through 80.806 [Removed]

■ 72. Remove §§ 80.801 through 80.806.

§ 80.807 [Redesignated as § 80.268]

■ 73. Section 80.807 is redesignated as § 80.268.

■ 74. In newly redesignated § 80.268 revise the section heading and paragraphs (a)(5) and (b)(3) to read as follows:

§ 80.268 Technical requirements for radiotelephone installation.

* * * * *

(a) * * *

(5) This transmitter may be contained in the same enclosure as the receiver required by paragraph (b) of this section. These transmitters may have the capability to transmit J2D or J3E transmissions.

(b) * * *

(3) This receiver may be contained in the same enclosure as the transmitter required by paragraph (a) of this section. These receivers may have the capability to receive J2D or J3E transmissions.

* * * * *

§§ 80.808 through 80.817 [Removed]

■ 76. Remove §§ 80.808 through 80.817.

§§ 80.818 through 80.823 [Redesignated as §§ 80.288 through 80.293]

■ 77. Sections 80.818 through 80.823 are redesignated as §§ 80.288 through 80.293, respectively.

§§ 80.824 through 80.836 [Removed]

■ 78. Remove §§ 80.824 through 80.836.

Subpart Q—[Removed and reserved]

■ 79. Remove and reserve subpart Q.

■ 80–81. Section 80.851 is revised to read as follows:

§ 80.851 Applicability.

The radiotelephone requirements of this subpart are applicable to all compulsory ships which are not required to comply with subpart W of this part in total or in part because they have received an exemption from all or some of the subpart W provisions.

§ 80.853 [Amended]

■ 82. Section 80.853 is amended by removing paragraph (e).

§§ 80.856 and 80.857 [Removed]

■ 83. Remove §§ 80.856 and 80.857

§ 80.870 [Removed]

■ 84. Remove § 80.870.

§ 80.879 [Removed]

■ 85. Remove § 80.879.

■ 86. Add new § 80.880 to subpart R to read as follows:

§ 80.880 Vessel radio equipment.

(a) Vessels operated solely within twenty nautical miles of shore must be equipped with a VHF radiotelephone installation as described in this subpart, and maintain a continuous watch on Channel 16.

(b) Vessels operated solely within one hundred nautical miles of shore must be equipped with a medium frequency transmitter capable of transmitting J3E emission and a receiver capable of reception of J3E emission within the band 1710 to 2850 kHz, in addition to the VHF radiotelephone installation required by paragraph (a) of this section, and must maintain a continuous watch on 2182 kHz. Additionally, such vessels must be equipped with either:

(1) A single sideband radiotelephone capable of operating on all distress and safety frequencies in the medium frequency and high frequency bands listed in § 80.369(a) and (b), on all the ship-to-shore calling frequencies in the high frequency bands listed in § 80.369(d), and on at least four of the automated mutual-assistance vessel rescue (AMVER) system HF duplex channels (this requirement may be met by the addition of such frequencies to the radiotelephone installation required by paragraph (b) of this section); or

(2) If operated in an area within the coverage of an INMARSAT maritime mobile geostationary satellite in which continuous alerting is available, an INMARSAT ship earth station meeting the equipment authorization rules of parts 2 and 80 of this chapter.

■ 87. Add § 80.881 to subpart R to read as follows:

§ 80.881 Equipment requirements for ship stations.

Vessels subject to subpart R of this part must be equipped as follows:

(a) A category 1, 406.0–406.1 MHz EPIRB meeting the requirements of § 80.1061;

(b) A NAVTEX receiver meeting the requirements of § 80.1101(c)(1);

(c) A Search and Rescue Transponder meeting the requirements of § 80.1101(c)(6); and

(d) A two-way VHF radiotelephone meeting the requirements of § 80.1101(c)(7).

■ 88. Section 80.905 is amended by revising paragraphs (a)(2), (a)(3)(v), (vi) and (vii), (a)(4)(v) and (ix) and paragraph (d) to read as follows:

§ 80.905 Vessel radio equipment.

(a) * * *

(2) Vessels operated beyond the 20 nautical mile limitation specified in paragraph (a)(1) of this section, but not more than 100 nautical miles from the nearest land, must be equipped with a MF transmitter capable of transmitting J3E emission and a receiver capable of reception of J3E emission within the band 1710 to 2850 kHz, in addition to the VHF radiotelephone installation required by paragraph (a)(1) of this section. The MF transmitter and receiver must be capable of operation on 2670 kHz.

(3) * * *

(v) Be equipped with a NAVTEX receiver conforming to the following performance standards: IMO Resolution A.525(13), ''Performance standards for narrow-band direct printing telegraph equipment for the reception of navigational and meteorological warnings and urgent information to ships,'' including Annex, adopted November 17, 1983, and ITU–R Recommendation M.540–2, ''Operational and Technical Characteristics for an Automated Direct-printing Telegraph System for Promulgation of Navigational and Meteorological Warnings and Urgent Information to Ships,'' including Annexes, 1990. IMO Resolution A.525(13), including Annex, and ITU–R Recommendation M.540–2, including Annexes, are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards can be inspected at the Federal Communications Commission, 445 12th Street, SW, Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. IMO Resolution A.525(13) can be purchased from Publications, International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom. ITU–R Recommendation M.540–2, including Annexes, can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland;

(vi) Be equipped with a Category I 406.0–406.1 MHz satellite emergency position-indicating radiobeacon (EPIRB) meeting the requirements of § 80.1061; and

(vii) Participate in the AMVER system while engaged on any voyage where the vessel is navigated in the open sea for more than 24 hours. Copies of the AMVER Bulletin are available at: AMVER Maritime Relations, USCG Battery Park Building, Room 201, New York, NY 10004–1499. Phone 212–668–7764; Fax 212–668–7684.

(4) * * *

(v) Be equipped with a NAVTEX receiver conforming to the following

performance standards: IMO Resolution A.525(13), ''Performance standards for narrow-band direct printing telegraph equipment for the reception of navigational and meteorological warnings and urgent information to ships,'' 1994, and ITU–R Recommendation M.540–2, ''Operational and Technical Characteristics for an Automated Direct-printing Telegraph System for Promulgation of Navigational and Meteorological Warnings and Urgent Information to Ships,'' including Annexes, 1990. IMO Resolution A.525(13) and ITU–R Recommendation M.540–2, including Annexes, are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards can be inspected at the Federal Communications Commission, 445 12th Street, SW, Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. IMO Resolution A.525(13) can be purchased from Publications, International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom. ITU–R Recommendation M.540–2, including Annexes, can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland;

* * * * *

(ix) Participate in the AMVER system while engaged on any voyage where the vessel is navigated in the open sea for more than 24 hours. Copies of the AMVER Bulletin are available at: AMVER Maritime Relations, USCG Battery Park Building, Room 201, New York, NY 10004–1499. Phone 212–668–7764; Fax 212–668–7684.

* * * * *

(d) A VHF–DSC radiotelephone installation or a remote unit must be located at each steering station except those auxiliary steering stations which are used only during brief periods for docking or for close-in maneuvering. A single portable VHF–DSC radiotelephone set meets the requirements of this paragraph if adequate permanent mounting arrangements with suitable power provision and antenna feed are installed at each operator steering station. Additionally, for vessels of more than 100 gross tons, the radiotelephone installation must be located at the level of the main wheelhouse or at least one deck above the vessel's main deck.

■ 89. Section 80.909 is amended by revising paragraph (b) to read as follows:

§ 80.909 Radiotelephone transmitter.

* * * * *

(b) The single sideband radiotelephone must be capable of operating on maritime frequencies in the band 1710 to 27500 kHz with a peak envelope output power of at least 120 watts for J3E emission on 2182 kHz and J3E emission on the distress and safety frequencies listed in § 80.369(b).

* * * * *

■ 90. Section 80.933 is amended by revising paragraphs (c) introductory text and (c)(2)(i) to read as follows:

§ 80.933 General small passenger vessel exemptions.

* * * * *

(c) U.S. passenger vessels of less than 100 gross tons operated on domestic or international voyages are exempt from the radiotelegraph requirements of Part II of Title III of the Communications Act and the MF radiotelephone requirements of this subpart until one year after the Coast Guard notifies the Commission that shore-based Sea Area A1 coverage is established, if the following criteria are fully met:

* * * * *

(2) * * *

(i) A Category 1, 406.0–406.1 MHz EPIRB meeting the requirements of § 80.1061;

* * * * *

■ 91. Section 80.1051 is revised to read as follows:

§ 80.1051 Scope.

This subpart describes the technical and performance requirements for Classes A, B, and S, and Categories 1, 2, and 3 EPIRB stations.

■ 92. Section 80.1053 is revised to read as follows:

§ 80.1053 Special requirements for Class A EPIRB stations.

Class A EPIRBs shall not be manufactured, imported, or sold in the United States on or after February 1, 2003. Operation of Class A EPIRB stations shall be prohibited after December 31, 2006. New Class A EPIRBs will no longer be certified by the Commission. Existing Class A EPIRBs must be operated as certified.

■ 93. Section 80.1055 is revised to read as follows:

§ 80.1055 Special requirements for Class B EPIRB stations.

Class B EPIRBs shall not be manufactured, imported, or sold in the United States on or after February 1, 2003. Operation of Class B EPIRB stations shall be prohibited after December 31, 2006. New Class B EPIRBs will no longer be certified by the Commission. Existing Class B EPIRBs must be operated as certified.

§ 80.1057 [Removed and reserved]

■ 94. Section 80.1057 is removed and reserved.

■ 95. Section 80.1059 is revised to read as follows:

§ 80.1059 Special requirements for Class S EPIRB stations.

Class S EPIRBs shall not be manufactured, imported, or sold in the United States on or after February 1, 2003. Operation of Class S EPIRB stations shall be prohibited after December 31, 2006. New Class S EPIRBs will no longer be certified by the Commission. Existing Class S EPIRBs must be operated as certified.

■ 96. Section 80.1061 is revised to read as follows:

§ 80.1061 Special requirements for 406.0–406.1 MHz EPIRB stations.

(a) Notwithstanding the provisions in paragraph (b) of this section, 406.0–406.1 MHz EPIRBs must meet all the technical and performance standards contained in the Radio Technical Commission for Maritime Services document entitled RTCM Paper 77–02/SC110–STD, ''RTCM Recommended Standards for 406 MHz Satellite Emergency Position-Indicating Radiobeacons (EPIRBs),'' Version 2.1, dated June 20, 2002 (RTCM Recommended Standards). The RTCM Recommended Standards are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the RTCM Recommended Standards can be inspected at the Federal Communications Commission, 445 12th Street, SW, Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The RTCM Recommended Standards can be purchased from the Radio Technical Commission for Maritime Services, 1800 Diagonal Road, Suite 600, Alexandria, VA 22314. Phone 703–684–4481; Fax 703–684–4229; email *wtadams@rtcm.org.*

(b) The 406.0–406.1 EPIRB must contain as an integral part a ''homing'' beacon operating only on 121.500 MHz that meets all the requirements described in the RTCM Recommended Standards document described in paragraph (a) of this section. The 121.500 MHz ''homing'' beacon must

have a continuous duty cycle that may be interrupted during the transmission of the 406.0–406.1 MHz signal only. Additionally, at least 30 percent of the total power emitted during any transmission cycle must be contained within plus or minus 30 Hz of the carrier frequency.

(c) Prior to submitting a certification application for a 406.0–406.1 MHz radiobeacon, the radiobeacon must be certified by a test facility recognized by one of the COSPAS/SARSAT Partners that the equipment satisfies the design characteristics associated with the measurement methods described in Appendix B of the RTCM Recommended Standards. Additionally, the radiobeacon must be certified by a test facility recognized by the U.S. Coast Guard to certify that the equipment complies with the U.S. Coast Guard environmental and operational requirements associated with the test procedures described in Appendix A of the RTCM Recommended Standards. Information regarding the recognized test facilities may be obtained from Commandant (G–MSE), U.S. Coast Guard, 2100 2nd Street SW, Washington, DC 20593–0001.

(1) After a 406.0–406.1 MHz EPIRB has been certified by the recognized test facilities the following information must be submitted in duplicate to the Commandant (G–MSE), U.S. Coast Guard, 2100 2nd Street SW, Washington, DC 20593–0001:

(i) The name of the manufacturer or grantee and model number of the EPIRB;

(ii) Copies of the certificate and test data obtained from the test facility recognized by a COPAS/SARSAT Partner showing that the radiobeacon complies with the COSPAS/SARSAT design characteristics associated with the measurement methods described in Appendix B of the RTCM Recommended Standards;

(iii) Copies of the test report and test data obtained from the test facility recognized by the U.S. Coast Guard showing that the radiobeacon complies with the U.S. Coast Guard environmental and operational characteristics associated with the measurement methods described in Appendix A of the RTCM Recommended Standards; and

(iv) Instruction manuals associated with the radiobeacon, description of the test characteristics of the radiobeacon including assembly drawings, electrical schematics, description of parts list, specifications of materials and the manufacturer's quality assurance program.

(2) After reviewing the information described in paragraph (c)(1) of this section the U.S. Coast Guard will issue a letter stating whether the radiobeacon satisfies all RTCM Recommended Standards.

(d) A certification application for a 406.0–406.1 MHz EPIRB submitted to the Commission must also contain a copy of the U.S. Coast Guard letter that states the radiobeacon satisfies all RTCM Recommended Standards, a copy of the technical test data, and the instruction manual(s).

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.0–406.1 MHz COSPAS/SARSAT satellite system, must be programmed in each EPIRB unit to establish a unique identification for each EPIRB station. With each marketable EPIRB unit the manufacturer or grantee must include a postage pre-paid registration card printed with the EPIRB identification code addressed to: NOAA/NESDIS, SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233. The registration card must request the owner's name, address, telephone number, type of ship, alternate emergency contact and include the following statement: ''WARNING—failure to register this EPIRB with NOAA before installation could result in a monetary forfeiture being issued to the owner.''

(f) To enhance protection of life and property it is mandatory that each 406.0–406.1 MHz EPIRB be registered with NOAA before installation and that information be kept up-to-date. Therefore, in addition to the identification plate or label requirements contained in §§ 2.925, 2.926 and 2.1003 of this chapter, each 406.0–406.1 MHz EPIRB must be provided on the outside with a clearly discernible permanent plate or label containing the following statement: ''The owner of this 406.0–406.1 MHz EPIRB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA, NOAA/SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233.'' Vessel owners shall advise NOAA in writing upon change of vessel or EPIRB ownership, transfer of EPIRB to another vessel, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

(g) For 406.0–406.1 MHz EPIRBs whose identification code can be changed after manufacture, the identification code shown on the plate or label must be easily replaceable using commonly available tools.

■ 97. Section 80.1071 is amended by revising paragraph (b)(2), removing paragraph (b)(3), and adding paragraph (c) to read as follows:

§ 80.1071 Exemptions.

* * * * *

(b) * * *

(2) In exceptional circumstances, for a single voyage outside the sea area or sea areas for which the ship is equipped.

(c) All fishing vessels of 300 gross tons and upward are exempt from subpart W requirements applicable for carriage of VHF–DSC and MF–DSC equipment until one year after the USCG establishes GMDSS coast facilities for Sea Areas A1 and A2, if the following provisions are met:

(1) The ship is equipped with:

(i) A VHF radiotelephone installation meeting the requirements of § 80.1101(c)(2).

(ii) A MF or HF radiotelephone installation meeting the requirements of § 80.1101(c)(3) and (4).

(iii) A Category 1, 406.0–406.1 MHz EPIRB meeting the requirements of § 80.1061;

(iv) A NAVTEX receiver meeting the requirements of § 80.1101(c)(1);

(v) Survival craft equipment meeting the requirements of § 80.1095;

(vi) A Search and Rescue Transponder meeting the requirements of § 80.1101(c)(6); and

(2) The ship remains within coverage of a VHF coast station and maintains a continuous watch on VHF Channel 16; or

(3) The vessel remains within coverage of an MF coast station and maintains a continuous watch on 2182 kHz and VHF Channel 16.

■ 98. Section 80.1073 is amended by revising paragraphs (a)(1), (a)(2), and (b)(6) to read as follows:

§ 80.1073 Radio operator requirements for ship stations.

(a) * * *

(1) A qualified GMDSS radio operator must be designated to have primary responsibility for radiocommunications during distress incidents, except if the vessel operates exclusively within twenty nautical miles of shore, in which case a qualified restricted radio operator may be so designated.

(2) A second qualified GMDSS radio operator must be designated as backup for distress and safety radiocommunications, except if the vessel operates exclusively within twenty nautical miles of shore, in which case a qualified restricted GMDSS radio operator may be so designated.

(b) * * *

(6) Responsible for ensuring that the ship's navigation position is entered into all installed DSC equipment, either automatically through a connected or integral navigation receiver, or manually at least every four hours when the ship is underway.

■ 99. Section 80.1074 is amended by revising paragraph (b)(2) and removing paragraph (b)(3) to read as follows:

§ 80.1074 Radio maintenance personnel for at-sea maintenance.

* * * * *

(b) * * *

(2) GB: GMDSS Operator's/Maintainer's License.

* * * * *

■ 100. Section 80.1077 is revised to read as follows:

§ 80.1077 Frequencies.

The following table describes the frequencies used in the Global Maritime Distress and Safety System:

Alerting:	
406.0–406.1 EPIRBs	406.0–406.1 MHz (Earth-to-space). 1544–1545 HHz (space-to-Earth).
INMARSAT Ship Earth Stations capable of voice and/or direct printing.	1626.5–1645.5 MHz (Earth-to-space).
VHF DSC Ch. 70	156.525 MHz [1].
MF/HF DSC [2] [11]	2187.5 kHz [3], 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12577 kHz, and 16804.5 kHz.
On-scene communications:	
VHF Ch. 16	156.8 MHz.
MF Radiotelephony	2182 kHz.
NBDP	2174.5 kHz.
Communications involving aircraft:	
On-scene, including search and rescue	156.8 MHz[4], 121.5 MHz[5], 123.1 MHz 156.3 MHz, 2182 kHz, 3023 kHz, 4125 kHz, and 5680 kHz[6].
Locating signals:	
406–406.1 EPIRB Beacons	121.5 MHz.
9 GHz radar transponders	9200–9500 MHz.
Maritime safety information (MSI):	
International NAVTEX	518 kHz[7]
Warnings	490 kHz, 4209.5 kHz.
NBDP	4210 kHz, 6314 kHz, 8416.5 kHz, 12579 kHz, 16806.5 kHz, 19680.5 kHz, 22376 kHz, 26100.5 kHz.
Satellite	1530–1545 MHz [10].
General distress and safety communications and calling:	
Satellite	1530–1544 MHz (space-to-Earth) and 1626.5–1645.5 MHz (Earth-to-space) [10].
Radiotelephony	2182 kHz, 4125 kHz, 6215 kHz, 8291 kHz, 12290 kHz, 16420 kHz, and 156.8 MHz.
NBDP	2174.5 kHz, 4177.5 kHz, 6268 kHz, 8376.5 kHz, 12520 kHz, and 16695 kHz.
DSC	2187.5 kHz, 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12577 kHz, 16804.5 kHz, and 156.525 MHz.
Survival craft:	
VHF radiotelephony	156.8 MHz and one other 156–174 MHz frequency.
9 GHz radar transponders	9200–9500 MHz.

[1] Frequency 156.525 MHz can be used for ship-to-ship alerting and, if within sea area A1, for ship-to-shore alerting.
[2] For ships equipped with MF/HF equipment, there is a watch requirement on 2187.5 kHz, 8414.5 kHz, and one other frequency.
[3] Frequency 2187.5 kHz can be used for ship-to-ship alerting and, if within sea areas A2, for ship-to-shore alerting.
[4] Frequency 156.8 MHz may also be used by aircraft for safety purposes only.
[5] Frequency 121.5 MHz may be used by ships for aeronautical distress and urgency purposes.
[6] The priority of use for ship-aircraft communications is 4125 kHz, then 3023 kHz. Additionally, frequencies 123.1 MHz, 3023 kHz and 5680 kHz can be used by land stations engaged in coordinated search and rescue operations.
[7] The international NAVTEX frequency 518 kHz is the primary frequency for receiving maritime safety information. The other frequencies are used only to augment the coverage or information provided on 518 kHz.
[8] [Reserved.]
[9] [Reserved].
[10] In addition to EPIRBs, 1544–1545 MHz can be used for narrowband distress and safety operations and 1645.5–1646.5 MHz can be used for relay of distress alerts between satellites. Feeder links for satellite communications are assigned from the fixed satellite service, see 47 CFR § 2.106.
[11] Routine calling is not permitted on MF and HF DSC frequencies.

* * * * *

■ 101. Section 80.1083 is amended by adding paragraph (d) to read as follows:

§ 80.1083 Ship radio installations.

* * * * *

(d) A Shipborne Integrated Radiocommunication System (IRCS) may be utilized to integrate all GMDSS equipment into a standard operator's console. Such installation must be type accepted in accordance with § 80.1103 and meet the requirements of IMO Assembly Resolution A.811(19), ''Performance Standards for a Shipborne Integrated Radiocommunication System (IRCS) When Used in the GMDSS,'' with Annex, adopted 23 November 1995. IMO Assembly Resolution A.811(19) with Annex is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW. Suite 700, Washington, DC.

The IMO standards can be purchased from Publications, International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

* * * * *

■ 102. Section 80.1085 is amended by revising paragraph (a)(6)(i), add paragraph (a)(6)(iii), remove paragraphs (b) and (c), redesignate paragraph (d) as paragraph (b), add a new paragraph (c), and revise newly redesignated paragraph (b) to read as follows:

§ 80.1085 Ship radio equipment—General.

(a) * * *

(6) A satellite emergency position-indicating radio beacon (satellite EPIRB) which must be:

(i) Capable of transmitting a distress alert through the polar orbiting satellite service operating in the 406.0–406.1 MHz band (406.0–406.1 MHz EPIRB); and

* * * * *

(iii) Examined and tested annually in accordance with IMO Circular MSC/Circ.882, Guidelines on annual testing of 406 MHz satellite EPIRBs. See § 80.1105(k).

* * * * *

(b) Ships must carry either the most recent edition of the IMO publication entitled GMDSS Master Plan of Shore-Based Facilities, the U.S. NIMA Publication 117, or the Admiralty List of Radio Signals Volume 5 Global Maritime Distress and Safety System. Notice of new editions will be published on the Commission's Wireless Telecommunications Bureau web page under ''Marine Services'' and information will be provided about obtaining the new document.

(c) All GMDSS equipment capable of transmitting an automatic distress alert which includes position of the ship must have either an integral navigation receiver or capability of being connected to an external navigation receiver. If an external navigation receiver is installed, it shall be connected to all of the alerting devices referred to in paragraph (a) of this section. If there is no navigation receiver, the position must be entered manually for each alerting device at least once every 4 hours (at the change of the navigation watch).

■ 103. Section 80.1087 is amended by revising paragraph (a)(2) to read as follows:

§ 80.1087 Ship radio equipment—Sea area A1.

* * * * *

(a) * * *

(2) Through the polar orbiting satellite service on 406.0–406.1 MHz (this requirement may be fulfilled by the 406.0–406.1 MHz EPIRB, required by § 80.1085(a)(6), either by installing the 406.0–406.1 MHz EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

* * * * *

■ 104. Section 80.1089 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 80.1089 Ship radio equipment—Sea areas A1 and A2.

* * * * *

(a) * * *

(3) * * *

(i) Through the polar orbiting satellite service on 406.0–406.1 MHz (this requirement may be fulfilled by the 406.0–406.1 MHz EPIRB required by § 80.1085(a)(6), either by installing the 406.0–406.1 MHz EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

* * * * *

■ 105. Section 80.1091 is amended by revising paragraph (a)(4)(i), adding a note at the end of paragraph (a)(4)(iii), and revising paragraph (b)(3)(i) to read as follows:

§ 80.1091 Ship radio equipment—Sea areas A1, A2, and A3.

* * * * *

(a) * * *

(4) * * *

(i) Through the polar orbiting satellite service on 406.0–406.1 MHz (this requirement may be fulfilled by the 406.0–406.1 MHz EPIRB required by § 80.1085(a)(6), either by installing the 406.0–406.1 MHz EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

* * * * *

(iii) * * *

Note to paragraph (a)(4)(iii). For ships subject to this subpart, sailing only in domestic waters, alternative satellite system fitting may be considered. However, the satellite system fitted must comply with all features of the INMARSAT system for its intended function. These are shown in IMO Assembly Resolution A.801(19) Appendix 13, Annex 5, ''Criteria for Use When Providing Inmarsat Shore-Based Facilities for Use in the GMDSS,'' adopted 23 November 1995, and in IMO Assembly Resolution A.888(21), ''Criteria for the Provision of Mobile Satellite Communication Systems in the Global Maritime Distress and Safety System (GMDSS),'' with Annex, adopted 25 November 1999. In any case, the alternative satellite system must provide continuous coverage for all sea areas in which the ship intends to sail. IMO Assembly Resolution A.801(19) Appendix 13, Annex 5, and IMO Assembly Resolution A.888(21) with Annex are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards can be inspected at the Federal Communications Commission, 445 12th Street, SW, Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The IMO standards can be purchased from Publications, International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

(b) * * *

(3) * * *

(i) Through the polar orbiting satellite service on 406.0–406.1 MHz (this requirement may be fulfilled by the 406.0–406.1 MHz EPIRB required by § 80.1085(a)(6), either by installing the 406.0–406.1 MHz EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

* * * * *

■ 106. Section 80.1099 is amended by revising paragraphs (f)(2) and (h) to read as follows:

§ 80.1099 Ship sources of energy.

* * * * *

(f) * * *

(2) Battery charge levels should be checked at intervals of 30 days or less with equipment turned ON and the battery charger turned OFF. Portable equipment with primary batteries such as EPIRBs and SARTs should be checked at the same intervals using methods recommended by the manufacturer. The results of battery checks should be recorded in the radio log.

* * * * *

(h) If an uninterrupted input of information from the ship's navigational or other equipment to a radio installation required by this subpart (including the navigational receiver referred to in SOLAS Chapter IV, Regulation 18) is needed to ensure its proper performance, means must be provided to ensure the continuous supply of such information in the event of failure of the ship's main or emergency source of electrical power.

* * * * *

■ 107. Section 80.1101 is revised to read as follows:

§ 80.1101 Performance standards.

(a) The abbreviations used in this section are as follows:

(1) International Maritime Organization (IMO).

(2) International Telecommunication Union—Telecommunication

Standardization Bureau (ITU–T) (Standards formerly designated as CCITT are now designated as ITU–T.)

(3) International Electrotechnical Commission (IEC).

(4) International Organization for Standardization (ISO).

(5) International Telecommunication Union—Radiocommunication Bureau (ITU–R) (Standards formerly designated as CCIR are now designated as ITU–R.)

(b) All equipment specified in this subpart must meet the general requirements for shipboard equipment in conformity with performance specifications listed in this paragraph, which are incorporated by reference.

(1) IMO Resolution A.694(17), ''General Requirements for Shipborne Radio Equipment Forming Part of the Global Maritime Distress and Safety System (GMDSS) and for Electronic Navigational Aids,'' adopted 6 November 1991.

(2) ITU–T Recommendation E.161, ''Arrangement of Digits, Letters and Symbols on Telephones and Other Devices that Can Be Used for Gaining Access to a Telephone Network,'' 1993.

(3) ITU–T Recommendation E.164.1, ''Series E: Overall Network Operation, Telephone Service, Service Operation and Human Factors; Operation, Numbering, Routing and Mobile Services—International Operation—Numbering Plan of the International Telephone Service: Criteria and Procedures for the Reservation, Assignment, and Reclamation of E.164 Country Codes and Associated Identification Codes (ICs),'' March 1998.

(4) IEC Publication 92–101, ''Electrical Installations in Ships,'' Third Edition 1980 with amendments through 1984.

(5) IEC Publication 533, ''Electromagnetic Compatibility of Electrical and Electronic Installations in Ships,'' First Edition 1977.

(6) IEC Publication 60945, ''Maritime navigation and radiocommunication equipment and systems—General requirements—Methods of testing and required test results,'' Edition 4.0, with Annexes, August 2002.

(7) ISO Standard 3791, ''Office Machines and Data Processing Equipment—Keyboard Layouts for Numeric Applications,'' First Edition 1976(E).

(c) The equipment specified in this subpart must also conform to the appropriate performance standards listed in paragraphs (c)(1) through (10) of this section, which are incorporated by reference, and must be tested in accordance with the applicable IEC testing standards listed in paragraph (c)(11) of this section, and are also incorporated by reference.

(1) *NAVTEX receivers:* (i) IMO Resolution A.525(13), ''Performance Standards for Narrow-band Direct Printing Telegraph Equipment for the Reception of Navigational and Meteorological Warnings and Urgent Information to Ships,'' including Annex, adopted 17 November 1983.

(ii) ITU–R Recommendation M.540–2, ''Operational and Technical Characteristics for an Automated Direct-printing Telegraph System for Promulgation of Navigational and Meteorological Warnings and Urgent Information to Ships,'' including Annexes, 1990.

(2) *VHF radio equipment:* (i) IMO Resolution A.803(19), ''Performance Standards for Shipborne VHF Radio Installations Capable of Voice Communication and Digital Selective Calling,'' with Annex, adopted 23 November 1995, as amended by IMO Resolution MSC.68(68), ''Adoption of Amendments to Performance Standards for Shipborne Radiocommunication Equipment,'' GMDSS terrestrial communications—1.1(c), adopted 6 June 1997.

(ii) ITU–R Recommendation M.493–10, ''Digital Selective-calling System for Use in the Maritime Mobile Service,'' with Annexes 1 and 2, 2000, and ITU–R Recommendation M.541–8, ''Operational Procedures for the Use of Digital Selective-Calling Equipment in the Maritime Mobile Service,'' with Annexes, 1997.

(3) *MF radio equipment:* (i) IMO Resolution 804(19), ''Performance Standards for Shipborne MF Radio Installations Capable of Voice Communication and Digital Selective Calling,'' with Annex, adopted 23 November 1995, as amended by IMO Resolution MSC.68(68), ''Adoption of Amendments to Performance Standards for Shipborne Radiocommunication Equipment,'' GMDSS terrestrial communications—1.2(c), adopted 6 June 1997.

(ii) ITU–R Recommendation M.493–10, ''Digital Selective-calling System for Use in the Maritime Mobile Service,'' with Annexes 1 and 2, 2000, and ITU–R Recommendation M.541–8, ''Operational Procedures for the Use of Digital Selective-Calling Equipment in the Maritime Mobile Service,'' with Annexes, 1997.

(4) *MF/HF radio equipment:* (i) IMO Resolution A.806(19), ''Performance Standards for Shipborne MF/HF Radio Installations Capable of Voice Communication, Narrow-Band Direct Printing and Digital Selective Calling,'' with Annex, adopted 23 November 1995, as amended by IMO Resolution MSC.68(68), ''Adoption of Amendments to Performance Standards for Shipborne Radiocommunication Equipment,'' GMDSS terrestrial communications—1.3(c), adopted 6 June 1997.

(ii) ITU–R Recommendation M.493–10, ''Digital Selective-calling System for Use in the Maritime Mobile Service,'' with Annexes 1 and 2, 2000, and ITU–R Recommendation M.541–8, ''Operational Procedures for the Use of Digital Selective-Calling Equipment in the Maritime Mobile Service,'' with Annexes, 1997.

(iii) ITU–R Recommendation M.625–3, ''Direct-Printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995, ITU–R Recommendation M.493–10, ''Digital Selective-calling System for Use in the Maritime Mobile Service,'' with Annexes 1 and 2, 2000. Equipment may conform to ITU–R Recommendation M.476–5, ''Direct-Printing Telegraph Equipment in the Maritime Mobile Service,'' with Annex, 1995, in lieu of ITU–R Recommendation M.625–3 with Annex, 1995, where such equipment was installed on ships prior to February 1, 1993.

(iv) IMO Resolution A.700(17), ''Performance Standards for Narrow-band Direct-printing Telegraph Equipment for the Reception of Navigational and Meteorological Warnings and Urgent Information to Ships (MSI) by HF,'' adopted 6 November 1991.

(5) *406.0–406.1 MHz EPIRBs:* (i) IMO Resolution A.810(19), ''Performance Standards for Float-free Satellite Emergency Position-indicating Radio Beacons (EPIRBs) Operating on 406 MHz,'' with Annex, adopted 23 November 1995, and IMO Resolution A.812(19), ''Performance Standards for Float-free Satellite Emergency Position-indicating Radio Beacons Operating Through the Geostationary INMARSAT Satellite System on 1.6 GHz,'' with Annex, adopted 23 November 1995.

(ii) IMO Resolution A.662(16), ''Performance Standards for Float-free Release and Activation Arrangements for Emergency Radio Equipment,'' adopted 19 October 1989.

(iii) ITU–R Recommendation M.633–2, ''Transmission Characteristics of a Satellite Emergency Position-indicating Radiobeacon (Satellite EPIRB) System Operating Through a Low Polar-orbiting Satellite System in the 406 MHz Band,'' 2000.

(iv) The 406.0–406.1 MHz EPIRBs must also comply with § 80.1061.

(6) *9 GHz radar transponders:* (i) IMO Resolution A.802(19), ''Performance

Standards for Survival Craft Radar Transponders for Use in Search and Rescue Operations,'' with Annex, adopted 23 November 1995.

(ii) ITU–R Recommendation M.628–3, ''Technical Characteristics for Search and Rescue Radar Transponders,'' with Annexes, 1994.

(7) *Two-Way VHF radiotelephone:* (i) IMO Resolution A.809(19), ''Performance Standards for Survival Craft Two-Way VHF Radiotelephone Apparatus,'' including Annexes 1 and 2, adopted 23 November 1995.

(ii) IMO Resolution MSC.80(70), ''Adoption of New Performance Standards for Radiocommunication Equipment,'' with Annexes, adopted 8 December 1998.

(8) *INMARSAT Ship Earth Station Capable of Two-Way Communications:* IMO Resolution A.808(19), ''Performance Standards for Ship Earth Stations Capable of Two-Way Communications,'' with Annex, adopted 23 November 1995.

(9) *INMARSAT–C SES:* IMO Resolution A.807(19), ''Performance Standards for INMARSAT–C Ship Earth Stations Capable of Transmitting and Receiving Direct-Printing Communications,'' with Annex, adopted 23 November 1995, as amended by IMO Resolution MSC.68(68), ''Adoption of Amendments to Performance Standards for Shipborne Radiocommunication Equipment,'' Satellite communications—2.3(c), adopted 6 June 1997.

(10) *INMARSAT EGC:* IMO Resolution A.664(16), ''Performance Standards for Enhanced Group Call Equipment,'' adopted 19 October 1989.

(11) *Standards for testing GMDSS equipment:*

(i) IEC 1097–1 Ed 1.0, ''Global Maritime Distress and Safety System (GMDSS)—Part 1: Radar transponder—Marine Search and Rescue (SART)—Operational and Performance Requirements, Methods of Testing and Required Test Results,'' with Annexes, July 1992.

(ii) IEC 1097–3 Ed 1.0, ''Global Maritime Distress and Safety System (GMDSS)—Part 3: Digital Selective Calling (DSC) Equipment—Operational and Performance Requirements, Methods of Testing and Required Testing Results,'' with Annexes, June 1994.

(iii) IEC 1097–4 Ed 1.0, ''Global Maritime Distress and Safety System (GMDSS)—Part 4: INMARSAT–C Ship Earth Station and INMARSAT Enhanced Group Call (EGC) Equipment—Operational and Performance Requirements, Methods of Testing and Required Test Results,'' with Annexes, November 1994.

(iv) IEC 1097–6 Ed 1.0, ''Global Maritime Distress and Safety System (GMDSS)—Part 6: Narrowband direct-printing telegraph equipment for the reception of navigational and meteorological warnings and urgent information to ships (NAVTEX)—Operational and Performance Requirements, Methods of Testing and Required Test Results,'' February 1995.

(v) IEC 1097–7 Ed 1.0, ''Global Maritime Distress and Safety System (GMDSS)—Part 7: Shipborne VHF radiotelephone transmitter and receiver—Operational and Performance Requirements, Methods of Testing and Required Test Results,'' with Annexes, October 1996.

(vi) IEC 61097–8 Ed 1.0, ''Global Maritime Distress and Safety System (GMDSS)—Part 8: Shipborne watchkeeping receivers for the reception of digital selective calling (DSC) in the maritime MF, MF/HF, and VHF bands—Operational and Performance Requirements, Methods of Testing and Required Test Results,'' with Annexes, September 1998.

(vii) IEC 61097–9 Ed 1.0, ''Global Maritime Distress and Safety System (GMDSS)—Part 9: Shipborne Transmitters and Receivers for Use in the MF and HF Bands Suitable for Telephony, Digital Selective Calling (DSC) and Narrow Band Direct Printing (NBDP)—Operational and Performance Requirements, Methods of Testing and Required Test Results,'' with Annexes, December 1997.

(viii) IEC 61097–10 Ed 1.0, ''Global Maritime Distress and Safety System (GMDSS)—Part 10: INMARSAT–B Ship Earth Station Equipment—Operational and Performance Requirements, Methods of Testing and Required Test Results,'' with Annexes, June 1999.

(ix) IEC 1097–12 Ed 1.0, ''Global Maritime Distress and Safety System (GMDSS)—Part 12: Survival Craft Portable Two-Way VHF Radiotelephone Apparatus—Operational and Performance Requirements, Methods of Testing and Required Test Results,'' with Annexes, November 1996.

(d) The documents referenced in paragraphs (a) through (c) of this section have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Identification data and place to purchase for each of the referenced documents are listed as follows:

(1) Copies of IMO Resolutions, the 1974 SOLAS Convention, and the 1983 and 1988 amendments to the 1974 SOLAS Convention can be purchased from Publications, International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

(i) IMO Resolution A.525(13) is contained in the Resolutions and Other Decisions of the Assembly of the International Maritime Organization, 13th Session, 1983, (IMO, London, 1984), Sales Number 073 84.07.E.

(ii) IMO Resolutions A.802(19), A.803(19), A.804(19), A.806(19), A.807(19), A.808(19), A.810(19), A.811(19) and A.812(19) are contained in the Resolutions and Other Decisions of the Assembly of the International Maritime Organization, 19th Session, 1995, (IMO, London, 1988), Sales Number IMO–194E ISBN No. 91–801–1416–6.

(iii) IMO Resolutions A.662(16) and A.664(16) are contained in the Resolutions and Other Decisions of the Assembly of the International Maritime Organization, 16th Session, 1989, (IMO, London, 1990), Sales Number 136 90.04.E

(iv) IMO Resolutions A.694(17), and A.700(17) are contained in the Resolutions and Other Decisions of the Assembly of the International Maritime Organization, 17th Session, 1991, (IMO, London, 1991), Sales Number IMO–142E ISBN No. 91–801–1281–3.

(2) ITU–R Recommendations, ITU Radio Regulations, and ITU-T publications can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

(i) All ITU–R Recommendations referenced in this section are contained in Recommendations of the ITU–R, Volume M series parts 3, 4, and 5.

(ii) ITU–T Recommendation E.161 is contained in Facicle II.2 Volume II—Telephone Network and ISDN Operation, Numbering, Routing and Mobile Service, (ITU, Geneva, 1989, revised in 1993 and 1995).

(iii) ITU–T Recommendation E.164.1 is contained in Facicle VI.1 Volume II Numbering Plan for the International Telephone Service, (ITU, Geneva, 1989, revised in 1997).

(3) IEC publications can be purchased from the International Electrotechnical Commission, 3 Rue de Varembe, CH–1211 Geneva 20, Switzerland, or from the American National Standards Institute (ANSI), 25 West 43rd Street, New York, NY 10036, telephone (212) 642–4900.

(4) ISO Standards can be purchased from the International Organization for Standardization, 1 Rue de Varembe, CH–1211 Geneva 20, Switzerland, or from the American National Standards Institute (ANSI), 25 West 43rd Street,

New York, NY 10036, telephone (212) 642–4900.

(5) Copies of the publications listed in this section that are incorporated by reference can be inspected at the Federal Communications Commission, 445 12th Street, SW., (room CY–A257), Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

■ 108. Section 80.1103 is amended by revising paragraphs (a) and (e) to read as follows:

§ 80.1103 Equipment authorization.

(a) All equipment specified in § 80.1101 must be certificated in accordance with 47 CFR part 2 specifically for GMDSS use, except for equipment used in the INMARSAT space segment which must be type-approved by INMARSAT and verified in accordance with 47 CFR part 2 specifically for GMDSS use. The technical parameters of the equipment must conform to the performance standards as specified in § 80.1101. For emergency position-indicating radiobeacons operating on 406.0–406.1 MHz (406.0–406.1 MHz EPIRBs) that were authorized prior to April 15, 1992, and meet the requirements of § 80.1101, the manufacturer may attest by letter that the equipment (indicate FCC ID#) meets the requirements of § 80.1101 and request that it be denoted as approved for GMDSS use.

* * * * *

(e) In addition to the requirements in part 2 of this chapter, equipment specified in § 80.1101 shall be labeled as follows: ''This device complies with the GMDSS provisions of part 80 of the FCC rules.'' Such a label is not required for emergency position-indicating radiobeacons operating on 406.0–406.1 MHz (406.0–406.1 MHz EPIRBs) that were authorized prior to April 15, 1992.

■ 109. Section 80.1105 is amended by adding a new paragraph (k) to read as follows:

§ 80.1105 Maintenance requirements.

* * * * *

(k) Satellite EPIRBs shall be tested at intervals not exceeding 12 months for all aspects of operational efficiency with particular emphasis on frequency stability, signal strength and coding. The test may be conducted on board the ship or at an approved testing or servicing station.

■ 110. Section 80.1111 is amended by revising paragraph (d) to read as follows:

§ 80.1111 Distress alerting.

* * * * *

(d) All stations which receive a distress alert transmitted by digital selective calling must immediately cease any transmission capable of interfering with distress traffic and must continue watch on the digital selective call distress calling channel until the call has been acknowledged to determine if a coast station acknowledges the call using digital selective calling. Additionally, the station receiving the distress alert must set watch on the associated distress traffic frequency for five minutes to determine if distress traffic takes place. The ship can acknowledge the call using voice or narrowband direct printing as appropriate on this channel to the ship or to the rescue authority.

■ 111. Section 80.1113 is amended by revising paragraphs (b) and (d) to read as follows:

§ 80.1113 Transmission of a distress alert.

* * * * *

(b) The format of distress calls and distress messages must be in accordance with ITU–R Recommendation M.493–10, ''Digital Selective-calling system for use in the Maritime Mobile Service,'' with Annexes 1 and 2, 2000, as specified in § 80.1101. ITU–R Recommendation M.493–10 with Annexes 1 and 2 is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

* * * * *

(d) Ship-to-ship distress alerts are used to alert other ships in the vicinity of the ship in distress and are based on the use of digital selective calling in the VHF and MF bands. The HF bands should not be used to notify ships in the vicinity unless no response is received within five minutes on VHF or MF.

* * * * *

■ 112. Add § 80.1114 to subpart W to read as follows:

§ 80.1114 False distress alerts.

The provisions of §§ 80.334 and 80.335 apply to false distress alerts.

■ 113. Section 80.1117 is amended by revising paragraph (a) as follows:

§ 80.1117 Procedure for receipt and acknowledgement of distress alerts.

(a) Normally, distress calls received using digital selective calling are only acknowledged using a DSC acknowledgement by a coast station. Ships should delay any acknowledgement in order to give sufficient time for a coast station to acknowledge the call. In cases where no acknowledgement has been heard and no distress traffic has been heard, the ship should transmit a distress alert relay to the coast station. Upon advice from the Rescue Coordination Center, the ship may transmit a DSC acknowledgement call to stop it from being repeated. Acknowledgement by digital selective calling of receipt of a distress alert in the terrestrial services must comply with ITU–R Recommendation M.541–8, ''Operational Procedures for the Use of Digital Selective-Calling Equipment in the Maritime Mobile Service,'' with Annexes, 1997. ITU–R Recommendation M.541–8 with Annexes is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

* * * * *

■ 114. Section 80.1121 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 80.1121 Receipt and acknowledgement of distress alerts by ship stations and ship earth stations.

* * * * *

(b) For VHF and MF, ships in receipt of a distress alert shall not transmit a distress alert relay, but should listen on the distress traffic channel for 5 minutes and, if appropriate, acknowledge the alert by radiotelephony to the ship in distress and inform the coast station and/or Rescue Coordination Center. Distress alert relays to ''all ships'' on these bands may only be sent by a ship who has knowledge that another ship in distress is not itself able to transmit the distress alert, and the Master of the ship considers that further help is necessary.

(c) For HF, ships in receipt of a distress alert shall listen on the distress traffic channel for 5 minutes. If no distress communications are heard and

if the call is not acknowledged by a coast station, the ship shall transmit a distress relay on HF to the coast radio station and inform the Rescue Coordination Center. Distress alert relays to ''all Ships'' on HF may only be sent by a ship who has knowledge that another ship in distress is not itself able to transmit the distress alert, and the Master of the ship considers that further help is necessary.

(d) In cases where distress alert continues to be received from the same source, the ship may, after consultation with the Rescue Coordination Center, transmit a DSC acknowledgment to terminate the call.

* * * * *

■ 115. Section 80.1123 is amended by revising paragraphs (c) and (d) to read as follows:

§ 80.1123 Watch requirements for ship stations.

* * * * *

(c) Until February 1, 2005, every ship while at sea must maintain, when practicable, a continuous listening watch on VHF Channel 16. This watch must be kept at the position from which the ship is normally navigated or at a position which is continuously manned.

(d) Every ship required to carry a radiotelephone watch receiver must maintain, while at sea, a continuous watch on the radiotelephone distress frequency 2182 kHz. This watch must be kept at the position from which the ship is normally navigated or at a position which is continually manned.

* * * * *

■ 116. Section 80.1125 is amended by revising paragraph (b) to read as follows:

§ 80.1125 Search and rescue coordinating communications.

* * * * *

(b) Error correction techniques, in accordance with ITU–R Recommendation M.625–3, ''Direct-printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995, as specified in § 80.1101, must be used for distress traffic by direct-printing telegraphy. All messages must be preceded by at least one carriage return, a line feed signal, a letter shift signal and the distress signal MAYDAY. ITU–R Recommendation M.625–3 with Annex is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

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■ 117. Section 80.1127 is amended by revising paragraphs (b) and (c) to read as follows:

§ 80.1127 On-scene communications.

* * * * *

(b) Control of on-scene communications is the responsibility of the unit coordinating search and rescue operations. Simplex communications must be used so that all on-scene mobile stations may share relevant information concerning the distress incident. If direct-printing telegraphy is used, it must be in the forward error-correcting mode in accordance with ITU–R Recommendation M.625–3, with Annex, as specified in § 80.1101.

(c) The preferred frequencies in radiotelephony for on-scene communications are 156.8 MHz and 2182 kHz. The frequency 2174.5 kHz may also be used for ship-to-ship on-scene communications using narrow-band direct-printing telegraphy in the forward error correcting mode in accordance with ITU–R Recommendation M.625–3, ''Direct-printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995, as specified in § 80.1101. ITU–R Recommendation M.625–3 with Annex is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

* * * * *

■ 118. Section 80.1129 is amended by revising paragraph (d) to read as follows:

§ 80.1129 Locating and homing signals.

* * * * *

(d) The 9 GHz locating signals must be in accordance with ITU-R Recommendation M.628–3, ''Technical Characteristics for Search and Rescue Radar Transponders,'' with Annexes, 1994, as specified in § 80.1101. ITU–R Recommendation M.628–3 with Annexes is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

■ 119. Section 80.1131 is amended by revising paragraph (j) to read as follows:

§ 80.1131 Transmissions of urgency communications.

* * * * *

(j) Error correction techniques, in accordance with ITU-R Recommendation M.625–3, ''Direct-printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995, as specified in § 80.1101, must be used for urgency messages by direct-printing telegraphy. All messages must be preceded by at least one carriage return, a line feed signal, a letter shift signal and the urgency signal PAN PAN. ITU–R Recommendation M.625–3 with Annex is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

* * * * *

■ 120. Section 80.1133 is amended by revising paragraph (g) to read as follows:

§ 80.1133 Transmission of safety communications.

* * * * *

(g) Error correction techniques, in accordance with ITU–R Recommendation M.625–3, ''Direct-printing Telegraph Equipment Employing Automatic Identification in the Maritime Mobile Service,'' with Annex, 1995, as specified in § 80.1101, must be used for safety messages by

direct-printing telegraphy. All messages must be preceded by at least one carriage return, a line feed signal, a letter shift signal and the safety signal SECURITE. ITU–R Recommendation M.625–3 with Annex is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The ITU–R Recommendation can be purchased from the International Telecommunication Union (ITU), Place des Nations, CH–1211 Geneva 20, Switzerland.

* * * * *

■ 121. Section 80.1135 is amended by revising paragraph (b) to read as follows:

§ 80.1135 Transmission of maritime safety information.

* * * * *

(b) The mode and format of the transmissions mentioned in this section is in accordance with the ITU–R Recommendation M.540 as specified in § 80.1101.

* * * * *

[FR Doc. 03–19687 Filed 8–6–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 152
Thursday, August 7, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142605–02]

RIN–1545–BB47

Administration Simplification of Section 481(a) Adjustment Periods in Various Regulations; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section sections 263A and 448 of the Internal Revenue Code. The amendments apply to taxpayers changing a method of accounting under the regulations and are necessary to conform the rules governing those changes to the rules provided in general guidance issued by the IRS for changing a method of accounting.

DATES: The public hearing originally scheduled for August 13, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit, Associate Chief Counsel (Procedure and Administration), at (202) 622–4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, May 12, 2003, (68 FR 25310), announced that a public hearing was scheduled for August 13, 2003, at 10 a.m., in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The subject of the public hearing is proposed regulations under sections 263A and 448 of the Internal Revenue Code. The public comment period for these regulations expired on July 11, 2003. The outlines of oral comments were due on July 23, 2003. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Monday, August 4, 2003, no one has requested to speak. Therefore, the public hearing scheduled for August 13, 2003, is cancelled.

Cynthia E. Grigsby,
Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–20184 Filed 8–6–03; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL MEDIATION BOARD

29 CFR Chapter X

Administration of National Railroad Adjustment Board Functions and Activities

AGENCY: National Mediation Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Railway Labor Act (RLA) establishes the National Mediation Board (NMB) whose functions, among others, are to administer certain provisions of the RLA with respect to the arbitration of labor disputes in the rail industry, including the administration of the National Railroad Adjustment Board (NRAB) established under the RLA. The RLA provides the NMB with authority for administration, including making expenditures for necessary expenses, of the NRAB.

The NMB is considering changes to its rules and procedures to facilitate the more timely resolution of grievances (''minor disputes'') among grievants and carriers in the railroad industry. Because of its role in the administration of the NRAB's program, the NMB is interested in receiving public input on the factors that should be considered in accomplishing this goal. In particular, because of the NMB's statutory responsibility for the appointment and compensation of neutral arbitrators (''referees'') to resolve deadlocks within NRAB divisions, and the NMB's overall statutory responsibility for the administrative processing of grievances to facilitate the timely resolution of these disputes in the railroad industry, the NMB is considering what initiatives it may undertake to further the resolution of deadlocks on a more timely and expeditious basis. In addition, the NMB is interested in receiving public input on achieving case resolution in the most cost effective way possible.

DATES: Comments must be in writing and must be received by September 8, 2003.

ADDRESSES: All comments should be addressed to Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board, 1301 K Street, NW., Suite 250—East, Washington, DC 20572. Attn: NMB Docket No. 2003–01. You may submit your comments via letter, or electronically through the Internet to the following address: *arb@nmb.gov*. If you submit your comments electronically, please put the full body of your comments in the text of the electronic message and also as an attachment readable in MS Word. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 692–5086. Please cite NMB Docket No. 2003–01 in your comment.

FOR FURTHER INFORMATION CONTACT: Roland Watkins, NRAB Administrator, 1301 K Street, NW., Suite 250 East, Washington, DC 20572 (telephone: 202–692–5000).

SUPPLEMENTARY INFORMATION:

A. Background and Summary

The Railway Labor Act (RLA), 45 U.S.C. 151 *et seq.* establishes the National Mediation Board (NMB) whose functions, among others, are to administer certain provisions of the RLA with respect to the arbitration of labor disputes in the rail industry, including the administration of the National Railroad Adjustment Board (NRAB) established under 45 U.S.C. 153. 45 U.S.C. 154, Third, provides the NMB with authority for administration, including making expenditures for necessary expenses, of the NRAB.

Pursuant to its authority under 45 U.S.C. 154, Third, the NMB is considering changes to its rules and procedures to better facilitate the timely resolution of minor disputes between grievants and carriers in the railroad industry. Because of its fundamental role in the administration of the NRAB,

the NMB is interested in receiving public comment on the various factors that might be considered in accomplishing this goal. In particular, because of the NMB's statutory responsibility for the appointment and compensation of neutral arbitrators (''referees'') to resolve deadlocks within NRAB divisions, the NMB is considering what improvements it may pursue to resolve deadlocks on a more expeditious basis. In addition, the NMB is interested in receiving public input on achieving case resolution in the most cost effective way possible.

B. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this ANPRM. All comments must be in writing and must be submitted to the address indicated in the **ADDRESSES** section.

Dated: August 1, 2003.

Roland Watkins,

National Railroad Adjustment Board Administrator.

National Mediation Board—Advance Notice of Proposed Rulemaking—Improving the Administration of Case Processing Before the National Railroad Adjustment Board

The Railway Labor Act (RLA), 45 U.S.C. 151 *et seq.* establishes the National Mediation Board (NMB) whose functions, among others, are to administer certain provisions of the RLA with respect to the arbitration of labor disputes in the rail industry, including the administration of the National Railroad Adjustment Board (NRAB) established under 45 U.S.C. 153.45 U.S.C. 154, Third, authorizes the NMB to provide for the administration (including the making of expenditures for necessary expenses) of the NRAB.

Pursuant to its authority under 45 U.S.C. 154, Third, the NMB is considering changes to its administrative rules and procedures to facilitate the timely resolution of various disputes between grievants and carriers in the railroad industry. Because of its statutory role in the administration of the NRAB's program, the NMB is interested in receiving public input on the factors that should be considered in accomplishing this goal. In particular, because of the NMB's responsibility for the appointment and compensation of neutral arbitrators (''referees'') to resolve deadlocks within NRAB divisions, the NMB is considering what initiatives it may undertake to further the resolution of deadlocks on a more timely and expeditious basis. In addition, the NMB is interested in receiving public input on achieving case resolution in the most cost effective way possible.

The NMB has undertaken a review of the administration of the program of the NRAB. The NMB's initial review suggests that given budgetary and staffing constraints, the NMB should place greater emphasis on the NMB's statutory responsibility to ensure the prompt resolution of minor disputes that come before the NRAB. The NMB is particularly interested in speeding the resolution of minor disputes because of the Government's need to provide for the efficient and effective use of taxpayer money. Any proposed action to be taken by the NMB in this area will govern the NMB's administrative processing of cases in which the parties request that the NMB compensate the arbitrator.

Question One: If the NMB promulgates procedures for the administrative processing of NRAB cases in which the parties request that the Government compensate the neutral (''referee''), what should be the criteria or guidelines for these procedures?

It has been suggested to the NMB, that a desirable goal is to have minor disputes resolved within one year of the filing of a Notice of Intent to File a Submission. At present, it is not uncommon for cases to remain unresolved for two years.

Question Two: If a stated goal of any new procedures to be adopted by the NMB is to have the cases decided by an arbitrator within one year from the date of the filing of the Notice of Intent, what steps do you recommend comprise this procedure? Do you believe that a one year goal is reasonable? If not, why not?

Question Three: If the parties do not agree to follow the procedures adopted by the NMB, should there be any adverse consequences? Should the parties have options with respects to these procedures? What would you recommend be the steps that comprise an efficient case resolution procedure?

Question Four: What should happen to those cases that are still pending after one year in which the parties have not placed the cases before a Public Law Board, pursuant to 45 U.S.C. 153, Second? If the cases are placed before a Public Law Board, should a time limit be imposed for the resolution of those cases?

At present, the NRAB has approximately 2,000 cases pending before it. Many of these cases arise out of the filing of multiple grievances by different parties for the same underlying set of facts.

Question Five: In order to ensure the most efficient use of limited Government resources, should the NMB, in agreeing to pay for the appointment of an arbitrator (''referee'') require the consolidation of similar cases dealing with similar issues? If, in your view, case consolidation is a viable option for improving the resolution of cases, what should be the standards adopted for consolidation? What should the NMB do if the parties refuse to consolidate cases, when in the NMB's view, it would be appropriate to do otherwise?

Question Six: As the goal of this initiative is to improve the processing of disputes before the NRAB, are there any other recommendations or suggestions that you would make to the NMB with regard to its statutory responsibilities for the administration of the NRAB?

The NMB will review all submissions made in response to this ANPRM in the development of any possible notice of proposed rulemaking. In addition, the Board intends to hold a public hearing prior to the release of any proposed rule, in order to permit interested parties an opportunity to further elaborate on the points made in their comments in response to this ANPRM. The notice of an open public meeting before the NMB will be the subject of a separate notice appearing in a future issue of the **Federal Register**.

[FR Doc. 03–20085 Filed 8–6–03; 8:45 am]

BILLING CODE 7550–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–036]

RIN 1625–AA00

Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent safety and security zones in portions of the waters around La Guardia and John F. Kennedy airports in Queens, NY, the New York City Police Department (NYPD) ammunition depot on Rodman Neck in Eastchester Bay, the Port Newark and Port Elizabeth, NJ, commercial shipping facilities in Newark Bay, and between the Global Marine and Military Ocean Terminals in Upper New York Bay. This action is necessary to safeguard critical port infrastructure and coastal facilities from sabotage, subversive acts, or other

threats. The zones will prohibit entry into or movement within these areas without authorization from the Captain of the Port New York.

DATES: Comments and related material must reach the Coast Guard on or before September 8, 2003.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–03–036), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

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 (CGD01–03–036), 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 the Waterways Oversight Branch 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

On September 11, 2001, three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. *See*, *Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, 67 FR 58317 (September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, 67 FR 59447 (September 20, 2002). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is endangered by disturbances in international relations of United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations.

Executive Order 13273 of August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States, 67 FR 56215 (September 3, 2002)

Since the September 11, 2001 terrorist attacks, the Federal Bureau of Investigation has issued several warnings concerning the potential for additional attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the war in Iraq have made it prudent for U.S. ports and properties of national significance 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.

The Captain of the Port New York recently established six new safety and security zones throughout the New York Marine Inspection Zone and Captain of the Port Zone. (68 FR 2890, January 22, 2003). Subsequently, the Captain of the Port has determined that the safety and security zones proposed by this rule are urgently required to meet critical maritime domain security needs that were not addressed by the earlier rule. On February 19, 2003, we published a Temporary final rule; request for comments entitled ''Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone'' in the **Federal Register** (68 FR 7926) temporarily establishing these safety and security zones. We received no letters commenting on the temporary rule. No public hearing was requested, and none was held.

The Coast Guard proposes to establish permanent safety and security zones around La Guardia and John F. Kennedy airports, the New York City Police Department ammunition depot, and the Port Newark/Port Elizabeth commercial shipping facilities.

Additionally, we propose to establish a permanent safety and security zone in all waters of Upper New York Bay between the Global Marine and Military Ocean Terminals, west of the New Jersey Pierhead Channel. This proposed zone was inadvertently not placed in the Temporary final rule establishing the other six safety and security zones. It is currently being enforced by a Vessel Traffic Service Measure as provided for in 33 CFR 161.11.

These safety and security zones are necessary to provide for the safety of the port and to ensure that vessels, facilities, airports, or ammunition depots, are not used as targets of, or platforms for, terrorist attacks. These zones would restrict entry into or movement within portions of the New York Marine Inspection and Captain of the Port Zones.

Discussion of Proposed Rule

This proposed rule would establish the following safety and security zones:

La Guardia Airport, Bowery and Flushing Bays, Queens, NY

The Coast Guard proposes to establish a safety and security zone in all waters of Bowery and Flushing Bays within approximately 200 yards of La Guardia Airport. The zone would start at a point onshore in Steinway, Queens (approximate position 40°46′32.1″ N, 073°53′22.4″ W (NAD 1983)), proceeding east/northeast, 200 yards off the shoreline to a point 200 yards off the shoreline and 25 yards southeast of the lighted runway approach extending through Rikers Island Channel, continuing to the northwest, maintaining a distance of 25 yards off the lighted runway approach, to a point 25 yards past the end of the lighted runway approach, to the Rikers Island shoreline in approximate position, 40°47′13.0″ N, 073°53′16.1″ W, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, maintaining a distance of 25 yards around the lighted runway approach extending to the east of Rikers Island, to a point 200 yards off the shoreline of La Guardia Field, continuing 200 yards off

the shoreline to where it intersects the southern boundary of Flushing Bay Channel, continuing along the southern boundary of Flushing Bay Channel to where it intersects the northern boundary of the western Special Anchorage Area, and continuing along the northern boundary of the Special Anchorage Area to approximate position 40°45′48.4″ N, 073°51′37.0″ W, (NAD 1983) in East Elmhurst, Queens, thence along the shoreline to the point of origin.

Within the boundaries of this zone, the Coast Guard proposes to establish another safety and security zone in all waters of Bowery and Flushing Bays within approximately 100 yards of La Guardia Airport.

When port security conditions permit, the Captain of the Port would allow vessels to operate within that portion of the 200-yard zone that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of the two zones would be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com.* This regulatory framework provides the Captain of the Port with the tools to safeguard airport property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

John F. Kennedy (JFK) Airport, Jamaica Bay, Queens, NY

The Coast Guard proposes to establish four safety and security zones in all waters near JFK Airport bound by the following points:

First, all waters of Bergen Basin north of 40°39′26.4″ N.

Second, all waters of Thurston Basin north of 40°38′21.2″ N.

Third, all waters of Jamaica Bay within approximately 200 yards of John F. Kennedy Airport. The zone would start at a point onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence 200 yards offshore to approximate position 40°38′42.5″ N, 073°49′13.2″ W, (NAD 1983) proceeding east/southeast, 200 yards off the shoreline to a point 200 yards off the shoreline and 25 yards off the lighted runway approach extending north of East High Meadow, maintaining a distance of 25 yards around the lighted runway approach, to a point 200 yards off the shoreline, continuing 200 yards off the shoreline to Jamaica Bay Grass Hassock Channel LIGHT 23 (LLNR 34485), continuing along the northern boundary of Head of Bay Channel, maintaining a 200 yard boundary to approximate position thence to 40°38′00.8″ N, 073°44′54.9″ W, about 690 yards northeast of Head of Bay Buoy 30 (LLNR 34545) thence to the shoreline at 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

Fourth, within the boundaries of this zone, the Coast Guard proposes to establish another safety and security zone in all waters of Jamaica Bay within approximately 100 yards of John F. Kennedy Airport.

When port security conditions permit, the Captain of the Port would allow vessels to operate within that portion of the 200-yard zone in Jamaica Bay that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of those two zones would be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com.* This regulatory framework provides the Captain of the Port with both the authority to safeguard airport property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

NYPD Ammunition Depot, Rodman Neck, Eastchester Bay, NY

The Coast Guard proposes to establish two safety and security zones in all waters of Eastchester Bay near the NYPD Ammunition Depot bound by the following points:

First, all waters of Eastchester Bay within approximately 150 yards of Rodman Neck. The zone would start at a point on the western shore of Rodman Neck in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence 150 yards offshore to 40°51′29.9″ N, 073°48′20.7″ W, (NAD 1983) proceeding around the southern end of Rodman Neck and then north to a point onshore in approximate position 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983), south of the City Island Bridge, thence southwesterly along the shoreline to the point of origin.

Second, within the boundaries of this zone, the Coast Guard proposes to establish another safety and security zone in all waters of Eastchester Bay within approximately 100 yards of Rodman Neck.

When port security conditions permit, the Captain of the Port would allow vessels to operate within that portion of the 150-yard zone that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of the two zones would be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com.* This regulatory framework provides the Captain of the Port with the tools to safeguard Police Department property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

Port Newark/Port Elizabeth, Newark Bay, NJ

The Coast Guard proposes to establish a safety and security zone around the Port Newark and Port Elizabeth facilities in Newark Bay. The zone would start at a point onshore at the New Jersey Extension Bridge in approximate position 40°41′49.9″ N, 074°07′32.2″ W, thence to 40°41′46.5″ N, 074°07′20.4″ W, (NAD 1983) at the western edge of Newark Bay North Reach, proceeding along the western edge of Newark Bay Channel south through Newark Bay Channel Buoy 21 (LLNR 37515), Newark Bay Channel Buoy 19A (LLNR 37507), Newark Bay Channel Lighted Buoy 17 (LLNR 37485), Newark Bay Channel Buoy 15A (LLNR 37477), Newark Bay Channel Lighted Buoy 7 (LLNR 37405), thence west to the shoreline in approximate position 40°39′21.5″ N, 074°09′54.3″ W, (NAD 1983) thence northerly along the shoreline to the point of origin.

Global Marine Terminal, Upper New York Bay

The Coast Guard proposes to establish a safety and security zone that includes all waters of Upper New York Bay between the Global Marine and Military Ocean Terminals, west of the New Jersey Pierhead Channel.

The proposed zones described above are necessary to protect the La Guardia and John F. Kennedy airports, NYPD ammunition depot, the Port Newark/Port Elizabeth commercial shipping facilities, the Global Marine Terminal, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the airports, ammunition depot, and commercial shipping facilities that could potentially cause serious negative impact to vessels, the port, commercial ground shipments by vehicle or rail, airline traffic, or the environment and result in numerous casualties. The Captain of the Port does not expect this proposed rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Vessels would still be able to transit

around the proposed safety and security zones at all times. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the proposed zones.

Any violation of any proposed safety or security zone herein is punishable by, among others, civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This proposed rulemaking is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port, New York. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone.

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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that: the zones were established by a previous Temporary final rule with a 60-day comment period and no comments were received by the Coast Guard; the proposed zones implicate relatively small portions of the waterway; vessels would be able to transit around the safety and security zones at all times; commercial vessels visiting Port Newark/Port Elizabeth and Global Marine Terminal are already subject to control of the Vessel Traffic Service and previously established safety and security zones while recreational and fishing vessels are unlikely to operate within those areas; and the Captain of the Port would relax the enforcement of the 200-yard zones around airport facilities and the 150-yard zone around the NYPD ammunition depot whenever he determines that the security environment existing within the port would allow him to do so.

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 might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the New York Marine Inspection and Captain of the Port Zones in which entry will be prohibited by the proposed safety or security zones.

These proposed safety and security zones would not have a significant economic impact on a substantial number of small entities for the following reasons: the proposed zones implicate relatively small portions of the waterway; vessels would be able to transit around the proposed safety and security zones at all times; commercial vessels visiting Port Newark/Port Elizabeth and the Global Marine Terminal are already subject to control of the Vessel Traffic Service and previously established safety and security zones while recreational and fishing vessels are unlikely to operate within those areas; and the Captain of the Port would relax the enforcement of the 200-yard zones around airport facilities and the 150-yard zone around the NYPD ammunition depot whenever he determines that the security environment existing within the port allows him to do so.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that we 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 Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

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 rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because it establishes safety and security zones. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping 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. In § 165.169, revise paragraphs (a)(7) through (a)(10) and add paragraph (a)(11) to read as follows:

§ 165.169 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) * * *

* * * * *

(7) *La Guardia Airport, Bowery and Flushing Bays, Queens, NY.* (i) *Location: 200-Yard Zone.* All waters of Bowery and Flushing Bays within approximately 200 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′52.8″ N, 073°53′09.3″ W, thence to 40°46′54.8″ N, 073°52′54.2″ W, thence to 40°46′59.3″ N, 073°52′51.3″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′10.6″ N, 073°52′06.7″ W, thence to 40°47′01.9″ N, 073°52′02.4″ W, thence to 40°46′50.4″ N, 073°52′08.1″ W, thence to 40°46′26.8″ N, 073°51′18.5″ W, thence to 40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′51.2″ N, 073°50′59.6″ W, thence to 40°45′49.5″ N, 073°51′07.2″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′02.3″ N, 073°51′20.1″ W, thence to 40°45′48.4″ N, 073°51′37.0″ W, (NAD 1983) thence along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Bowery and Flushing Bays within approximately 100 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46′32.1″ N, 073°53′22.4″ W, thence to 40°46′50.6″ N, 073°53′07.3″ W, thence to 40°46′53.0″ N, 073°52′50.9″ W, thence to 40°46′57.6″ N, 073°52′47.9″ W, thence to 40°47′11.8″ N, 073°53′17.3″ W, thence to 40°47′13.0″ N, 073°53′16.1″ W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47′12.9″ N, 073°52′17.9″ W, thence to 40°47′16.7″ N, 073°52′09.2″ W, thence to 40°47′36.1″ N, 073°51′52.5″ W, thence to 40°47′35.1″ N, 073°51′50.5″ W, thence to 40°47′15.9″ N, 073°52′06.4″ W, thence to 40°47′14.5″ N, 073°52′03.1″ W, thence to 40°47′07.9″ N, 073°52′09.2″ W, thence to 40°47′01.4″ N, 073°52′06.1″ W, thence to 40°46′50.0″ N, 073°52′14.6″ W, thence to 40°46′22.2″ N, 073°51′16.0″ W, thence to 40°45′57.2″ N, 073°51′01.8″ W, thence to 40°45′52.4″ N, 073°51′00.2″ W, thence to 40°45′50.6″ N, 073°51′07.9″ W, thence to 40°45′58.8″ N, 073°51′13.2″ W, thence to 40°46′04.0″ N, 073°51′23.3″ W, thence to 40°45′51.2″ N, 073°51′38.8″ W, (NAD 1983) thence along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(7) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(7)(i) that lies outside of the waters described in paragraph (a)(7)(ii). Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(7)(i) and (a)(7)(ii) will be communicated by the Captain of the Port to the public by marine broadcast, or local notice to mariners, or notice posted at http://www.harborops.com.

(8) *John F. Kennedy Airport, Jamaica Bay, Queens, NY.* (i) *Location: Bergen Basin.* All waters of Bergen Basin north of 40°39′26.4″ N.

(ii) *Location: Thurston Basin.* All waters of Thurston Basin north of 40°38′21.2″ N.

(iii) *Location: 200-Yard Zone.* All waters of Jamaica Bay within approximately 200 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′42.5″ N, 073°49′13.2″ W, thence to 40°38′00.6″ N, 073°47′35.1″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°37′59.4″ N, 073°47′32.6″ W, thence to 40°37′46.1″ N, 073°47′07.2″ W, thence to 40°37′19.5″ N, 073°47′30.4″ W, thence to 40°37′05.5″ N, 073°47′03.0″ W, thence to 40°37′34.7″ N, 073°46′40.6″ W, thence to 40°37′20.5″ N, 073°46′23.5″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′36.9″ N, 073°45′52.8″ W, thence to 40°38′00.8″ N, 073°44′54.9″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

(iv) *Location: 100-Yard Zone.* All waters of Jamaica Bay within approximately 100 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38′49.0″ N, 073°49′09.1″ W, thence to 40°38′45.1″ N, 073°49′11.6″ W, thence to 40°38′02.0″ N, 073°47′31.8″ W, thence to 40°37′52.3″ N, 073°47′55.0″ W, thence to 40°37′50.3″ N, 073°47′53.5″ W, thence to 40°38′00.8″ N, 073°47′29.4″ W, thence to 40°37′47.4″ N, 073°47′02.4″ W, thence to 40°37′19.9″ N, 073°47′25.0″ W, thence to 40°37′10.0″ N, 073°47′03.7″ W, thence to 40°37′37.7″ N, 073°46′41.2″ W, thence to 40°37′22.6″ N, 073°46′21.9″ W, thence to 40°37′05.7″ N, 073°46′34.9″ W, thence to 40°36′54.8″ N, 073°46′26.7″ W, thence to 40°37′14.1″ N, 073°46′10.8″ W, thence to 40°37′40.0″ N, 073°45′55.6″ W, thence to 40°38′02.8″ N, 073°44′57.5″ W, thence to 40°38′05.1″ N, 073°45′00.3″ W, (NAD 1983) thence along the shoreline to the point of origin.

(v) *Enforcement period.* The zones described in paragraphs (a)(8) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(8)(iii) that lies outside of the waters described in paragraph (a)(8)(iv). Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(8)(iii) and (a)(8)(iv) will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com.*

(9) *NYPD Ammunition Depot, Rodman Neck, Eastchester Bay, NY.* (i) *Location: 150-Yard Zone.* All waters of Eastchester Bay within approximately 150 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′29.9″ N, 073°48′20.7″ W, thence to 40°51′16.9″ N, 073°48′22.5″ W, thence to 40°51′07.5″ N, 073°48′18.7″ W, thence to 40°50′54.2″ N, 073°48′11.1″ W, thence to 40°50′48.5″ N, 073°48′04.6″ W, thence to 40°50′49.2″ N, 073°47′56.5″ W, thence to 40°51′03.6″ N, 073°47′47.3″ W, thence to 40°51′15.7″ N, 073°47′46.8″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Eastchester Bay within approximately 100 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51′30.4″ N, 073°48′14.9″ W, thence to 40°51′30.1″ N, 073°48′19.0″ W, thence to 40°51′16.8″ N, 073°48′20.5″ W, thence to 40°51′07.9″ N, 073°48′16.8″ W, thence to 40°50′54.9″ N, 073°48′09.0″ W, thence to 40°50′49.7″ N, 073°48′03.6″ W, thence to 40°50′50.1″ N, 073°47′57.9″ W, thence to 40°51′04.6″ N, 073°47′48.9″ W, thence to 40°51′15.9″ N, 073°47′48.4″ W, thence to 40°51′23.5″ N, 073°47′41.9″ W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(9) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(9)(i) that lies outside of the waters described in paragraph (a)(9)(ii). Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(9)(i) and (a)(9)(ii) will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at *http://www.harborops.com.*

(10) *Port Newark/Port Elizabeth, Newark Bay, NJ.* All waters of Newark Bay bound by the following points: 40°41′49.9″ N, 074°07′32.2″ W, thence to 40°41′46.5″ N, 074°07′20.4″ W, thence to 40°41′10.7″ N, 074°07′45.9″ W, thence to 40°40′54.3″ N, 074°07′55.7″ W, thence to 40°40′36.2″ N, 074°08′03.8″ W, thence to 40°40′29.1″ N, 074°08′06.3″ W, thence to 40°40′21.9″ N, 074°08′10.0″ W, thence to 40°39′27.9″ N, 074°08′43.6″ W, thence to 40°39′21.5″ N, 074°08′50.1″ W, thence to 40°39′21.5″ N, 074°09′54.3″ W, (NAD 1983) thence northerly along the shoreline to the point of origin.

(11) *Global Marine Terminal, Upper New York Bay.* All waters of Upper New York Bay between the Global Marine and Military Ocean Terminals, west of the New Jersey Pierhead Channel.

* * * * *

Dated: July 14, 2003.

C.E. Bone,

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

[FR Doc. 03–20023 Filed 8–6–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Reconsidered Finding for an Amended Petition To List the Westslope Cutthroat Trout as Threatened Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce our reconsidered 12-month finding for an amended petition to list the westslope cutthroat trout (WCT) (*Oncorhynchus clarki lewisi*) as a threatened species throughout its range in the United States, pursuant to a Court order and the Endangered Species Act (Act) of 1973, as amended. After a thorough review of all available scientific and commercial information, we find that listing the WCT as either threatened or endangered is not warranted at this time. Also pursuant to the Court order, we assert our scientifically-based conclusion about the extent to which it is appropriate to include ''hybrid'' WCT populations and populations of unknown genetic characteristics in the taxonomic group that we considered for listing.

DATES: The finding announced in this document was made on August 1, 2003.

ADDRESSES: Data, information, comments, or questions regarding this document should be sent to the Chief, Branch of Native Fishes Management, U.S. Fish and Wildlife Service, Montana Fish and Wildlife Management Assistance Office, 4052 Bridger Canyon Road, Bozeman, Montana 59715. The complete administrative file for this finding is available for inspection, by appointment and during normal business hours, at the above address. The new petition finding, the status update report for WCT, the amended petition and its bibliography, our initial status review document and petition finding, related **Federal Register** notices, the Court Order and Judgement and Memorandum Opinion, and other pertinent information, may be obtained at our Internet Web site: *http://mountain-prairie.fws.gov/endspp/fish/wct/.*

FOR FURTHER INFORMATION CONTACT: Lynn R. Kaeding, by e-mail (*Lynn_Kaeding@fws.gov*) or telephone (406–582–0717).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that within 90 days of receipt of the petition, to the maximum extent practicable, we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. The term ''species'' includes any subspecies of fish or wildlife or plants,

and any Distinct Population Segment (DPS) of any species of vertebrate fish or wildlife that interbreeds when mature. If the petition contains substantial information, the Act requires that we initiate a status review for the species and publish a 12-month finding indicating that the petitioned action is either: (a) Not warranted, (b) warranted, or (c) warranted but precluded from immediate listing proposal by other pending proposals of higher priority. A notice of such 12-month findings is to be published promptly in the **Federal Register**.

On June 6, 1997, we received a petition to list the WCT (*Oncorhynchus clarki lewisi*) as threatened throughout its range and designate critical habitat for this subspecies of fish pursuant to the Act. The petitioners were American Wildlands, Clearwater Biodiversity Project, Idaho Watersheds Project, Montana Environmental Information Center, the Pacific Rivers Council, Trout Unlimited's Madison-Gallatin Chapter, and Mr. Bud Lilly.

The WCT is 1 of 14 subspecies of cutthroat trout native to interior regions of western North America (Behnke 1992, 2002). Cutthroat trout owe their common name to the distinctive red or orange slash mark that occurs just below both sides of the lower jaw. Adult WCT typically exhibit bright yellow, orange, and red colors, especially among males during the spawning season. Characteristics of WCT that distinguish this fish from the other subspecies of cutthroat trout include a pattern of irregularly shaped spots on the body, with few spots below the lateral line except near the tail; a unique number of chromosomes; and other genetic and morphological traits that appear to reflect a distinct evolutionary lineage (Behnke 1992).

Although its extent is not precisely known, the historic (*i.e.*, native) range of WCT is considered the most geographically widespread among the 14 subspecies of inland cutthroat trout (Behnke 1992). West of the Continental Divide, the subspecies is believed to be native to several major drainages of the Columbia River basin, including the upper Kootenai River drainage from its headwaters in British Columbia, through northwest Montana, and into northern Idaho; the Clark Fork River drainage of Montana and Idaho downstream to the falls on the Pend Oreille River near the Washington-British Columbia border; the Spokane River above Spokane Falls and into Idaho's Coeur d'Alene and St. Joe River drainages; and the Salmon and Clearwater River drainages of Idaho's Snake River basin. The historic distribution of WCT also includes disjunct areas draining the east slope of the Cascade Mountains in Washington (Methow River and Lake Chelan drainages, and perhaps the Wenatchee and Entiat River drainages), the John Day River drainage in northeastern Oregon, and the headwaters of the Kootenai River and several other disjunct regions in British Columbia. East of the Continental Divide, the historic distribution of WCT is believed to include the headwaters of the South Saskatchewan River drainage (United States and Canada); the entire Missouri River drainage upstream from Fort Benton, Montana, and extending into northwest Wyoming; and the headwaters of the Judith, Milk, and Marias Rivers, which join the Missouri River downstream from Fort Benton.

Previous Federal Actions

On July 2, 1997, we notified the petitioners that our Final Listing Priority Guidance, published in the December 5, 1996, **Federal Register** (61 FR 64425), designated the processing of new listing petitions as being of lower priority than were the completion of emergency listings and processing of pending proposed listings. A backlog of listing actions, as well as personnel and budget restrictions in our Region 6 (Mountain-Prairie Region), which had been assigned primary responsibility for the WCT petition, prevented our staff from working on a 90-day finding for the petition.

On January 25, 1998, the petitioners submitted an amended petition to list the WCT as threatened throughout its range and designate critical habitat for the subspecies. The amended petition contained additional new information in support of the requested action. Consequently, we treated the amended petition as a new petition.

On June 10, 1998, we published a notice (63 FR 31691) of a 90-day finding that the amended WCT petition provided substantial information indicating that the requested action may be warranted and immediately began a comprehensive status review for WCT. In the notice, we asked for data, information, technical critiques, comments, and questions relevant to the amended petition.

In response to that notice, we received information on WCT from State fish and wildlife agencies, the U.S. Forest Service, National Park Service, tribal governments, and private corporations, as well as private citizens, organizations, and other entities. That information, subsequently compiled in a comprehensive status review document (U.S. Fish and Wildlife Service 1999), indicated that WCT then occurred in about 4,275 tributaries or stream reaches that collectively encompassed more than 37,015 kilometers (km) (23,000 miles [mi]) of stream habitat. Those WCT were distributed among 12 major drainages and 62 component watersheds in the Columbia, Missouri, and Saskatchewan River basins. In addition, WCT were determined to naturally occur in 6 lakes totaling about 72,843 hectares (ha) (180,000 acres [ac]) in Idaho and Washington and in at least 20 lakes totaling 2,164 ha (5,347 ac) in Glacier National Park in Montana. That status review also revealed that most of the habitat for extant WCT was on lands administered by Federal agencies, particularly the U.S. Forest Service. Moreover, most of the strongholds for WCT were within roadless or wilderness areas or national parks, all of which afforded considerable protection to WCT. Finally, the status review indicated that there were numerous Federal and State regulatory mechanisms that protected WCT and their habitats throughout the subspecies' range.

On April 14, 2000, we published a notice (65 FR 20120) of our finding that the WCT is not likely to become either a threatened or an endangered species within the foreseeable future. We also found that, although the abundance of the WCT subspecies had been reduced from historic levels and its extant populations faced threats in several areas of the historic range, the magnitude and imminence of those threats were small when considered in the context of the overall status and widespread distribution of the WCT subspecies. Therefore, we concluded that listing the WCT as either a threatened or an endangered species under the Act was not warranted at that time.

On October 23, 2000, plaintiffs filed, in the U.S. District Court for the District of Columbia, a suit alleging four claims. They alleged that our consideration of existing regulatory mechanisms was arbitrary. Plaintiffs further claimed that our consideration of hybridization as a threat to WCT was arbitrary because, while identifying hybridization as a threat to WCT, we relied on a draft Intercross policy (61 FR 4710) to include hybridized WCT in the WCT subspecies that we considered for listing under the Act. Their third claim averred that we arbitrarily considered the threats to WCT posed by the geographic isolation of some WCT populations and the loss of some WCT life-history forms. Finally, plaintiffs claimed that we failed to account for the threat of whirling disease and other important factors, and

that our decision to not list the WCT as threatened was arbitrary and capricious. In the subsequent oral argument before the Court, plaintiffs conceded that their strongest argument, and the one from which their other concerns stemmed, was that we included hybridized fish in the WCT subspecies considered for listing under the Act, while also recognizing hybridization as a threat to the subspecies. The hybridization threat to WCT is posed by certain nonnative fishes that management agencies and other entities stocked into streams and lakes in many regions of the historic range of WCT, beginning more than 100 years ago. Subsequently, those nonnative fishes or their hybrid descendants became self-sustaining populations and remain as such today.

On March 31, 2002, the U.S. District Court for the District of Columbia found that our listing determination for WCT did not reflect a reasoned assessment of the Act's statutory listing factors on the basis of the best available science. The Court remanded the listing decision to us with the order that we reconsider whether to list the WCT as a threatened species, and that in so doing we evaluate the threat of hybridization as it bears on the Act's statutory listing factors. Specifically, the Court ordered us to determine: (1) The current distribution of WCT, taking into account the prevalence of hybridization; (2) whether the WCT population (*i.e.*, subspecies, as used in the present document) is an endangered or a threatened species because of hybridization; and (3) whether existing regulatory mechanisms are adequate to address the threats posed by hybridizing, nonnative fishes.

The Court also pointed out that the draft Intercross policy (61 FR 4710; February 7, 1996) in no way indicates what degree of hybridization would threaten WCT, or that the existing levels of hybridization do not presently threaten WCT. Furthermore, the Court directed the Service to present a scientifically-based conclusion about the extent to which it is appropriate to include hybrid WCT stocks (*i.e.*, populations, as used in the present document) and populations of unknown genetic characteristics in the WCT subspecies considered for listing.

On September 3, 2002, we announced (67 FR 56257) initiation of a new status review for the WCT and solicited comments from all interested parties regarding the present-day status of this fish. We were particularly interested in receiving data, information, technical critiques, and relevant comments that would help us to address the issues that had been raised by the Court.

During the subsequent comment period, we received written requests for an extension of that period from the fish and wildlife agencies of the States of Washington, Oregon, Idaho, and Montana, as well as the Kalispel Tribe of Indians and the Earthjustice Legal Foundation. In their letters, those entities indicated that they were assembling or awaiting important information relevant to the status of WCT and that those entities wanted to make such information available to us for use in the new status review. Accordingly, on December 18, 2002, we announced (67 FR 77466) that the comment period was reopened until February 15, 2003.

For the purposes of this listing determination, ''WCT subspecies'' refers explicitly to all populations of WCT within the international boundaries of the United States, although populations of WCT also occur in Canada. As part of this listing determination, the WCT subspecies many be found to consist of DPSs, as described in a subsequent section of this finding.

The Value of Hybrid Westslope Cutthroat Trout in Listing Determinations

As described in the preceding section, the U.S. District Court for the District of Columbia ruled that the Service must provide a scientifically-based conclusion about the extent to which it is appropriate to include ''hybrid WCT stocks'' and ''stocks of unknown genetic characteristics'' in the WCT subspecies considered for listing. We herewith respond to the Court.

In the past, natural hybridization between congeneric or closely-related species of fish was thought to be rare. However, during the first half of the 20th Century, Professor Carl Hubbs and his associates demonstrated that natural hybridization between morphologically distinct species, particularly for temperate-zone freshwater fishes in North America, was common in areas where the geographic ranges of those species overlap (Hubbs 1955). Such natural hybridization may be especially common among centrarchid (basses and sunfishes) and cyprinid (minnows) fishes in the central United States (Avise and Saunders 1984; Dowling and Secor 1997).

Many investigators have subsequently demonstrated that several extant species of fish most likely originated from the interbreeding of two or more ancestral or extant species (Meagher and Dowling 1991; DeMarais *et al.* 1992; Gerber *et al.* 2001). Indeed, natural hybridization between taxonomically distinct species has long been recognized as an important evolutionary mechanism for the origin of new species of plants (Rieseberg 1997). Conversely, natural hybridization has only recently been recognized as an important evolutionary mechanism for the origin of new species of animals (Dowling and Secor 1997). Natural hybridization is now acknowledged as an important evolutionary mechanism that: (a) Creates new genotypic diversity, (b) can lead to new, adaptive phenotypes, and (c) can yield new species (Arnold 1997).

Hybridization also can result in the extinction of populations and species (Rhymer and Simberloff 1996). Indeed, hybridization resulting from anthropogenic factors is considered a threat to many species of fish (Campton 1987; Verspoor and Hammar 1991; Leary *et al.* 1995; Childs *et al.* 1996; Echelle and Echelle 1997). In particular, the extensive stocking of rainbow trout (*O. mykiss*) outside their native geographic range has resulted in appreciable hybridization with other species of trout (Bartley and Gall 1991; Behnke 1992, 2002; Dowling and Childs 1992; Carmichael *et al.* 1993). This interbreeding also has occurred for WCT where natural hybridization with introduced rainbow trout and Yellowstone cutthroat trout (*O. c. bouvieri*; YCT) is considered a threat to the WCT subspecies (see subsequent section, Hybridization with Nonnative Fishes).

Hybridization also can result in the genetic introgression of genes from one species into populations of another species if F1 (*i.e.*, the first filial generation) and F2 hybrids are fertile and can interbreed, or *backcross*, with individuals of a parental species. For example, first-generation hybrids between WCT and rainbow trout appear to be fully fertile (Ferguson *et al.* 1985), and levels of genetic introgression or ''admixture'' vary widely (<1 to >50 percent) among natural populations of WCT (*e.g.*, Weigel *et al.* 2002). In this context, admixture refers to the percentage of a population's gene pool derived from rainbow trout genes (or alleles) versus WCT trout genes. In these latter situations, the Service must determine which populations represent WCT, and the genetic resources of WCT, under the Act and which populations threaten the continued existence of the WCT subspecies.

The purpose of the Act is to conserve threatened and endangered ''species'' and the ecosystems on which those species depend. The definition of ''species'' under the Act includes any taxonomic species or subspecies, and ''distinct population segments'' of vertebrate species. The issue here for

this status review is not the definition of ''species'' under the Act, but rather, the scientific criteria used by professional zoologists and field biologists to taxonomically classify individuals, and populations of interbreeding individuals, as members of a particular species or subspecies.

The scientific criteria for describing and formally recognizing taxonomic species of fish are based almost entirely on morphological characters (Behnke 1992; Bond 1996; Moyle and Cech 1996). Indeed, the scientific basis for distinguishing rainbow trout and cutthroat trout (*O. clarki*) as distinct species are well-established differences in the number of scales in the lateral-line series, spotting patterns on the sides of the body, and the presence of: (a) Basibranchial teeth (*i.e.*, teeth on a series of bones behind the tongue and between the gills) and (b) a distinctive red or orange slash mark that occurs just below both sides of the lower jaw in cutthroat trout but not in rainbow trout (Miller 1950). Morphological differences, particularly external spotting patterns, also distinguish subspecies of cutthroat trout (Behnke 1992). These morphological differences among cutthroat trout subspecies are consistent with their distinct, geographic distributions (*e.g.*, Yellowstone [River] vs. Lahontan [basin] cutthroat trout [*O. c. henshawi*]). In addition, the common names of the various species of trout clearly reflect their distinctive morphological appearances, *e.g.*, rainbow trout, redband trout (*O. m. gairdneri*), cutthroat trout, and golden trout (*O. m. aguabonita*) (Behnke 2002).

The advent of molecular genetic techniques in the mid-1960s added an additional set of biological characters that can be used to distinguish species and subspecies of native trouts (*Oncorhynchus* spp.) in the western United States. In most cases, the new molecular genetic data simply confirmed the evolutionary distinctness of species and subspecies that had already been described taxonomically on the basis of morphology (Behnke 1992). One notable exception was the failure of molecular genetic techniques to distinguish fine-spotted Snake River cutthroat trout (*O. c.* subsp.) and YCT as two evolutionarily distinct forms (Loudenslager and Kitchen 1979).

Although molecular genetic data have had little impact on the taxonomic recognition of rainbow trout, cutthroat trout, and their respective subspecies, molecular genetic markers are very sensitive tools for detecting natural hybridization and small amounts of genetic introgression. For example, Campton and Utter (1985) used allozymes (proteins) to first document the incidence of natural hybridization between naturally sympatric populations of coastal cutthroat trout (*O. c. clarki*) and rainbow trout/steelhead (*O. mykiss*), although earlier morphological descriptions had suggested such interbreeding was occurring (DeWitt 1954; Hartman and Gill 1968). The sensitivity of the molecular genetic data simply provided compelling evidence that interbreeding was indeed occurring.

In general, molecular genetic methods are capable of detecting extremely small amounts of genetic introgression (*e.g.*, <1 percent) undetectable by other methods (Weigel *et al.* 2002; *see also* Fig. 2 of Kanda *et al.* 2002). For example, a large number of situations exist in the scientific literature where the mitochondrial DNA (mtDNA) from one species appears to have introgressed via hybridization into the nuclear genetic background of a closely related species (*e.g.*, Ferris *et al.* 1983; Bernatchez *et al.* 1995; Glemet *et al.* 1998; Wilson and Bernatchez 1998; Redenbach and Taylor 2002). This ability to detect very low levels of introgression raises fundamental questions regarding the criteria by which introgressed populations, and individuals in those populations, should be included with, or excluded from, their parental or morphological species. In the mtDNA situations cited above, the scientific community considers the ''introgressed'' individuals to be legitimate members of their morphological species despite the presence of mtDNA from another species. Similarly, individuals of a particular ''species'' may possess nuclear genes from another taxon detectable only by molecular genetic methods, yet those individuals may still conform morphologically, behaviorally, and ecologically to the scientific taxonomic description of the parental or native species (*e.g.*, Busack and Gall 1981; Weigel *et al.* 2002).

Previous Service positions regarding hybridization, based upon interpretations in a series of opinions by the U.S. Department of the Interior, Office of the Solicitor, generally precluded conservation efforts under the authorities of the Act for progeny, or their descendants, produced by matings between taxonomic species or subspecies (O'Brien and Mayr 1991). However, advances in biological understanding of natural hybridization (*e.g.*, Arnold 1997) prompted withdrawal of those opinions. The reasons for that action were summarized in two sentences in the withdrawal memorandum (Memorandum from Assistant Solicitor for Fish and Wildlife, U.S. Department of the Interior, to Director, U.S. Fish and Wildlife Service, dated December 14, 1990): ''New scientific information concerning genetic introgression has convinced us that the rigid standards set out in those previous opinions should be revisited. In our view, the issue of ''hybrids'' is more properly a biological issue than a legal one.''

Our increasing understanding of the wide range of possible outcomes resulting from exchanges of genetic material between taxonomically distinct species, and between entities within taxonomic species that also can be listed under the Act (*i.e.*, subspecies, DPSs), requires the Service to address these situations on a case-by-case basis. In some cases, introgressive hybridization may be considered a natural evolutionary process reflecting active speciation or simple gene exchange between naturally sympatric species. In other cases, hybridization may be threatening the continued existence of a taxon due to anthropogenic factors or natural environmental events. In many cases, introgressed populations may contain unique or appreciable portions of the genetic resources of an imperiled or listed species. For example, populations with genes from another taxon at very low frequencies may still express important behavioral, life-history, or ecological adaptations of the indigenous population or species within a particular geographic area. Consequently, the Service plans to carefully evaluate the long-term conservation implications for each taxon separately on a case-by-case basis where introgressive hybridization may have occurred. The Service shall perform these evaluations objectively based on the best scientific and commercial information available consistent with the intent and purpose of the Act.

For example, the Service may recognize that small amounts of genetic introgression do not disqualify individuals or populations from ''species membership'' or the Act's protections if those individuals or populations conform to the scientific taxonomic description of that species. A natural population of a particular species that possesses genes from another taxon at low frequency, yet retains the distinguishing morphological, behavioral, and ecological characters of the native species, may remain very valuable to the overall conservation and survival of that species.

The Service also recognizes special cases where all individuals of a ''species'' are considered hybrids. For example, the Service recognizes that deliberate hybridization may be necessary in extreme cases to prevent extinction of the genetic resources associated with a highly endangered species, as was the case for the Florida panther (*Felis concolor coryi*) (Hedrick 1995). Similarly, the Service continues to protect red wolves (*Canis rufus*) under the Act despite ongoing controversies regarding their possible hybrid origin (Nowak and Federoff 1998). In both of those cases, extending the Act's jurisdictions and protections to ''hybrids'' may contribute to the conservation of the genetic resources of those taxa, consistent with the intent and purpose of the Act.

A potential dichotomy thus exists under the Act between: (a) The need to protect the genetic resources of a species in which introgression has occurred and (b) the need to minimize or eliminate the threat of hybridization posed by another taxon. Implementing actions under the Act that distinguish between these two alternatives is difficult when imperiled species are involved because a large number of populations may have experienced small amounts of genetic introgression from another taxon. These decisions are further complicated for WCT because the native geographic ranges of WCT and rainbow (redband) trout overlap in portions of the Columbia River drainage. For example, as noted by Howell and Spruell (2003), ''It is apparent that WSCT [WCT] × RB [rainbow trout] hybridization can be extensive in areas, such as the John Day [River] subbasin, where both taxa are native and there have been little to no introductions of hatchery RB.''

For the purpose of providing conservation guidelines, Allendorf *et al.* (2001) have suggested that hybridization be categorized as either anthropogenic or ''natural.'' They further suggest that ''hybrid'' populations or taxa resulting from natural causes would be eligible for conservation protection, whereas genetically introgressed individuals or populations resulting from anthropogenic causes would generally not be protected unless ''hybrids'' were the last remaining genetic representatives of a hybridized species (their ''Type 6'' hybridization). Such criteria may be useful for prioritizing management options for populations or species that are not eligible for listing under the Act. However, the issue for species under potential jurisdiction of the Act is the extent to which hybridization poses a threat to the continued existence of the ''species'' regardless of whether the cause is anthropogenic or ''natural.'' Both natural evolutionary processes, including catastrophic environmental events (*e.g.*, floods, earthquakes), and anthropogenic factors can lead to secondary contact and hybridization between species. Also, distinguishing between anthropogenic and natural causes of hybridization, particularly for species with naturally overlapping geographic ranges, may be extremely difficult (*e.g.*, Campton and Utter 1985; Young *et al.* 2001; Baker *et al.* 2002). A complicating issue in these determinations is the degree to which ''natural'' hybridization may have compromised the identity of a distinct species prior to anthropogenic influences (*e.g.*, Weigel *et al.* 2002). The principal issues here under the Act are the threats and potential outcomes of hybridization, including other potential risks associated with the five statutory listing factors (*e.g.*, habitat loss, disease), and not necessarily the mechanistic causes (natural or anthropogenic) of those threats. In this context, the Act does not distinguish between natural and ''manmade'' factors that may threaten the continued existence of a species (section 4(a)(1)).

Several studies have demonstrated that natural populations, and individual fish, conforming morphologically to the scientific taxonomic description of WCT may contain genes derived from rainbow trout or YCT as the result of a past hybridization event (Leary *et al.* 1984; Marnell *et al.* 1987; Forbes and Allendorf 1991a, b; Leary *et al.* 1996; Weigel *al.* 2002, 2003). For example, Leary *et al.* (1984) reported that an introgressed population of WCT, with an estimated 20 percent of its nuclear genes derived from rainbow trout, was indistinguishable morphologically from nonintrogressed WCT populations. A subsequent study revealed a strong, positive correlation between percent rainbow trout genes in natural populations of WCT and the percent of individuals without basibranchial teeth in those populations (Table 1 in Leary *et al.* 1996). Indeed, based on this latter study, the percent of individuals without basibranchial teeth appears to be a fairly accurate predictor of the percent rainbow trout genes in natural populations where WCT are native. However, this correlation collapses in nonintrogressed populations of WCT where up to 18 percent of the individuals may not have any basibranchial teeth (Leary *et al.* 1996).

Weigel *et al.* (2002) recently conducted the most extensive study to date comparing variation in morphological characters to levels of genetic introgression in natural populations of WCT. In that study, Weigel *et al.* (2002) compared variation in morphological characters to nuclear DNA genotypes at 16 dominant marker loci (Spruell *et al.* 1999, 2001) in random samples of 20 trout from each of 100 sites in the Clearwater and Lochsa River drainages in Idaho. In that study, the presence of at least 1 rainbow trout DNA marker among the 20 individuals tested at a particular site was accepted as evidence that genetic introgression had occurred in the native WCT population inhabiting that site. According to the authors, their DNA methods and sample sizes (n = 20) allowed them to achieve 95 percent confidence (probability) of detecting genetic introgression in WCT populations with as little as 1 percent rainbow (or redband) trout genes. However, because those authors used ''dominant'' genetic markers, they could not distinguish heterozygotes from homozygotes, thus precluding calculations of allele frequencies and true estimation of admixture proportions (*i.e.*, percent rainbow trout genes) in each sample or population evaluated.

Despite those limitations, three main results pertinent to this status review can be gleaned from the paper by Weigel *et al.* (2002): (1) The percent of fish at each sample site with at least 1 rainbow trout marker was bimodally distributed among the 100 sample sites examined (see Figure 2 in Weigel *et al.* 2002); approximately 62 percent of the sites yielded population samples where zero to 30 percent of the fish showed evidence of introgression, while approximately 36 percent of the sample sites had 50 to 100 percent of the individuals showing evidence of introgression. (2) Variation in the mean values of four morphological characters among natural populations of WCT (*i.e.*, the presence or absence of red or orange slash marks, the number of basibranchial teeth, the shape of individual spots on the body, and the ratio of head length to total body length) was correlated with the amount of rainbow trout genetic introgression in those populations. (3) By employing a dichotomous morphology key, field observers attained 93 percent accuracy in morphologically detecting genetic introgression in natural populations of WCT where 50 percent or more of the fish in those populations had at least one rainbow trout DNA marker; however, those same observers were unable to accurately distinguish WCT populations with no DNA evidence of introgression from populations with low

levels of introgression where less than 50 percent of the individuals expressed at least one rainbow trout DNA marker. Given the statistical power of the authors' methods and their use of dominant genetic markers, we conclude that rainbow trout genes constituted less than 25 percent of the genes in those latter WCT populations where less than 50 percent of the individuals expressed a rainbow trout DNA marker.

In a recent unpublished report to the Service, Allendorf *et al.* (2003) reviewed results from their laboratory regarding the threshold levels of rainbow trout or YCT genetic introgression (*i.e.*, threshold percent genetic admixture) detectable by morphological criteria (*see also* Leary *et al.* 1984; Marnell *et al.* 1987; Leary *et al.* 1996). Allendorf *et al.* (2003) presented data indicating that introgressed populations of WCT with less than 20 percent of their genes derived from another taxon are morphologically indistinguishable from nonintrogressed populations with zero percent genetic admixture. They also presented data indicating that introgression exceeding 50 percent non-WCT genes in natural populations of WCT would most likely be detectable by morphological methods.

Therefore, based on the best scientific and commercial data available, we conclude that natural populations of WCT may have a genetic ancestry derived by as much as 20 percent from rainbow trout or YCT when fish in those populations express a range of morphological variation that conforms to the scientific taxonomic description of WCT. In other words, a natural population of WCT with less than 20 percent of its genes derived from rainbow trout or YCT is, most likely, morphologically indistinguishable from nonintrogressed populations of WCT with no hybrid ancestry.

As noted previously, on March 31, 2002, the U.S. District Court for the District of Columbia found that our listing determination for WCT did not reflect a reasoned assessment of the Act's statutory listing factors on the basis of the best available science. The Court remanded the listing decision to us with specific instructions to evaluate the threat of hybridization as it bears on the Act's statutory listing factors and the status of the WCT subspecies. The Court also ruled that inclusion of introgressed populations or ''hybrid stock'' (Court's term) as part of the WCT subspecies in our status review, based on the visually based, professional opinions of field biologists familiar with the subspecies, ''was arbitrary and capricious.'' During the Court proceedings, we noted that the Act does not require ''100 percent genetic purity'' and the plaintiffs agreed with this proposition, noting that they were not insisting on genetic purity. The Court, in effect, concurred. ''Genetic purity'' is not a condition for including populations or individual fish with the WCT subspecies under the Act, but the conditions for including potential ''hybrid stock'' with WCT may not be arbitrary and capricious.

In reconciling the dichotomy between hybridization as a threat and the potential inclusion of ''hybrid stock'' with WCT under the Act, one must make a clear distinction between the action (hybridization) and the outcome of that action (hybrid stock). Therefore, we must define these terms more precisely. Consequently, in response to the Court order and for the purpose of this new status review for WCT, we define ''hybridization'' as the direct interbreeding between two individuals that conform morphologically to different species or subspecies, including the interbreeding between individuals conforming morphologically to WCT and individuals not conforming morphologically to WCT. We further define ''hybrid stock'' (Court's term), or introgressed population, as a group of potentially interbreeding individuals with a genetic ancestry derived from two or more extant species or subspecies. Under these definitions, ''hybridization'' may represent a ''natural or manmade factor affecting the continued existence'' of the WCT subspecies. Similarly, introgressed populations composed of individuals not conforming morphologically to the scientific taxonomic description of WCT may be a potential hybridization threat to the continued existence of the WCT subspecies.

Conversely, in accordance with the above definition of hybridization, we do not consider populations or individual fish conforming morphologically to the scientific taxonomic description of WCT to be a hybridization threat to the WCT subspecies. Although such individuals may have genes from another taxon at low frequency, we are not aware of any information to suggest that such individuals express behavioral, ecological, or life-history characteristics differently than do WCT native to the particular geographic area. Without such changes, we expect the frequency of genes from the other taxon to remain low in the population. Therefore, we do not consider such populations as contributing to the threat of hybridization to the WCT subspecies.

Therefore, in accordance with the Court's order, we provide our scientifically-based conclusion about the extent to which it is appropriate to include hybrid or genetically introgressed WCT populations, and populations of unknown genetic characteristics, in the WCT subspecies considered for listing. These criteria are specific to this listing determination for WCT under the Act and may not be applicable to other species or taxa.

To determine which natural populations we should consider as WCT under the Act, we used the best scientific data available (as described previously) to establish three principal criteria: (1) The population under consideration must first exist within the recognized, native geographic range of WCT (Behnke 1992; Shepard *et al.* 2003). The population must then satisfy one of the following two additional criteria to be considered WCT under the Act; (2) If all measured individuals in the population have morphological characters that are all within the scientific, taxonomically-recognized ranges of those characters for the WCT subspecies, then the population shall be considered WCT; or (3) if not all of the measured individuals have morphological characters that are within the scientific, taxonomically-recognized ranges of those characters for the WCT subspecies, then additional evidence of reproductive discreteness between individuals that conform morphologically to the WCT subspecies and individuals that do not conform morphologically to the subspecies will be examined. If the two forms are considered reproductively discrete (*e.g.*, naturally sympatric populations of native redband trout and WCT that may only occasionally interbreed), then we shall consider the population under consideration to be WCT under the Act. In making these latter determinations, we will consider the following additional information: (a) Whether rainbow (redband) trout are native to the geographic area under consideration; (b) the percent of measured individuals that do not conform morphologically to the taxonomic scientific description of WCT, including their range of morphological variation (*e.g.*, a single anomalous individual reflecting a congenital abnormality would not disqualify the population from inclusion); (c) the results of genetic tests that would indicate reproductive discreteness between the two forms; and (d) any other additional information that would assist with these determinations (*e.g.*, information on the locations and timing of spawning for each of the two forms).

Hence, our principal criterion for including potentially introgressed populations, and populations of unknown genetic characteristics, with

the WCT subspecies under the Act is whether fish in those populations conform morphologically to the scientific taxonomic description of the WCT subspecies. As noted previously, natural populations conforming morphologically to the scientific taxonomic description of WCT are presumed to express the behavioral, ecological, and life-history characteristics of WCT native to the geographic areas where those populations occur.

The Service acknowledges that molecular genetic data also can be very useful for guiding these decisions regarding inclusion or exclusion of particular populations from the WCT subspecies under the Act. For example, on the basis of data described previously in this section, our general conclusion is that natural populations conforming morphologically to the scientific taxonomic description of WCT may have up to 20 percent of their genes derived from rainbow trout or YCT. Consequently, for populations for which molecular genetic data may be the only data available, populations with less than 20 percent introgression will be considered WCT under the Act, whereas populations with more than 20 percent introgression will generally be excluded from the WCT subspecies. However, such decisions involving possible inclusion or exclusion will need to consider other potentially important characteristics of the populations, including the ecological setting, geographic extent of the introgression across the population's range, and whether rainbow (or redband) trout are naturally sympatric with WCT in the particular region under consideration.

The Service shall evaluate natural populations for which no morphological or genetic data exist on a case-by-case basis considering their geographic relationship to natural populations for which such data do exist and any other available information pertinent to those evaluations (*e.g.*, ecological setting, degree of geographic isolation, and historical stocking records of nonnative trout species).

The species criteria described above are consistent with the best scientific and commercial data available because they are based on: (a) The criteria by which taxonomic species of fish are recognized scientifically, and (b) the biological relationship between those taxonomic criteria and levels of genetic introgression detected by molecular genetic methods in natural populations of WCT. Those criteria exclude from the WCT subspecies considered for listing genetically introgressed populations and individual fish that do not conform morphologically to the scientific taxonomic description of the subspecies.

These criteria are further justified for this subspecies because: (a) There are no generally applicable standards for the extent of hybridization considered acceptable under the Act; (b) decisions regarding status of WCT under the Act must be made for the entire subspecies and its component populations (*see* Distinct Population Segments section); (c) in most cases, the taxonomic classification of extant WCT has been based on the pattern of spots on the fish's body and the professional evaluations and experiences of fishery biologists who examined the fish in the field (*see also* Marnell *et al.* 1987); and (d) spotting pattern was chief among the morphological characteristics diagnostic of the type specimens of WCT.

Our approach further acknowledges that a significant proportion of the genetic resources associated with WCT throughout its native geographic range may be represented by populations with low-frequency genes from other taxa (*e.g.*, rainbow trout) detectable only by molecular genetic methods. Such populations, if they conform morphologically to the scientific taxonomic description of WCT, are considered part of the WCT subspecies under the Act. As noted previously, individual fish or populations conforming to the scientific taxonomic description of WCT shall not be considered a threat to the continued existence of the subspecies.

Conversely, we will consider genetically introgressed populations not classified as WCT as potential hybridization threats to the WCT subspecies. By definition, these latter populations do not conform morphologically to the scientific taxonomic description of WCT, or—in the absence of morphological data—we would expect them to not conform morphologically to WCT based on the level of introgression detected by a molecular genetic test or other available information.

As a result, the Service must determine which natural populations represent potential hybridization ''threats'' to the future existence of the WCT subspecies and which populations represent potential genetic resources of the subspecies itself. The criteria we use to make such decisions must not only be consistent with previous Service rulings dealing with ''hybrids'' under the Act, but decisions resulting from those criteria also must be consistent with the intent and purpose of the Act itself. The Service has concluded that, in such situations, the intent and purpose of the Act is to be inclusionary, not exclusionary. Consequently, any natural population conforming to the scientific taxonomic description of WCT, as conditioned by the criteria stated previously, will be considered WCT under the Act. The Service also has concluded that alternative approaches would either be arbitrary and capricious (*e.g.*, ≥90 percent genetic ''purity'' required for inclusion) or inconsistent with the intent and purpose of the Act (*e.g.*, 100 percent genetic ''purity'' required for inclusion). For example, the best scientific and commercial data available indicate that WCT populations with 1 percent to 20 percent of their genes derived from another taxon are indistinguishable morphologically from nonintrogressed populations of WCT. Hence, establishing a threshold of ''90 percent genetic purity'' would be arbitrary and capricious because no scientific or commercial data exist to support that threshold based on the morphological criteria by which species are described taxonomically. In contrast, the ''80 percent genetic threshold'' described previously is based on the best scientific and commercial data available, although, as we have described, that threshold is not the principal criterion by which populations are included or excluded from the WCT subspecies. Similarly, as noted previously, the Solicitor's Office for Department of the Interior overturned (withdrew)—in December 1990—the Service's old ''hybrid policy'' which precluded federal protections to hybrid offspring or their descendants under the Act (O'Brien and Mayr 1991). Moreover, the court in the present WCT case ruled that ''100 percent genetic purity'' is not a condition for including populations or individual fish with the WCT subspecies under the Act.

Our criteria for including potentially introgressed populations of WCT with the WCT subspecies considered for listing under the Act also are consistent with a recent Position Paper developed by the fish and wildlife agencies of the intermountain western States (Utah Division of Wildlife Resources 2000). That document identifies, for all subspecies of inland cutthroat trout, three tiers of natural populations for prioritizing conservation and management options under the States' fish and wildlife management authorities: (1) Core conservation populations composed of ≥99 percent cutthroat trout genes; (2) conservation populations that generally ''have less than 10 percent introgression, but [in which] introgression may extend to a greater amount depending upon

circumstances and the values and attributes to be preserved''; and (3) cutthroat trout sport fish populations that, ''at a minimum, meet the species (*e.g.*, WCT) phenotypic expression defined by morphological and meristic characters of cutthroat trout.'' Conservation populations of cutthroat trout also include those believed to have uncommon, or important, genetic, behavioral, or ecological characteristics relative to other populations of the subspecies under consideration. Sport fish populations are those that conform morphologically (and meristically) to the scientific taxonomic description of the subspecies under consideration but do not meet the additional criteria of ''conservation'' or ''core'' populations. Consequently, the Service's criteria for including potentially introgressed populations of WCT with the WCT subspecies considered for listing under the Act include the first two tiers, as defined by the intermountain State fish and wildlife agencies, as well as those sport fish populations in the third tier for which morphological or genetic data are available. The implicit premise of the Position Paper is that populations must conform, ''at a minimum,'' to the morphological and meristic characters of a particular cutthroat trout subspecies in order for those populations to be included in a State's conservation and management plan for that subspecies. Signatories to the Position Paper are the Colorado Division of Wildlife, Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, Nevada Division of Wildlife, New Mexico Game and Fish Department, Utah Division of Wildlife Resources, and the Wyoming Game and Fish Department.

Molecular genetic methods for estimating percent introgression, or genetic admixture proportions, in natural populations of WCT need to be consistent to help guide the conservation decisions described here under the Act. The continual development of new types of molecular genetic markers for population-level evaluations complicates estimation of genetic admixture proportions in introgressed populations (*e.g.*, Weigel *et al.* 2002). The most accurate estimates are obtained with codominant genetic markers in which heterozygotes and homozygotes at single loci can be distinguished. Allozymes and alleles at microsatellite nuclear DNA (nDNA) loci meet this ''codominance'' criterion. ''Amplified fragment-length polymorphisms'' (AFLPs) and ''paired interspersed nuclear elements'' (PINES; Weigel *et al.* 2002) do not. Also, a minimum of four or five codominantly-expressed, diagnostic loci are usually required to attain sufficient statistical power in evaluations of introgressive hybridization (Fig. 2 in Campton 1990; Figure 1 in Epifanio and Phillip 1997; Figure 2 in Kanda *et al.* 2002). Under these conditions, percent introgression (P) in a population can be calculated as $P = (N_A/2LN) \times 100$, where L = the number of diagnostic, codominantly expressed loci that distinguish the two taxa or species, N = the number of individual fish in a random sample of individuals from the population, and N_A = the number of alleles from another taxon observed at the diagnostic loci in the sample of individuals. This estimator is equally applicable to allozyme and microsatellite nDNA markers and is identical to the statistic proposed by the State fish and wildlife agencies (Utah Division of Wildlife Resources 2000). Consequently, this estimator provides a standardized approach for evaluating genetic introgression in natural populations. Evaluations of introgression based on dominant markers (Weigel *et al.* 2002) should computationally convert the observed data (*e.g.*, percent of individuals with one or more rainbow trout alleles) into estimates of percent introgression on the basis of explicitly stated assumptions (*e.g.*, that a single, random-mating population was sampled). If one or more codominantly expressed loci are not diagnostic between species, then the statistical methods of least squares or maximum likelihood can be used to estimate admixture proportions in introgressed populations (Campton 1987; Bertorelle and Excoffier 1998).

Further support for the morphological and genetic criteria developed by the Service and the State fish and wildlife agencies for classifying natural populations as WCT comes from field observations of the effects of natural and artificial selection in genetically introgressed populations of other taxa. Gerber *et al.* (2001) note that natural selection may act to retain the morphological phenotypes of native species despite introgressive hybridization resulting from secondary contact of a colonizing, congeneric species. Busack and Gall (1981) note a similar outcome resulting from artificial selection (*i.e.*, selective removal of ''hybrid-looking'' individuals) for the Paiute cutthroat trout (*O. c. seleniris*) phenotype within introgressed populations of this latter subspecies. Those results suggest the lack of a genetic correlation between morphological phenotypes (*i.e.*, the genes affecting those phenotypes) and molecular genetic markers used to detect introgression in natural populations. In other words, molecular genetic markers (*e.g.*, microsatellite DNA alleles, DNA fingerprint patterns) provide very sensitive methods for evaluating ancestral or pedigree relationships among populations, species, or individuals independent of the genes affecting morphology and other species-specific characters.

We now perform our new status review for WCT based on the described criteria for including potentially introgressed populations and populations of unknown genetic characteristics with the WCT subspecies considered for possible listing under the Act.

New Status Review

Background

In response to our September 3 and December 18, 2002, **Federal Register** notices, we received comments and information on WCT from several State fish and wildlife agencies, the U.S. Forest Service, private citizens and organizations, and other entities. Among the materials that we received, the most important was a status update report for WCT, a comprehensive document (Shepard *et al.* 2003) prepared by the fish and wildlife agencies of the States of Idaho, Montana, Oregon and Washington, and the U.S. Forest Service.

The WCT status update report (Shepard *et al.* 2003) and the comprehensive database that is the report's basis, presented to us the best scientific and commercial information available that describes the present-day rangewide status of WCT in the United States. To compile that important information, 112 professional fishery biologists from 12 State, Federal, and Tribal agencies and private firms met at 9 workshops held across the range of WCT in fall 2002. Those fishery biologists had a combined 1,818 years of professional experience, 63 percent of which involved work with WCT or other subspecies of cutthroat trout. At the workshops, the biologists submitted essential information on the WCT in their particular geographic areas of professional responsibility or expertise, according to standardized protocols. Presentation of information directly applicable to addressing the issues raised by the Court, as well as other concerns that we consider when making listing determinations under the Act, was central to those protocols.

In conducting the new status review for WCT in the United States described

in the present document, we considered our initial review (U.S. Fish and Wildlife Service 1999) to be the foundational compendium of information on the present-day status of WCT. In turn, the more-recent WCT status update report (Shepard *et al.* 2003), as well as the other materials that we received or otherwise obtained while conducting the new review, clarified and improved our understanding of the present-day status of WCT and also helped us to address the important issues that had been raised by the Court. While describing our findings in the present document, we will often compare the recently received information for WCT to that found during our initial status review.

Findings of the New Status Review

Distinct Population Segments

The Service and the National Marine Fisheries Service have adopted criteria (61 FR 4722; February 7, 1996) for designation of DPSs for vertebrate organisms, such as WCT, under the Act. To constitute a DPS, a population or group of populations must be: (1) Discrete (*i.e.*, spatially, ecologically, or behaviorally separated from other populations of the taxonomic group [*i.e.*, taxon]); (2) significant (*e.g.*, ecologically unique for the taxon, extirpation would produce a significant gap in the taxon's range, the only surviving native population of the taxon, or substantial genetic divergence occurs between the population and other populations of the taxon); and (3) the population segment's conservation status must meet the Act's standards for listing.

In our initial status review, we found no morphological, physiological, or ecological data for WCT that indicated unique adaptations of individual WCT populations or groups of populations that inhabit discrete areas within the subspecies' historic range. Although the disjunct WCT populations in Washington and Oregon, as well as the populations in Montana's upper Missouri River basin, met the first criterion for DPS designation (*i.e.*, discreteness), scientific evidence in support of the second criterion (significance) was absent or insufficient to conclude that any of those populations represented a DPS (U.S. Fish and Wildlife Service 1999).

Extant WCT show a remarkably large amount of genetic variation at the molecular level, both within and among WCT populations across the subspecies' historic range (Allendorf and Leary 1988; Leary *et al.* 1997). Leary *et al.* (1997) found that 65 percent of the total measured genetic variation in the WCT genome is within WCT populations, 34 percent is among the populations themselves, and about 1 percent is between the aggregates of populations in the Columbia and Missouri River basins. Those authors also found that there can be genetic differences among WCT populations that are separated by short geographic distances. In the context of DPS designation, those differences suggest reproductive isolation among populations that may be indicative of ''discreteness.'' Nevertheless, because of the large amount of genetic variation in the WCT subspecies, the occurrence of a WCT population with molecular genetic characteristics that differ statistically (with adequate sample sizes) from those of other WCT populations is often sufficient to meet the discreteness criterion but not sufficient to meet the significance criterion indicative of unique morphological, behavioral, physiological, or ecological attributes.

Recently, the Northwest Environmental Defense Center (2002) argued that the WCT populations in Oregon's John Day River drainage merited listing as a DPS; however, the Northwest Environmental Defense Center provided no supportive, empirical evidence for that contention and only speculated as to why those populations may be significant in the context of DPS designation. Congress has made clear that DPSs should be used ''sparingly'' in the context of the Act (*see* Senate Report 151, 96th Congress, 1st Session). While conducting the new status review for WCT, we found no compelling evidence for recognizing DPSs of WCT. Instead, for purposes of the new status review, we recognize WCT as a single taxon in the contiguous United States.

Disjunct Westslope Cutthroat Trout Populations in Washington

In addition to the historic range of WCT previously described (*see* Background), Behnke (1992) speculated that the WCT is native to the Wenatchee and Entiat River drainages in Washington. Because Behnke's conclusion was largely speculative, we did not consider those two drainages as being within the historic range of WCT in our initial status review (U.S. Fish and Wildlife Service 1999). Similarly, those drainages were not included in the WCT status update report (Shepard *et al.* 2003) because the Washington Department of Fish and Wildlife did not consider those drainages to be within the historic range of WCT.

Because of the extensive introductions of hatchery-produced WCT (and the probable human transport and stocking of native WCT into waters outside the subspecies' historic range) during the 20th Century, WCT populations are more numerous and widely distributed in Washington today than prior to European settlement (U.S. Fish and Wildlife Service 1999). Those populations now occur in over 493 streams and 311 lakes in Washington (Fuller 2002). Similarly, some WCT populations have been intentionally established in Oregon's John Day River drainage (Unterwegner 2002). However, as was done during our initial status review (U.S. Fish and Wildlife Service 1999), our decision whether or not to recommend listing the WCT as a threatened or an endangered species, as described in the present document, will be based entirely on WCT that presently occur within the formally recognized historic range of the subspecies (Behnke 1992), as modified by Shepard *et al.* (2003) in their status update report.

Recent data from ongoing studies suggest that native WCT populations do occur in the Yakima, Entiat, and Wenatchee River drainages of Washington (Trotter *et al.* 1999, 2001; Howell and Spruell 2003). In assessing the origins of the cutthroat trout they collected from selected streams in those drainages, Trotter *et al.* (1999, 2001) assumed that the absence of a written stocking record for WCT, particularly in the studied streams where those fish are now present, was evidence that WCT are native to those areas. However, as pointed out by Howell and Spruell (2003), who are presently conducting a similar study of the WCT in those drainages as well as in Oregon's John Day River drainage, the historic stocking records of management agencies in Washington and Oregon are incomplete and have ''large gaps.'' Moreover, as Trotter *et al.* (2001) indicate, during the 20th century it was common for the representatives of many Federal, State, and county agencies, and even private citizens, to stock hatchery-produced fish. Those fish were often readily obtained from nearby fish hatcheries, whose managers took advantage of the willingness of citizens to haul hatchery fish to remote areas by whatever means. Moreover, angler conservationists often moved fish from established populations to nearby ostensibly fishless streams.

Howell and Spruell (2003) concluded that WCT in the Yakima, Wenatchee, Entiat, and Methow River drainages of Washington are probably native WCT because populations from each of those drainages possessed some genetic characteristics (*i.e.*, allozyme alleles) that were absent from those of the Twin

Lakes WCT hatchery population maintained by the State of Washington. However, as those authors point out, the Twin Lakes population is not the only population of hatchery WCT that was stocked in Washington during the past century. Moreover, random genetic drift, which has a greater probability of occurring in small, isolated populations, could have resulted in genetic differences among populations of introduced WCT, and perhaps in the Twin Lakes hatchery population itself.

Howell and Spruell (2003) describe their study as a ''work in progress.'' We agree and suggest that their caveat should be applied to both the recent and ongoing investigations of WCT populations in Washington. Extensive discussions of the available data and their interpretations among members of the scientific community, as part of the normal, peer-review process, will be required to determine whether any of the putative, native WCT populations that Trotter *et al.* (1999, 2001) and Howell and Spruell (2003) have identified in Washington are native to the streams from which the fish were collected. However since these populations are putative, we did not include them as part of this listing decision. Rather in our assessment we relied on those populations that the best scientific data currently indicate are native (as described by Behnke 1992 and Shepard *et al.* 2003).

Distribution of Westslope Cutthroat Trout and the Prevalence of Hybridization

New, definitive information on both the probable historic and present-day range-wide distributions of WCT was provided in the status update report (Shepard *et al.* 2003). That information indicated WCT historically occupied about 90,928 km (56,500 mi) of stream in the United States and now occupy about 33,500 (59 percent) of those stream miles. About 33,000 (58 percent) of the historically occupied stream miles were in Montana, 19,000 (34 percent) in Idaho, 1,000 (2 percent) in Oregon, 3,000 (5 percent) in Washington, and 161 km (100 mi) (<1 percent) in Wyoming (*i.e.*, Yellowstone National Park). Shepard *et al.* (2003) also concluded that several river drainages, including the Milk Headwaters, Upper Milk, Willow, Bullwhacker-Dog, Box Elder, and the Upper, Middle, and Lower Musselshell in the Missouri River basin, the Hangman River watershed in the Spokane River drainage, and the North John Day River drainage in Oregon, were outside the historic range of WCT. On the basis of the less definitive information available prior to the WCT status update report, preceding assessments (*e.g.*, U.S. Fish and Wildlife Service 1999) had treated the streams in those drainages, except Hangman River, as historic WCT habitat. Today, WCT occupy over 28,968 km (18,000 mi) of stream in Idaho (95 percent of historic range in Idaho), about 20,922 km (13,000 mi) in Montana (39 percent of historic range in Montana), about 402 km (250 mi) in Oregon (21 percent of historic range in Oregon), and about 3,219 km (2,000 mi) of stream in Washington (66 percent of historic range in Washington). In our initial status review (U.S. Fish and Wildlife Service 1999), we reported that WCT occupied about 37,015 km (23,000 mi) of stream in the United States.

Information provided in the WCT status update report (Table 9 of Shepard *et al.* 2003) also indicated that laboratory-based genetic testing has been performed on samples of WCT collected from locations representative of about 6,100 (18 percent) of the occupied stream miles and that nonintrogressed (*i.e.*, showing no evidence of introgressive hybridization) WCT are known to inhabit about 3,500 of those stream miles (57 percent of tested stream miles; 10 percent of occupied miles). An additional 1,669 km (1,037 mi) of stream contained a mixture of individual WCT that were either nonintrogressed or introgressed. Finally, based on the absence of nonnative, potentially hybridizing fish species, we conclude WCT inhabiting an additional 14,645 km (9,100 mi) of stream, for which genetic testing of the WCT therein has not yet been performed (Table 9 of Shepard *et al.* 2003), are most likely not introgressed (see preceding section on the Value of Hybrid Westslope Cutthroat Trout in Listing Determinations). Thus, nonintrogressed WCT are known to inhabit 5,633 km (3,500 mi) of stream and probably inhabit as many as 20,278 km (12,600 mi) of stream in which no potentially hybridizing fishes occur. In our initial status review (U.S. Fish and Wildlife Service 1999), we reported that: (1) WCT occupied about 37,015 km (23,000 mi) of stream; (2) data on the genetic characteristics of WCT were limited and available mainly for Montana; and (3) nonintrogressed WCT were known to occupy 4,237 km (2,633 mi) of stream.

The WCT status update report (Shepard *et al.* 2003) grouped most of the WCT in the occupied miles of stream into 563 separate ''conservation'' populations. Those conservation populations collectively occupied 39,349 km (24,450 mi) of stream or 72 percent of the occupied habitat; WCT in the remaining 28 percent of occupied habitat did not satisfy the criteria of ''conservation'' populations and are thus being managed as ''sport fish'' populations, as described previously (Utah Division of Wildlife Resources 2000). Individual conservation populations ranged in geographic extent from small, nonintrogressed, isolated populations (*i.e.*, isolets) to large metapopulations that included numerous populations and encompassed hundreds of stream miles. According to Shepard *et al.* (2003), 457 (81.2 percent) of the 563 WCT conservation populations were isolets that were often restricted to headwater areas and represented 11.5 percent of the total occupied stream miles. Most of the occupied stream miles (88.5 percent) were habitat for WCT in metapopulations.

Finally, the status update report (Shepard *et al.* 2003) revealed that 70 percent of the habitat occupied by extant WCT populations lies on lands managed by Federal agencies, including lands designated as national parks (2 percent of occupied habitat), wilderness areas (19 percent), or U.S. Forest Service roadless areas (40 percent). Although we could not distinguish wilderness and roadless areas from other Federal lands in our initial status review (U.S. Fish and Wildlife Service 1999), we reported that most of the habitat for extant WCT populations was on lands administered by Federal agencies, particularly the U.S. Forest Service.

Occurrence of Westslope Cutthroat Trout Life-History Forms

Biologists commonly recognize three WCT life-history forms: resident fish do not move long distances and spend their lives entirely in their natal stream, where they themselves were produced; fluvial fish spawn in small tributaries and their young migrate downstream to larger rivers, where they grow and mature; and adfluvial fish spawn in streams and their young migrate downstream (or upstream, in the case of outlet-spawning populations) to mature in lakes. All three life-history forms may occur in a single drainage and whether they represent opportunistic behaviors, heritable (*i.e.*, genetically-based) traits, or a combination of these factors is unknown.

In our initial status review (U.S. Fish and Wildlife Service 1999), we found that adfluvial WCT occur naturally in 6 lakes in Idaho and Washington that total about 72,843 ha (180,000 ac) and at least 20 lakes that total 2,164 ha (5,347 ac) in Glacier National Park in Montana. Most of those populations receive the high

level of protection afforded by Glacier National Park. We also reported that about 37,015 km (23,000 mi) of stream were occupied by WCT, most of which were of either the resident or fluvial life-history form. More recently, the status update report (Shepard *et al.* 2003) indicated that WCT populations that include resident and fluvial fish, both of which live entirely in streams, presently occur in 53,913 km (33,500 mi) of stream habitat. In preparing that report, the lake habitats occupied by WCT were necessarily treated as stream habitat because of the limitations of the hydrologic database used in the geographic information systems-based analyses. Consequently, perhaps several hundred of the stream miles that Shepard *et al.* (2003) reported as occupied by WCT were actually lake habitats. The WCT in those lakes have the adfluvial life history. In addition, the extensive WCT conservation populations that function as metapopulations encompass hundreds of stream miles and frequently exhibit all three life-history forms. Nonetheless, WCT with the adfluvial life history probably constitute the smallest proportion of the WCT subspecies today, and this may have been true historically.

Analysis of Extant Threats to Westslope Cutthroat Trout

The Act identifies five factors of potential threats to a species: (1) The present or threatened destruction, modification, or curtailment of the species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting the species' continued existence.

We examined each of these factors in the context of present-day WCT. We also used the database of Shepard *et al.* (2003) to more closely examine the effects of several specific threats (*i.e.*, whirling disease, nonnative predators, competition from nonnative brook trout [*Salvelinus fontinalis*], and hybridization) to WCT in two categories of extant populations: (1) Nonintrogressed and suspected nonintrogressed WCT populations and (2) introgressed and suspected introgressed WCT classified as ''conservation'' populations (Utah Division of Wildlife Resources 2000). Collectively, those two categories exclude introgressed ''sport fish'' populations and thus are a subset of the populations we defined previously as WCT under the Act (*see* section on The Value of Hybrid Westslope Cutthroat Trout in Listing Determinations). We applied our analyses of threats to this more restricted subset of WCT populations to take advantage of the States' detailed database and to be conservative regarding the status and viability of extant WCT populations. This approach also avoided classification uncertainties associated with possible marginal populations managed primarily as sport fisheries (*i.e.*, populations that may not explicitly meet our stated criteria of WCT under the Act but for which detailed morphological or genetic analyses have not been performed). Detailed geographic summaries of biological information pertinent to each of the drainages within the historic range of WCT were provided in our initial status review (U.S. Fish and Wildlife Service 1999). Our evaluations of the five factors of potential threats to the aforementioned subset of WCT populations are presented below.

(A) Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Our initial status review revealed that most of the habitat for extant WCT populations lies on lands administered by Federal agencies, particularly the U.S. Forest Service (U.S. Fish and Wildlife Service 1999). Moreover, most of the strongholds for WCT populations occurred within roadless or wilderness areas or national parks, all of which afforded considerable protection to WCT. More recently, the information that we received during the two comment periods, in particular the information provided in the status update report (Shepard *et al.* 2003), entirely supported our earlier conclusions and clearly indicated that WCT populations are widespread across the subspecies' historic range, abundant in several regions, and that many of those populations receive the appreciable protections afforded by roadless and wilderness areas and national parks (*see* also Hagener 2002). The status update report (Shepard *et al.* 2003) indicated that 70 percent of the habitat occupied by extant WCT populations lies on lands managed by Federal agencies, including lands designated as national parks (2 percent of occupied habitat), wilderness (19 percent), or U.S. Forest Service roadless areas (40 percent). In addition, the regulatory mechanisms in place to prevent the destruction or adverse modification of WCT habitat on those Federal lands and elsewhere are extensive (*see* subsequent section, Regulatory Mechanisms Involving Land Management).

The best scientific and commercial information available to us indicates that the WCT subspecies is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

(B) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Our initial status review revealed that each of the States and the National Park Service greatly restricted the harvest of WCT and that in many regions only catch-and-release angling was allowed (U.S. Fish and Wildlife Service 1999). However, catch-and-release-only angling regulations are not essential to protecting WCT from excessive harvest by anglers. Instead, the angling regulations must not allow harvests that cause adverse population depletion and thereby threaten population survival. Our initial status review also revealed that, where there was collection of WCT for educational or scientific purposes, such collection was highly regulated and had a negligible effect on the WCT subspecies.

The additional information that we received while conducting this new status review confirmed our earlier conclusions. In Montana, recreational fishing and scientific collecting are highly regulated and have become increasingly restrictive. Enforcement of regulations pertaining to native fishes is a priority, and regulations limit the locations, dates, bag limits, and methods of fishing. In many WCT waters in the Columbia River basin, and in all waters in the Missouri River basin in Montana, fishing is restricted to catch-and-release (Hagener 2002; Shepard *et al.* 2003). In Idaho, nearly all WCT populations are managed with restrictive fishing regulations (Moore 2002). In Oregon, angling regulations in areas occupied by WCT are designed to protect Endangered Species Act-listed Mid-Columbia steelhead and Columbia Basin bull trout (*Salvelinus confluentus*). There is little angling pressure in the John Day River drainage, particularly in areas occupied by WCT (Unterwegner 2002). In Washington, the sportfishing rules for 2003–2004 allow the daily harvest of 2 trout longer than 20 centimeters (8 inches) from most streams, and 5 trout of any size from lakes, with the exception that all wild cutthroat trout caught from Lake Chelan and its tributaries, as well as from the Methow River, must be released alive.

The best scientific and commercial information available to us indicates that the WCT subspecies is not

threatened by overutilization for commercial, recreational, scientific, or educational purposes.

(C) Disease or Predation

Threats from Disease—As part of both the initial and new status reviews, we considered the threat that diseases may pose to WCT. Perhaps the most important of the contemporary diseases is whirling disease, which is caused by an exotic myxozoan parasite. That microscopic parasite was introduced to the eastern United States from Europe in the 1950s and has since been found in many western States. Two separate host organisms are necessary for completion of the parasite's life cycle, a salmonid (*i.e.*, salmon, trout, and their close relatives) fish and a specific aquatic oligochaete worm. Within the range of WCT, whirling disease was first found in Idaho in 1987 and in Montana in 1994 (Bartholomew and Reno 2002).

The WCT status update report (Shepard *et al.* 2003) concluded that the threats to extant WCT populations from diseases in general were greater for the extensive WCT metapopulations than for the smaller WCT populations that occur as isolets. The key assumption made in reaching that conclusion was that, because the ranges of individual metapopulations were naturally much larger and encompassed habitats more diverse than those of isolets, the probability that diseases may be introduced and become established in WCT populations was greater for metapopulations than isolets. As noted previously, we examined the database of Shepard *et al.* (2003) to assess the disease risk to two groups of extant WCT: (1) Nonintrogressed or suspected nonintrogressed populations and (2) introgressed or suspected introgressed fish classified as ''conservation'' populations. Results indicated that only about 10 percent of the 1,944 stream miles occupied by nonintrogressed and suspected nonintrogressed WCT populations occurring in isolets were at moderately high or high risk of disease, whereas 69 percent of the 9,999 stream miles occupied by nonintrogressed WCT in the considerably more-extensive metapopulations were considered to be at similar risk. Similarly, introgressed or suspected introgressed WCT ''conservation'' populations occurring as isolets were at moderately high or high risk of disease in about 20 percent of their 751 occupied stream miles, whereas introgressed WCT in metapopulations were considered at similar risk in 88 percent of their 11,775 occupied stream miles.

However, we believe that the procedures used by Shepard *et al.* (2003) to assemble their database inevitably led to inflated estimates of the proportions of stream miles in which the WCT are at moderately high or high risk of disease. Moreover, as we will describe, the available scientific information indicates whirling disease is not a substantial threat to the majority of populations constituting the WCT subspecies. Although the whirling disease parasite continues to spread in many waters of the western United States (Bartholomew and Reno 2002), few outbreaks of whirling disease in resident fishes (mainly rainbow trout) have occurred. Studies summarized by Downing *et al.* (2002) indicated that presence of the whirling disease parasite does not portend outbreaks of the disease in resident fishes. For example, although 46 of 230 sites tested in Montana were positive for the parasite, disease outbreaks were known to have occurred at only 6 of those sites. Downing *et al.* (2002) provided evidence that the frequent absence of manifest whirling disease in resident trout, despite presence of the parasite, is due to complex interactions among the timing and spatial locations of important host-fish life-history events (*e.g.*, spawning, fry emergence from stream gravels, and early-life growth) and spatial and temporal variation in the occurrence of the parasite itself. Only under specific conditions, which evidently occur only in a small proportion of the locations where the parasite has been found, are those interactions such that disease outbreaks occur in resident fishes. The available scientific information specific to whirling disease thus indicates considerable variation in the probable disease threat among individual WCT populations and provides evidence that the disease is not a significant threat to the majority of populations constituting the WCT subspecies. The database procedures used by Shepard *et al.* (2003) necessarily resulted in entire WCT metapopulations being treated at the same level of risk from disease, even though that risk applied only to specific populations within those metapopulations. Thus, we conclude that the percent of stream miles in which Shepard *et al.* (2003) reported that WCT are at moderately high or high risk of disease is inflated to an extent that cannot be quantified with the available data.

A broad suite of variables has been shown to influence the incidence and intensity of infections of salmonid fishes by the whirling disease parasite, including host-fish species and age, parasite dose, and water temperature (Kerans and Zale 2002; MacConnell and Vincent 2002). Among the salmonid fishes that have been examined under controlled conditions, rainbow trout has been found to be the most susceptible to whirling disease (Bartholomew and Wilson 2002). Studies conducted on various salmonids by Vincent (2002) revealed that WCT were moderately susceptible to whirling disease and had the lowest susceptibility of the three cutthroat trout subspecies examined. We are unaware of any studies of the susceptibility of the hybrids of rainbow trout and WCT to whirling disease.

In addition, although the parasite's essential oligochaete host, *Tubifex tubifex*, can be found in a wide variety of habitats and is considered ubiquitous across the diversity of freshwater habitats used by trout, *T. tubifex* has a much higher probability of occurring at locations with abundant fine sediments in eutrophic (*i.e.*, nutrient-rich) lakes and streams (Granath and Gilbert 2002). The mountain streams that WCT often inhabit are cold and have low biological productivity, factors that make those streams much less suited to both the whirling disease parasite and *T. tubifex* (Bartholomew and Wilson 2002).

Extensive research is being conducted to determine the distribution of whirling disease, the susceptibility of WCT and other fishes to whirling disease, infection rates, and possible control measures (Bartholomew and Wilson 2002). Although no means have been found to eliminate the whirling disease parasite from streams and lakes, the States have established statutes, policies, and protocols that prevent the human-caused spread of extant pathogens and the introduction of new pathogens (*e.g.*, Hagener 2002). Except for whirling disease, the fish pathogens that occur in the natural habitats of WCT are mainly benign in wild populations and cause death only when the fish are stressed by severe environmental conditions.

On the basis of the best scientific and commercial information available to us, we conclude that the WCT subspecies is not threatened by whirling disease, although some specific populations may be at higher risk.

Threats From Predation—The instances when predation by other fishes may negatively affect extant WCT populations are few and limited to a few large rivers, lakes and reservoirs (U.S. Fish and Wildlife Service 1999; Hagener 2002). However, as reported in the initial status review, predacious, nonnative fishes in Idaho's Coeur d'Alene Lake, Montana's Flathead Lake, and other lakes have negatively affected resident WCT. In those instances,

predation has reduced the abundance of WCT that have the adfluvial life history.

We examined the database of Shepard *et al.* (2003) to assess the extent that nonnative fishes, including recognized predacious species, co-occur (*i.e.*, are sympatric) with extant WCT for: (1) Nonintrogressed or suspected nonintrogressed populations and (2) introgressed or suspected introgressed ''conservation'' populations. Results indicated that two predacious species, brown trout (*Salmo trutta*) and lake trout (*Salvelinus namaycush*), each occur in only small proportions of the habitat occupied by WCT, mainly WCT that occur in metapopulations. However, for reasons related to the database and described previously for whirling disease, those small proportions are inflated to an extent that cannot be quantified using the available data. Brown trout occur primarily in mainstem rivers and their major tributaries, whereas lake trout occur almost exclusively in lakes. When one or the other species occurred in the range of a WCT metapopulation, the procedures of Shepard *et al.* (2003) necessarily resulted in the entire WCT metapopulation being treated as sympatric with the nonnative species, although the actual region of species overlap within that range may be small.

The best scientific and commercial information available to us indicates that the WCT subspecies is not threatened by predation from brown trout, lake trout, or other predaceous, nonnative fishes. However, where such predation does occur, it is mainly on WCT that have either the fluvial or adfluvial life history. The remaining, nonnative fishes sympatric with WCT will be discussed in subsequent sections of this document.

(D) Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to those extant threats that place the species in danger of becoming either threatened or endangered. Our initial status review (U.S. Fish and Wildlife Service 1999) revealed that there are numerous existing Federal and State regulatory mechanisms whose purpose is to protect WCT and their habitats throughout the subspecies' range. Neither our initial nor our new status review revealed information to indicate that those mechanisms were not working or will not work to protect the WCT subspecies.

Regulatory Mechanisms Involving Land Management—During our initial status review (U.S. Fish and Wildlife Service 1999), we found numerous laws and regulations that help to prevent the adverse effects of land-management activities on WCT. More recently, Hagener (2002) reiterated that Montana laws that benefit WCT include the Montana Stream Protection Act, the Streamside Management Zone Law, the Montana Natural Streambed and Land Preservation Act, and the Montana Pollutant Discharge Elimination System. Federal laws that protect WCT and their habitats in Montana and elsewhere include the CWA, Federal Land Management Protection Act (FLMPA), and the National Environmental Policy Act (NEPA). Much of the habitat of extant WCT is managed by Federal agencies, including the U.S. Forest Service and the Bureau of Land Management. Those Federal agencies have adopted the Inland Native Fish Strategy (INFISH) that includes standards and guidelines that protect watersheds. Furthermore, because the broad distribution of bull trout—listed as a threatened species under the Act in 1999—considerably overlaps the distribution of WCT, the WCT will benefit from the Act's section 7 protective actions for bull trout in areas where the two species coexist.

In addition, the U.S. Forest Service recently reported (McAllister 2002) that existing regulatory mechanisms that protect WCT habitat include the Northwest Forest Plan; the Interim Strategies for managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (*i.e.*, PACFISH); INFISH; the Wilderness Act; and the Upper Missouri (River) Memorandum of Understanding and Land Use Strategy (in draft). In Idaho (Moore 2002), regulatory mechanisms that protect WCT habitat include the Stream Channel Protection Act, the Lake Protection Act, and the Forest Practices Act. At the Federal level, protection is afforded by the CWA, the National Forest Management Act, NEPA, Wild and Scenic Rivers legislation, and the Wilderness Act. The St. Joe and Lochsa rivers are protected by ''Wild and Scenic'' designation and nearly all of the Middle Fork Salmon and Selway rivers and their watersheds are protected by Wilderness Act designations. In addition, the range of WCT in Idaho is almost entirely overlapped by that of one or more federally listed fish species, namely, bull trout, Kootenai River white sturgeon (*Acipenser transmontanus*), chinook salmon (*O. tshawytscha*), sockeye salmon (*O. nerka*), or steelhead. Protective measures under the Act for those listed fishes also benefit WCT.

During our initial status review, we found Federal regulations and guidelines that protect WCT and their habitat in Oregon and Washington included CWA, NEPA, FLPMA, INFISH, PACFISH, and National Forest Management Plans (U.S. Fish and Wildlife Service 1999). More recently, information received from Oregon (Unterwegner 2002) indicated that the Oregon Plan for Salmon and Watersheds (ORS 541.405) mandates restoration of watersheds and the recovery of fish and wildlife populations therein to productive and sustainable levels in a manner that provides substantial environmental, cultural, and economic benefits; the Oregon Forest Practices Act (ORS 527.610) mandates the protection, maintenance, and, where appropriate, improvement of functions and values of streams, lakes, wetlands, and riparian management areas; State fill and removal laws (ORS 196.800–990) require that a permit be obtained before materials are moved and mitigation measures be implemented if stream habitats will be negatively affected; a water right must be obtained before any surface water is diverted from a stream for beneficial use; and a Water Quality Management Plan is being written that addresses nonpoint source water-quality issues in the mainstem John Day River, identifies nonpoint source pollution, and ensures that agricultural producers do not degrade water quality as prescribed by the CWA. In Oregon, WCT inhabit a number of protected areas, including the Strawberry and North Fork John Day Wilderness Areas, and the Vinegar Hill-Indian Rock Scenic Areas.

In Washington, the Act's section 7 protections accorded to bull trout and Pacific salmon also benefit WCT. The same holds true for Oregon, where bull trout and mid-Columbia River steelhead are listed fishes.

Hitt and Frissell (2001) used data from the Interior Columbia (River) Basin Ecosystem Management Project (ICBEMP) to assess the degree of spatial overlap between populations of bull trout and populations of WCT that were both considered ''strong'' by the ICBEMP. Those authors found that about 75 percent of the WCT populations did not co-occur with bull trout. Accordingly, Hitt and Frissell (2001) concluded that the bull trout may not be a good ''umbrella'' species, *i.e.*, a species whose protections accorded by the Act's section 7 also would serve to protect WCT. However, our conclusion stated herein that the Act's section 7 protections accorded bull trout and other listed fish species also would benefit WCT is not based on the

assumption that all extant WCT populations co-occur with one or more of those listed fishes. Rather, we believe that in those instances of co-occurrence, the WCT will derive protections from the section 7 protections that are accorded the listed species.

Regulatory Mechanisms That Address Threats From Hybridizing, Nonnative Fishes—Montana has a number of laws and regulatory mechanisms that address threats posed by the unlawful stocking of potentially hybridizing, nonnative fishes (Hagener 2002). These include statutes, rules, and policies that restrict the capture, possession, transportation, and stocking of live fish, including fishes that may hybridize with WCT, as well as rigorous fish-health policies that restrict the transport or stocking of live fish. The stocking of private ponds also is closely regulated. Furthermore, although the stocking of rivers and streams with a variety of nonnative fishes was routine early in the 20th Century, it no longer occurs in Montana. In 1976, Montana adopted a policy that prohibits the stocking of hatchery fish in rivers and streams. Consequently, unless done for government-sponsored conservation purposes, no other trout or nonnative fish may be stocked in rivers and streams inhabited by WCT.

In Idaho, regulatory mechanisms that protect extant WCT from hybridization are in place (Moore 2002, 2003). The Idaho Department of Fish and Game helped develop and has adopted the interstate position paper on genetic considerations associated with cutthroat trout management (Utah Division of Wildlife Resources 2000). Department of Fish and Game management direction, as described in its Fisheries Management Plan (a publicly reviewed, Commission-adopted document), gives priority in management decisions to wild, native populations of fish. The Department of Fish and Game has redirected almost all of its hatchery rainbow trout program to the production of sterile, triploid fish, and only triploid rainbow trout are now stocked in waters connected to or near WCT habitat. In addition, the transport of live fish to, within, and from Idaho is regulated by the Department of Fish and Game and the Idaho Department of Agriculture. The Department of Fish and Game regulates private ponds in the State and applies the same criteria to private-pond stocking that it does to the stocking of public waters, *i.e.*, stocking of potentially hybridizing fishes that may pose a hybridization threat to native cutthroat trout is prohibited.

In Washington, the Department of Fish and Wildlife no longer stocks resident rainbow trout in tributaries that contain native WCT populations. In areas where stocking occurs in mainstem river reaches (*e.g.*, the Pend Oreille River), only sterile (*i.e.*, triploid) rainbow trout are stocked (Fuller 2002). In Oregon, the Department of Fish and Wildlife exclusively manages all streams within the John Day River drainage for wild fish production and none of those streams has been stocked with hatchery fish since 1997 (Unterwegner 2002).

The best scientific and commercial information available to us indicates that the WCT subspecies is not threatened by the inadequacy of existing regulatory mechanisms related to the stocking of potentially hybridizing, nonnative fishes. However, as described in a subsequent section (*see* Hybridization with Nonnative Fishes), hybridization with introduced, nonnative fishes that have become established as self-sustaining populations does pose a threat to WCT. As discussed in that subsequent section, there are no regulatory mechanisms that would prevent hybridization from self-sustaining populations of an introduced species. However, in some instances, certain management actions may serve as preventative actions and there also may be natural factors that limit the spread of hybridization in the WCT subspecies.

(E) Other Natural or Manmade Factors Affecting the Species' Continued Existence

Fragmentation and Isolation of Small Westslope Cutthroat Trout Populations in Headwater Areas—Our initial status review (U.S. Fish and Wildlife Service 1999) revealed that extant WCT populations are not necessarily small or limited to headwater streams. Instead, that review indicated that many river drainages had numerous, interconnected miles of stream habitat occupied by WCT. Those areas included Montana's Clark Fork River drainage (8,314 stream km [5,166 stream mi]) and Idaho's Salmon River drainage (6,563 stream km [4,078 stream mi]). Furthermore, our initial review revealed no evidence that the isolation of some WCT populations had resulted in either deleterious inbreeding (see also Caro and Laurenson 1994) or stochastic extirpations that threatened the WCT subspecies.

Information provided in the WCT status update report (Shepard *et al.* 2003) substantiated our earlier conclusions and indicated that, although 457 (81.2 percent) of the 563 WCT conservation populations were isolets that were often restricted to headwater areas, those isolets represented only 11.5 percent of the total stream miles occupied by WCT. Thus, the small WCT populations in headwater areas were numerous but they occupied a small proportion of the total habitat occupied by WCT. Most of the occupied stream miles (88.5 percent) were habitat for WCT in metapopulations. Consequently, the best scientific and commercial information available to us indicates that the WCT subspecies is not threatened by the fragmentation and isolation of small WCT populations in headwater areas.

Competition From Introduced Brook Trout—Brook trout, a nonnative species that can adversely compete with WCT (*e.g.*, Griffith 1988), have been stocked in numerous areas throughout the range of WCT. We examined the database of Shepard *et al.* (2003) to assess the extent that brook trout co-occur (*i.e.*, are sympatric) with extant WCT. Results indicated that in the: (1) Combined nonintrogressed and suspected nonintrogressed WCT populations and (2) the introgressed or suspected introgressed WCT conservation populations, both of which occur as either isolets or metapopulations, brook trout are sympatric with a substantial proportion of those populations (41 to 90 percent of the collective stream miles for each category). However, as was the case for assessments of other threats made using this database, it was not possible to determine the extent that brook trout are distributed throughout the range of an individual WCT population, nor was it possible to quantify the competitive effect of brook trout on the abundance or viability of WCT. Nonetheless, it is evident from their longstanding coexistence in some streams that complete competitive exclusion of WCT by brook trout is not inevitable where the two fishes co-occur. In addition, the database did not provide conspicuous insights into how far upstream brook trout may eventually move in the various drainages in which they now occur. Nonetheless, as we will describe, the available scientific information indicates brook trout are not a substantial threat to the majority of extant populations constituting the WCT subspecies.

Adams *et al.* (2000) assessed the ability of brook trout to move upstream in four headwater streams in a mountainous area of northern Idaho. They concluded that the upstream movement of brook trout was inhibited, but not precluded, by stream gradients up to 13 percent. That study did not involve the experimental introduction of brook trout into streams in which they were absent; instead, brook trout were already established in the study

streams. The study design involved mechanical removal of brook trout in certain stream reaches; the marking of brook trout in neighboring reaches; and the subsequent assessment of movement of marked brook trout into the stream reaches that had been mechanically depopulated. Because they were already inhabited by brook trout, the four streams examined by Adams *et al.* (2000) may have been among streams especially conducive to colonization by brook trout. Thus, it is not possible to extrapolate the results of Adams *et al.* (2000) to the broad array of headwater streams in which WCT presently occur but brook trout do not, even though brook trout occur in the downstream portions of those drainages.

More recently, Adams *et al.* (2002) assessed historic changes in the upstream limits of distribution of brook trout in 17 streams accessible by the fish in the upper South Fork Salmon River drainage in central Idaho. Brook trout already inhabited portions of 10 of the streams in 1971–1985. In 1996, their upstream-distribution limit remained unchanged in 8 streams that historically contained brook trout and 5 of 6 streams that did not (*i.e.*, one stream was invaded by brook trout). In the remaining 4 streams, the distribution of brook trout had moved upstream 1.9 to 3.1 km (1.2 to 1.9 mi). There was no detectable increase in the upstream distribution of brook trout in 10 streams that had no obvious physical barriers to such movement. The authors concluded that upstream colonization by brook trout is not continuously progressing throughout much of the drainage, and that the absence of brook trout in streams with no apparent barriers to the upstream movement of fish indicated that other factors were limiting the upstream expansion of brook trout. Consequently, the best scientific and commercial information available to us indicates that the WCT subspecies is not threatened by competition from introduced brook trout, although some populations may be at higher risk.

Risks Associated With Catastrophic, Natural Events—Our initial status review found that the geographic isolation of some extant WCT populations had not resulted in stochastic extirpations of such populations (due, for example, to floods, landslides, or wildfires) to a degree that threatened the WCT subspecies (U.S. Fish and Wildlife Service 1999).

Information provided in the WCT status update report (Shepard *et al.* 2003) ranked each of four measures of population viability that could make WCT vulnerable to catastrophic, natural events or adverse human effects on the aquatic environment: (1) Population productivity, (2) temporal variability, (3) isolation, and (4) population size. That analysis suggested that about 76 percent of the stream miles occupied by WCT conservation populations considered isolets were at high risk from catastrophic events because WCT would not be available to naturally recolonize those habitats. In contrast, only a small (~2 percent) proportion of the stream miles occupied by WCT conservation populations considered metapopulations were at moderately high or high risk from catastrophic or human events with respect to the four measures of population viability. However, on the basis of empirical information, Rieman and Dunham (2000) reported that none of the small WCT populations they studied in the Coeur d'Alene River drainage were extirpated by a large winter flood that was considered a once-in-100-years event and affected more than 50 watersheds. Similarly, despite large wildfires in 1996 and 2002 in Oregon's Indian Creek and Roberts Creek drainages, respectively, WCT populations in those streams have exhibited no immediate negative effects of the fires (Unterwegner 2002). The widespread geographic distribution of WCT across the subspecies' range further mitigates potential negative effects resulting from local population extinctions following future catastrophic natural events, as no single event is likely to impact a significant percent of the overall number of isolated populations. Moreover, given the widespread efforts for the conservation of these fish (*see* ''Evaluation of Ongoing Conservation Efforts,'' below), any such local extirpation is likely to be followed by reintroduction efforts if WCT were not available naturally to recolonize those habitats.

Kruse *et al.* (2001) assessed the possible demographic and genetic consequences of purposely isolating the populations of another cutthroat trout, the YCT, in headwater streams in the Absaroka Mountains, Wyoming. Such isolation may actually result, for example, from intentional placement of a movement barrier to prevent nonnative fishes downstream from invading upstream reaches. Kruse *et al.* (2001) made estimates of population size for YCT in each of 23 streams, then compared those estimates to minimum criteria that the authors considered necessary to prevent population extirpation. Kruse *et al.* (2001) acknowledged that their minimum-viability criteria had not been confirmed for YCT and that there was debate among researchers regarding the applicability of those criteria. Despite those limitations, 21 of 23 YCT populations met 2 of the 3 criteria, and the third criterion (*i.e.*, a population size of at least 500 fish) was met by 7 of the 23 populations. Nevertheless, the authors speculated that isolated YCT populations are vulnerable to chance extinctions, although they also pointed out that ''there has been little opportunity to observe the real effects of small population size and isolation on native, extant Yellowstone cutthroat trout populations.'' We believe those limitations of knowledge also apply to WCT in isolated headwater streams across the subspecies' range. Consequently, the best scientific and commercial information available to us indicates that the WCT subspecies is not threatened at the present time by risks associated with catastrophic, natural events.

Threats to Any of the Three Westslope Cutthroat Trout Life-History Forms—The three WCT life-history forms occur in numerous areas across the subspecies' range. In our initial status review, we found that WCT naturally occur in 6 lakes in Idaho and Washington that total about 72,843 ha (180,000 ac) and in least 20 lakes that total 2,164 ha (5,347 ac) in Glacier National Park, Montana (U.S. Fish and Wildlife Service 1999). All of those WCT in lakes are adfluvial (*i.e.*, migratory) populations and many of them receive the high level of protection afforded by Glacier National Park. However, outside the park, protections accorded WCT in most lakes are less rigorous (U.S. Fish and Wildlife Service 1999). Today, WCT with the adfluvial life history probably constitute the smallest proportion of the WCT subspecies, and probably did so historically.

We also found (U.S. Fish and Wildlife Service 1999) that resident (*i.e.*, showing little movement) and fluvial (*i.e.*, migratory) WCT populations, which live entirely in streams, constitute the most common WCT life-history forms and occur in about 4,275 tributaries or stream reaches that collectively encompass more than 37,015 km (23,000 linear mi) of stream habitat. Those WCT populations are distributed among 12 major drainages and 62 component watersheds in the Columbia, Missouri, and Saskatchewan River basins, within the international boundaries of the United States. As described in the preceding section Occurrence of Westslope Cutthroat Trout Life-history Forms, the information recently provided to us (Shepard *et al.* 2003) indicates even

greater abundance of WCT across the subspecies' range than we had estimated during the initial status review. The available data do not suggest the future loss of any of the three life-history forms represented by WCT. Consequently, we conclude that the WCT subspecies is not threatened by the loss of one or more of its life-history forms throughout all or a significant portion of its historic range.

Hybridization With Nonnative Fishes—Hybridization with introduced, nonnative fishes, particularly rainbow trout and their hybrid descendants that have established self-sustaining populations, is recognized as an appreciable threat to the WCT subspecies. Hybridization requires that the nonnative species invade the WCT habitat, the two species interbreed, and the resulting hybrids themselves survive and reproduce. If the hybrids backcross with one or both of the parental species, genetic introgression can occur. Continual introgression can eventually lead to the loss of genetic identity of one or both parent species, thus resulting in a ''hybrid swarm'' consisting entirely of individual fish that each contain genetic material from both of the parental species.

The WCT is known to interbreed with rainbow trout and YCT, both of which were first stocked into many regions of the historic range of WCT more than 100 years ago. Nonetheless, the limited data available at the time of our initial status review revealed that numerous, nonintrogressed WCT populations inhabited more than 4,184 km (2,600 mi) of stream (U.S. Fish and Wildlife Service 1999). Moreover, in the present document, we have concluded that nonintrogressed WCT are known to inhabit 5,633 km (3,500 mi) of stream and probably inhabit as many as 20,278 km (12,600 mi) of stream in which no potentially hybridizing fishes occur. Clearly, not all nonintrogressed WCT populations have been equally vulnerable to introgressive hybridization. In Idaho, WCT in many populations are sympatric with potentially hybridizing, native redband trout but remain nonintrogressed (Moore 2002). Thus, the occurrence of potentially hybridizing fishes does not portend their imminent hybridization with WCT.

The WCT status update report (Shepard *et al.* 2003) concluded that the threats to extant WCT populations from introgressive hybridization were greater for the extensive WCT metapopulations than for the smaller WCT populations that occurred as isolets. As pointed out by Shepard *et al.* (2003), the vulnerability to hybridization of WCT in metapopulations stems from the key characteristic of the metapopulation itself, *i.e.*, the ability of its member fish to move (and interbreed) among the various WCT populations that constitute the metapopulation. It is assumed that potentially hybridizing fishes are similarly unencumbered in their movements throughout the geographic area occupied by the metapopulation and, accordingly, WCT metapopulations can inevitably become completely introgressed as a hybrid swarm.

We examined the database of Shepard *et al.* (2003) to assess the introgressive hybridization risk to extant WCT that consist of: (1) Nonintrogressed or suspected nonintrogressed populations and (2) introgressed or suspected introgressed ''conservation'' populations. Results indicated that nonintrogressed and suspected nonintrogressed WCT populations occurring as isolets were at moderately high or high risk of introgression in about 16 percent of their 1,944 occupied stream miles, whereas nonintrogressed populations occurring in metapopulations were considered to be at similar risk in 89 percent of their 9,999 occupied stream miles. Similarly, WCT in introgressed or suspected introgressed conservation populations occurring as isolets were at moderately high or high risk of introgression in about 38 percent of their 751 occupied stream miles, whereas introgressed populations occurring in metapopulations were considered at similar risk in 99 percent of their 11,775 occupied stream miles. The WCT in introgressed or suspected introgressed populations inhabited a total 19,262 km (11,943 mi) of stream, 1,060 km (657 mi) less than reported by Shepard *et al.* (2003). However, those authors also reported the 563 WCT ''conservation'' populations collectively occupied 39,349 km (24,450 mi) of stream, nearly identical to the amount that we found (*i.e.*, 39,466 km or 24,469 mi) when the database was examined. The reason for the small discrepancy (5.2 percent) in the total amounts of habitat occupied by WCT in introgressed or suspected introgressed populations is unknown but may be due to differences in the specific database queries.

The hybridization risk to WCT is almost entirely from rainbow trout, YCT, and the hybrid offspring and descendants of those fishes that have established self-sustaining populations within the range of extant WCT populations. We examined the database of Shepard *et al.* (2003) to assess the extent that rainbow trout and ''other cutthroat trout'' (primarily YCT) co-occur (*i.e.*, are sympatric) with extant WCT in: (1) Nonintrogressed or suspected nonintrogressed populations and (2) introgressed or suspected introgressed ''conservation'' populations. Rainbow trout or YCT occur in 47 to 91 percent of the stream miles occupied by WCT metapopulations but only 0 to 22 percent of the stream miles occupied by WCT isolets.

In most cases today, it is not technologically possible to eliminate the self-sustaining populations of potentially hybridizing, nonnative fishes from entire drainages or even individual streams. Consequently, perceived threats to extant WCT posed by nonnative fishes in streams are sometimes met by installing barriers to the upstream movement of the nonnative fishes into stream reaches occupied by WCT. In a few cases, usually involving small streams that provide the greatest opportunity for success, fish toxins may be used to completely remove all fishes upstream from such barriers, after which WCT may be stocked (*e.g.*, Hagener 2002). In either case, because of technological, budgetary, and other limitations, such actions are now being taken for only a small proportion of WCT populations across the subspecies' range.

Because self-sustaining populations of nonnative fishes pose the greatest hybridization threat to WCT and few of those populations can be eliminated or appreciably reduced, a key concern is for the extent that introgressive hybridization may eventually pervade extant, nonintrogressed or suspected nonintrogressed WCT populations, particularly those that inhabit headwater streams in high-elevation areas. Hitt (2002) reported that 55 percent of 40 WCT populations examined in the Flathead River drainage in Montana showed evidence of introgressive hybridization with rainbow trout, and that introgression had progressed upstream in several tributaries during the past 2 decades. Additional evidence suggested that the upstream introgression of rainbow trout genes would eventually be halted by diminished stream size, as evidenced by the observation that rainbow trout usually inhabit larger streams than cutthroat trout. However, Hitt (2002) further speculated that the stream reaches upstream from those potentially limiting locations would be too small to support viable WCT populations.

In the Clearwater River drainage in Idaho, Weigel *et al.* (2003) similarly found that WCT at 64 percent of the 80 sample sites showed evidence of introgression with rainbow trout or native redband trout. The incidence and intensity of that introgression was

negatively associated with stream elevation, which the authors believed resulted from the interaction of low water temperatures or other characteristics of the high-elevation hydrologic regimes and either the physiological or habitat requirements of rainbow trout and their hybrids with WCT. In a study conducted in the Kootenay (= Kootenai) River, British Columbia, Rubidge *et al.* (2001) found that WCT introgressive hybridization with rainbow trout had become more widespread in the drainage since the mid-1980s, which the authors attributed to the ongoing stocking of rainbow trout into Koocanusa Reservoir in British Columbia.

In addition, many extant WCT populations occur upstream from barriers that entirely prevent the upstream movements of nonnative fishes, including those that may potentially hybridize with WCT. We examined the database of Shepard *et al.* (2003) to determine the extent that extant, nonintrogressed or suspected nonintrogressed WCT populations occur upstream from such ''complete'' barriers. Results indicated that 48 percent of the 1,944 stream miles inhabited by WCT in isolets are protected by such barriers, whereas about 6 percent of the 9,999 stream miles inhabited by nonintrogressed WCT in metapopulations are similarly protected. Thus, nonintrogressed or suspected nonintrogressed WCT populations inhabiting 2,454 km (1,525 mi) of stream are protected from introgressive hybridization by barriers to the upstream movement of nonnative fishes.

The available empirical evidence and speculations by many fishery scientists indicate that rainbow trout genes are expected to continue moving upstream into many stream reaches presently inhabited by nonintrogressed WCT, although, as we have discussed, there may be limits to that upstream dispersal set by low stream temperatures or other factors. However, the observation that numerous nonintrogressed WCT populations persist today despite both the longstanding occurrence (*i.e.*, more than 100 years) of potentially hybridizing fishes in regions downstream and the absence of obvious intervening barriers to the upstream movement of those fish suggests that not all nonintrogressed WCT populations have been and are equally vulnerable to introgression. Behnke (1992, 2002) provides evidence that phenotypically true, native cutthroat trout of several subspecies persist in many essentially undisturbed, natural habitats because they have fitness superior to that of nonnative fishes, including potentially hybridizing species and their hybrid descendants. Thus, the eventual extent that rainbow trout, or YCT, genes move upstream may be stream-specific and unpredictable. Nonetheless, as noted previously (see previous section, ''The Value of Hybrid Westslope Cutthroat Trout in Listing Determinations''), small amounts of genetic introgression do not disqualify individual WCT or their populations from species membership under the Act. Finally, nonintrogressed or suspected nonintrogressed populations of WCT inhabiting 2,454 km (1,525 mi) of stream are considered secure from genetic introgression because those populations occur upstream from barriers to the upstream movement of nonnative fishes or their hybrid descendants. Therefore, the best scientific and commercial information available to us indicates that the WCT subspecies is not threatened by introgressive hybridization.

Evaluation of Ongoing Conservation Efforts

In the initial status review (U.S. Fish and Wildlife Service 1999), we identified numerous, ongoing conservation efforts that benefitted WCT and their habitats. For example, the U.S. Forest Service, State fish and wildlife agencies, and National Park Service reported more than 700 ongoing projects directed toward the protection and restoration of WCT and their habitats.

Recent information indicates that these important conservation efforts are ongoing and increasing in number. At the time of the initial status review, the four State fish and wildlife agencies, the U.S. Forest Service, and other entities were implementing WCT conservation actions in a minimally coordinated manner. The State of Montana had developed a formalized conservation program for WCT that included a State-wide conservation agreement, a conservation strategy with specific goals and objectives, a steering committee consisting of representatives from various key agencies and other concerned entities, and a technical oversight group. At that time, Idaho, Oregon, and Washington also were implementing WCT conservation actions as an integral part of their fisheries management programs. The U.S. Forest Service also was protecting WCT habitat as specified under INFISH and PACFISH, and had established a new professional position whose incumbent focused entirely on inland cutthroat trout conservation in the western United States.

More recently, the conservation efforts for WCT have been enhanced by formalized coordination among the four State fish and wildlife agencies, the U.S. Forest Service, and the Service. Beginning in June 2001, formal coordination meetings have been held under the leadership of a representative of the Idaho Department of Fish and Game. A formal coordination agreement is now being developed, consistent conservation goals and objectives for WCT have been identified, and an emphasis on consistency and continuity in WCT conservation among the agencies has emerged. An indication of the important level of coordination that has been achieved is provided by the recent WCT status update report (Shepard *et al.* 2003), which was completed through a concerted effort among the parties to the coordination agreement. To complete that report, 112 biologists—working with 19 geographic information systems and data-entry specialists—completed the task of updating the current information on WCT in a timely and comprehensive manner.

In Idaho, hundreds of conservation efforts have been undertaken in recent years to protect WCT and their habitats (Moore 2003). Those efforts include initiation of a study to determine movement patterns of WCT in the Middle Fork of the Salmon River basin (this study will be expanded into the upper Salmon River basin), accelerated genetic sampling of fishes in central and northern Idaho streams, addition of a qualified geneticist to Department of Fish and Game staff, and implementation of joint efforts with the U.S. Forest Service focused on protection and enhancement of WCT habitat and populations. Montana Fish, Wildlife and Parks continues to implement its conservation agreement and plan. In Montana, more than 200 projects that directly benefit WCT have now been completed, many of which were accomplished as part of a Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat Trout in Montana, and numerous, additional projects are ongoing (Hagener 2002). Included in the Montana Fish, Wildlife and Parks efforts are removal of nonnative trout through both physical and chemical means, installation of fish-passage barriers, and coordinated efforts with U.S. Forest Service and other management authorities focused on WCT habitat protection and enhancement.

Oregon and Washington fishery agencies are likewise planning and implementing WCT conservation actions. In Oregon (Unterwegner 2002), the Department of Fish and Wildlife is developing a Native Fish Conservation

Policy in response to a Governor's Executive Order to review the existing Wild Fish Management Policy. The Oregon Department of Fish and Wildlife also has an active fish-screening program for irrigation diversions in the John Day River drainage and elsewhere. That program began in the 1950s and more than 300 fish screens are now in place and operated during the annual irrigation season. The Oregon Department of Fish and Wildlife also has accomplished several habitat-restoration projects throughout the drainage, funded mainly by the Bonneville Power Administration and Oregon Watershed Enhancement Board.

The U.S. Forest Service has a very active conservation program in place for WCT. Between 1998 and 2002, the U.S. Forest Service, in partnership with the States and others, implemented 324 projects that benefit WCT. The total investment of funds for these projects was approximately $9,665,000 (McAllister 2002). During the 2002 Fiscal Year, the U.S. Forest Service accomplished 54 on-the-ground restoration projects, inventories, evaluations, and public outreach efforts at a cost of $1.6 million (Johnston 2003).

The conservation efforts presently being accomplished as part of the routine management objectives of State and Federal agencies, and as part of formal interagency agreements and plans, provide substantial assurance that the WCT subspecies is being conserved. The best information available to us indicates that numerous, ongoing conservation efforts for WCT are being implemented across the subspecies' range. These ongoing conservation efforts are commendable and they contribute to the certainty that WCT can be conserved and protected.

Listing Determinations Made Under the Act

In the context of the Act, the term ''threatened species'' means any species (or subspecies or, for vertebrates, DPS) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term ''endangered species'' means any species that is in danger of extinction throughout all or a significant portion of its range. The Act does not indicate threshold levels of historic population size at which, as the population of a species declines, listing as either ''threatened'' or ''endangered'' becomes warranted. Instead, the principal considerations in the determination of whether or not a species warrants listing as a threatened or an endangered species under the Act are the threats that now confront the species and the probability that the species will persist in ''the foreseeable future.'' The Act does not define the term ''foreseeable future.'' However, the WCT interagency conservation team, the group that produced the WCT status update report, considered the ''foreseeable future'' to be 20 to 30 years (approximately 4 to 10 WCT generations) beyond the present time (Shepard *et al.* 2003), a measure that we believe is both reasonable and appropriate for the present listing determination.

In our initial status review, we provided evidence from the Missouri River basin that indicated a conspicuous decline in the WCT subspecies occurred early in the 20th Century (U.S. Fish and Wildlife Service 1999). We attributed that decline to rapid, abundant colonization of mainstem rivers and their major tributaries by one or more introduced nonnative fish species (*e.g.*, brown trout, rainbow trout, and brook trout) that had adverse effects on WCT. Our analysis also showed that the rate of decline in the WCT subspecies is markedly lower today than it was early in the 20th century. We believe that the evidence from the Missouri River basin provided a model for the historic decline of WCT that was applicable to WCT in many other regions of the subspecies' historic range.

Conclusions

The information that we have summarized in this document, particularly that obtained from the status update report (Shepard *et al.* 2003), indicates even greater abundance of WCT across the subspecies' range than we had estimated during the initial status review (U.S. Fish and Wildlife Service 1999). Today, 563 extant WCT ''conservation'' populations collectively occupy 39,349 km (24,450 mi) of stream in Idaho, Montana, Oregon, Washington, and Wyoming. Those WCT populations are distributed among 12 major drainages and 62 component watersheds in the Columbia, Missouri, and Saskatchewan River basins, within the international boundaries of the United States. In our initial status review (U.S. Fish and Wildlife Service 1999), we reported that WCT occupied about 37,015 km (23,000 mi) of stream in the United States. In addition, nonintrogressed WCT are now known to inhabit 5,633 km (3,500 mi) of stream and probably inhabit as many as 20,278 km (12,600 mi) of stream in which no potentially hybridizing fishes occur. In our initial status review (U.S. Fish and Wildlife Service 1999), we reported that nonintrogressed WCT were known to occupy 4,237 km (2,633 mi) of stream.

Although the WCT subspecies has been reduced from historic levels and its extant populations face threats in several areas of the historic range, we find that the magnitude and imminence of those threats do not jeopardize the continued existence of the subspecies within the foreseeable future. Many former threats to WCT, such as those posed by excessive harvest by anglers or the widespread stocking of nonnative fishes, are no longer factors that threaten the continued existence of the WCT subspecies. The effects of other extant threats are being effectively countered by the management actions of State and Federal agencies, in conjunction with existing regulatory mechanisms. Nonetheless, hybridization with nonnative rainbow trout or their hybrid progeny and descendants, both of which have established self-sustaining populations in many areas in the range of WCT, remains the greatest threat to WCT. The available empirical evidence and speculations of many fishery scientists indicate that introgression of rainbow trout genes will continue to move upstream into many stream reaches presently inhabited by WCT, although there may be limits to that upstream spread set by environmental factors and the superior fitness of extant WCT populations in their native habitats. The eventual extent that such hybridization moves upstream may be stream-specific and impossible to predict. Nonetheless, the criteria that we provided for inclusion of individual fishes in the WCT subspecies, in response to the Court's order, allow for the limited presence in WCT of genetic material from other fish species, consistent with the intent and purpose of the Act.

The WCT subspecies is widely distributed and there are numerous, robust WCT populations and aggregates of populations throughout the subspecies' historic range. Moreover, numerous nonintrogressed WCT populations are distributed in secure habitats throughout the subspecies' historic range. In addition, despite the frequent occurrence of introgressive hybridization, we find that numerous WCT populations are nonintrogressed or nearly so, and thus retain substantial portions of their genetic ancestry. We consider slightly introgressed WCT populations, with low amounts of genetic introgression detectable only by molecular genetic methods, to be a potentially important and valued component of the overall WCT subspecies.

Finally, the numerous ongoing WCT conservation efforts clearly demonstrate the broad interest in protecting WCT

held by State, Federal, local, and nongovernmental organizations and other entities. Nonetheless, those ongoing conservation efforts, while important, are not pivotal to our decision whether or not to list the WCT as either a threatened or an endangered species under the Act. That decision is based mainly on the present-day status of the WCT subspecies, and the occurrence of the numerous extant laws and regulations that work to prevent the adverse effects of land-management and other activities on WCT, particularly on those lands administered by Federal agencies.

On the basis of the best available scientific and commercial information, which has been broadly discussed in this notice and detailed in the documents contained in the Administrative Record for this decision, we conclude that the WCT is not likely to become either a threatened or an endangered species within the foreseeable future. Therefore, listing of the WCT as a threatened or an endangered species under the Act is not warranted at this time.

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Authors

The primary author of this document is Lynn R. Kaeding (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: August 1, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–20087 Filed 8–6–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 152

Thursday, August 7, 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

Commodity Credit Corporation

2003 Hurricane Assistance Program for Louisiana's Sugarcane Producers and Sugarcane Processors

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this Notice to implement section 207 of the Agricultural Assistance Act of 2003. This Act requires CCC to provide compensation to Louisiana sugarcane producers and processors who suffered economic losses from the cumulative effects of Tropical Storm Isadore, Hurricane Lili, and excessive rains in October 2002. CCC will make payments to affected sugarcane processors. The processors shall then disburse payments to affected producers from the payments they receive in a manner reflecting current contracts between the two parties. This Notice provides eligibility criteria and application procedures that will be used to conduct this program.

DATES: The dates applicable to the 2003 Hurricane Assistance Program are as follows:

(1) Eligible producers have until August 18, 2003, to select a base year other than 1999 for the purpose of calculating their 2002-crop sugar loss.

(2) Farm operators have until September 2, 2003, to certify ownership tract sugar losses on their farms.

(3) Sugarcane processor applications must be submitted after September 4, 2003 but no later than September 22, 2003.

(4) Payments will be issued to applicants meeting all eligibility requirements beginning October 8, 2003, or as the Louisiana Farm Service Agency (FSA) State Executive Director determines.

(5) Producers must be paid within 30 days of the date the initial payments were made to the applicants.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso, Dairy and Sweeteners Group, USDA/FSA/EPAS, 1400 Independence Ave., SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; facsimile (202) 690–1480; electronic mail: *barbara.fecso@usda.gov*.

SUPPLEMENTARY INFORMATION:

Environmental Compliance

A review for the need of an environmental assessment was completed to consider this action's potential impacts on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for NEPA compliance, 7 CFR part 799. It was determined that this program will have slight to no significant impact on the quality of the human environment. Therefore, these actions are categorically excluded from compliance with 7 CFR part 799 and no further review or assessment is necessary. These findings are available for public review upon request.

Paperwork Reduction Act

Section 217(b) of Title II of Division N of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7) (2003 Act) requires that this Notice be promulgated and the programs administered without regard to 44 U.S.C. 35, the Paperwork Reduction Act. Thus, information to be collected from the public to implement this program and the associated burden, in time and money, the information collection will have on the public do not need Office of Management and Budget approval and are not subject to the 60-day public comment period 5 CFR 1320.8(d)(1) requires.

Background

This Notice implements the 2003 Hurricane Assistance Program. Section 207 of the 2003 Act authorizes this program which requires CCC to assist certain processors by providing them payments or commodities from CCC inventory. The law was intended to partially compensate Louisiana sugarcane producers and processors for losses related to the natural disaster declaration resulting from Tropical Storm Isadore, Hurricane Lili, and excessive rains in October 2002. CCC sugar inventory is not available. Thus, this program will be carried out by issuing payments. CCC has resolved other discretionary matters for carrying this program as follows:

Determination of Hurricane Assistance Program Payment Rate Per Pound

On February 20, 2003, the date the 2003 Act was passed, the sugar #14 New York Exchange nearby price for raw sugar was 21.96 cents per pound. Subtracting out the Louisiana average transportation cost per pound of 1.21 cents and Louisiana's average location discount results in a base price of about 20 cents per pound. Thus, CCC will make payments based on 20 cents per pound.

Determination of Loss Eligibility

To be eligible for this program, this notice requires evidence of a tract 2002-crop sugar percentage loss equal or greater than 20 percent. This percent loss, coupled with the estimated 15 percent economic loss due to time and money spent salvaging the sugarcane plants (which are perennials), maintenance to machinery damaged by mud, as well as on field repair and replanting, results in an implicit required loss of 35%. FSA is using the estimate of 15 percent economic loss based on a Louisiana State University study. Louisiana sugarcane processor and producer losses are estimated to be far greater than the amount of assistance the 2003 Act provided. Compensation will then be paid on a portion of losses exceeding this threshold—limited by the amount (150,000 tons or 300,000,000 pounds) provided in the 2003 Act.

2003 Hurricane Assistance Program Operation

I. Applicability

This Notice sets forth terms and conditions under which CCC will make payments to eligible Louisiana sugarcane processors for 2002-crop weather-related sugarcane losses.

II. Definitions

Commercially Recoverable Sugar (CRS) Final Settlement Payment Pounds. The total actual pounds of 96 sugar degrees the producer delivers to a sugarcane processor during a given crop year.

Farm. The acreage identified under one FSA Farm Serial Number.

Farm Operator. The person in general control of the farming operations on all ownership tracts of a farm during the program.

FSA. FSA means the Farm Service Agency.

Ownership Tract. A subset of the acreage of a farm associated with a separate ownership interest.

Producer. A person (including owners) who receives a payment or shares in the payment a sugarcane processor makes for delivery of sugarcane.

Split-Shippers. Farm operators who deliver their harvested cane to more than one sugarcane processor during a given crop year.

Sugarcane Processor. A person or entity who produces raw cane sugar by commercially processing sugarcane and has an allocation under the sugar marketing allotment program.

III. Applicant Eligibility Requirements

Applicants must meet all the following requirements to be eligible for 2003 Hurricane Assistance Program benefits:

(1) Be a sugarcane processor located in Louisiana.

(2) Be eligible to obtain a loan under section 156(a) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7272(a)).

(3) Submit the application according to the requirements and deadlines the Notice specifies.

IV. Aggregate Amount of Assistance

Total compensation equals the market value of 150,000 tons or 300 million pounds of CCC sugar. CCC has determined that this value is 20 cents per pound (or $60 million in total). CCC will maintain a 7 percent reserve ($4.2 million) in the event of appeals. The reserve will be dispersed once the appeals process is satisfied.

V. 2002–Crop Sugar Loss

(1) Loss will be measured for each ownership tract by the following formula: Loss = [sugar per acre (base year) – sugar per acre (2002 crop)] × tract acres in 2002.

(2) The base year for figuring losses will be 1999 unless the producer requests a different year (2000 or 2001).

(A) Producers have until August 18, 2003, to select a different base year.

(B) The same base year will be used for all farms with the same operator. If some tracts (cannot be *ALL* tracts) had no production in the base year, the State yield will be used.

(C) Tracts with production in the base year and no FSA certified acres will require the operator to:

(i) Pick a different base year; or

(ii) Make this tract ineligible for disaster benefits.

(D) Tracts with FSA certified acreage and no production in the base year will require the operator to:

(i) Pick a different base year; or

(ii) Make this tract ineligible for disaster benefits.

(E) Tracts not harvested for sugar or seed will be assigned a zero yield in the base year.

(3) Sugar per acre for each ownership tract is calculated as:

(A) The CRS Final Settlement Payment Pounds from sugarcane processor records for the applicable year divided by

(B) The ownership tract's total cane acres (minus Payment-in-Kind acres) identified in the FSA Certified Acreage Report for the same year.

(4) The 1999 average state yield will be applied to any operator with no production history in 1999, 2000 or 2001 and produces sugarcane in the 2002 crop year.

(5) In the case of split-shippers, total FSA certified acres will be prorated to each mill based on pounds of sugar each mill produced. For mills that did not identify sugar produced by ownership tract at time of delivery, the total production will be prorated to each tract based on total FSA certified acres.

(6) Farm operators have until September 2, 2003, to certify ownership tract sugar losses on their farms.

(7) Applicants must submit a CCC-prescribed form certifying the sugarcane processor's loss calculation to CCC, no earlier than September 4, 2003, and no later than September 22, 2003.

(A) No late-filed applications will be accepted.

(B) All eligible farm operators must certify the loss calculations included in the application.

VI. 2002–Crop Eligible Tract Sugar Losses

(1) Ownership tract sugar losses are eligible if the tract's 2002-crop sugar percentage loss is equal to or greater than 20 percent.

(2) The 2002-crop sugar percentage loss for an FSA ownership tract is defined as: [1 − (sugar per acre (2002 crop) / sugar per acre (base year))] × 100.

The eligible tract sugar losses are defined as follows: 80% of the 2002-crop sugar losses greater than or equal to 40%, plus 60% of the 2002-crop sugar losses greater than or equal to 30% and less than 40%, plus 40% of the 2002-crop sugar losses greater than or equal to 20% and less than 30%.

(4) If the computed total of all 2002-crop eligible tract sugar losses across all eligible sugarcane processors is less than, or exceeds, 300 million pounds, a factor will be applied to make this total exactly 300 million pounds.

VII. Payment Calculation

An applicant's payment will equal the total eligible tract sugar losses for its producers multiplied by 20 cents per pound.

VIII. Payments to Affected Producers

Applicants must share their hurricane assistance payments with affected producers according to the percentage shares for dividing net revenue as stated in their 2002 farm processor/producer contracts. Payments to producers must be made within 30 days of the date initial payments were made to eligible processors.

IX. Contract Liability

All sugarcane processors and associated operators receiving a share of the total hurricane assistance payment are jointly and severally liable for program violations and resulting repayments, if applicable.

X. Misrepresentation, scheme, or device

A person shall be ineligible to receive assistance under this Notice and be subject to such other remedies as law may allow, if the FSA State or county committee, or any other FSA official, determines that such person has:

(1) Adopted a scheme or other device that tends to defeat the purpose of the program operated under this Notice,

(2) Made any fraudulent representation regarding this program, or

(3) Misrepresented any fact affecting a program determination.

XI. Creditor liens and claims; and CCC offsets and withholdings

(1) Any benefit or portion thereof due any person under this program shall be allowed without regard to questions of title under State law and without regard to any claim or lien in favor of any person, except agencies of the U.S. Government.

(2) CCC may offset or withhold any amount due CCC in accordance with the provisions of the regulations at 7 CFR part 1403 or successor regulations as designated by the Department.

XII. Administration

When circumstances beyond the applicant's control preclude compliance, the county committee may request the Louisiana FSA State Executive Director to grant relief. In such cases, except for statutory requirements, the Louisiana FSA State Executive Director may, in order to more equitably accomplish this Notice's goals, waive or modify deadlines if the failure to meet such deadlines does not adversely affect program operation. All program payments will be subject to review.

XIII. Appeals

Regulations at 7 CFR part 11 apply to this Notice. CCC is not involved in resolving disputes between processors and producers.

Signed at Washington, DC, on August 1, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–20080 Filed 8–1–03; 4:24 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Public Hearing on Sugarcane State Allotments and Processor Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of public hearing.

SUMMARY: The Commodity Credit Corporation (CCC) will hold a public hearing to receive comments on establishing sugarcane State allotments and sugarcane processor allocations of those allotments for the 2003 crop.

DATES: The public hearing will be held August 25, 2003, in Room 107-A of the U.S. Department of Agriculture (USDA) Jamie L. Whitten Federal Building, 12th and Jefferson Drive, SW., Washington, DC. The hearing is scheduled from 9 a.m. to 1 p.m. Eastern Standard Time (EDT).

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic and Policy Analysis Staff, Farm Service Agency (FSA), USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: Because the 2002 Farm Security and Rural Investment Act provides CCC wide discretion in establishing sugarcane State allotments and associated sugarcane processor allocations, CCC is required to conduct a hearing on this issue in August of each year, beginning with the 2003 crop, if requested by sugarcane growers by July 15, 2003 (7 CFR 1435.307(c)). Such a request was received June 13, 2003.

CCC will use this hearing to collect comments on any issues related to establishing sugarcane State allotments and sugarcane processor allocations of those allotments for the 2003 crop. After consideration of comments obtained at the hearing, a final determination on cane State allotments and processor allocations will be announced.

The public hearing will be held on Monday, August 25, 2003, in Room 107–A of the USDA Jamie L. Whitten Federal Building, 12th and Jefferson Drive, SW., Washington, DC. The hearing is scheduled from 9 p.m. to 1 p.m. Eastern Standard Time (EDT). Attendance is open to interested parties.

Anyone wishing to make an oral statement may do so, time permitting. Comments will be limited to 5 minutes. A signup sheet for oral statements will be available at the entrance of 107–A 1 hour before the hearing begins. Oral statements will be made in the order the requests are received. People wishing to make a written statement in lieu of an oral statement should send their statement to Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic and Policy Analysis Staff, FSA, USDA, 1400 Independence Avenue, SW, STOP 0516, Washington, DC 20250–0516; e-mail: *barbara.fecso@usda.gov.* Statements must be received by close of business on August 24, 2003.

Persons with disabilities who require special accommodations to attend or participate in the hearing should contact Barbara Fecso.

Signed in Washington, DC on July 30, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–20081 Filed 8–1–03; 4:43 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Proposed Revisions to the Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comment.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is requesting public comment on proposed revisions to the Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds (64 FR 19242–19248). These guidelines prescribe the procedures to be followed by the eligible institutions receiving Federal agricultural research and extension formula funds under the Hatch Act of 1887, as amended (7 U.S.C. 361a *et seq.*); sections 3(b)(1) and (c) of the Smith-Lever Act of 1914, as amended (7 U.S.C. 343 (b)(1) and (c)); and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 and 3222). The recipients of these funds are commonly referred to as the 1862 land-grant institutions and 1890 land-grant institutions, including Tuskegee University and West Virginia State College. CSREES also is requesting public comment on the revision and reinstatement of a previously approved information collection (OMB No. 0524–0036) associated with these Guidelines.

DATES: Written comments are invited from interested individuals and organizations. To be considered in the formulation of the guidelines, comments must be received on or before September 8, 2003.

ADDRESSES: Address all comments to CSREES–USDA; Planning and Accountability, Office of the Administrator, Mail Stop 2214; 1400 Independence Avenue, SW., Washington, DC 20250–2214. Comments may be hand-delivered to CSREES–USDA; Planning and Accountability, Office of the Administrator, Room 1325; 800 9th Street, SW., Washington, DC 20024. Comments may also be mailed electronically to *bhewitt@csrees.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Bart Hewitt; Program Analyst, Planning and Accountability, Office of the Administrator; Cooperative State

Research, Education, and Extension Service; U.S. Department of Agriculture; Washington, DC 20250; at 202–720–5623, 202–720–4730 (fax) or via electronic mail at *bhewitt@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements imposed by the implementation of these guidelines have been submitted to OMB for approval. Those requirements will not become effective prior to OMB approval. The eligible institutions will be notified upon this approval.

Title: Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds.

Summary: The purpose of this collection of information is to implement the requirements of section 7 of the Hatch Act of 1887, as amended (7 U.S.C. 361g); section 4 of the Smith-Lever Act, as amended (7 U.S.C. 343); and section 1444(d) and section 1445(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221(d) and 3222 (c)), which require that before funds may be provided to a State or eligible institution under these Acts a plan of work must be submitted by the proper officials of the State or eligible institution, as appropriate, and approved by the Secretary of Agriculture.

Need for the Information: The Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. 105–185, amended the Hatch Act of 1887, Smith-Lever Act, and sections 1444 and 1445 of NARETPA to require plans of work to be received and approved by CSREES prior to the distribution of funding authorized under these Acts. This collection of information will satisfy the plan of work reporting requirements as imposed by these Acts. This collection of information includes two parts: (1) The submission of a FY 2005–FY 2006 Plan of Work Update to extend the current FY 2000–FY 2004 5-Year Plan of Work by two years; and (2) the submission of the Annual Report of Accomplishments and Results for the current 5-Year Plan of Work (*i.e.*, for FY 2003 and FY 2004) and the FY 2005–FY 2006 Plan of Work Update (*i.e.*, for FY 2005 and FY 2006).

1. The first collection of information is required in order to satisfy the above amendments to the Acts that authorize the distribution of agricultural research and extension formula funds to States and eligible institutions. In addition to a description of planned programs, the FY 2005–FY 2006 Plan of Work Update must include information on how critical short-term, intermediate, and long-term agricultural issues in the State will be addressed in research and extension programs; how the State or eligible institution has developed a process to consult users of agricultural extension and research in the identification of critical agricultural issues in the State and the development of programs and projects targeting these issues (also referred to as stakeholder input); how the State or eligible institution has made efforts to identify and collaborate with other universities and colleges that have a unique capacity to address the identified agricultural issues in the State and the extent of current and emerging efforts (including the regional and/or multistate efforts) to work with these institutions; the manner in which research and extension, including research and extension activities funded other than through formula funds, will cooperate to address the critical issues in the State, including activities to be carried out separately, sequentially, or jointly; and for extension, the education and outreach programs already underway to convey available research results that are pertinent to a critical agricultural issue, including efforts to encourage multicounty cooperation in the dissemination of research information.

Section 103(e) of AREERA (7 U.S.C. 7613(e)) also required, effective October 1, 1999, that a merit review process be established at the 1862 land-grant institutions and 1890 land-grant institutions in order to obtain agricultural research and extension formula funds. The current 5-Year Plan of Work includes a section for the description of the merit review process to ensure that such a process is in place prior to the distribution of agricultural research and extension formula funds.

Sections 104 and 105 of AREERA also amended the Hatch Act and Smith-Lever Act to require that a specified amount of the agricultural research and extension formula funds be expended for multistate activities and that a description of these activities be reported in the plan of work. Section 204 of AREERA further amended the Hatch Act and Smith-Lever Act to require that a specified amount of the agricultural research and extension formula funds be expended for activities that integrate cooperative research and extension and that a description of these activities be included in the plan of work. Two components of the 5-Year Plan of Work submission have been included to meet these additional requirements.

2. The second collection of information will be the Annual Report of Accomplishments and Results. This will be based on the existing 5-Year Plan of Work and the approved FY 2005–FY 2006 Plan of Work Update, and will assist CSREES in ensuring that federally supported and conducted research and extension activities are accomplished in accordance with the management principles set forth under section 102(d) of AREERA (7 U.S.C. 7612(d)). These principles require that to the maximum extent possible, CSREES shall ensure that federally supported research and extension activities are accomplished in a manner that integrates agricultural research, extension, and education functions to better link research to technology transfer and information dissemination activities; encourages regional and multistate programs to address relevant issues of common concern and to better leverage scarce resources; and achieves agricultural research, extension, education objectives through multi-institutional and multifunctional approaches and by conducting research at facilities and institutions best equipped to achieve these objectives.

CSREES is proposing to request a Plan of Work Update to the existing 5-Year Plan of Work (*i.e.*, FY 2000–FY 2004) instead of a new 5-Year Plan of Work in order to allow CSREES to incorporate the recommendations from the USDA Office of Inspector General (OIG) Audit No. 13001–3–Te, CSREES Implementation of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) in the plan-of-work process. In addition, CSREES needs time, once the final recommendations are made, to develop a viable electronic option for compliance with the Government Paperwork Elimination Act (GPEA). Currently, institutions are submitting their reports via e-mail in WordPerfect file format, Microsoft Word file format, or ASCII file format, and CSREES proposes to have the institutions to do so until a viable electronic option is available. CSREES also is in the process of developing a ''One-Solution'' for reporting for all CSREES grant programs including those covered in the 5-Year Plan of Work. A ''One-Solution'' integrated reporting system will be more streamlined and effective, eliminate duplicative reporting, and provide additional program and fiscal

accountability while reducing the overall burden hours for reporting.

Respondents: Respondents will be the 57 1862 land-grant institutions and the 18 1890 land-grant institutions, including Tuskegee University and West Virginia State College, who will provide a FY 2005–FY 2006 Plan of Work Update; and will report on the accomplishments and results of the original 5-year plan of work and the FY 2005–2006 Plan of Work Update annually to CSREES.

Estimate of Burden: The amendments to AREERA require a plan of work for funds that are distributed on an annual basis. To reduce the burden on respondents, CSREES proposes to extend the current 5-Year Plan of Work (*i.e.*, FY 2000—FY 2004) for two years by allowing the 5-Year Plan of Work to be amended by adding the FY 2005–FY 2006 Plan of Work Update.

The total reporting and recordkeeping requirements for the submission of the ''FY 2005–FY 2006 Plan of Work Update'' is estimated to average 242 hours per response.

Estimated Number of Respondents: 75.

Estimated Number of Responses: 95.

Estimated Total Annual Burden on Respondents: 22,990 hours.

Frequency of Responses: Once for the FY 2005–FY 2006.

The total annual reporting and recordkeeping requirements for the ''Annual Report of Accomplishments and Results'' is estimated to average 851 hours per response.

Estimated Number of Respondents: 75.

Estimated Number of Responses: 95.

Estimated Total Annual Burden on Respondents: 80,845 hours.

Frequency of Responses: Annually.

Comments: 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 collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: CSREES–USDA; Planning and Accountability, Office of the Administrator; Mail Stop 2214; 1400 Independence Avenue, SW., Washington, DC 20250–2214 by October 14, 2003, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20502. Reference should be made to the volume, page, and date of this **Federal Register** publication.

Background and Purpose

The Cooperative State Research, Education, and Extension Service (CSREES) proposes to revise the Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds which implement the plan-of-work reporting requirements enacted in the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. 105–185, by adding Part V, FY 2005–FY 2006 Plan of Work Update. CSREES is proposing that the 1862 and 1890 land-grant institutions be required to submit a Plan of Work Update only for FY 2005 and FY 2006, instead of submitting a new 5-Year Plan of Work for FY 2005–FY 2009, as CSREES needs to incorporate the recommendations from the USDA Office of Inspector General (OIG) Audit No. 13001–3–Te, CSREES Implementation of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) into the 5-Year Plan of Work. Consequently, once the final audit recommendations are made, CSREES needs time to develop a viable electronic option for compliance with the Government Paperwork Elimination Act (GPEA). Currently, institutions are submitting their reports via e-mail in WordPerfect file format, Microsoft Word file format, or ASCII file format, and CSREES proposes to have the institutions to do so until a viable electronic option is available.

The objective of the USDA OIG Audit is to determine whether CSREES established effective controls to ensure land-grant institutions implemented AREERA provisions in accordance with the law and regulations. The audit began on November 8, 2002, and the fieldwork is still being conducted. CSREES would like to consider the findings and recommendations of that audit in the design of the next 5-year plan of work. Time also is needed for CSREES to consult with its partnering institutions—1862 and 1890 land-grant institutions—in any redesign of the plan-of-work reporting system or extensive revision of the existing Guidelines for the State Plans of Work. This 2-year period will allow for the consideration of the USDA OIG audit findings and recommendations, opportunity to consult with the 1862 and 1890 land-grant institutions on any extensive revisions to the current Guidelines for State Plans of Work, and the development of a viable electronic option in compliance with GPEA.

CSREES also is proposing to change the due date of the Annual Report of Accomplishments and Results from March 1 to April 1. On December 28, 2000 (65 FR 82317), CSREES changed the original due date for the Annual Reports of Accomplishments and Results from December 31 to the following March 1 after consultation with the 1862 and 1890 land-grant institutions. CSREES is now proposing to extend the due date for the Annual Report of Accomplishments and Results to April 1, 2004, for FY 2003; April 1, 2005, for FY 2004; April 1, 2006, for FY 2005; and April 1, 2007, for FY 2006.

Pursuant to the plan of work requirements enacted in the Agricultural Research, Extension, and Education Reform Act of 1998, the Cooperative State Research, Education, and Extension Service hereby to add Part V, FY 2005–FY 2006 Plan of Work Update, to the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds as follows:

Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds

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V. Submission of the FY 2005–2006 Plan of Work Update

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The FY 2005–FY 2006 Plan of Work Update is a prospective plan that extends coverage of the original 5-Year Plan of Work (*i.e.*, FY 2000–FY 2004) to include FY 2005–FY 2006. The FY 2005–2006 Plan of Work Update should be prepared for an institution's individual functions (*i.e.*, research or extension activities), for an individual institution (including the planning of research and extension activities), or for state-wide activities (a 5-year research and/or extension plan of work for all the eligible institutions in a State), as they were submitted in the original 5-Year Plan of Work that was due on July 15, 1999. Each FY 2005–FY 2006 Plan of Work Update must reflect the content of the program(s) funded by Federal agricultural research and extension

formula funds and the required matching funds. This FY 2005–FY 2006 Plan of Work Update must continue to describe not only how the program(s) address critical short-term, intermediate, and long-term agricultural issues in a State, but how it relates to and is part of the five broad national goals as outlined above and originally described in the previous 5-year plan of work, thus expanding upon and extending the existing plan with new or continuing efforts.

The FY 2005–FY 2006 Plan of Work Update should continue to be based on the five original national goals established in the FY 2000–FY 2004 5-year Plan of Work as described in section II.B.1.

2. Period Covered

The FY 2005–FY 2006 Plan of Work Update will extend the current 5-Year Plan of Work that covered the period from October 1, 1999, through September 30, 2004, to include the period from October 1, 2004, through September 30, 2006.

3. Projected Resources

The resources that are allocated for various planned programs in the FY 2005–2006 Plan of Work Update, in terms of human and fiscal measures, should be included and projected to include the sixth and seventh years. The baseline for the institution's or State's initial plan (for the two years) should be the Federal agricultural research and extension formula funds for FY 1999 and the required level (*i.e.*, percentage) of matching funds for FY 2005 and FY 2006.

4. Submission and Due Date

The FY 2005–FY 2006 Plan of Work Update must be submitted by April 1, 2004, to the Planning and Accountability Unit, Office of the Administrator of the Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture. It is preferred that these FY 2005–FY 2006 Plan of Work Updates be submitted electronically to *bhewitt@csrees.usda.gov* in either WordPerfect file format, Microsoft Word file format, or ASCII file format. It also is requested that the FY 2003 Annual Report of Accomplishments and Results be submitted with the FY 2005–FY 2006 Plan of Work Update in order to facilitate a more efficient and comprehensive review for both CSREES and the land-grant institutions.

5. Certification

The FY 2005–FY 2006 Plan of Work Updates must be signed by the 1862 Extension Director, 1862 Research Director, 1890 Extension Administrator, and/or 1890 Research Director, depending on the planning option chosen.

B. FY 2005–2006 Plan of Work Update Evaluation by CSREES

1. Schedule

All FY 2005–FY 2006 Plan of Work Updates will be evaluated by CSREES in conjunction with the review of the FY 2003 Annual Report of Accomplishments and Results. The FY 2005–FY 2006 Plan of Work Update will either be accepted by CSREES without change or returned to the institution, with clear and detailed recommendations for its modification. The submitting institution(s) will be notified by CSREES of its determination within 90 days (review to be completed in 60 days, communications to the institutions allowing a 30-day response) of receipt of the document. Adherence to the Plan of Work schedule by the recipient institution is critical to assuring the timely allocation of funds by CSREES. The FY 2005–FY 2006 Plan of Work Updates accepted by CSREES will be in effect for the period beginning October 1, 2004, through September 30, 2006. CSREES will notify all institutions of a need for a new 5-year plan of work two years prior to the plan's expiration on September 30, 2006.

2. Review Criteria

CSREES will evaluate the FY 2005–FY 2006 Plan of Work Update according to the criteria in section II.C.2.

Done at Washington, DC, this 1st day of August, 2003.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 03–20122 Filed 8–6–03; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Record of Pooled Farm Allotment or Quota, Application for Transfer of Allotment or Quota from Pool, and Request for Tobacco Disaster Credit

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on the reinstatement with revision of a previously approved information collection and on a new information collection transaction. The revision to the information collection is to remove all references to peanuts. The three forms will be used in administering the tobacco marketing quota program.

DATES: To be assured of consideration, comments about this notice must be received in writing on or before October 6, 2003. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the Director, Tobacco Division, FSA, USDA, 1400 Independence Avenue, SW., Room 5750–S, STOP 0514, Washington, DC 20250–0514; and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be submitted via facsimile to (202) 720–0549 or by e-mail to *tob_comments@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco Division, at (202) 720–2715 or at *ann_wortham@wdc.usda.gov.* The public may inspect comments received and copies of the forms at the Tobacco Division at the address shown above during normal business hours. Visitors are encouraged to call ahead at (202) 720–7413 to facilitate entry into the building. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collections

Title: Record of Pooled Farm Allotment of Quota.

OMB Control Number: 0560–0033.

Form Number: FSA–177.

Type of Request: Reinstatement With Revision of a Previously Approved Information Collection.

Abstract: The 'Record of Pooled Farm Allotment or Quota' form is used to record tobacco allotments or quotas that are to be held in a reserve 'pool' for landowners who have been displaced because their farms have been taken by power of 'eminent domain' by a Federal, State, or other agency either by court proceedings to condemn the land or by negotiation between the agency and the owner of the land. When an owner is displaced from a farm in such a way, the owner shall notify the FSA County Committee at the FSA County office where the farm is located so that the farm allotment or quota may be placed

in an eminent domain pool. The allotment or quota thus placed in a pool is held for the displaced owners to transfer to other farms they own or may purchase. An owner must request transfer of the allotment or quota from the pool within 3 years from the date of displacement from the farm to which the allotment or quota originally belonged. Pooled allotments or quotas shall be considered fully planted and, for each year in the pool, shall be established in accordance with tobacco marketing quota regulations. (An owner is a person, or persons in a joint ownership, having title to the land for a period of at least 12 months immediately prior to the date of eminent domain acquisition.)

Estimate of Annual Burden: 50 minutes.

Type of Respondents: Tobacco allotment or quota holders who are displaced from their land when such land is taken by eminent domain acquisition.

Estimated Annual Number of Respondents: 12.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours.

Title: Application for Transfer of Allotment or Quota From Pool.

OMB Control Number: 0560–0033.

Form Number: FSA–178.

Type of Request: Reinstatement with Revision of a Previously Approved Information Collection.

Abstract: A person who has been displaced from her/his farm by eminent domain and who placed that farm's tobacco allotment or quota in a pool, will use the 'Application for Transfer of Allotment or Quota From Pool' to transfer the pooled tobacco to another farm which she/he owns or has purchased. The request for transfer must be made within 3 years from the date of displacement and submitted for approval to the FSA County Office in which the receiving farm is located.

Estimate of Annual Burden: 50 minutes.

Type of Respondents: Tobacco allotment or quota holders who are displaced from their land when such land is taken by eminent domain acquisition.

Estimated Annual Number of Respondents: 12.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours.

Title: Request for Tobacco Disaster Credit.

OMB Control Number: 0560–0033.

Form Number: FSA–182.

Type of Request: New collection.

Abstract: Tobacco growers whose crop either could not be planted or that failed because of a natural disaster will use the 'Request for Tobacco Disaster Credit'. When a grower is faced with either condition, the grower may supply information pertaining to the disaster to the County Committee of the FSA County office where the tobacco farm is located, requesting disaster credit for the affected acreage. Data provided by the grower in this information collection transaction include such things as the kind and amount of tobacco impacted, weather conditions which affected it, and management practices that were used in planting, or preparing to plant the crop.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: Allotment or quota growers who were prevented from planting tobacco, or whose tobacco crop failed, because of a disaster.

Estimated Annual Number of Respondents: 12.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the purposes stated and the proper performance of FSA, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public records. Comments will be summarized and included in the submission for Office of Management and Budget Approval.

Signed at Washington, DC, on July 28, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–20083 Filed 8–6–03; 8:45 am]

BILLING CODE 3451–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Online Registration for FSA-sponsored Events and Conferences

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; Request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency is seeking comments from all interested individuals and organizations on an extension without revision of the information collection associated with online registration for FSA-sponsored events and conferences. The information collection is needed for FSA to obtain information from the respondents who register on the Internet to make payment and reservations to attend any FSA-sponsored conferences and events.

DATES: Comments must be received in writing on or before October 6, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Farm Service Agency, USDA, Office of External Affairs, Jeff Kerby, 1400 Independence Avenue, SW., Washington, DC 20250. Comments also may be submitted via facsimile to (202) 720–2979 or by e-mail to: *jeff.kerby@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Kerby, Office of External Affairs, (202) 720–1593. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Online Registration for FSA-sponsored Events and Conferences

OMB Number: 0560–0226.

Expiration Date of Approval: 12/31/03.

Type of Request: Extension with no revision.

Abstract: The collection of information is necessary for people to register online to make payment and reservations to attend conferences and events. They can register on FSA's Online Registration site on the Internet. Respondents who do not have access to the Internet can register by mail or fax. The information is collected by the FSA employees who sponsor the conferences and events. The FSA is collecting

common elements from interested respondents such as name, organization, address, country, phone number, State, City or Town, payment options (cash, credit card, check) and special accommodations requests. The respondents are mainly individuals who are interested in attending the FSA-sponsored conferences or events. The information is used to collect payment from the respondents and make hotel reservations and other special arrangements as necessary.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 900.

Estimated Annual Number of Responses per Respondent: 900.

Estimated Total Annual Burden on Respondents: 225.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on July 28, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–20084 Filed 8–6–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Release of Georgia Tobacco Farmers' Social Security Numbers to the State of Georgia for Matching Payments Under the Tobacco Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Farm Service Agency's (FSA's) intent to release the Social Security Numbers of those Georgia tobacco farmers who received 2003 Federal Tobacco Payment Program (TOPP) payments to the State of Georgia and instructs interested parties how to opt out of the release. Social Security Numbers will enable Georgia to distribute an identical sum of State funds to each Georgia farmer who received a Federal TOPP payment.

DATES: To be assured of consideration, requests for exemption from the release of Social Security information must be received in writing on or before August 22, 2003.

ADDRESSES: Mail or hand-deliver requests to opt out of the release of Social Security information to Director, Tobacco Division, FSA, USDA, 1400 Independence Avenue, SW., Room 5750–S, STOP 0514, Washington, DC 20250–0514. Also, requests may be sent by facsimile to (202) 720–9832 or by e-mail to *tob_comments@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Agricultural Program Specialist, Tobacco Division, FSA, USDA, STOP 0514, 1400 Independence Avenue, SW,, Washington, DC 20250–0514: Telephone—(202) 720–2715; e-mail—*ann_wortham@wdc.usda.gov*

SUPPLEMENTARY INFORMATION: Section 205 of the Agricultural Assistance Act of 2003 (Pub. L. 108–7) (the Act) provides for Federal TOPP payments to be made to eligible persons for certain kinds of tobacco. Tobacco farmers who applied for Federal TOPP payments were required to provide their Social Security Numbers to the Farm Service Agency (FSA).

The Act includes a special rule for Georgia that requires that Federal payments would be made to farmers in Georgia only if the State of Georgia agreed to use $13,000,000 of State funds to make payments concurrently, or subsequently, to the same persons and in the same manner as stipulated for the TOPP payments.

In order to efficiently and expeditiously make the matching payments to Georgia tobacco farmers, the State of Georgia has requested that FSA provide the names, addresses, Social Security Numbers, and the amount of money to be paid to each farmer. Precautions will be taken to ensure that the Social Security information will only be used by the State of Georgia to make matching payments and will not be released to outside entities or individuals. The matching State payments can provide much needed financial help to Georgia farmers and therefore the Secretary intends to release the Social Security Numbers to the State of Georgia. However, because Social Security Numbers are private, the Secretary will not release the Social Security Numbers of Georgia tobacco farmers who request that they not be released. Farmers who want to opt out of the release must send written notice of their election to the Director of the Tobacco Division, as provided in the **ADDRESSES** section of this notice.

Each farmer should understand that not releasing his or her Social Security Number to the State of Georgia could result in a delay in receiving a payment from the State or ineligibility for such a payment. FSA does not expect many farmers to opt out of the release.

Signed at Washington, DC, on August 1, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–20117 Filed 8–4–03; 12:08 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Interpretive Services at Ancient Bristlecone Pine Forest in the Inyo National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on a new information collection, Interpretive Services at Ancient Bristlecone Pine Forest in the Inyo National Forest. This study requires administration of a survey to a statistical sample of site visitors.

DATES: Comments must be received in writing on or before October 6, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. James Absher, USDA Forest Service, Pacific Southwest Research Station, 4955 Canyon Crest Drive, Riverside, CA 92507. Comments also may be submitted via facsimile to (909) 680–1501 or by e-mail to *jabsher@fs.fed.us.* The public may inspect comments received at the address given previously during normal business hours. Visitors are encouraged to call ahead to (909) 680–1559 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. James Absher, Pacific Southwest Research Station, at (909) 680–1501.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Interpretive Services at Ancient Bristlecone Pine Forest.

OMB Number: 0596–New.

Type of Request: New.

Abstract: As part of a continuing research effort to develop and try alternative approaches for evaluating recreational services on public lands, this information collection will focus entirely on visitors to the Ancient Bristlecone Forest in the Inyo National Forest of California, which is an important tourist destination. The information collected will help forest managers better understand how and why visitors use the interpretive opportunities provided and ways to improve service delivery. It will contribute to the assessment of recreational opportunities and to the forest's public programs in general. Researchers will use three methods to collect the information: (1) On-site observation of site use—for example, time spent on an interpretive trail or inside the visitor center, (2) an interview, or (3) a self-administered, written questionnaire. Both the interview and questionnaire are voluntary and will contain questions about how, why, and when visitors used interpretive services at Ancient Bristlecone Pine Forest, whether these services meet their needs, and how they think the interpretive services might be improved.

Experts in recreation, social science and interpretive services from the Forest Service and cooperating universities, in consultation with the Inyo National Forest staff, will develop the surveys. The researchers will then administer the surveys to a random sample of visitors at Ancient Bristlecone Pine Forest, analyze the information and incorporate the results and recommendations into reports for use by managers and other researchers. This survey is necessary to provide land managers with reliable information about site visitors and to improve customer and information services.

Estimate of Annual Burden: 20 minutes per respondent.

Type of Respondents: Randomly selected individuals visiting the interpretive services at Ancient Bristlecone Pine Forest, Inyo National Forest, California.

Estimated Annual Number of Respondents: 1,000.

Estimated Annual Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 333 hours.

Comment is Invited

Comment is invited on: (1) The necessity of the information collection for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the information collection burden, 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: August 1, 2003.

Robert Lewis, Jr.,

Deputy Chief for Research and Development.

[FR Doc. 03–20142 Filed 8–6–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee M]eeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, July 21, 2003. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is: Discuss reciting the Flag Salute to open meeting, review any new RAC proposals, review progress of FY 2002 accounting, update on new Forest Service Region 5 RAC website, finalize Madera County RAC mission and clarity voting procedures.

DATES: The Madera Advisory Committee meeting will be held Monday, August 18, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neals, CA 93645.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Discuss reciting the Flag Salute to open meeting, (2) review any new RAC proposals, (3) review progress of FY 2002 accounting, (4) update on new Forest Service Region 5 RAC website, (5) finalize Madera County RAC mission, and (6) clarify voting procedures. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 1, 2003.

David W. Martin,

District Ranger.

[FR Doc. 03–20089 Filed 8–6–03; 8:45 am]

BILLING CODE 3410–11––M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–01–SA]

Designation for the Grand Forks (ND) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Grain Inspection, Inc. (Jamestown);

Minot Grain Inspection, Inc. (Minot);

North Dakota Grain Inspection Service, Inc. (North Dakota); and

Northern Plains Grain Inspection Service, Inc. (Northern Plains).

EFFECTIVE DATE: October 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@ usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and

determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 2003, **Federal Register** (68 FR 9971), GIPSA asked persons interested in providing official services in the geographic area assigned to Grand Forks Grain Inspection Department, Inc. (Grand Forks), to submit an application for designation. Applications were due by April 1, 2003.

There were five applicants for the Grand Forks Area: Grand Forks, Jamestown, Minot, and North Dakota, all currently designated official agencies; and Paul B. Bethke, Terry D. Pladson, and Ryan M. Kuhl proposing to do business as Northern Plains Grain Inspection Service, Inc. Grand Forks applied for designation to provide official services in the entire area currently assigned to them. Jamestown, Minot, North Dakota, and Northern Plains, applied for all or part of the area currently assigned to Grand Forks.

GIPSA asked for comments on the applicants for providing service in the Grand Forks area in the May 1, 2003, **Federal Register** (68 FR 23279). Comments were due by May 1, 2003. GIPSA received 40 comments by the due date. Grand Forks received 14 favorable comments, 13 from grain elevator managers and one from Grand Forks' owner; and one unfavorable comment from a grain elevator manager. Jamestown received six favorable comments from grain elevator managers. Minot received one favorable comment from a grain elevator manager. North Dakota received five favorable comments from elevator managers. Northern Plains received 12 favorable comments and one unfavorable comment from grain elevator managers.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l)(A) of the Act and, according to section 7(f)(l)(B), determined the following. Jamestown is better able to provide services in the southwestern portion of the Grand Forks area in North Dakota, as follows: the remainder of Wells and Eddy Counties in addition to the area they already serve. Minot is better able to provide services in the western portion of the Grand Forks area in North Dakota, as follows: the remainder of Bottineau County, in addition to the area they already serve. North Dakota is better able to provide services in the southeastern portion of the Grand Forks area in North Dakota, as follows: the remainder of Traill County, in addition to the area they already serve. Northern Plains is better able to provide services in a portion of the Grand Forks area in North Dakota, as follows: Benson, Cavalier, Grand Forks, Nelson, Ramsey, Rolette, Pembina, Pierce (the eastern portion only), Towner, and Walsh Counties.

These designation actions to provide official inspection services are effective October 1, 2003, and run concurrent with the official agencies' present designations, in the geographic areas specified above in addition to any areas they are already designated to serve, if applicable. North Dakota's current designation ends March 31, 2005; Jamestown's current designation ends March 31, 2006; Minot's current designation ends June 30, 2006. Northern Plains is designated for 18 months only to provide official services in the geographic area for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start–end
Jamestown	Jamestown, ND 701–252–1290	04/01/2003–03/31/2006
Minot	Minot, ND 701–838–1734	07/01/2003–06/30/2006
North Dakota	Fargo, ND 701–293–7420 Additional locations: Ayr, Enderlin, and Hillsboro, ND.	04/01/2002–03/31/2005
Northern Plains	Grand Forks, ND 701–772–2414 Additional location: Devils Lake, ND.	10/01/2003–03/31/2005

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: August 4, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–20123 Filed 8–6–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 37–2003]

Foreign-Trade Zone 82—Mobile, AL; Request for Manufacturing Authority, Bender Shipbuilding and Repair Company (Shipbuilding)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Mobile, Alabama, grantee of FTZ 82, pursuant to Section 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Bender Shipbuilding and Repair Company (Bender) to construct and repair oceangoing vessels under FTZ procedures within FTZ 82. It was formally filed on July 29, 2003.

The Bender facility is used for the construction, repair, and conversion of commercial and military vessels for domestic and international customers. Foreign components that may be used at the shipyard (up to 20% of finished vessel value) include: plastic tubes/pipes/hoses/fittings/closures/cases/bags/crates, rubber mats/gaskets/o-rings/seals/dock fenders/knobs/dampeners, knotted rope/twine, glass fibers, articles of glass, steel mill products (must be admitted under privileged foreign status (19 CFR 146.41)), steel and iron pipe/tube/profiles/casings/fittings, bridges and bridge sections, roofing, siding, flooring, cooking appliances, hangers, copper and brass bar/rods/profiles, aluminum plate/sheet/strip/bar/profiles/tube/wire, articles of aluminum (bridge sections and structures, roofing, guttering, siding, tanks, reservoirs, drums, cans, cable, frames, fasteners, hangers), metal hinges, pneumatic cylinders, door closers, pumps, air conditioners, fire extinguishers, sprinkler systems, air cleaners, de/humidifiers, trash compactors, valves, transmissions and related parts, gears, flywheels, pulleys, propellers, transformers, converters, inductors, radar apparatus, television equipment, smoke detectors, alarms, indicator panels, printed circuits, electrical switches/relays/fuses/surge suppressors/connectors/terminals, generators, lamps, wiring harnesses, fiber optic cable, navigational equipment, thermostats, monostats, regulators, controllers, lamps, and lighting fixtures (2003 duty rates: free—14.3%).

FTZ procedures would exempt Bender from Customs duty payments on the foreign components (except steel mill products) used in export activity. On its domestic sales, the company

would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign-origin components noted above. Duties would be deferred or reduced on foreign production equipment admitted by Bender to the zone until which time it becomes operational. The manufacturing activity conducted under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign-origin steel mill products (*e.g.*, angles, pipe, plate), which requires that Customs duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

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 22, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 6, 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.

Dated: July 29, 2003.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 03–20178 Filed 8–6–03; 8:45 am]

BILLING CODE 3510–D8–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative and new shipper reviews.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China until October 31, 2003. This extension applies to the administrative review of four exporters, Jinan Yipin Corporation, Ltd., Shandong Heze International Trade and Developing Company, Top Pearl Ltd., and Wo Hing (H.K.) Trading Co., and the new shipper reviews of three exporters, Jining Trans-High Trading Company, Zhengzhou Harmoni Spice Co., Ltd., and Xiangcheng Yisheng Foodstuffs Co., Ltd.[1] The period of review is November 1, 2001, through October 31, 2002.

EFFECTIVE DATE: August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Ellman or Minoo Hatten, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4852 and (202) 482–1690, respectively.

Background

On December 26, 2002, the Department of Commerce (the Department) published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (67 FR 78772), in which it initiated an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). On January 6, 2003, the Department published in the **Federal Register** the *Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China* (68 FR 542), in which it initiated new shipper reviews for three companies. On March 10, 2003, we aligned the new shipper reviews with the administrative review pursuant to 19 CFR 351.214(j). As such, the time limits for the new shipper reviews were aligned with those for the administrative review. See memorandum to the File from Jennifer Moats entitled ''Request for Alignment of Annual and New Shipper Reviews,'' dated March 10, 2003.

Extension of Time Limit for Preliminary Results of Administrative and New Shipper Reviews

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department has determined that the aligned administrative review and new shipper reviews are extraordinarily complicated and that it is not practicable to complete the preliminary results by the current deadline of August 2, 2003. There are a number of complex factual and legal questions related to the calculation of the antidumping margins in the administrative review and new shipper reviews, in particular the analysis of the *bona fides* of the sales at issue and the valuation of the factors of production. We require additional time to issue supplemental questionnaires addressing these matters, review the responses, and verify certain information. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 90 days, until no later than October 31, 2003.

Dated: August 1, 2003.

Laurie Parkhill,

Acting Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. 03–20175 Filed 8–6–03; 8:45 am]

BILLING CODE 3510–DS–P

[1] On July 31, 2003, we issued a notice partially rescinding the administrative review covering sales made during the period November 1, 2001, through October 31, 2002, by Clipper Manufacturing Ltd., Fook Huat Tong Kee Pte., Ltd., Huaiyang Hongda Dehydrated Vegetable Company, Golden Light Trading Company, Ltd., Good Fate International, Phil-Sino International Trading Inc., and Mai Xuan Fruitex Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part: For the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review and intent not to revoke in part.

SUMMARY: In response to requests by interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain pasta (''pasta'') from Italy for the period of review (''POR'') July 1, 2001 through June 30, 2002.

We preliminarily determine that during the POR, Pastificio Garofalo S.p.A. (''Garofalo''), IAPC Italia S.r.l. (''IAPC''), and Industria Alimentare Colavita, S.p.A. (''Indalco'') and its affiliate Fusco S.r.l. (''Fusco'') (collectively ''Indalco''), P.A.M. S.p.A. (''PAM''), Molino e Pastificio Tomasello S.r.l. (''Tomasello''), and Pastificio Zaffiri S.r.l. (''Zaffiri''), sold subject merchandise at less than normal value (''NV''). If these preliminary results are adopted in the final results of this administrative review, we will instruct the Bureau of Customs and Border Protection (''BCBP'') to assess antidumping duties equal to the difference between the export price (''EP'') or constructed export price (''CEP'') and NV.

We preliminarily determine that during the POR, Pastificio Guido Ferrara (''Ferrara''), Pastificio Antonio Pallante S.r.l. (''Pallante'') and its affiliate Industrie Alimertari Molisane s.r.l (''IAM'') (collectively ''Pallante''), Pastificio F.LLI Pagani S.p.A. (''Pagani'') and Rummo S.p.A. Molino e Pastificio (''Rummo'') did not make sales of the subject merchandise at less than NV (*i.e.*, sales were made at ''zero'' or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct the BCBP to liquidate appropriate entries without regard to antidumping duties. Furthermore, two companies, F. Divella S.P.A. (''Divella'') and Labor S.r.l.(''Labor''), timely withdrew their requests for review of the antidumping order. Because the requests were timely and there were no other requests for review of the companies, we are rescinding the review for these two companies. *See* 19 CFR 351.213(d)(i).

Finally, we preliminarily intend not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Pagani because its sales were not made in commercial quantities. *See* 19 CFR 351.222 (e)(ii)) and ''Intent Not to Revoke'' section of this notice.

Interested parties are invited to comment on these preliminary results and partial recission. Parties who submit comments in this segment of the proceeding should also submit with them: (1) A statement of the issues; and (2) a brief summary of the comments. Further, parties submitting written comments are requested to provide the Department with an electronic version of the public version of any such comments on diskette.

EFFECTIVE DATE: August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey or Carrie Farley, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793 or (202) 482–0395, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreement Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Case History

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy; *see Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy* (61 FR 38547). On July 1, 2002, we published in the **Federal Register** the notice of ''Opportunity to Request Administrative Review'' of this order (67 FR 44172).

On July 31, 2002, we received requests for review from petitioners,[1] and from individual Italian exporters/producers of pasta, in accordance with 19 CFR 351.213(b)(2). There were requests made for thirteen Italian companies. In addition, on July 31, 2002, Pagani requested that the Department revoke the antidumping duty order with respect to it. *See* ''Intent Not to Revoke'' section of this notice.

On August 27, 2002, we published the notice of initiation of this antidumping duty administrative review covering the period July 1, 2001, through June 30, 2002, listing these thirteen companies as respondents: Divella, Ferrara, Garofalo, IAPC, Indalco, IAM, Labor, Pagani, Pallante, PAM, Rummo, Tomasello and Zaffiri.[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002) (*Initiation Notice*).

On August 29, 2002, we sent questionnaires to the twelve companies.

On October 2, 2002, Divella and Labor withdrew their requests for administrative review of the antidumping duty order.

During the most recently completed segments of the proceeding in which the following companies participated, the Department disregarded sales that failed the cost test: Indalco, Pagani, Pallante, PAM and Rummo.[3] Pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production (''COP''). Therefore, we initiated cost investigations of these companies, and instructed the companies to fill out sections A–D[4] upon issuance of the initial questionnaire. The companies submitted their section D responses on the following dates: Pagani on October 21, 2002; Indalco on October 28, 2002; Pallante on October 28, 2002; PAM on November 5, 2002; and Rummo on January 24, 2003.

After several extensions, the respondents submitted their responses to the appropriate sections of the questionnaire during the months of October and November 2002. In its

[1] New World Pasta Company; Dakota Growers Pasta Company; Borden Foods Corporation; and American Italian Pasta Company.

[2] Although the Department initiated this review on thirteen companies, included within that number were companies known to be affiliated, namely, Pallante/IAM and Indalco/Fusco. After accounting for known affiliated parties, this review covers twelve companies.

[3] The fourth administrative review was the most recently completed review for Pallante, PAM, and Rummo. *See Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy,* 67 FR 300 (January 3, 2002). The most recently completed review that Pagani participated in was the fifth administrative review. *See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy,* 68 FR 6882 (February 11, 2003). The first administrative review was the most recent segment of the proceeding in which Indalco participated. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy,* 64 FR 6615 (February 10, 1999).

[4] Section A: Organization, Accounting Practices, Markets and Merchandise;

Section B: Comparison Market Sales;

Section C: Sales to the United States;

Section D: Cost of Production and Constructed Value.

initial release of the antidumping questionnaire, the Department did not require Ferrar, Garofalo, IAPC, Tomasello, or Zaffiri to respond to section D of the questionnaire.

As stated in its questionnaire response, IAPC filed a Section D response because some of its U.S. sales had no contemporaneous comparison market matches during the appropriate window period. *See* IAPC's response to the Section D questionnaire (November 4, 2002). Although IAPC had a viable comparison market, for those sales which did not have a comparison market match, we used constructed value (''CV'').

In November 2002, petitioners submitted cost allegations against Ferrara, Garofalo, Tomasello, and Zaffiri. We determined that petitioners' cost allegations provided a reasonable basis to initiate a COP investigation, and as a result, we initiated cost investigations of these four companies. *See* the company-specific COP initiation memoranda, dated December 13, 2002, in the case file in the Central Records Unit, main Commerce building, room B–099 (''the CRU''). Also on December 13, 2002, we informed these four companies that they were required to respond to the section D of the antidumping questionnaire. *See* December 13, 2002, letters from the Department to these respondents requiring section D questionnaire responses, in the CRU. On January 27, 2003, we received responses to the section D questionnaires from the above-mentioned companies.

On March 27, 2003, the Department published an extension of preliminary results of this review, extending its preliminary results until July 31, 2003. *See Certain Pasta from Italy: Extension of Preliminary Results of Antidumping Duty Administrative Reviews,* 68 FR 14945 (March 27, 2003).

During the months of February, March, April, and May of 2003, the Department issued supplemental, second supplemental, and third supplemental questionnaires to each respondent, as applicable.

We conducted verification of the sales information as follows: (1) Indalco/Fusco from June 12 through June 25, 2003; (2) PAM from May 12 through May 16, 2003; (3) Rummo and Rummo USA from June 3 through June 11, 2003; (4) Tomasello from June 2 through June 6, 2003; and (5) Zaffiri from June 9 through June 13, 2003. We verified the cost information submitted by: (1) Indalco/Fusco from May 5 through May 9, 2003; (2) Rummo from May 26 through May 30; (3) Tomasello from May 19 through May 23, 2003; and (4) Zaffiri from May 12 through May 16, 2003. The Department did not verify PAM's cost information. However, on May 21, 2003, the Department sent PAM a second supplemental section D questionnaire. PAM's response was originally due on June 4, 2003. At PAM's request, the Department granted PAM an extension until June 18, 2003, to submit its response to the second supplemental section D questionnaire. On June 18, 2003, PAM submitted its response. The Department, in reviewing PAM's response, discovered that PAM had included untimely filed new factual information in the response.

On July 1, 2003, the Department rejected PAM's second supplemental section D questionnaire response because it contained untimely filed new factual information. PAM was requested to re-submit the response without this information. *See* The Department's Letter to David Craven, counsel for PAM, dated July 1, 2003, in the CRU. On July 2, 2003, PAM asked for an extension to re-submit its June 18, 2003, response to the second supplemental section D questionnaire and requested that the Department reconsider its rejection of the untimely filed new factual information. The Department granted PAM's request for an extension and subsequently further extended PAM's time to re-submit the response upon being informed by PAM that it was experiencing difficulties delivering the submission. *See* July 9, 2003, Memorandum to the File from Lyman Armstrong to Eric B. Greynolds, Program Manager, regarding an additional extension for the removal of untimely filed new factual information, in the CRU. On July 21, 2003, the Department informed PAM that at PAM's request, it had reconsidered its July 1, 2003, rejection of PAM's untimely new factual information, and that it continued to determine not to accept PAM's untimely filed new factual information. *See* July 21, 2003 letter to PAM; *see also* July 21, 2003, Memorandum to the File from Nancy Decker, Senior Accountant, through Michael Martin, Program Manager, available in the CRU.

Affiliations

Petitioners have alleged that because Garofalo and Pastificio Antonio Amato & C. S.p.A. (''Amato''), a pasta company, were found to be affiliated pursuant to section 771(33) of the Act in the fifth review, they should be determined to be affiliated for this review and collapsed, in accordance with 19 CFR 351.401(f).

Section 771(33) of the Act considers the following persons to be affiliated: members of a family; any officer or director of an organization and the organization; partners; employer and employee; persons directly or indirectly owning, controlling, or holding with the power to vote five percent or more of outstanding stock or shares of an organization and the organization; two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and any person who controls any other person and that person. As further provided in section 771(33) of the Act, ''A person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.'' Section 351.401(f)(1) of the Department's regulations states that in an antidumping proceeding, the Department ''will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.'' Paragraph two of that section goes on to state that in identifying a significant potential for manipulation, the Department may consider:

- The level of common ownership;
- The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers.

In the previous review, we found that Garofalo and Amato were affiliated pursuant to 771(33) of the Act, but that there was no common control, and consequently, a significant potential to manipulate products or prices did not exist to justify collapsing the two companies. *See* Petitioners' November 5, 2002 Submission, Attachment 1, July 31, 2002 Memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, ''Whether to Collapse Garofalo and Amato in the Preliminary Results'' (''Garofalo Collapsing Memo''), the public and proprietary versions of which are on file in the CRU. *See also Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy,* 68 FR 6882 (February 11, 2003).

In the current review, petitioners have provided no new information or argument on the relationship between Garofalo and Amato, nor has the Department discovered new information during the course of this review. Consequently, the Department's analysis from the previous review, which is contained in the Garofalo Collapsing Memo that the petitioners placed on the record in this review, is adopted in its entirety. For the reasons set forth in the Garofalo Collapsing Memo, the Department determines that Garofalo and Amato are affiliated pursuant to section 771(33) of the Act and 19 CFR 351.102(a), but lack common control, so that a significant potential to manipulate products or prices does not exist and it is not appropriate to collapse the two companies under section 351.401(f) of the Department's regulations.

In Indalco's April 30, 2003, second supplemental questionnaire response, Indalco presented the Department with evidence that Indalco and Fusco are affiliated by means of common ownership and common board of directors, and therefore should be collapsed. Because both companies have production facilities which would not require substantial retooling for producing similar or identical products, and there is a significant potential for the manipulation of prices or production, as demonstrated by the level of common ownership, the commonality of the board of directors and the intertwined operations of the companies, there is sufficient record evidence supporting a finding that Indalco and Fusco should be collapsed in the preliminary results.

On the basis of this information, and because nothing we reviewed at the verification of these companies caused us to revise our position, the Department has preliminarily determined to collapse Indalco and Fusco pursuant to section 351.401(f)(1) of the Department's regulations. For a more detailed discussion on the Department's decision to collapse Indalco and Fusco, *see* the May 14, 2003, Memorandum to Melissa Skinner from Eric Greynolds, Re: Whether to Collapse Industri Alimentare Colavita S.p.A. (''Indalco'') and Fusco S.r.l. (''Fusco''), in the case file in the CRU.

On December 19, 2002, petitioners alleged that Rummo and one of its U.S. customers were affiliated under section 771(33) of the Act and section 351.102(b) of the Department's regulations. As noted above, the Act and the Department's regulations direct the Department to find affiliation between two parties when one party is able to control another party. The statute provides that control can be established if one person is legally or operationally able to ''exercise restraint or direction'' over the other. Section 351.102(b) of the regulations contains a list of factors to be considered by the Department in determining whether control exists: corporate or family groupings, a franchise or joint venture agreement, debt financing, or a close-supplier relationship. The Department, however, may not find control based on these factors unless the relationship has the potential to impact decisions concerning the production, pricing or cost of the subject merchandise.

Specifically, petitioners cite four factors as evidence that Rummo is affiliated with its U.S. customer: (1) Warehouse and distribution arrangements; (2) sales process and sample U.S. sales documents demonstrating joint sales operations and common control over inventories; (3) Rummo's financial statements including an amount for a note receivable; and (4) a product brochure submitted in the questionnaire response providing information connecting the customer and Rummo. Although the petitioners have not specifically classified the bases for their claim, their allegations appear to be premised upon debt financing and a close-supplier relationship. *See* July 31, 2003 Memorandum from the Team to Melissa G. Skinner, through Eric Greynolds, regarding Whether Rummo S.p.A. Molino e Pastificio (Rummo) and one of its U.S. customers are Affiliated for the Preliminary Results.

On January 3, 2003, Rummo disputed petitioners' affiliation arguments. Respondents argue that petitioners failed to prove that affiliation exists through control between Rummo and its U.S. customer. Specifically, respondents claim that petitioners did not allege that Rummo has a ''close-supplier'' relationship with its U.S. customer. Respondents argue that petitioners' argument of a ''supplier/buyer'' relationship is an attempt to circumvent the ''close-supplier'' relationship threshold identified by the *Statement of Administrative Action* accompanying H.R. 5110, H.R. Doc. No. 316, Vol. 1, 103d Congr., 2d Sess. 911–955 (1994) (''SAA''). *See* SAA at 838.

With respect to the petitioners' allegation of debt financing, we find that the outstanding note receivable from the U.S. customer does not demonstrate that the companies are engaged in joint operations. The information on the record does not demonstrate that either company was providing financial support to the other during the POR. The record shows that the note receivable was given prior to the POR and was being repaid during the POR. Furthermore, we disagree with petitioners' argument that the outstanding note receivable indicates joint operations during the POR, as the financial statements show that the note receivable was being repaid rather than providing new debt financing.

The SAA describes ''close-supplier'' relationships as those ''in which the supplier or buyer becomes reliant upon the other.'' *See* SAA at 838; *see also Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from Indonesia,* 62 FR 1719, 1725 (Jan. 13, 1997). The evidence that petitioners refer to does not support a relationship in which one party is reliant upon the other. Rummo's sample sales documents do not demonstrate common control over inventories or an exclusive distributor relationship with the U.S. customer. Notably, Rummo USA provided evidence in its questionnaire response that it had customers in the U.S. market, other than the one that petitioners are alleging are affiliated. The evidence before the Department refutes petitioners' claim that Rummo and its customer have an exclusive distributor relationship.

We also find petitioners' argument that the U.S. customer has control over Rummo USA's inventory to be inaccurate and therefore not persuasive. For instance, Rummo's verification report at page 6, shows that Rummo USA and not its U.S. customer is in charge of: (1) Invoicing and billing; and (2) reordering when Rummo USA's warehouses' inventory is low. Rummo USA orders a product from Rummo when it needs more. *See* July 30, 2003, Memorandum to Eric B. Greynolds, Re: Verification of the Sales Response of Rummo S.p.A. Molino e Pastificio (Rummo) and Rummo USA Inc. (Rummo USA) in the Sixth Administrative Review of the Antidumping Duty Order of Certain Pasta from Italy (''Rummo's Verification Report''). Furthermore, as explained in Rummo's Verification Report, Rummo had to request that information pertaining to other customer's sales not be forwarded to the U.S. customer. If the U.S. customer had control over Rummo USA's warehousing and inventory there would be no reason for Rummo USA to make such a request to its freight company. Rummo USA and the U.S. customer are not engaged in joint warehousing or the joint marketing of pasta; we therefore find that the U.S. customer does not have control over Rummo USA's inventory.

We also disagree with petitioners' argument that Rummo USA and its U.S. customer have a warehouse and distribution agreement. During verification, we found that Rummo sends pasta to two types of warehouses: (1) Locations where Rummo USA rents space; and (2) direct containers. An official explained that for direct sales, Rummo ships to the customer's determined location, which Rummo provided in Appendix A–3 of its October 21, 2002 questionnaire response. Because the direct sales to the U.S. customer go to the company's designated location and Rummo USA rents its own warehouse space to hold its own inventory, we find that Rummo USA and its U.S. customer are not involved in joint warehousing.

Lastly, we find that Rummo's brochure which petitioners referenced as evidence of Rummo and its U.S. customer's exclusive importer/distributor relationship is outdated and, therefore, not persuasive in finding an exclusive importer/distributor relationship between Rummo and its U.S. customer during the POR. Rummo reported in its March 17, 2003 supplemental questionnaire response that, ''copies provided in the October 21, 2002 submission were in fact filed in a previous administrative review,'' thus the brochure was not current for this POR.

The facts before the Department do not support a finding ''in which the supplier or buyer becomes reliant upon the other.'' Neither Rummo nor Rummo USA are in a position to control its U.S. customer and this customer is similarly not in a position to exercise control over Rummo or Rummo USA. As such, the relationship between the companies is not a ''close-supplier'' relationship. Therefore, we preliminarily find that Rummo and its U.S. customer are not affiliated companies, as defined by 771(33) of the Act or section 351.102(b) of the regulations.

Partial Rescission

On October 2, 2002, Divella and Labor withdrew their requests for a review within 90 days of the publication of the *Initiation Notice*. Because the letters withdrawing the requests were timely filed, and because there were no other requests for review of Divella and Labor, we are rescinding the review with respect to Divella and Labor in accordance with 19 CFR 351.213(d)(1).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, or by Associazione Italiana per l'Agricoltura Biologica.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*''HTSUS''*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings and AntiCircumvention Inquiries

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders,* 65 FR 26179 (May 5, 2000).

(6) On July 30, 2003, we issued a preliminary finding on the anti-circumvention inquiry; however, the notice has not yet been published in the **Federal Register**. *See Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders.*

Verification

As provided in section 782(i) of the Act, we conducted verification of the sales and cost information provided by Indalco/Fusco, Rummo, Tomasello, and Zaffiri, and the sales information provided by PAM. We used standard verification procedures, including on-

site inspection of the manufacturers' facilities and examination of relevant sales and financial records. Our verification results are detailed in the company-specific verification reports placed in the case file in the CRU. We made certain minor revisions to certain sales and cost data based on verification findings. *See* the company-specific verification reports and calculation memoranda, in the CRU.

Adverse Facts Available

In accordance with section 776(a)(2) of the Act, the Department has determined that the use of facts available is appropriate for purposes of determining the preliminary antidumping duty margins for the subject merchandise sold by PAM. Section 776(a)(2) of the Act provides:

> If an interested party (A) withholds information that has been requested by the administrating authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and the manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Moreover, section 776(b) of the Act provides that;

> If the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, the administering authority, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.

PAM failed to provide significant home market sales information that was requested by the Department. The Department gave PAM many opportunities to report a complete home market sales database. Specifically, the Department issued to PAM two supplemental questionnaires in addition to the initial sections A–C of the questionnaire, and granted PAM's requests for extensions for each questionnaire response due date. Despite these opportunities, the Department discovered at verification that PAM failed to report at least two-thirds of the home market sales it was required to report. Prior to verification, the Department had no way of knowing such data was missing. In addition to the detailed instructions given in the questionnaires issued to PAM, PAM has participated in previous reviews of this order in which the Department verified PAM's sales information, and is therefore aware of the Department's reporting requirements. *See Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, Partial Recision of Antidumping Administrative Review, and Revocation of Antidumping Duty Order in Part,* 66 FR 300 (January 3, 2002); *see also Certain Pasta from Italy: Final Results of Antidumping Administrative Review and Determination to Revoke the Antidumping Duty Order in Part,* 65 FR 77853 (December 13, 2000). For the reasons set forth in the following sections, we have determinated that PAM's failure to report a significant portion of its home market sales warrants the use of facts otherwise available. Because the Department finds that PAM failed to cooperate by not acting to the best of its ability in complying with the Department's requests for a complete home market sales database, the Department is using an inference that is adverse to PAM.

PAM Verification Failure

On May 2, 2003, the Department issued a verification outline for PAM. As noted therein, the verification of PAM's questionnaire response was set for May 12 through May 16, 2003. Thereafter, from May 12 through May 16, 2003, the Department conducted a verification of PAM's questionnaire response at the company's headquarters in Gragnano, Italy. At the verification, as provided in the May 2, 2003 verification outline, the Department's verifiers required PAM to reconcile the total reported quantity and value of its home market sales to its financial records and to demonstrate the completeness of its reported home market sales database. In its verification outline, the Department requested that PAM prepare specific worksheets and have available certain records which the verifiers intended to use to ensure that PAM properly reported all of its home market sales of subject merchandise. *See* the May 2, 2003 letter from the Department to PAM, transmitting PAM's verification outline, available in the CRU (''As part of this review, we must ensure that all sales of the subject merchandise were properly included in, or excluded from, your sales listings.''). The Department also informed PAM in the letter transmitting the verification outline that:

> Please note that *verification is not intended to be an opportunity for submission of new factual information*. New information will be accepted at verification only when: (1) The need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record.

See PAM's verification outline (emphasis in original).

At verification, it became apparent to the Department's verifiers that PAM had failed to prepare most of the material requested by the Department in the verification outline. Although PAM provided invoices and other source documents, company officials had not prepared adequate supporting documentation in advance, such as the worksheets requested by the Department, to demonstrate how the total reported quantity and value of sales reconciled to the company's financial statements or accounting records. Despite this lack of preparation, during the course of the verification, the verifiers afforded PAM officials the opportunity to reconcile the total reported quantity and value of the company's home market sales to its financial records.[5] *See* the July 28, 2003, Memorandum to the File: Verification of PAM's Sales Response (''PAM's Sales Verification Report''). After discussions with company officials, and in the absence of prepared worksheets, the verifiers requested that the officials provide for review, a sales listings and records so that the Department could reconcile the total quantity and value reported in the U.S. and home market sales databases. PAM provided: (1) The VAT sales book for the months of October 2001 and May 2002 and the total of all invoices issued during the same period; (2) the VAT receipts for October 2001 and May 2002; and (3) a chart showing a breakout of the subject and non-subject merchandise sold during these two months. *See* PAM's Sales Verification Report at Exhibit 14.

Using this information, the Department was able to reconcile PAM's sales for the months of October 2001 and May 2002 to its financial statement. However, the verifiers noticed a large discrepancy between the numbers of sales reported in the home market database and the number of sales reported in VAT sales while checking invoices from the VAT sales account for the month of May 2002. Company officials were initially unsure as to the cause of this discrepancy, but did determine the source of the mistake. According to company officials there are several types of invoices used in PAM's computerized accounting system.

[5] Consistent with the instructions accompanying the verification outline, PAM did notify the Department of certain minor corrections to its databases prior to the start of verification.

Company officials stated that a particular type of invoice used in this review was not used in the prior review in which PAM participated, specifically those invoices issued by PAM for merchandise sold from a non-PAM warehouse. As the program which instructs PAM's accounting system to extract this information when reporting PAM's quantity and value of home market sales was not modified from the previous review, the sales associated with this new invoice type were not reported. *See* PAM's Sales Verification Report at page 18.

The verifiers reviewed a company generated list showing all invoices issued by PAM for merchandise sold from non-PAM warehouses for the month of May 2002, and noted that these sales were not reported to the Department. In addition, we noted that there were several of these invoices that were not included in this list, but appeared to reference subject merchandise sold in the home market. These missing invoices were all to one customer. When asked why PAM did not report these sales, company officials stated they thought that because the sales were outside of the ordinary course of trade, PAM was not required to report the invoices. PAM's failure to report these sales is contrary to the explicit instructions set forth in the initial questionnaire sent to PAM. *See* the General Instructions to the Department's August 29, 2003 Antidumping Duty Questionnaire at page G–7, number 13 (*''You must report all sales, including those sales which you believe are outside the ordinary course of trade.* If you claim that some sales are outside the ordinary course of trade, you should then identify those sales. You must include a complete explanation in your narrative why you consider those sales to be outside the ordinary course of trade.'') (emphasis added). Combining the sales to this customer and the FP invoices, PAM failed to report approximately two-thirds of its home market sales to the Department. *See* PAM's Sales Verification Report at page 18 and 19 (emphasis added).

The Department's antidumping analysis is based fundamentally on an evaluation of a respondent's home market and U.S. selling practices. Thus, complete and accurate reporting of home market sales is central to determining accurate dumping margins. The Department verified that only one-third of PAM's home market sales were reported. Therefore, the Department's ability to calculate PAM's dumping margin using the data reported by PAM has been severely compromised. Such a small sample may not provide a reasonable approximation of PAM's actual sales practice in the home market. Not only may these sales not be representative, but any allocated expenses calculated by PAM for these sales are incorrect, because allocated expenses are calculated by dividing the total expenditure on a particular item by total sales. As PAM's total sales figure is incorrect, all of PAM's allocated expenses, including expenses such as direct and indirect selling expenses, in the home market are significantly overstated. Therefore, the data on the record cannot be used to calculate the actual percentage of sales at less than fair value.

PAM could not establish the completeness of its reported home market sales database. As noted above, the Department discovered at verification that PAM had failed to report approximately two-thirds of its home market sales, despite the Department's requests for such information. Given this significant omission from its home market database, we consider that PAM withheld information requested by the Department, and attempted to provide such information after the Department discovered the omission, but the information could not be verified. Consequently, the Department has determined to use facts otherwise available, consistent with section 776(a) of the Act. Put simply, PAM failed verification.

Application of Adverse Facts Available

As noted above, the record in this review demonstrates that PAM failed to report sales information representing approximately two-thirds of its home market sales during the POR. Therefore, pursuant to section 776(a)(2)(A) and (D) of the Act, we have relied upon facts available in reaching our preliminary results for PAM. The Department has determined that PAM has not acted to the best of its ability in failing to report approximately two-thirds of its home market sales in this review, because, (1) the Department issued clear instructions requiring this information in its initial questionnaire; (2) PAM had the opportunity to provide the information in responding to two supplemental questionnaires, all of the deadlines of which were extended at PAM's request by the Department; (3) the Department had instructed PAM to report all sales, including those claimed to be outside the ordinary course of trade; and (4) PAM has successfully participated in previous reviews. Moreover, the fact that the Department readily obtained general information regarding the existence of such sales at verification adds support to our determination that PAM did not act to the best of its ability in reporting its home market sales.

PAM had the ability to report these sales; however, it failed to do so. Therefore, pursuant to section 776(b)(3) of the Act, we have used an adverse inference in selecting facts available margins for PAM. *See Reiner Brach GmbH & Co.* v. *United States,* 206 F. Supp. 2d 1323, 1333, 1336 (Court of International Trade 2002) (CIT). The CIT upheld the Department's determination to apply facts otherwise available and apply an adverse inference resulting from Reiner Brach's failure to provide all information regarding home market sales. The court noted, among other things, that ''Reiner Brach failed to provide information regarding home market sales of similar merchandise despite the clear language of the questionnaire asking for information on ''all sales'' of the foreign like product.'' *See also Acciai Speciali Terni* v. *United States,* 142 F. Supp. 2d 969, 994 (CIT 2001). The CIT affirmed the Department's application of adverse facts available occasioned by the respondent's failure to timely report 84 U.S. sales. The court noted that the respondent ''has made no allegations that it could not provide the additional U.S. sales. It claims that the omission was inadvertent; inadvertence is not the same as inability.'' Accordingly, we have based PAM's preliminary margin on the highest margin upheld during the proceeding: 45.49 percent. *See World Finer Foods Inc.* v. *U.S.,* 120 F. Supp. 2d 1131, 1134 (CIT 2000).

Corroboration of Secondary Information Used As Adverse Facts Available

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, 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

to question the reliability of the margin for that time period. *See Grain-Oriented Electrical Steel from Italy: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.

For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review,* 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated); *see also Borden Inc.* v. *United States,* 4 F Supp 2d 1221, 1246–48 (CIT 1998) (the Department may not use an uncorroborated petition margin that is high when compared to calculated margins for the period of review). None of these unusual circumstances are present here. Accordingly, for PAM we have resorted to adverse facts available and have used the highest margin upheld in this proceeding as the margin for these preliminary results because there is no evidence on the record indicating that such a margin is not appropriate as adverse facts available.

Use of Partial Facts Available

Sections 776(a)(2)(A), (B) and (D) of the Act, provide for the use of facts available when an interested party withholds information that has been requested by the Department, when an interested party fails to provide the information requested in a timely manner and in the form required, or provides such information but the information cannot be verified.

From June 12, through June 26, 2003, the Department conducted a verification of Indalco's questionnaire response at the company's headquarters in Ripalimosani, Italy. At verification, the Department's verifiers asked Indalco to present minor changes, if any, to its questionnaire response resulting from verification preparation. The Department notified Indalco of these requirements in its verification agenda dated, May 21, 2003. *See* the May 21, 2003 letter from the Department to Indalco, transmitting the verification outline. At the onset of verification, Indalco submitted a list of minor errors to the Department as Exhibit 1. Although, there were several errors with its selling expenses, Indalco did not bring these errors to the Department's attention until after Indalco's submission of minor corrections. Specifically, Indalco used fiscal year 2001, instead of POR, expenses to compute its direct and indirect selling and advertising ratios. For a more detailed discussion *see* Memorandum to Eric Greynolds, from Mark Young and Tipten Troidl, Re: Verification of the Sales Response of Industria Alimentare Colavita, S.p.A. (''INDALCO'') and Fusco S.r.l. (''Fusco'') in the 01/02 Administrative Review of the Antidumping Duty Order of Certain Pasta from Italy, (''Indalco/Fusco Verification Report''), which is available in the CRU.

While the Department granted Indalco's requests for additional time to respond to the questionnaires, and Indalco did appear to cooperate to the best of its ability, Indalco did not submit the information in the form and manner requested by the Department.

As long recognized by the CIT, the burden is on the respondent, not the Department, to create a complete and accurate record. *See Pistachio Group of Association Food Industries* v. *United States,* 641 F. Supp. 31, 39–40 (CIT 1987). Therefore, in accordance with section 776(a)(2) of the Act, we are applying partial facts otherwise available in calculating Indalco's dumping margin. However, because Indalco did cooperate to the best of its ability, we are not making any adverse inferences, for the reasons noted above. As a result of these miscalculations, as facts available, the Department will use the information verified and collected at verification to calculate Indalco's selling expenses.

Product Comparisons

In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. When there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing (''VCOM'') between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than NV, we compared the EP or CEP to the NV, as described in the ''Export Price and 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 U.S. transactions. *See* the company-specific verification reports and calculation memoranda, available in the CRU.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed cost-insurance-freight (''CIF''), ex-factory, free-on-board (''FOB''), or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. When appropriate, we reduced these prices to reflect discounts and rebates.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight

from port to the customer). In addition, when appropriate, we increased EP or CEP as applicable, by an amount equal to the countervailing duty rate attributed to export subsidies in the most recently completed administrative review, in accordance with section 772(c)(1)(C) of the Act.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (advertising, cost of credit, warranties, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Pagani and Zaffiri reported the resale of subject merchandise purchased in Italy from unaffiliated producers. In its April 23, 2003 supplemental response at page 23, Zaffiri amended its response and reported that its purchased pasta should actually be considered pasta that it toll produced with its unaffiliated supplier. Zaffiri argues that this pasta should be considered toll produced because it provided its unaffiliated supplier with packing materials and then the supplier would invoice Zaffiri for the semolina cost, the conversion cost, and the packing cost. Because Zaffiri does not control the production of this pasta, nor does it own or hold title to a significant input for this pasta (*i.e.*, semolina), we preliminarily determine that this pasta is, in fact, pasta purchased from an unaffiliated supplier.

In those situations in which an unaffiliated producer of the subject pasta knew at the time of the sale that the merchandise was destined for the United States, the relevant basis for the EP would be the price between that producer and the respondent. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order,* 63 FR 50867, 50876 (September 23, 1998). In the instant review, we determined that it was reasonable to assume that the unaffiliated producers knew or had reason to know at the time of sale that the ultimate destination of the merchandise was the United States because virtually all enriched pasta is sold to the United States. *See Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta from Italy,* 65 FR 4867, 4869 (August 8, 2000). Accordingly, consistent with our methodology in prior reviews (*see id.*), when a respondent purchased pasta from other producers and we were able to identify resales of this merchandise to the United States, we excluded these sales of the purchased pasta from the margin calculation for that respondent. Where the purchased pasta was commingled with the respondent's production and the respondent could not identify the resales, we examined both sales of produced pasta and resales of purchased pasta. Inasmuch as the percentage of pasta purchased by any single respondent was an insignificant part of its U.S. sales database, we included the sales of commingled purchased pasta in our margin calculations.

Normal Value

A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because each respondent, with the exception of IAPC, had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers except IAPC.

Because IAPC did not have an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, the Department determined, in accordance with section 773(a)(1)(c) of the Act and section 351.404(b)(2) of the Department's regulations to use a third-country market, the United Kingdom, as IAPC's comparison market. We compared IAPC's volume of third country sales in the United Kingdom of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B)(ii) and 773(a)(1)(C) of the Act, because IAPC had an aggregate volume of third-country sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that, in accordance with section 351.404(c)(ii) of the Department's regulations, the third-country market of the United Kingdom was viable for IAPC.

B. Arm's-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer; *i.e.*, sales at arm's-length. *See* 19 CFR 351.403(c). Sales to affiliated customers for consumption in the home market which were determined not to be at arm's-length were excluded from our analysis. Garofalo reported sales of the foreign like product to an affiliated end-user customer and an affiliated reseller. To test whether these sales were made at arm's-length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices to the affiliated party were, on average, between 98 and 102 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were at arm's-length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 53339 (August 15, 2002); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of the Final Determination, and Negative Preliminary Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand* 68 FR 42373, 42375–6 (July 17, 2003). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test. *See* 19 CFR 351.403; *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR at 27295 (May 19, 1997).

C. Cost of Production Analysis

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of Ferrara, Garofalo, Indalco, Pagani, Pallante, Rummo, Tomasello, and Zaffiri, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for

the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A'') and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondents' information as submitted, except in instances where we used data with minor revisions based on verification findings for Indalco, Rummo, Tomasello, and Zaffiri. *See* the company-specific calculation memoranda on file in the CRU, for a description of any changes that we made.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(c) of the Act. The sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act, because they were made over the course of the POR. 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 recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Specifically, we are preliminarily disregarding below-cost sales made by Ferrara, Garofalo, Indalco, Pagani, Pallante, Rummo, Tomasello, and Zaffiri. *See* the company-specific calculation memoranda on file in the CRU, for our calculation methodology and results.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works, FOB or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for handling, loading, inland freight, warehousing, inland insurance, discounts, and rebates. We added interest revenue. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance of sale (''COS'') adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, and billing adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and section 19 CFR 351.411 of the Department's regulations. We based this adjustment on the difference in the variable cost of manufacture (''VCOM'') for the foreign like product and subject merchandise, using POR-average costs.

Sales of pasta purchased by the respondents from unaffiliated producers and resold in the comparison market were treated in the same manner described above in the ''*Export Price and Constructed Export Price*'' section of this notice.

E. Calculation of Normal Value Based on Constructed Value

For IAPC, when we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing (''COM'') of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by IAPC in connection with the production and sale of the foreign like product in the comparison market.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

F. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP and CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison-market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *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, 61732–33 (November 19, 1997). Specifically in this review, we did not make an LOT adjustment for any respondent. However, we are preliminarily granting a CEP offset for IAPC and Rummo.

For a detailed description of our LOT methodology and a summary of

company-specific LOT findings for these preliminary results, *see* the company-specific verification reports and calculation memoranda, all on file in the CRU.

G. Company-Specific Issues

We relied on the respondents' information as submitted, except in instances where, based on verification findings, we made minor modifications to the calculation of NV and EP or CEP. See the company-specific calculation memoranda on file in the CRU.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve.

Intent Not To Revoke

On July 31, 2002, Pagani submitted a letter to the Department requesting, pursuant to 19 CFR 351.222(e), revocation of the antidumping duty order with respect to its sales of the subject merchandise. Pagani submitted along with its revocation request a certification stating that: (1) The company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV (*see* 19 CFR 351.222(e)(1)(i)); (2) the company sold the subject merchandise to the United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(1)(ii)); and (3) the company agrees to immediate reinstatement of the order, if the Department concludes that the company, subsequent to revocation, has sold the subject merchandise at less than NV (*see* 19 CFR 351.222(b)(1)(iii)). Petitioners did not comment on the issue of revocation.

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751(d) 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. The regulation requires that exporters or producers covered by the order and desiring revocation 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 for at least three consecutive years in commercial quantities; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, has sold 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).

Pagani submitted the required certifications and agreements. However, after applying the criteria outlined in section 351.222(b) of the Department's regulations, and considering the evidence on the record, we have preliminarily determined that one of the Department's requirements for revocation has not been met. While we preliminarily find that Pagani has demonstrated three consecutive years of sales at not less than NV, we also preliminarily find that, based on Pagani's U.S. shipment data, its sales to the United States have not been made in commercial quantities during all three review periods at issue, in accordance with sections 351.222(d) and 351.222(e)(1)(ii) of the Department's regulations.

In particular, data on the record indicate that the amount of subject merchandise sold in the U.S. market by Pagani during the fourth and fifth review periods is small in quantity relative to Pagani's total U.S. sales volume during the period of investigation (''POI''). With respect to the sixth review period, we recognize that Pagani's volume of sales to the United States has substantially increased. However, because Pagani did not make sales in commercial quantities during the fourth and fifth review periods, Pagani did not satisfy the regulatory requirement to sell commercial quantities in each of the three years forming the basis of this revocation request. We conclude that Pagani's sales during the fourth and fifth PORs do not provide any meaningful information concerning Pagani's normal commercial practice. Consequently, we find that Pagani's shipments during these PORs are not a reasonable basis for finding commercial quantities.[6]

Therefore, we have determined that the requirements for revocation have not been met because Pagani has not made sales to the United States in commercial quantities during the fourth or fifth segment of this proceeding.[7] Based on our examination of these facts, we find that, consistent with Department practice, we do not have a sufficient basis to conclude that the *de minimis* dumping margin calculated for Pagani for the fourth, fifth, or sixth administrative review is reflective of the company's normal commercial experience. *See e.g., Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 65 FR 7497, 7498 (February 15, 200) (''*Silicon Metal from Brazil*'') (finding that because sales and volume figures were so small the Department could not conclude that the reviews reflected what the company's normal commercial experience would be absent an antidumping duty order). Because Pagani has not met the commercial quantities requirement, we have not examined the issue as to whether the antidumping duty order is necessary to offset future dumping (*see Silicon Metal from Brazil*, at 7505). For a more detailed discussion, *see* Memorandum to Melissa Skinner through Eric Greynolds from the Team, Re: Commercial Quantities, issued simultaneously with this notice.

Based on the foregoing analysis, we have preliminarily determined that Pagani has not met one of the threshold

[6] Pagani's history of subject merchandise pasta sales is as follows: Pagani's 4th POR sales of subject pasta were 0.94 percent of its POI sales of subject pasta. Pagani's 5th POR sales of subject pasta were 1.06 percent of its POI sales of subject pasta. Pagani's 6th POR sales of subject pasta were 17.63 percent of its POI sales of subject pasta.

[7] As we noted in *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) (''*Pure Magnesium from Canada*''), sales in commercial quantities is a threshold requirement that must be met by parties seeking revocation. We also note that while the regulation requiring sales in commercial quantities may have developed from the unreviewed intervening year regulation, its application in all revocation cases based on the absence of dumping is reasonable and mandated by the regulations. The application of this requirement to all such cases is reflected not only in the provision for unreviewed intervening years (*see* 19 CFR 351.222 (d)(1)), but also in the new general requirement that parties seeking revocation certify to sales in commercial quantities in each of the years on which revocation is to be based. *See* 19 CFR 351.222(e)(1)(ii). This requirement ensures that the Department's revocation determination is based upon a sufficient breadth of information regarding a company's normal commercial practice. *See Pure Magnesium from Canada*, 64 FR at 12979.

requirements for revocation (*i.e.*, sales in commercial quantities during the three consecutive PORs). We therefore preliminarily intend not to revoke the order, with respect to pasta produced and also exported by Pagani, if these preliminary findings are affirmed in our final results.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period July 1, 2001, through June 30, 2002:

Manufacturer/exporter	Margin (percent)
Ferrara	0.18
Garofalo	1.44
IAPC	0.52
Indalco	17.25
Pagani	0.20
Pallante	0.12
PAM	45.49
Rummo	0.05
Tomasello	8.47
Zaffiri	6.36
All Others	11.26

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs limited to issues raised in such briefs, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the BCBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period, with the exception of PAM, whose margin is based on AFA.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.26 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 38547 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20180 Filed 8–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium from Canada; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of 2001/2002 administrative review.

SUMMARY: On April 24, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 2001, through July 31, 2002. This review covers imports of pure magnesium from one producer/exporter. We provided interested parties with an opportunity to comment on the preliminary results of this review, but received no comments.

The final results do not differ from the preliminary results of this review, in which we found that sales of the subject merchandise have not been made below normal value. We will instruct the United States Bureau of Customs and Border Protection not to assess antidumping duties on the subject merchandise exported by this company.

EFFECTIVE DATE: August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1279.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results of this review (*see Pure Magnesium from Canada; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 68 FR 20112 (April 24, 2003) (''*Preliminary Results*'')), the following events have occurred:

The Department of Commerce (''the Department'') invited interested parties to comment on the preliminary results of this review. No comments were received.

Scope of the Order

The product covered by this order is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule (''HTS''). The HTS item number is provided for convenience and for customs purposes. The written description of the scope of the order remains dispositive.

Period of Review

The period of review (''POR'') is August 1, 2001, through July 31, 2002.

Fair Value Comparisons

To determine whether sales of pure magnesium from Canada to the United States were made at less than normal value (''NV''), we compared export price (''EP'') to NV. Our calculations followed the methodologies described in the *Preliminary Results*.

Final Results of the Review

As a result of this review, we determine that the following percentage weighted-average margin exists for the period August 1, 2001, through July 31, 2002:

Manufacturer/Exporter	Margin
Norsk Hydro Canada Inc.	0.01 (*de minimis*)

Assessment Rates

The Department shall determine, and the United States Bureau of Customs and Border Protection (''BCBP'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b)(1), we have calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

Pending the final disposition of a NAFTA panel appeal by NHCI, the Department will not order the liquidation of entries of pure magnesium from Canada exported by NHCI on or after August 1, 2000, at this time. Liquidation will occur at the rates described in these final results of review following the final judgement in the NAFTA panel appeals process.

Cash Deposit Requirements

The following deposit requirements will be effective upon the publication of this notice of final results of administrative review for all shipments of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by 751(a)(1) of the Act: (1) For NHCI, which has a *de minimis* rate, no antidumping duty deposit will be required; (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) the cash deposit rate for all other exporters will continue to be 21.00 percent, the ''all others'' rate made effective by the less-than-fair-value investigation.

These deposit instructions will remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final 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.

Notification Regarding APOs

This notice also serves as the only reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20174 Filed 8–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: In response to a request from ThyssenKrupp Acciai Speciali Terni S.p.A. (''TKAST''), a producer and exporter of subject merchandise, and ThyssenKrupp AST USA, Inc. (''TKAST USA''), an importer of subject merchandise, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (''SSSS'') from Italy. This review covers imports of subject merchandise from TKAST.

The Department preliminary determines that SSSS from Italy has been sold in the United States at less than normal value during the period of

review (''POR''). 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 equal to the difference between constructed export price and normal value.

EFFECTIVE DATE: August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–3207 or 202–482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

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 SSSS from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 67 FR 44172, (July 1, 2002). On July 29, 2002, TKAST requested that the Department conduct an administrative review of the antidumping duty order. On August 27, 2002, the Department initiated an administrative review of the antidumping duty order on SSSS from Italy with regard to TKAST. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002).

On August 30, 2002, the Department issued an antidumping duty questionnaire to TKAST. On October 4, 2002, TKAST submitted its response to Section A of the questionnaire. TKAST requested in its October 4, 2002, Section A response at page A–4, that TKAST not be required to report the downstream sales of all affiliated parties but only report certain downstream sales. October 18, 2002, the Department sent TKAST a letter in which it allowed TKAST to report on certain downstream sales. *See* Letter from Department to TKAST dated October 18, 2002. Also in its October 4, 2002, Section A response at page A–4, TKAST requested, that with regard to the U.S. sales, it not be required to report the downstream sales of a certain affiliate and that TKAST was also unable to determine if any downstream sales were made by a certain affiliate to an unaffiliated party. In its October 18, 2003, letter to TKAST, the Department stated that TKAST was required to report all of TKAST's affiliate's resales to unaffiliated customers in the United States.

On October 15, 2002, TKAST submitted its responses to Sections B, C and D of the questionnaire. The Department issued its supplemental section A questionnaire on December 20, 2002, and on January 17, 2003, TKAST submitted its supplemental Section A response. On February 4, 2003, the Department issued its supplemental Section B questionnaire and on February 28, 2003, TKAST submitted its supplemental Section B response. The Department issued its supplemental Section C questionnaire on February 26, 2003, and on March 25, 2003, TKAST submitted it supplemental Section C response. On March 12, 2003, TKAST submitted an updated Section D response. On March 21, 2003, the Department issued its supplemental Section D questionnaire to TKAST. On April 18, 2003, TKAST submitted its supplemental Section D response. The Department issued its second supplemental Sections A–C questionnaire on April 23, 2003, and its third supplemental Sections A–C questionnaire on May 20, 2003. TKAST submitted the second supplemental Sections A–C response on May 13, 2003, and the third supplemental Sections A–C response on May 23, 2003. On May 13, 2003, the Department issued the second supplemental Section D questionnaire, and TKAST submitted its second supplemental section D response on May 27, 2003.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On March 24, 2003, the Department extended the time limit for the preliminary results in this administrative review by 120 days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy,* 68 FR 14196 (March 24, 2003).

Period of Review

The POR is July 1, 2001, through June 30, 2002.

Verification

As provided in section 782(i) of the Act, the Department conducted a sales and cost verification of the information provided by TKAST, from June 9, 2003, through June 16, 2003, and a constructed export price (''CEP'') verification from May 28, 2003, through May 30, 2003, using standard verification procedures, including an examination of relevant sales, cost, and financial records, and a selection of relevant original documentation. Our verification results are outlined in the Report on the Sales and Cost Verification of ThyssenKrupp Acciai Speciali Terni S.p.A. (July 21, 2003) (''*Sales and Cost Verification Report*''), and Verification of Constructed Export Price Sales for Thyssen Krupp Acciai Speciali Terni USA, Inc. (July 29, 2003) (''*CEP Verification Report*''). Public versions of the verification reports are on file in the Central Records Unit, room B–099 of the Herbert C. Hoover Department of Commerce building, 1401 Constitution Avenue, NW., Washington, DC.

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060,

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and BCBP purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' [6] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' [7] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo'' is the proprietary grade of Hitachi Metals America, Ltd.

[7] ''GIN5'' is the proprietary grade of Hitachi Metals America, Ltd.

between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [8]

Product Comparisons

In accordance with section 771(16) of the Act, we considered all SSSS products covered by the ''Scope of the Review'' section of this notice, *supra.,* which were produced and sold by TKAST in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of SSSS products. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): (1) Grade; (2) hot/cold rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, TKAST requested a CEP offset with respect to its CEP sales in the United States. For further discussion on CEP offset, *see* the ''Level of Trade'' section, *infra*. Based on the information on the record, we preliminarily find that all of TKAST's U.S. sales are appropriately classified as CEP sales. TKAST reported that it sold the subject merchandise in the United States through two channels (*i.e.*, channel one, and channel two). With respect to channel one sales, TKAST reported that these sales are shipped directly from the factory in Italy to the U.S. customer. However, TKAST USA, TKAST's U.S. based affiliated reseller, serves as the principal point of contact for the U.S. customer. For channel one sales, customers place their orders with TKAST USA, which then places an order with TKAST. Upon confirmation from TKAST, TKAST USA separately issues an invoice to the customer. TKAST USA is solely responsible for collecting payment from the U.S. customer, and separately responsible for paying TKAST for the merchandise. TKAST USA separately invoiced and received payment from those customers. Channel two sales are made from the inventory of TKAST USA. Accordingly, the Department preliminarily determines that TKAST's channel one and two sales were made ''in the United States'' within the meaning of section 772(b) of the Tariff Act of 1930, as amended (''the Act'') and should be treated as CEP transactions, consistent with *AK Steel Corp.* v. *United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000).

We calculated CEP in accordance with section 772(b) of the Act. We based CEP on the packed prices to the first unaffiliated purchaser in the United States. We made adjustments to the starting price for billing adjustments, the alloy surcharge, skid charges and freight revenue, where applicable. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: International freight, U.S. inland freight from warehouse/plant to the unaffiliated customer, other U.S. transportation expense, U.S. Customs duties, and inland freight from the plant/warehouse to port of exit. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, technical services expenses, inventory carrying costs, and other indirect selling expenses.

For U.S. indirect selling expenses, TKAST provided the Department with a recalculated indirect selling expense ratio on page 12 of its May 13, 2003 response. However, TKAST did not revise the computer database to reflect this recalculated ratio; therefore, the Department has revised the computer programs to use the recalculated U.S. indirect selling expense ratio. *See* May 13, 2003 response at page 12 and *Analysis for the Preliminary Results of Review of Stainless Steel Sheet and Strip in Coils from Italy,* (''*Analysis Memorandum*''), dated July 31, 2003 at 3. In addition, we disallowed TKAST's claimed insurance revenue for certain U.S. sales based on the fact that the insurance payments did not represent additional revenue, but only reimbursement for the costs associated with these insurance claims. *See CEP Verification Report* at pages 9–14, and *Analysis Memorandum* at 3.

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

After testing home market viability, as discussed below, we calculated normal value (''NV'') as noted in the ''Price-to-CV Comparisons'' and ''Price-to-Price Comparisons'' sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(c) of the Act, 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 or equal to five percent of the aggregate volume of U.S. sales), we compared TKAST's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (c) of the Act, because TKAST'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 sales in the home market provide a viable basis for calculating NV. We therefore based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Italy, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the constructed export price (''CEP'') sales, as appropriate.

2. Arm's-Length Test

TKAST reported that during the POR, it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. If any sales to affiliated customers in the home market were not made at arm's length prices, we excluded them from our analysis because we considered them to be

[8] ''GIN6'' is the proprietary grade of Hitachi Metals America, Ltd.

outside the ordinary course of trade. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers, net of all billing adjustments, rebates, movement charges, direct selling expenses, and home market packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unrelated party, we determined that sales made to the related party were at arm's length. *See* 19 CFR 351.403(c).[9] While TKAST made sales to affiliated parties in the home market during the POR, the Department determined that TKAST only needed to report certain affiliated customer's downstream sales. *See* Background Section *supra.*, and TKAST's October 4, 2002 Section A response at page A–3 through A–4. We ran the arm's length test on the remaining sales to affiliated parties and excluded those sales which failed the arm's length test, but we did not require TKAST to report the downstream sales of these affiliates as TKAST was reporting the downstream sales of affiliate(s) that comprised the vast majority of affiliated sales. *See* Background Section *supra.* In our home market NV calculation, we have included TKAST's reported downstream sales.

3. Cost of Production

In the original investigation, the Department determined that TKAST made sales in the home market at prices below the COP and, therefore, excluded such sales from NV. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30754–55 (June 8, 1999). Accordingly, the Department had reasonable grounds to believe or suspect that TKAST made sales in the home market at prices below the COP for this POR. *See* section 773(b)(2)(A)(ii) of the Act. As a result, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by TKAST.

A. Calculation of the COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of TKAST's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), interest expenses, and packing costs. We relied on the COP data submitted by TKAST in its original and supplemental cost questionnaire responses and findings at verification.

B. Test of Home Market Prices

We compared the weighted-average COP for TKAST to its home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(c) of the Act, where less than 20 percent of TKAST's sales of a given product were, within an extended period of time, at prices less than 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 TKAST's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time, in accordance with sections 773(b)(2)(B) of the Act. In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated constructed value (''CV'') based on the sum of TKAST's cost of materials, fabrication, SG&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by TKAST in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production (''COP''), we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Where appropriate, we deducted early payment discounts, rebates, credit expenses, warranty expenses, and inland freight.

We revised the credit expense for sales that had an early payment discount because TKAST reported a payment date based on the terms of payment instead of one reflective of the early payment date. *See Sales and Cost Verification Report* at pages 15–16, and *Analysis Memorandum* at 2. We also revised the reported credit expense for the home market sales which TKAST factored with a financial institution. For the invoices that were factored, the financial institution, usually a bank, ''purchased'' TKAST's invoices and paid TKAST the value of the invoices at the time of factoring, which occurs about once a month. TKAST then collected payment from the customer, according to the regular payment terms of the sale, and TKAST in turn re-paid the bank. The bank charged two fees for this service, which were a fixed commission based on the value of the invoice and interest. *See* TKAST's supplemental Section B response dated February 28, 2003, at pages 5 and 6 and *Sales and Cost Verification Report* at 20.

TKAST reported that it was unable to report actual payment dates for its home market sales because the payment information is recorded in an accounts receivable system and cannot be linked directly with the invoicing system. Therefore, in the payment date field in the response, TKAST used the payment term dates and not the date the customer actually paid TKAST. *See* TKAST's Section B response dated October 15, 2002, at page B–17. Although TKAST cannot electronically track invoices and customer payment dates, we believe TKAST would be able to determine the actual payment date for a sale if it conducted a manual review of its records. *See Sales and Cost Verification Report* at 20.

For this administrative review, we are not requiring TKAST to conduct a manual review of every sale in order to

[9] Because this review was initiated before November 23, 2002, the 99.5 percent test applies to this review. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69197 (November 15, 2002).

report the actual date on which the customer pays TKAST. However, in any subsequent administrative review, the Department will expect TKAST to report the actual date on which the customer paid TKAST. Also, in this administrative review for the home market credit expense, we used the actual credit expense reported by TKAST, which included the commission and interest expenses actually paid by TKAST to the factoring bank, and allocated it over the home market sales that were factored. We determined this was appropriate because TKAST did not report the payment date on which it was actually paid by the customer, but it did report the actual credit expense, therefore calculating an imputed credit expense is unnecessary. *See Analysis Memorandum* at pages 2–3.

We also adjusted the starting price for billing adjustments, alloy surcharge, skid charges, and freight revenue. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding twenty percent of the cost of manufacturing (''COM'') of the U.S. product, we based NV on CV.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses (''SG&A''), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Italy. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses.

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. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, the LOT is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(1). As noted in the ''Export Price/Constructed Export Price'' section, *supra*, we preliminarily find that all of TKAST's U.S. sales are appropriately classified as CEP sales.

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 customer. Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stage of marketing. *See* 19 CFR 351.412(c)(2). If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect 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, 61732 (November 19, 1997).

In the present administrative review, TKAST requested a CEP offset. To determine whether a CEP offset was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customer, and selling expenses.

TKAST reported one LOT in the home market, with two channels of distribution: (1) Direct factory sales to end-users, manufacturers, service centers and distributors; and (2) warehouse sales to end-users, service centers and distributors. TKAST performed the same selling functions for sales in both home market channels of distribution, including production guidance, price negotiations, sales calls and services, arranging for freight and delivery, technical assistance and general selling activities. *See* TKAST's October 4, 2002 Section A response. The only differences are that for warehouse sales, TKAST initiates the sale (whereas direct sales are initiated by either party), and conducts inventory maintenance, and that warehouse sales typically carry no guarantee or warranty. Accordingly, because these selling functions are substantially similar for both channels of distribution, we preliminarily determine that there is one LOT in the home market.

TKAST reported two channels of distribution for the U.S. market: (1) Direct factory sales through TKAST USA to end-users and service centers; and (2) warehouse sales from the inventory of TKAST USA to end-users and service centers. We reviewed the selling functions and services performed by TKAST in the U.S. market, as represented by TKAST in its section A response and verification findings. We have determined that the selling functions for the two U.S. channels of distribution are similar because TKAST provides almost no selling functions to either U.S. channel of distribution. TKAST reported that the only services it provided for the CEP sales were very limited freight and delivery arrangements and very limited warranty services. *See* TKAST's October 4, 2002 Section A response at page A–25 and TKAST's January 17, 2003 Supplemental Section A response at Exhibit 42. Accordingly, because these selling functions are substantially similar for the two channels of distribution, we preliminarily determine that there is one LOT in the U.S. market.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between TKAST and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. *See* TKAST's October 4, 2002 Section A response at page A–25 and TKAST's January 17, 2003 Supplemental Section A response at Exhibit 42. TKAST reported that it provided virtually no selling functions for the CEP level of trade and that, therefore, the home market level of trade is more advanced than the CEP level of trade. To determine whether a CEP offset was

necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customer, and selling expenses.

Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that the home market LOT was at a more advanced stage of distribution when compared to TKAST's CEP sales because TKAST provides many more selling functions in the home market (*i.e.*, production guidance, price negotiations, sales calls and services, arranging for freight and delivery, technical assistance and general selling activities) as compared to selling functions performed for its CEP sales (*i.e.*, very limited freight and delivery arrangements and very limited warranty services). We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that the LOT in the home market did not match the LOT of the CEP transactions. Accordingly, we did not calculate a LOT adjustment. Instead, we applied a CEP offset to the NV for CEP comparisons. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value for home market sales that were compared to U.S. CEP sales. We therefore limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with Section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the POR:

Producer/manufacturer/exporter	Weighted-average margin (Percent)
ThyssenKrupp Acciai Speciali Terni S.p.A.	1.54

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties to this proceeding the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.

Pursuant to 19 CFR 351.309, interested parties may submit written comments and/or case briefs on these preliminary results. Comments and case briefs must be submitted no later than thirty days after the date of publication of this notice. Rebuttal comments and briefs must be limited to issues raised in the case briefs and comments, and must be submitted no later than five days after time limit for filing case briefs and comments. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs and comments must be served on interested parties in accordance with 19 CFR 351.303(f). Also, within thirty days of the date of publication of this notice, an interested party may request a public hearing on the arguments to be raised in the case and rebuttal briefs and comments. *See* 19 CFR 351.310(c). Unless otherwise specified, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any case and rebuttal briefs and comments, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct the BCBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review 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 by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except that no deposit will be required if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously 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 less than fair value (''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) if neither the exporter nor the manufacturer is a firm covered in this review, a prior review, or the original LTFV investigation, the cash deposit rate will continue to be the ''all others'' rate of 11.23 percent, which is the ''all others'' rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Italy,* 64 FR 40567 (July 27, 1999). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

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 administrative 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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20176 Filed 8–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils From Germany; Notice of 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.

EFFECTIVE DATE: August 7, 2003.

SUMMARY: In response to a request from Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization (collectively, petitioners) and respondent ThyssenKrupp Nirosta GmbH, ThyssenKrupp VDM GmbH, ThyssenKrupp Nirosta North America, Inc., and ThyssenKrupp VDM USA, Inc. (collectively, TKN), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4) from Germany. The review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR) July 1, 2001, through June 30, 2002.

We preliminarily determine that TKN made sales at less than normal value during the POR. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Bureau of Customs and Border Protection (Customs) to assess antidumping duties based on the difference between the United States Price (USP) and normal value (NV).

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues and (2) a brief summary of the arguments (no longer than five pages, including footnotes) and (3) a table of authorities.

FOR FURTHER INFORMATION CONTACT: Patricia Tran, Thomas Killiam, or Robert James at (202) 482–1121, (202) 482–5222, or (202) 482–0649, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on S4 from Germany on July 27, 1999. *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order; S4 Steel Sheet and Strip in Coils from Germany (Antidumping Duty Order),* 64 FR 40557 (July 27, 1999). The Department published the *Notice of Opportunity to Request Administrative Review* of S4 from Germany for the period July 1, 2001, through June 30, 2002, on July 1, 2002 (67 FR 44172).

On July 30 and 31, 2002, respectively, TKN and petitioners requested an administrative review of TKN's sales for the period July 1, 2001, through June 30, 2002. On August 27, 2002, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002).

Because it was not practicable to complete this review within the normal time frame, on February 10, 2003, we published in the **Federal Register** our notice of the extension of time limits for this review. *See S4 Steel Sheet and Strips in Coils from Germany; Antidumping Duty Administrative Review; Time Limits; Notice of Extension of Time Limits,* 68 FR 6719 (February 10, 2003). This extension established the deadline for these preliminary results as July 31, 2003.

Scope of the Review

For purposes of this order, the products covered are certain S4. S4 steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled S4 steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of S4 steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty S4 steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as S4 steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between

0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [5]

Verification

As provided in section 782(i) of the Act, the Department conducted a cost verification at TKN's headquarters. *See* Memorandum from Ernest Gziryan to Neal M. Halper, ''Verification Report on the Cost of Production and Constructed Value Data Submitted by ThussenKrupp Nirosta GmbH and Affiliates,'' July 14, 2003. We used standard verification procedures, including on-site inspection of the facility, examination of relevant records, and selection of original documents containing relevant information. See *id*.

Fair Value Comparisons

To determine whether sales of S4 in the United States were made at less than fair value, we compared USP to NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted-average NVs and compared these to individual U.S. transactions.

Constructed Export Price (CEP)

We calculated CEP in accordance with subsection 772(b) of the Tariff Act, because sales to the first unaffiliated purchaser took place after importation into the United States. We based CEP on

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

the packed, delivered, duty paid or delivered to unaffiliated purchasers in the United States. We made adjustments for price or billing errors, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, marine insurance, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, international freight, foreign inland freight, insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses, commissions and other direct selling expenses), inventory carrying costs, and indirect selling expenses. We offset credit expenses by the amount of interest revenue on sales. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

For those sales in which material was sent to an unaffiliated U.S. processor to be further processed, we made an adjustment based on the transaction-specific further-processing amounts reported by TKN. In addition, TKN's affiliated U.S. reseller, Ken-Mac, performed further processing on some of TKN's U.S. sales. For these sales, we deducted the cost of further processing in accordance with section 772(d)(2) of the Tariff Act. In calculating the cost of further manufacturing for Ken-Mac, we relied upon the further manufacturing information provided by TKN. *See* Memorandum from Ernest Gziryan to Neal M. Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results,'' July 31, 2003 (Cost Memorandum).

Home Market

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 was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Tariff Act. As TKN'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 of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. If sales were not made at arm's-length then the Department used the sale from the affiliated party to the first unaffiliated party. *See* 19 CFR 351.102. To test whether these sales to affiliates were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c).[6] In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine whether these sales were made at arm's-length prices and, therefore, excluded them from our analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993) and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Emulsion Styrene-Butadiene Rubber from Brazil,* 63 FR 59509, 59512 (November 4, 1998). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production (COP) Analysis

The Department disregarded certain sales made by TKN in the preceding administrative review because these sales failed the cost test. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Germany,* 68 FR 6716 (February 10, 2003); *see also Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 511199, 51201 (August 7, 2002). Thus, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act, there are reasonable grounds to believe or suspect that sales of S4 in the home market were made at prices below their COP in the current review period. Accordingly, pursuant to section 773(b) of the Tariff Act, we initiated a cost investigation to determine whether sales made during the POR were at prices below their respective COP.

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), interest expenses, and home market packing costs. We relied on the COP data submitted by TKN, except where noted below:

In accordance with section 773(f)(2) of the Tariff Act, where TKN's reported transfer prices for purchases of nickel from an affiliated party were not at arm's length, we increased these prices to reflect the prevailing market prices. *See* Cost Memorandum. We recalculated the cost of downstream processing performed by affiliates for TKN, and revised TKN's reported G&A expense ratio to exclude net foreign exchange losses. For both TKN and VDM, we revised the interest expense ratio by recalculating the short-term interest income offset and including the net miscellaneous financial expense, and we excluded packing expenses from the cost of sales denominator of the financial expense ratio. *See ibid.*

In accordance with section 773(b)(1) of the Tariff Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of TKN's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of TKN's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were made: (1) In substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Tariff Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of

[6] Because this review was initiated before November 23, 2002, the 99.5 percent test applies to this review. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69197 (November 15, 2002).

the Tariff Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Tariff Act. We did not make use of constructed value, as all U.S. sales were matched to home market merchandise.

Normal Value

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments for interest revenue, discounts, and rebates where appropriate. We made deductions, where appropriate, for foreign inland freight, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. *See* ''Level of Trade and CEP Offset'' section below. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer. Moreover, for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Tariff Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we asked TKN to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. TKN identified four channels of distribution in the home market: (1) Mill direct sales (2) mill inventory sales (3) service center inventory sales, and (4) service center processed sales. For all channels TKN performs similar selling functions such as negotiating prices with customers, setting similar credit terms, arranging freight to the customer, and conducting market research and sales calls. The remaining selling activities did not differ significantly by channel of distribution. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each customer class or channel are sufficiently similar, we determined that one level of trade exists for TKN's home market sales.

For the U.S. market, TKN reported four channels of distribution: (1) Back-to-back CEP sales made through TKNNA or Thyssen Marathon Canada (TMC); (2) consignment CEP sales made through TKNNA or TMC; (3) inventory sales from TKNNA and TMC; and (4) sales by Ken-Mac. All U.S. sales were CEP transactions and TKN performed the same selling functions in each instance. Therefore, the U.S. market has one LOT.

When we compared CEP sales (after deductions made pursuant to section 772(d) of the Tariff Act) to home market sales, we determined that for CEP sales TKN performed fewer customer sales contacts, technical services, delivery services, and warranty services. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales. In the home market TKN provides marketing further down the chain of distribution by providing certain downstream selling functions that are normally performed by the affiliated resellers in the U.S. market (*e.g.*, technical advice, credit and collection, *etc.*).

Based on our analysis, we determined that CEP and the starting price of home market sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to HM sales, we examined whether a LOT adjustment may be appropriate. In this case TKN sold at one LOT in the home market; therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of TKN's sales of other similar products, and there is no other record evidence upon which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in Germany for TKN is at a more advanced stage than the LOT of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Tariff Act, as claimed by TKN. Where there were commissions in the U.S. market but not the home market, we calculated the CEP offset as the lesser of either the U.S. commissions or the home market indirect selling expenses. Where there were commissions in both the U.S. and home markets, we calculated the CEP offset as the lesser of either the home market indirect selling expenses or the difference between the U.S. and home market commissions. Where there were commissions in the home market but not the U.S. market, we set the CEP offset equal to zero. We performed these calculations in accordance with 772(d)(1)(D) of the Tariff Act. We applied the CEP offset to NV, whether based on home market prices or CV.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin exists for the period July 1, 2001, through June 30, 2002:

Manufacturer/exporter	Weighted average margin (percentage)
TKN	3.59

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. 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. The Department will issue final results of these administrative reviews, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties for each importer. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department will issue appropriate appraisement instructions directly to Customs within fifteen days of publication of the final results of review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of S4 in coils from Germany 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 Tariff Act:

(1) The cash deposit rates for TKN will be the rates established in the final results of review;

(2) If the exporter is not a firm covered in this review or the less-than-fair-value (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

(3) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate of 13.48 percent from the LTFV investigation (*see Notice of Amended Final Determination of Antidumping Duty Investigation: Stainless Steel Sheet and Strip in Coils from Germany,* 67 FR 15178 (March 29, 2002)).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: July 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20177 Filed 8–6–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; 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 respondents ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico (A–201–822). This review covers imports of subject merchandise from Mexinox S.A. during the period July 1, 2001 to June 30, 2002.

We preliminarily determine that sales of S4 in coils from Mexico have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Bureau of Customs and Border Protection (Customs) to assess antidumping duties based on the difference between the constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

EFFECTIVE DATE: August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone : (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published in the **Federal Register** the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order* on stainless steel sheet and strip in coils from Mexico (64 FR 40560). On July 1, 2002, the Department published the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* of, *inter alia,* stainless steel sheet and strip in coils from Mexico for the period July 1, 2001 through June 30, 2002 (67 FR 44172).

In accordance with 19 CFR 351.213(b)(1), Mexinox requested that we conduct an administrative review. On August 27, 2002, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period July 1, 2001 through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002).

On September 5, 2002, the Department issued an antidumping duty questionnaire to Mexinox. Mexinox submitted its response to section A of the questionnaire on October 10, 2002 and its response to sections B through E of the questionnaire on November 5, 2002. On January 16, 2003, the Department issued a supplemental questionnaire for sections D and E, to which Mexinox responded on February 14, 2003. The Department issued a second supplemental questionnaire for sections D and E on February 20, 2003, and Mexinox filed its response to that supplemental questionnaire on March 4, 2003. On February 19, 2003, the Department issued a supplemental questionnaire for sections A and B and on March 3, 2003 issued a supplemental questionnaire for section C. Mexinox responded to both of these supplemental questionnaires on April 1, 2003. Finally, the Department issued a second supplemental questionnaire for sections A through C on April 15, 2003; Mexinox submitted its response on April 23, 2003.

Because it was not practicable to complete this review within the normal time frame, on February 11, 2003, we published in the **Federal Register** our notice of the extension of time limits for this review (68 FR 6892). This extension established the deadline for these preliminary results as July 31, 2003.

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[5]

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Tariff Act), we verified information provided by Mexinox using standard verification procedures such as the examination of relevant sales and financial records, on-site inspection of the manufacturer's facilities, and selection of original documentation containing relevant information. Our verification results are outlined in the public and proprietary versions of the cost and sales verification reports, which are on file in the Central Records Unit of the Department in room B–099 of the main Commerce building.

Sales Made Through Affiliated Resellers

A. U.S. Market

Mexinox USA, a wholly-owned subsidiary of Mexinox S.A., sold subject merchandise in the United States. During the POR, Mexinox USA made sales of subject merchandise to an affiliated company, Ken-Mac Metals, Inc. (Ken-Mac), who in turn resold the subject merchandise to unaffiliated customers in the United States. *See* Mexinox's October 10, 2002 questionnaire response at A–11. Thus, in addition to Mexinox USA's sales to unaffiliated customers, we have included in our preliminary margin calculation resales of Mexinox subject merchandise made through Ken-Mac.

B. Home Market

Mexinox Trading, S.A. de C.V. (Mexinox Trading), a wholly-owned subsidiary of Mexinox S.A., sells both subject and non-subject merchandise in the home market. Mexinox reported that sales through Mexinox Trading represented less than five percent of Mexinox's total sales of subject merchandise in the home market. *See, e.g.*, Mexinox's October 10, 2002 questionnaire response at A–4 and its April 1, 2003 supplemental questionnaire response at Attachment B–21. Because Mexinox Trading's sales of subject merchandise were less than five percent of home market subject merchandise sales, and because these sales passed the Department's arm's-length test, pursuant to section 351.403(d) of the Department's regulations, we permitted Mexinox to report its sales to Mexinox Trading rather than require it to report downstream sales by Mexinox Trading to the first unaffiliated customer. This treatment is consistent with that employed in past administrative reviews of stainless steel sheet and strip in coils from Mexico. *See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review,* 68 FR 6889 (February 11, 2003), as amended, *Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico,* 68 FR 13686 (March 20, 2003).

Fair Value Comparisons

To determine whether sales of S4 in coils from Mexico to the United States were made at less than fair value, we compared the CEP to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act, we compared individual CEPs to monthly weighted-average NVs.

Transactions Reviewed

For its home market and U.S. sales, Mexinox reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale (19 CFR 351.401(i)). Mexinox stated the invoice date represented the date when the essential terms of sales, *i.e.*, price and quantity, are definitively set, and that up to the time of shipment and invoicing, these terms were subject to change. *See, e.g.*, Mexinox's October 10, 2002 questionnaire response at A–34 and A–39. In our February 19, 2003 supplemental questionnaire, we requested that Mexinox provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. In response, Mexinox provided analyses

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

for its U.S. and home market sales showing how often changes in price and quantity occurred between order date and invoice date. *See* Mexinox's April 1, 2003 supplemental questionnaire response at Attachment A–21 and Mexinox's April 23, 2003 supplemental questionnaire response at Attachment A–28. Based on our analysis of the information submitted by Mexinox, we have preliminarily determined the date of invoice is the appropriate date of sale because record evidence indicates that in a number of instances the price and quantity changed between the date of the order acceptance and the date of invoice. Therefore, we find Mexinox's claim that price and quantity terms are subject to negotiation until the date of invoice is substantiated.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by Mexinox S.A. covered by the description in the ''Scope of the Review'' section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): (1) Grade; (2) cold/hot rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting price of the comparison sales in the home 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 CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (*i.e.*, the CEP offset provision).

In the Department's September 5, 2002 questionnaire, we asked Mexinox to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. Mexinox identified two channels of distribution in the home market: (1) direct shipments (*i.e.*, products produced to order) and (2) sales through inventory. *See, e.g.*, Mexinox's October 10, 2002 questionnaire response at A–21 to A–22. Within both channels of distribution, Mexinox S.A. made sales to both retailers and end users. For both channels of distribution, Mexinox S.A. performed similar selling functions such as pre-sale technical assistance, inventory maintenance, freight and delivery arrangements, and after-sales warranty services. *See, e.g., Id.* at Attachment A–4–C. Because channels of distribution do not qualify as separate LOTs when the selling functions performed are sufficiently similar, we determined one LOT exists for Mexinox's home market sales. *See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review,* 67 FR 78417 (December 24, 2002).

For the U.S. market, Mexinox reported one LOT, the CEP LOT. Sales made through this LOT consisted of merchandise produced to order that was sold directly to unaffiliated U.S. customers (''direct shipments''), sales made from the stock of finished goods held at the Mexican factory in San Luis Potosi to unaffiliated U.S. customers (''SLP stock sales''), and sales made through Mexinox USA's inventory. *See, e.g.*, Mexinox's October 10, 2002 questionnaire response at A–22. When we compared CEP sales (after deductions made pursuant to section 772(d) of the Tariff Act) to home market sales, we determined there were fewer customer sales contacts, technical services, inventory maintenance, and warranty services performed for CEP sales. *See, e.g., Id.* at A–31 and Attachments A–4–B and A–4–C. In addition, the differences in selling functions performed for home market and CEP transactions indicate home market sales involved a more advanced stage of distribution than CEP sales. *See, e.g., Id.* at A–25 to A–27. In the home market, Mexinox S.A. provides marketing further down the chain of distribution by providing certain downstream selling functions that are normally performed by service centers in the U.S. market (*e.g.*, technical advice, credit and collection, *etc.*). *See Id.*

Based on our analysis of the selling functions performed for the CEP LOT and the home market LOT, we determined that the CEP and the starting price of home market sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to home market sales, we examined whether a level-of-trade adjustment may be appropriate. In this case, Mexinox sold at one LOT in the home market; thus, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of Mexinox's sales of other similar products, and there are no other respondents or other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment and the level of trade of home market sales is at a more advanced stage than the level of trade of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Tariff Act, as claimed by Mexinox. We based the amount of the CEP offset on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Tariff Act. We applied the CEP offset to NV, whether based on home market prices or CV.

In addition to the three U.S. channels of distribution discussed above (direct sales, SLP stock sales, and sales through Mexinox USA), Mexinox reported U.S. sales through one other channel of distribution: CEP sales through its affiliated reseller Ken-Mac. For purposes of this preliminary determination, we treated this channel of distribution as equivalent to the level of trade of other CEP sales.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Tariff Act for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. We made adjustments for billing adjustments, discounts and rebates, and commissions, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate: foreign inland freight, foreign brokerage and handling, inland insurance, U.S. customs duties, U.S. inland freight, U.S. brokerage, U.S. warehousing expenses. As further directed by section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, credit costs, warranty expenses, and another expense not subject to public disclosure), inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act, and added duty drawback to the starting price in accordance with section 772(c)(1)(B) of the Tariff Act. For those sales in which the material was sent to an unaffiliated U.S. processor to be further processed, we made an adjustment based on the transaction-specific further-processing amounts reported by Mexinox. In addition, the U.S. affiliated reseller Ken-Mac performed some further manufacturing of some of Mexinox's U.S. sales. For these sales, we deducted the cost of further processing in accordance with 772(d)(2) of the Tariff Act. In calculating the cost of further manufacturing for Ken-Mac, we relied upon the further manufacturing information provided by Mexinox.

Normal Value

A. Selection of Comparison Market

To determine whether there is 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 the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Tariff Act. Because the respondent'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 the home market was viable. *See*, *e.g.*, Mexinox's April 1, 2003 supplemental questionnaire response at Attachment A–1 (quantity and value chart).

B. Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. *See* 19 CFR 351.102(b). To test whether sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers minus all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c).[6] In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine whether these sales were made at arm's-length prices and, therefore, excluded them from our margin calculation. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil,* 63 FR 59509 (Nov. 8, 1998), citing *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model. For these preliminary results, we found that none of Mexinox's affiliated home market customers failed our arm's-length test.

C. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the cost of production (COP) in the most recently completed review of S4 in coils from Mexico (*see Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review,* 67 FR 6490 (February 12, 2002), as amended, *Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico,* 67 FR 15542 (April 2, 2002)), we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Mexinox may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Mexinox.

To calculate COP, in accordance with section 773(f)(3) of the Tariff Act, we revised Mexinox's reported raw material costs to reflect certain adjustments to the COP and transfer price. *See* the Department's ''Cost of Production and Constructed Value Adjustments for the Preliminary Results'' (COP Analysis Memorandum) dated July 31, 2003 for more information regarding these adjustments. We also recalculated Mexinox's general and administrative (G&A) and interest expenses as described in the COP Analysis Memorandum. We added the revised material costs to the respondent's reported cost of fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Tariff Act. We then computed weighted-average COPs during the POR, and compared the weighted-average COP figures to home market sales prices of the foreign like product as required under section 773(b) of the Tariff Act, to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to the home market prices net of billing adjustments, discounts and rebates, and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act: (1) whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given model (*i.e.*, CONNUM) were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we

[6] Because this review was initiated before November 23, 2002, the 99.5 percent test applies to this review. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69197 (November 15, 2002).

disregarded the below-cost sales because: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

Our cost test for Mexinox revealed that for home market sales of certain models, less than twenty percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Tariff Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Constructed Value

In accordance with section 773(e) of the Tariff Act, we calculated CV based on the sum of the respondent's cost of materials (revised to reflect certain adjustments to the COP and transfer price—*see* the Department's COP Analysis Memorandum dated July 31, 2003), fabrication, SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We deducted from CV the weighted-average home market direct selling expenses incurred on sales made in the ordinary course of trade.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers we determined to be at arm's length. We made adjustments for billing adjustments, discounts, and rebates, where appropriate. We made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, difmer) pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. As noted in the ''Level of Trade'' section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

F. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review we preliminarily determine the following weighted-average dumping margin exists for the period July 1, 2001 through June 30, 2002:

Manufacturer/Exporter	Weighted Average Margin (percentage)
ThyssenKrupp Mexinox S.A. de C.V.	7.43

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting case briefs, rebuttal briefs, and written comments would provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to Customs upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of S4 in coils from Mexico 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 Tariff Act:

(1) The cash deposit rate for Mexinox will be the rate established in the final results of review;

(2) If the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(3) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate from the investigation (30.85 percent; *see Notice of Amended Final Determination of Sales at Less Than Fair Value and*

Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Mexico, 64 FR 40560, 40562 (July 27, 1999)).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: July 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20181 Filed 8–6–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Preliminary Results in the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from France

SUMMARY: In response to requests from Ugine S.A. (''Ugine''), respondent, and Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Organization Inc., and the United Steelworkers of America, AFL–CIO/CLC, collectively, (''the Petitioners''), the U.S. Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (''SSSS'') from France for the period July 1, 2001 through June 30, 2002. The Department preliminarily determines that a dumping margin exists for Ugine's sales of SSSS in the United States. 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 (''Customs'') to assess antidumping duties on entries of Ugine's merchandise during the period of review. The preliminary results are listed in the section titled ''Preliminary Results of Review,'' *infra.*

EFFECTIVE DATE: August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Werner, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–2667.

Background

On July 27, 1999, the Department published in the **Federal Register** the amended final determination and antidumping duty order on SSSS from France. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from France,* 64 FR 40562 (July 27, 1999) (''*Antidumping Duty Order*''). On March 19, 2002, the Department published in the **Federal Register** the amended final results of the first antidumping duty administrative review of SSSS from France. *See Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France,* 67 FR 12522 (March 19, 2002). On January 28, 2003, the Department published in the **Federal Register** the amended final results of the second antidumping duty administrative review of SSSS from France. *See Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 4171 (January 28, 2003).

On July 1, 2002, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on stainless steel sheet and strip in coils from France for the period July 1, 2001, through June 30, 2002. *See Notice of Opportunity to Request Administrative Review of Antidumping Duty or Countervailing Duty Order, Finding, or Suspended Investigation,* 67 FR 44172 (July 1, 2002).

On July 31, 2002, Ugine, a French producer and exporter of subject merchandise, and the Petitioners requested that the Department conduct a review of Ugine's sales or entries of merchandise subject to the Department's antidumping duty order on SSSS from France. On August 27, 2002, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period July 1, 2001 through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002).

On October 7, 2002, Ugine reported in its response to Section A of the Department's questionnaire, that it made sales of subject merchandise to the United States during the POR. On October 22, 2002, Ugine submitted translations of financial statements that it had submitted in its October 7, 2002, response. On October 28, 2002, Ugine submitted its responses to Section B, C, D, and E of the Department's questionnaire. On December 10, 2002, Ugine submitted its cost reconciliation. On December 20, 2002, the Department issued a supplemental questionnaire for Sections A, B, and C of Ugine's questionnaire responses. On January 30, 2003, Ugine submitted its responses to the supplemental Sections A, B, and C questionnaire. On March 3, 2003, the Department issued a supplemental questionnaire for Sections D and E of Ugine's questionnaire responses, and Ugine submitted its response on April 3, 2003. On March 25, 2003, the Department issued a sucessorship questionnaire to Ugine. On April 15, 2003, Ugine submitted its response to the successorship questionnaire. On April 23, 2003, the Department requested Ugine submit Imphy Ugine Precision's (''IUP's''), an affiliate of Ugine, cost reconciliation as well as downstream sales of its affiliates. On April 30, 2003, the Department issued a second supplemental questionnaire for Sections A, B, and C, and on May 14, 2003, the Department issued a second supplemental questionnaire for Sections D and E. On May 21, and May 27, 2003, Ugine submitted its response to the second supplemental questionnaire for Sections A, B, and C. On May 29, 2003, the Department issued a supplemental questionnaire concerning Ugine's successorship response. On June 2, 2003, Ugine submitted its sales reconciliation. On May 28, and June 4, 2003, Ugine submitted its response to the second supplemental questionnaire for Sections D and E. On June 11, 2003, Ugine submitted its response to the supplemental questionnaire on successorship.

On March 27, 2003, the Department extended the time limit for the preliminary results of the antidumping duty administrative review. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless*

Steel Sheet and Strip in Coils from France, 68 FR 14948 (March 27, 2003).

Verification

As provided in section 782(i)(3) of the Act, we verified the information submitted by Ugine for use in our preliminary results. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Ugine. From June 15, 2003 through June 20, 2003, we verified sales and successorship information provided by Ugine. From June 24, 2003 through July 1, 2003, we verified constructed export price (''CEP'') sales information provided by Ugine and its U.S. sales affiliates. Our verification results are outlined in the public version of the verification report and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC. *See Memorandum from Cheryl Werner and Eugene Degnan, Case Analysts through James C. Doyle, Program Manager, to the File: Verification of Sales and Successorship for Ugine S.A. in the 3rd Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from France,* dated July 31, 2003 (*''Home Market Report''*); *Memorandum from Cheryl Werner and Kit Rudd, Case Analysts through James C. Doyle, Program Manager, to the File: Verification of CEP Sales for Usinor Stainless USA in the 3rd Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from France,* dated July 31, 2003 (*''U.S. Sales Report I''*); and *Memorandum from Cheryl Werner and Kit Rudd, Case Analysts through James C. Doyle, Program Manager, to the File: Verification of CEP Sales for Hague Steel Corporation in the 3rd Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from France,* dated July 31, 2002 (*''U.S. Sales Report II''*).

Period of Review

The period of review (''POR'') is July 1, 2001, through June 30, 2002.

Scope of Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[1], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 1.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 1.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of not more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with not scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 5 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Finally, three specialty stainless steels typically used in a certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''[6]

Affiliation of Parties

Pursuant to section 771(33)(E) of the Act, the Department preliminarily finds that Arcelor S.A. (''Arcelor'') is affiliated with Usinor S.A. (''Usinor''), by virtue of its acquisition of 97.58 percent of Usinor's shares. Ugine, in turn, is a wholly owned subsidiary of Usinor.[7] Additionally, Arcelor acquired 99.43 percent shares of Arbed S.A.'s (''Arbed's'') shares, and 95.03 percent of Aceralia Corporación Siderúrgica S.A.'s (''Aceralia's'') shares. Therefore, as discussed below, the Department also preliminarily finds that Arbed and Aceralia are affiliated with Usinor by virtue of the common ownership by Arcelor.

According to section 771(33)(E) of the Act, any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization shall be considered affiliated. Thus, since Arcelor owns 97.58 percent of Usinor's shares, 99.43 percent of Arbed's shares, and 95.03 percent of Aceralia's shares, it directly owns more than five percent of the shares of these companies.[8] Moreover, we preliminarily find this affiliation between Usinor and Arcelor, Arbed, and Aceralia and their subsidiaries to be effective as of February 28, 2002. We preliminarily find February 28, 2002, to be the date reflective of Arcelor's acquisition of Usinor's, and Aceralia's shares, because it is the effective date for the consolidation of Usinor, Arbed, and Aceralia's financial results.[9] According to Arcelor's consolidated financial statements, the Arcelor Group was created upon the merger of Aceralia, Arbed and Usinor, effective on February 28, 2002, in accordance with the International Financial Reporting Standards (''IFRA'').[10] For a complete discussion of this issue, see *Memorandum from Cheryl Werner, Case Analyst through James C. Doyle to the File: Affiliation of Arcelor and Usinor,* dated July 31, 2003 (''Affiliation Memo'').

Successorship

Ugine, an entity involved in the production and sale of subject merchandise in the United States, changed its name immediately following the POR to Ugine & ALZ France S.A. We have conducted a successorship review during this POR because entries for the new entity will be made under that name during the next POR. We also note that Usinor Stainless USA, a U.S. sales affiliate of Ugine, has changed its name to Arcelor Stainless USA.

The Department is making this successorship determination in order to apply the appropriate and necessary company-specific cash deposit rates. In determining whether Ugine & ALZ France is the successor to Ugine for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) Management, (2) production facilities, (3) suppliers,

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

[7] *See* Ugine's Section A questionnaire response, at page 11.

[8] *See* Ugine's April 15, 2003, successorship questionnaire response, at Exhibit 5: Arcelor Group Brochure.

[9] *See Home Market Verification Report,* at Exhibit 19: Arcelor's 2002 consolidated financial statements.

[10] *Id.*

and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992) (''Brass from Canada''); *Steel Wire Strand for Prestressed Concrete from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 55 FR 28796 (July 13, 1990); and *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review,* 59 FR 6944 (February 14, 1994). While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. *See Brass from Canada*. Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

The evidence on the record, including Ugine's company brochures, customer lists, and lists of suppliers, including those in Ugine's successorship responses, demonstrates that with respect to the production and sale of the subject merchandise, Ugine & ALZ France is the successor to Ugine. Specifically, the evidence shows that Ugine & ALZ France has the same SSSS production facilities, and most of the same customers, suppliers, and management, as Ugine had. At verification, we confirmed that Ugine's production facilities, customers, and suppliers had not changed. *See Home Market Verification Report,* at pages 12–13. We reviewed Ugine's organizational structure before and after the acquisition of its parent company by Arcelor and confirmed that there was only minimal changes. *See id.* Furthermore, we reviewed documentation at verification to support the name change, including the registration of the new name. *See id,* at Exhibit 5. Therefore, we preliminary find that Ugine & ALZ France is the successor to Ugine for purposes of this proceeding, and for the application of the antidumping law.

Normal Value Comparisons

To determine whether Ugine's sales of subject merchandise from France to the United States were made at less than fair value, we compared the CEP to the normal value (''NV''), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual CEP transactions.

Transactions Reviewed

A. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was 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 or equal to five percent of the aggregate volume of U.S. sales), we compared Ugine's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) of the Act, because Ugine'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 determine that the home market was viable.

B. Arm's Length Test

Ugine reported that it made sales in the home market to affiliate end users and resellers during the POR. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unafflilated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unrelated party, we determined that sales made to the related party were at arm's length. *See* 19 CFR 351.403(c).[11] Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See, e.g., Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Italy,* 67 FR 39677, 39679 (June 10, 2002). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. In our home market NV calculation, we have included Ugine's sales to certain of its affiliated customers because these entities passed the Department's arms's length test criteria. Conversely, certain other affiliated customers did not pass the arm's length test and have therefore been excluded from our home market NV calculation. For a further discussion of home market sales made by Ugine to one affiliated reseller who failed the arm's length test, please *see* the ''Facts Available'' section below.

C. Date of Sale

As stated at 19 CFR 351.401(i), the Department will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the essential terms of sale. Ugine explained that both the U.S. market's and HM's prices and quantities may be modified between the date of the initial order and the date of shipment.[12] Ugine explained that price may be modified to reflect changing market conditions. Ugine also explained that quantities may be modified when the customer's needs change between the initial order and shipment, or when Ugine's production exceeds the initial order quantity by more than the agreed-upon tolerance and the customer agrees to accept the additional quantity.[13]

Home Market

For all home market sales, Ugine reported the earlier of the date of invoice or date of shipment to its customers as the date of sale. Ugine reported that it had significant changes to price and volume between the contract date and invoice date during the first half of 2002.[14] Therefore, the Department is using Ugine's invoice date as the date of sale for the preliminary results.

U.S. Market

For all U.S. market sales, Ugine reported two sets of sale to the Department: the earlier of the date of invoice or date of shipment to its customer; and order (contract) date. Ugine reported that there were changes to the price and volume between the contract date and invoice date during the first half of 2002.[15] At verification, Ugine revised upward the percentage of changes to the price and volume due to a programming error in its analysis.[16]

[11] Because this review was initiated before November 23, 2002, the 99.5 percent test applies to this review. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69197 (November 15, 2002).

[12] *See* Ugine's January 29, 2003, supplemental Section A questionnaire response, at 20.

[13] *Id.* Also, *see Home Market Verification Report, U.S. Sales Report I,* and *U.S. Sales Report II.*

[14] *Id.*

[15] *Id.*

[16] *See Home Market Verification Report,* at Exhibit 28.

We preliminarily find that Ugine had significant changes to its prices and volumes between contract date and invoice date. Moreover, we note for some CEP sales, Ugine was unable to report an order date because Hague did not maintain this information in its normal course of business. Therefore, since there were significant changes between contract date and invoice date and the Department's preference is not to mix invoice dates and contract dates from the same market in its analysis, we are using the earlier of Ugine's U.S. affiliates' invoice date or shipment date as the date of sale for the preliminary results.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all SSSS products covered by the ''Scope of the Review'' section of this notice, *supra*, which were produced and sold by Ugine in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons of U.S. sales of SSSS products. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): (1) Grade; (2) hot/cold rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Constructed Export Price

In accordance with section 772(a) of the Act, export price (''EP'') is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) (of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, Ugine classified all of its exported sales of SSSS as CEP sales. During the review period Ugine made sales to the United States through its two U.S. based affiliates, Usinor Stainless USA and Hague, which then resold the merchandise to unaffiliated customers. According to Ugine, Usinor Stainless USA serves as a national ''super-distributor'' for Ugine in the U.S. market. Hague is an affiliated customer in the United States which further manufactured the SSSS before selling to unaffiliated customers. Therefore, because Ugine's U.S. sales were made by Usinor Stainless USA and Hague after the subject merchandise was imported into the United States, it is appropriate to classify these sales as CEP sales.

We calculated the CEP in accordance with Section 772(b) of the Act. We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. We also made deductions for the following movement expenses, where appropriate, in accordance with 772(c)(2)(A) of the Act: foreign inland freight from plant to distribution warehouse, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse/plant to the unaffiliated customer, U.S. warehouse expenses, other U.S. transportation expense, wharfage expenses, and Customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, discounts, rebates, credit, warranty expenses, commissions and other indirect selling expense.

For products that were further manufactured after importation, we adjusted for all costs of further manufacturing in the United States in accordance with section 772(d)(2) of the Act. We deducted the profit allocated to expenses deducted under section 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market. We also adjusted the starting price for billing adjustments and freight revenue.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Constructed Value (''CV'') Comparison'' and ''Price-to-Price Comparisons'' sections of this notice.

Cost of Production Analysis

Because we disregarded sales below the cost of production in the most recently completed segments of these proceedings on SSSS from France, we have reasonable grounds to believe or suspect that sales by Ugine in its home market were made at prices below the cost of production (''COP''), pursuant to section 773(b)(1) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30820 (June 8, 1999) (''*LTV Final*''); *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 67 FR 6493 (February 12, 2002); and *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 67 FR 78773 (December 26, 2002). Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ugine as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Ugine's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses (''SG&A''), including interest expenses, and packing costs. We relied on the COP data submitted by Ugine in its original and supplemental cost questionnaire responses. Ugine reported that it had purchases of scrap from an affiliated supplier. However, we find that Ugine's purchases of scrap do not constitute a major input because they do not represent a significant portion of the cost of manufacturing.[17] Section 773(f)(2) states that the Department can disregard transactions with affiliated parties if the amount representing that input does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the

[17] *See Memorandum from Cheryl Werner through James C. Doyle, Program Manager, to the File; Analysis for Ugine S.A. for the Preliminary Results of the 3rd Administrative Review on Stainless Steel Sheet and Strip Coils from France for the period July 1, 2001 through June 30, 2002,* dated July 31, 2003, at 4.

market under consideration. Therefore, according to section 773(f)(2) we compared the transfer price to the market price for the four types of scrap purchased from an affiliated party and found that for three types of scrap the transfer price was more than the market price. For one type of scrap the market price was slightly more than the transfer price. The purchase of this type of scrap was insignificant compared to the purchases of the other three types of scrap. Any adjustment under 773(f)(2) will have an immaterial affect on the reported cost. Therefore, for the preliminary results the Department has not made any adjustment to the reported costs for purchase of scrap from an affiliate.

B. Test of Home Market Prices

We compared the weighted-average COP for Ugine to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) Within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable billing adjustments, movements, movement charges, discounts, and direct and indirect selling expense.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Ugine's sales of a given product were at prices less than 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 Ugine's sales of a given product during the POR were at prices less than the COP, we determined that such sales 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 use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ugine's cost of materials, fabrication, SG&A (including interest expenses), U.S. packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ugine in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers or prices to affiliated customers that were determined to be at arm's length. Where appropriate, we deducted discounts, rebates, credit expenses, warranty expenses, inland freight, inland insurance, and warehousing expense. We also adjusted the starting price for billing adjustments, freight revenue, and direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with sections 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (''COM'') of the U.S. product, we based NV on CV.

For reasons discussed in the ''Level of Trade'' section below, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted the home market indirect selling expenses from NV for home market sales that were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

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 CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in 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, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondent, we examined all types of selling functions and activities reported in the respondent's questionnaire responses on LOT and during verification. In analyzing whether separate LOTs existed in this review, we found that no single selling function was sufficient to warrant a separate LOT in the home market. *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27371 (May 19, 1997). Based on a comparison of all selling functions performed for sales through affiliated parties to all selling functions performed for unaffiliated customers, we have preliminarily determined that Ugine sold merchandise at one LOT in the home market during the POR. The LOT involved sales made through three

channels: sales by Ugine directly to unaffiliated service centers or end users (Channel 1); sales made by Ugine with the assistance of Ugine France Service in its capacity as sales agent (Channel 2); and sales made by IUP to unaffiliated end users and service centers (Channel 3). From our analysis of the marketing process for these sales, we have determined that there are not significant distinctions in selling activities between Ugine's sales to its unaffiliated customers in Channels 1 and 2 and IUP's direct sales to its unaffiliated customers through Channel 3. *See Memorandum from Eugene Degnan, Case Analyst to the File through James C. Doyle, Program Manager, Third Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from France: Level of Trade Analysis,* dated July 31, 2003 (''*LOT Memorandum*''), on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC. Therefore, we preliminarily concluded that one LOT existed in the home market during the POR.

In order to determine the LOTs of the U.S. market, we received the selling activities associated with each reported channel of distribution. Ugine only reported CEP sales in the U.S. market. Because all of Ugine's CEP sales in the U.S. market were made through Usinor Stainless USA and Hague, we found that there was one LOT in the U.S. market. For these CEP sales, we determined that fewer and different selling functions were performed for CEP sales to Usinor Stainless USA than for sales at the home market LOT. In addition, we found that sales at the home market LOT were at a more advanced stage of distribution compared to the CEP sales. *See LOT Memorandum* at 11.

We examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that the LOT in the home market did not match the LOT of the CEP transactions. Because of this, we did not calculate a LOT adjustment. Instead, a CEP offset was applied to the NV–CEP comparisons. *See LOT Memo* at 11. In the two most recent administrative reviews of this order, where similar fact patterns existed, we also granted a CEP offset. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 67 FR 6493 (February 12, 2002) and accompanying *Issues and Decision Memorandum*, at Comment 8; and *see Preliminary Results of Antidumping Administrative Review: Stainless Steel Sheet and Strip in Coils From France*, 67 FR 51210 (August 7, 2002).

Facts Available

We preliminary determine that the use of facts available is appropriate for one element of Ugine's dumping margin calculation. Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In this case, consistent with sections 776(a)(2)(A), and (B) and (C) of the Act, we preliminary find that use of facts available is warranted for home market sales made to an affiliated reseller who failed the arm's length test. On December 20, 2002, the Department sent Ugine a supplemental questionnaire requesting the downstream sales for all known affiliated customers and resellers who purchased the subject merchandise in the home market during the POR. On January 28, 2003, Ugine submitted a letter arguing that if the Department applies one of the criteria outlined in the letter, resales by affiliated customers need not be reported. One of these criteria specifically stated that if the customers passed the arm's length test, then there was no need to report those customers' downstream sales. On January 29, 2003, Ugine submitted its Sections A–C supplemental questionnaire response, but did not include downstream sales for any affiliated customers. On April 23, 2003, the Department requested downstream sales for a smaller number of affiliated resellers, which included the affiliated customer who failed the arm's length test. To date, Ugine has not provided the downstream sales for any customer, including that affiliated customer. Therefore, consistent with section 776(a)(2)(A) and (C) of the Act, Ugine withheld information that had been requested by the Department, failed to provide such information in a timely manner, and significantly impeded the determination under the antidumping statute, justifying the use facts otherwise available in reaching the applicable determination. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Ugine has failed to provide the downstream sales made by affiliated resellers as requested in the Department's December 20, 2002, and April 23, 2003, letters to Ugine. However, in this case, the volume of sales from Ugine to its affiliated customer which failed the arm's length test is minimal. Therefore, we find adverse facts available is not warranted for these sales and will use facts available.

In selecting from facts otherwise available, for these preliminary results, for those sales to the affiliated reseller that failed the arm's length test, for which Ugine did not provide downstream sales, the Department used the gross unit price of the most similar model purchased by an unaffiliated customer. The Department applied similar facts available in a recent investigation as well as the second administrative review of this case. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from France*, 67 FR 31204 (May 9, 2002); and *see Preliminary Results of Antidumping Administrative Review: Stainless Steel Sheet and Strip in Coils From France*, 67 FR 51210 (August 7, 2002).

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs

from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915, 8918 (March 6, 1996), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 6, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate. In this case, there was no currency fluctuation.

Preliminary Results of Review

As a result of this review, we preliminarily find that the following weighted-average dumping margin exists:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM FRANCE

Producer/Manufacturer/Exporter	Weighted-Average Margin
Ugine S.A.	3.52

Pursuant to 19 CFR 351.224, the Department will disclose to any party to the proceeding, within ten days of publication of this notice, the calculations performed. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with an additional copy of the public version of any such comments on a computer diskette. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Assessment

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs within fifteen days of publication of the final results of review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. If the preliminary results are adopted in the final results of review, this rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

Cash Deposits

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ugine will be that established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, 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 less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the ''all others'' rate established in the LTFV investigation, which was 9.38 percent. *See Antidumping Duty Order* at 40565.

If we determine in the final results that Ugine & ALZ France is the successor to Ugine for purposes of applying the antidumping duty law, Ugine will no longer have its own company-specific cash deposit rate.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under regulation 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2003.

Joseph A. Spetrini,

Acting Assistance Secretary for Grant Aldonas, Import Administration.

[FR Doc. 03–20182 Filed 8–6–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Survey of Minority Commercial Broadcast Owners

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before October 6, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) should be directed to Maureen Lewis, Director, Minority Telecommunications Development Program, NTIA, Department of Commerce, Room 4720, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–1892 or by e-mail at *mlewis@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Minority Telecommunications Development Program (MTDP), National Telecommunications and Information Administration has developed a survey instrument for its periodic minority commercial broadcast ownership report. The survey will be the principal method

of systematically gathering information about the experiences of minority entrepreneurs entering the broadcast industry and/or expanding their operations.

II. Method of Collection

MTDP will conduct thirty-minute telephone surveys of station owners or senior management. MTDP will also make the surveys available to respondents on the NTIA website, so that station owners or managers may complete and submit the requested information electronically.

III. Data

OMB Number: 0660–0017.

Form Numbers: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 250.

Estimated Total Annual Cost to the Public: $0.

IV. Request for Comments

The Department of Commerce invites comments 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and will be included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 1, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–20088 Filed 8–6–03; 8:45 am]

BILLING CODE 3510–60–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice Concerning Request for Public Input on 2004 State Commission—Administrative and AmeriCorps Program Guidance

AGENCY: Corporation for National and Community Service.

ACTION: Notice concerning request for public input on 2004 State Commission Administrative and AmeriCorps Program Guidance.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') is requesting input from the public concerning the 2004 AmeriCorps grants program and state commission administrative guidance that will be issued beginning in September, 2003. This guidance will describe the policies, procedures, and timelines that govern the allocation of resources in fiscal year 2004, and covers organizations that may apply for AmeriCorps grants under the National and Community Service Act of 1990. By inviting input, we hope to encourage greater involvement by the national and community service field, members of the public, and other stakeholders. The Corporation invites input on any topic covered by this guidance, including application requirements; preferences for funding; sustainability; the grants timeline; and accountability measures. Once final, the guidance and related application materials will be posted on the Corporation's website at *www.nationalservice.org.* Organizations considering applying for grants and other Federal assistance provided by the Corporation should check our website periodically for information relating to the application and selection processes.

DATES: To ensure that your comments are considered, please provide them to the Corporation by no later than 5 p.m., Eastern Daylight Time, on August 22, 2003.

ADDRESSES: Please submit written comments to the Corporation at the following address: (a) Via e-mail to *2004Guidance@cns.gov*; (b) via fax to David Reingold at 202–565–2785; or (c) via letter, to: Corporation for National and Community Service, Attn: David Reingold, 1201 New York Avenue NW., Washington, DC 20525. Due to continued delays in the Corporation's receipt of mail, individuals are strongly encouraged to respond via e-mail or fax. This notice may be requested in an alternative format for the visually impaired.

FOR FURTHER INFORMATION CONTACT: For further information, contact either David Reingold at 202–606–5000x139 (*dreingold@cns.gov*) or Nancy Talbot at 202–606–5000x470 (*ntalbot@cns.gov*). Our TDD number is 202–565–2799.

SUPPLEMENTARY INFORMATION: In addition to this opportunity for written comments, the Corporation will hold a series of conference calls to receive input from the public on the following dates:

Conference Calls for State Commissions:

Call Date: Aug. 11, 2003.

Call Time: 3 p.m. Eastern Daylight Time.

Duration: 1 hr 30 min.

Leader: Ms. Rosie Mauk.

USA Toll Free Number: 888–220–3084.

Passcode: State Commission.

For security reasons, the passcode and the leader's name will be required to join your call.

Call Date: Aug-12–2003.

Call Time: 1:30 p.m. Eastern Daylight Time.

Duration: 1 hr 30 min.

Leader: Ms. Rosie Mauk.

USA Toll Free Number: 888–455–0040.

Passcode: State Commission.

For security reasons, the passcode and the leader's name will be required to join your call.

Conference Call for Education Awards Programs:

Call Date: Aug-13–2003.

Call Time: 1 p.m. Eastern Daylight Time.

Duration: 1 hr 30 min.

Leader: Ms. Rosie Mauk.

USA Toll Free Number: 888–566–5776.

Passcode: ED Awards.

For security reasons, the passcode and the leader's name will be required to join your call.

Conference Call for AmeriCorps*National:

Call Date: Aug-13–2003.

Call Time: 3 p.m. Eastern Daylight Time.

Duration: 1 hr 30 min.

Leader: Ms. Rosie Mauk.

USA Toll Free Number: 888–220–3083.

Passcode: National Direct.

For security reasons, the passcode and the leader's name will be required to join your call.

Please note that this Notice does not request comments on individual application forms used under the various programs of the Corporation. The Corporation periodically publishes separate requests for comments

concerning such application forms. By way of example, please refer to the Corporation's Application Guidelines for 2003 at *http://www.americorps.org/resources/guidelines2003.html.*

Dated: August 1, 2003.

David Reingold,

Director of Research and Policy Development.

[FR Doc. 03–20141 Filed 8–6–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, September 10, 2003; 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- The meeting presentation will feature an overview of the Tennessee Oversight Agreement as it pertains to ongoing monitoring programs. John Owsley, Director of the DOE Oversight Division of the Tennessee Department of Environment and Conservation and ORSSAB ex officio member, will provide the information.
- After offering background information on two other aspects of the Tennessee Oversight Agreement—management of the Federal Facility Agreement grant and operation with the Tennessee Emergency Management Agency—Mr. Owsley will focus on the Oversight and Monitoring Program. In particular, he will discuss recent findings by the state as they relate to ambient monitoring.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on August 4, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–20165 Filed 8–6–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0176, FRL–7541–8]

Agency Information Collection Activities: Continuing Collection; Comment Request; Registration of Fuels and Fuel Additives, EPA ICR Number 309.11, OMB Control Number 2060–0150

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 6, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0176, to EPA online using EDOCKET (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9303; fax number: (202) 565–2085; email address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0176, which is available for public viewing at the Office of Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the

official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are those who (1) manufacture or import gasoline or diesel fuel for use in motor vehicles, or (2) manufacture or import an additive for gasoline or diesel fuel for use in motor vehicles.

Title: Registration of Fuels and Fuel Additives: Requirements for Manufacturers (40 CFR part 79)

Abstract: In accordance with the regulations at 40 CFR part 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline or diesel fuel for use in motor vehicles, and manufacturers (including importers) of additives for such gasoline or diesel fuel, are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, certain technical and marketing information, and any health-effects information in possession of the manufacturer. The development of heath-effects data, as required by 40 CFR part 79, subpart F, is covered by a separate information collection. Manufacturers are also required to submit periodic reports (annually for additives, quarterly and annually for fuels) on production volume and related information. The information is used to identify products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. The information is also used to ensure that gasoline additives comply with EPA requirements for protecting catalytic converters and other automotive emission controls. The data have been used to construct a comprehensive data base on fuel and additive composition. The Mine Safety and Health Administration of the Department of Labor restricts the use of diesel additives in underground coal mines to those registered by EPA. Most of the information is confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: There are approximately 160 fuel manufacturers, 660 additive manufacturers, 350 registered fuels, and 5,800 registered additives. For each additive that is not a relable of a registered additive, about 4,000 additives, an annual report is required, at an estimated burden of one hour and cost of $66 each. For each fuel, quarterly and annual reports are required, at an estimated burden of three hours and $198 each. EPA estimates that there will be 500 new additives registered each year, with a reporting burden of eight hours and $528 each. EPA estimates that there will be 200 additive update letters each year, with a burden of one hour and $66 each. EPA estimates that there will be 70 new gasolines and diesel fuels registered each year, with a burden of eight hours and $528 each. EPA estimates that there will be 500 fuel update letters each year, with a burden of one hour and $66 each. There are no capital and start-up costs. There are no operation and maintenance costs beyond copying and postage. The total annual estimated burden for industry is 14,810 hours and $1 million. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 31, 2003.

Deborah K. Wood,

Acting Director, Transportation and Regional Programs Division.

[FR Doc. 03–20164 Filed 8–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7541–3]

Adequacy Status of the Louisville, Kentucky Submitted 1-Hour Ozone Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the motor vehicle emission budgets (MVEB) in the Louisville 1-Hour Ozone Maintenance Plan, submitted June 27, 2003, by the Kentucky Department of Air Quality (KDAQ) and the Jefferson County Air Pollution Control District (JCAPCD), are adequate for transportation conformity purposes. On March 2, 1999, the DC Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate. As a result of this finding, Louisville can use the MVEB from the Louisville 1-Hour Ozone Maintenance Plan for future conformity determinations.

DATES: This finding is effective August 22, 2003.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments are available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the ''Transportation Conformity'' text icon, then look for ''Adequacy Revision of State Implementation Plan (SIP) Submissions for Conformity'').

Lynorae Benjamin, Environmental Engineer; U.S. Environmental Protection Agency, Region 4; Air Planning Branch; Air Quality Modeling and Transportation Section; Branch; 61 Forsyth Street, SW; Atlanta, Georgia 30303. E-mail: *benjamin.lynorae@epa.gov.* Phone number: (404) 562–9040.

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 4 sent a letter to KDAQ and JCAPD on July 23, 2003, stating that the MVEB in the Louisville 1-hour Ozone Maintenance Plan Revision submitted on June 27, 2003, are adequate. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm,* (once there, click on the ''Transportation Conformity'' text icon, then look for ''Adequacy Review of State Implementation Plan (SIP) Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEB are adequate for transportation conformity purposes are outlined in 40 Code of Federal Regulations 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds a budget adequate, the Agency may later determine that the SIP itself is not approvable.

EPA has described the process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memorandum entitled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). EPA has followed this guidance in making this adequacy determination.

Authority: 42 U.S.C. 7401–7671 q.

Dated: July 31, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–20152 Filed 8–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IN 121–4; FRL–7541–2]

Adequacy Status of the Louisville, Kentucky/Indiana 1-Hour Ozone Maintenance Plan for Transportation Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the motor vehicle emission budgets (MVEB) in the Louisville area 1-Hour Ozone Maintenance Plan (which includes Clark and Floyd Counties Indiana), submitted June 26, 2003, by the Indiana Department of Environmental Management (IDEM), are adequate for transportation conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate. As a result of this finding, the Louisville area can use the MVEB from the Louisville area 1-Hour Ozone Maintenance Plan for future conformity determinations.

DATES: These MVEB are effective August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, U.S. Environmental Protection Agency, Region 5; Air Programs Branch; Regulation Development Section; 77 West Jackson Blvd.; Chicago, Illinois 60604. E-mail: *morris.patricia@epa.gov.* Phone number: (312) 353-8656. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the ''Transportation Conformity'' text icon, then look for ''Adequacy Revision of State Implementation Plan (SIP) Submissions for Conformity'').

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 5 sent a letter to IDEM on July 9, 2003, stating that the MVEB in the Louisville 1-hour Ozone Maintenance Plan Revision submitted in final on June 26, 2003, are adequate. IDEM submitted the MVEB for parallel processing on May 13, 2003, and EPA posted the submittal to the adequacy Web site on May 15, 2003, for public comment. The adequacy public comment period closed on June 16, 2003, and no comments were submitted. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm,* (once there, click on the ''Transportation Conformity'' text icon, then look for ''Adequacy Review of State Implementation Plan (SIP) Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEB are adequate for transportation conformity purposes are outlined in 40 Code of Federal Regulations 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds a budget adequate, the SIP could later be disapproved.

EPA has described the process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memorandum entitled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). EPA has followed this guidance in making this adequacy determination.

Authority: 42 U.S.C. 7401–7671 q.

Dated: July 23, 2003.

William E. Muno,

Acting Regional Administrator, Region 5.

[FR Doc. 03–20153 Filed 8–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7541–1]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); Notification of Advisory Committee Meeting of the CASAC Particulate Matter Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency Science Advisory Board (SAB) Staff Office, announces a public meeting of the Clean Air Scientific Advisory Committee's (CASAC) Particulate Matter

(PM) Review Panel to review the *EPA Air Quality Criteria for Particulate Matter (Fourth External Review Draft).*

DATES: The meeting will be held August 25 and 26, 2003, from 8:30 a.m. to 5:30 p.m. (eastern time) on both days.

ADDRESSES: The meeting will take place at the EPA campus, Building C, in EPA's Main Auditorium (Room C111), 109 Alexander Drive, Research Triangle Park (RTP), North Carolina. A publicly-accessible teleconference line will be available for the entire meeting.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the teleconference call-in numbers and access codes should contact Ms. Delores Darden, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2282, or e-mail: *darden.delores@epa.gov.*

Any member of the public who wants further information concerning this meeting, or who wishes to submit written or brief oral comments (5 minutes or less) must contact Mr. Fred Butterfield, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail: (202) 564–4561; fax: (202) 501–0582; or e-mail: *butterfield.fred@epa.gov.* Requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than noon eastern time five business days prior to the meeting in order to reserve time on the meeting agenda. Written comments (preferably via e-mail) should be sent to Mr. Butterfield by the same deadline so that the comments can be provided to the CASAC PM Review Panel prior to the meeting. See additional instructions in the section below entitled, ''Providing Oral or Written Comments at SAB Meetings.'' General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Summary: The Clean Air Scientific Advisory Committee, which comprises seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC PM Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The PM Review Panel is charged with conducting a peer review of the *EPA Air Quality Criteria for Particulate Matter (Fourth External Review Draft).* This is a continuation of the Panel's review of the Third External Review Draft of this document (67 FR 41723, June 19, 2002). The CASAC PM Review Panel's report, comments and recommendations from this review, dated September 30, 2002, can be found on the SAB Web site at: *http://www.epa.gov/sab/pdf/casacl02003.pdf.*

Background: EPA is in the process of updating, and revising where appropriate, the Air Quality Criteria Document (AQCD) for PM as issued in 1996. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, where appropriate, of the air quality criteria and the National Ambient Air Quality Standards (NAAQS) for ''criteria'' air pollutants such as PM. On June 30, 2003, the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development, made available for public review and comment a Fourth External Review Draft of a revised document, *EPA Air Quality Criteria for Particulate Matter.* Under CAA sections 108 and 109, the purpose of the revised document is to provide an assessment of the latest scientific information on the effects of airborne PM on the public health and welfare, for use in EPA's current review of the NAAQS for PM. Detailed summary information on the history of the current draft AQCD for PM is contained in a previous EPA **Federal Register** notice (68 FR 36985, June 20, 2003). The *EPA Air Quality Criteria for Particulate Matter (Fourth External Review Draft)* can be viewed and downloaded from the NCEA Web site at: *http://www.epa.gov/ncea.* Any questions concerning the draft document should be directed to Dr. Robert Elias, NCEA-RTP, at telephone: (919) 541–1818; or e-mail: *elias.robert@epa.gov.*

Availability of Additional Meeting Materials: Copies of the draft agendas for the meetings that are described in this notice will be posted on the SAB Web site at: *http://www.epa.gov/sab* (under the ''Agendas'' subheading) in advance of the CASAC PM Review Panel meeting. Other materials that may be available will also be posted on the SAB Web site during this time-frame.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the EPA Science Advisory Board Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board Staff Office expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Mr. Butterfield at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Butterfield at the phone number or e-mail address noted above at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 31, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–20163 Filed 8–6–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7541–4]

Whitehouse Waste Oil Pits Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement with the Estate and Trust of David Bradley Pipkin for recovery of past and future response costs concerning the Whitehouse Waste Oil Pits Superfund Site near Jacksonville, Duval County, Florida. The Agreement requires the Estate and Trust of David Bradley Pipkin to pay $100,000 to resolve their liability at the Site. EPA will consider Public comments on the proposed settlement until September 8, 2003. EPA may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: July 24, 2003.

Archie Lee,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–20162 Filed 8–6–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Previously Announced Date & Time: Tuesday, July 29, 2003, 10:00 A.M. Meeting Closed to the Public. This Meeting Was Cancelled.

DATE AND TIME: Tuesday, August 12, 2003 at 10:00 A.M.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 14, 2003 at 10:00 A.M.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2003–15: Denise Majette, A member of the U.S. House of Representatives, and the Committee to Re-Elect congresswoman Denise Majette, by counsel G. Scott Rafshoon.

Draft Advisory Opinion 2003–16: Providian National Bank, by counsel Kenneth A. Gross and Ki P. Hong.

Draft Advisory Opinion 2003–19: Democratic Congressional Campaign Committee by counsel, Judith Corley and Brian Svoboda.

Proposed Policy Statement on Deposition Transcripts in Nonpublic Investigations.

Notice of Proposed Rulemaking on Campaign Travel.

Notice of Proposed Rulemaking on Multicandidate Committee Status & Bi-annual Limits.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–20329 Filed 8–5–03; 3:25 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011528–023.

Title: Japan/United States Eastbound Freight Conference.

Parties: A.P. Moller-Maersk Sealand; American President Lines, Ltd.; Hapag-Lloyd Container Linie GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; and Wallenius Wilhelmsen Lines AS.

Synopsis: The amendment extends the suspension of the agreement through January 31, 2004.

Agreement No.: 011829–001.

Title: The Ro Ro Ancillary Agreement.

Parties: EUKOR Car Carriers, Inc.; Wallenius Wilhelmsen Lines AS; Walleniusrederierna AB; Wilh. Wilhelmsen ASA; and Hyundai Merchant Marine Co., Ltd.

Synopsis: The amendment reflects a change in name of Ro Ro Korea Inc., to EUKOR Car Carriers, Inc.

Agreement No.: 011858.

Title: CSCL/NLL Cross Space Charter, Sailing and Cooperative Working Agreement—Mediterranean/Far East/PNW Loop.

Parties: China Shipping Container Lines Co., Ltd.; Norasia Container Lines Limited.

Synopsis: The proposed agreement is a vessel-sharing agreement in the trades between U.S. West Coast ports and ports in Canada, the Far East, and on the Mediterranean Sea. The parties request expedited review.

Agreement No.: 200866–003.

Title: Broward/King Ocean Lease and Operating Agreement.

Parties: Broward County (Florida); King Ocean Service de Venezuela, S.A.; and King Ocean Central America, S.A.

Synopsis: The amendment changes the financial basis for payments under the agreement and extends the agreement through June 14, 2009.

Agreement No.: 201113–003.

Title: Oakland-SSA LLC Preferential Assignment Agreement.

Parties: Port of Oakland; SSA Terminals, LLC.

Synopsis: The amendment makes temporary changes to the minimum annual guarantee and break point levels, permits temporary use of an adjacent berth, and extends the agreement's termination to October 18, 2017.

By Order of the Federal Maritime Commission.

Dated: August 1, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–20067 Filed 8–6–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 03–08]

Trans-Net, Inc. v. Fesco Ocean Management Limited; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed by Trans-Net, Inc. (''Complainant''), against FESCO Ocean Management Limited (''Respondent''). Complainant contends that Respondent violated sections 5, 10(a)(2), and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1709(a)(2) and (d)(1), and 535.901 of the Commission's regulations. Specifically, Complainant alleges that Respondent has operated and continues to operate under agreements that were required to be filed with the Commission, and has failed to establish and maintain reasonable regulations and practices in connection with the receiving, handling, storing or delivering of property. Complainant seeks an order finding Respondent to have violated the sections cited above, directing Respondent to cease and desist, and awarding unspecified reparations, including interest and attorneys' fees.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 2, 2004, and the final decision of the Commission shall be issued by November 30, 2004.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–20069 Filed 8–6–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 1167F.
Name: A & F Forwarding, Inc.
Address: 26 Broadway #732, New York, NY 10004.
Date Revoked: July 19, 2003.
Reason: Failed to maintain a valid bond.

License Number: 3877F.
Name: Angelita Ojeda dba A & A International Shipping.
Address: 15302 Southern Breeze Court, Houston, TX 77049.
Date Revoked: July 23, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4058NF.
Name: Basic Shipping U.S.A., Inc.
Address: 39–01 Main Street, Ste. 209, Flushing, NY 11354.
Date Revoked: July 13, 2003.
Reason: Failed to maintain valid bonds.

License Number: 17414N.
Name: Cargo Care, Inc.
Address: 1300-C South Finley Road, Suite 104, Lombard, IL 60148.
Date Revoked: July 16, 2003.
Reason: Surrendered license voluntarily.

License Number: 4545F.
Name: Cypress Cargo, Corp.
Address: 8444 NW 66th Street, Miami, FL 33166.
Date Revoked: July 16, 2003.
Reason: Failed to maintain a valid bond.

License Number: 15704N.
Name: Douglas Logistics International, Inc.
Address: 13126 S. Broadway Street, Los Angeles, CA 90061.
Date Revoked: July 14, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4064F.
Name: Gilbert International, Inc.
Address: 2525 Brunswick Avenue, Suite 204, Linden, NJ 07036.
Date Revoked: July 7, 2003.
Reason: Failed to maintain a valid bond.

License Number: 13386N.
Name: Globetrans Inc.
Address: 2255 Morello Avenue, Suite 166, Pleasant Hill, CA 94523.
Date Revoked: July 3, 2003.
Reason: Failed to maintain a valid bond.

License Number: 3394F.
Name: Hartford Despatch & Warehouse Company, Inc., dba Hartford Despatch International.
Address: 225 Prospect Street, East Hartford, CT 06108.
Date Revoked: July 20, 2003.
Reason: Failed to maintain a valid bond.

License Number: 15992N.
Name: Hyung Joong Ko dba Baro Logistics Co.
Address: 616 W. Commonwealth Avenue, Suite E, Fullerton, CA 92832.
Date Revoked: June 28, 2003.
Reason: Failed to maintain a valid bond.

License Number: 1995N.
Name: La Rosa Del Monte Express, Inc.
Address: 1133–35 Tiffany Street, Bronx, NY 10459.
Date Revoked: July 2, 2003.
Reason: Failed to maintain a valid bond.

License Number: 15915N.
Name: Master's Container Line, Inc.
Address: 767 Lexington Avenue, Suite 306, New York, NY 10021
Date Revoked: July 18, 2003.
Reason: Failed to maintain a valid bond.

License Number: 2957F.
Name: Michael J. Loprimo.
Address: 1078 Route 112, Suite 164, Port Jefferson, NY 11776.
Date Revoked: June 30, 2003.
Reason: Failed to maintain a valid bond.

License Number: 2896F.
Name: Moving and Packing (M.A.P.) International, Inc.
Address: 2303 Nance Street, Houston, TX 77020.
Date Revoked: July 16, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4383F.
Name: Relogistics Worldwide, Inc.
Address: 6910 N. Shadeland Avenue, Suite 230, Indianapolis, IN 46220.
Date Revoked: July 10, 2003.
Reason: Failed to maintain a valid bond.

License Number: 3946F.
Name: Skyway International Cargo, Inc.
Address: 30665 Beverly Road, Romulus, MI 48174.
Date Revoked: July 17, 2003.
Reason: Failed to maintain a valid bond.

License Number: 3612F.

Name: Sofana Freight Forwarding Corp. USA

Address: 1295 Northern Blvd., Manhasset, NY 11030.

Date Revoked: July 23, 2003.

Reason: Failed to maintain a valid bond.

License Number: 16456NF.

Name: Star Container Lines, Inc.

Address: 12919 S. Figueroa Street, Los Angeles, CA 90061.

Date Revoked: July 11, 2003.

Reason: Surrendered license voluntarily.

License Number: 4189F.

Name: Terrace Express, Inc.

Address: 8151 E. Bailey Way, Anaheim, CA 92808.

Date Revoked: July 20, 2003.

Reason: Failed to maintain a valid bond.

License Number: 4164NF.

Name: Tober Group, Inc.

Address: 1948 Troutman Street, Ridgewood, NY 11385.

Date Revoked: July 5, 2003.

Reason: Failed to maintain valid bonds.

License Number: 15907N.

Name: Transportes Al Sud (Transalsud) S.A.

Address: 10 Elvira Mendez Street, P.O. Box 7392, Panama 5, Panama.

Date Revoked: July 23, 2003.

Reason: Failed to maintain a valid bond.

Ronald D. Murphy,

Deputy Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–20065 Filed 8–6–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Airlift Logistic (USA) Inc., 40 Brunswick Avenue, Suite 204, Edison, NJ 08817, Officers: Vibha Murthy, President (Qualifying Individual), Swaminathan Ramadas, Director.

CDC Caribe, Inc. dba CDC, 2000 Kennedy Avenue, Suite 201, San Juan, Puerto Rico 00920, Officers: Richard M. Pujol, Vice President (Qualifying Individual), Massimo Lolli, President.

Nibeco Shipping & Transport, Inc., 1105 Birchwood Lane, Roswell, GA 30076, Officers: Christian G. Bekkers, President (Qualifying Individual), Dirk Duchateau, Vice President.

CSL Servotech LLC, 152–31 134th Avenue, Jamaica, NY 11434, Officers: Sherrie Stevenson, Vice President (Qualifying Individual), Alamdar Hussain, President.

Dart Cargoways India Private Limited, 274 Marlin Street, Huntington Station, NY 11746, Officers: Prasad Prabhakar Gokhale, CEO (Qualifying Individual), D. R. Shete, Managing Director.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Commercial Cargo Carriers, Inc., 3305 Spring Mountain Road, #24, Las Vegas, NV 89102, Officers: Gregory A. Batulanon, Vice President (Qualifying Individual), Louis Fornarotto, President.

Speed of Sound, 84 Coit Street, Irvington, NJ 07111, Officer: Jon Nevins, President (Qualifying Individual).

All Merit Express, Inc., 19702 Miguel Avenue, Cerritos, CA 90703, Officers: Won Ik Lee, President (Qualifying Individual).

Dated: August 1, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–20068 Filed 8–6–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
14107N	Caribbean Shipping Services Inc., 1505 Dennis Street, Jacksonville, FL 32204	June 20, 2003.
2492NF	Deka Associates, Inc., One Clarence Place, Unit #8, San Francisco, CA 94107	February 14, 2003.
10443N	Immortal Service Inc., 440 S. Hindry Avenue, Suite F, Inglewood, CA 90301	June 6, 2002.
2957F	Michael J. Loprimo, 1078 Route 112, #164, Port Jefferson, NJ 11776	June 30, 2003.

Ronald D. Murphy,

Deputy Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–20066 Filed 8–6–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 21, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. R. Eugene Thompson, Kansas City, Missouri; as trustee for the Thompson family trusts, to acquire voting shares of Peoples Bancshares, Inc., Kansas City, Missouri, parent of MidAmerican Bancshares, Inc., Harrisonville, Missouri, and Allen Bank and Trust Company, Harrisonville, Missouri.

2. R. Eugene Thompson, Kansas City, Missouri; as trustee for the Thompson family trusts, to acquire voting shares of Platte County Bancshares, Inc., Platte City, Missouri, parent of MidAmerican Bancshares, Inc., Harrisonville, Missouri; Allen Bank and Trust Company, Harrisonville, Missouri, and Platte Valley Bank of Missouri, Platte City, Missouri.

Board of Governors of the Federal Reserve System, August 1, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–20138 Filed 8–6–03; 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 September 2, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Farmers & Merchants Financial Services, Inc., St. Paul, Minnesota; to merge with Eau Claire Financial Services, Inc., St. Paul, Minnesota, and thereby indirectly acquire American Bank, Eau Claire, Wisconsin, and American Bank Lake City, Lake City, Minnesota.

In connection with this application, Applicant also has applied to acquire Lake City Agency, Lake City, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000 as set forth in section 225.28(b)(11)(iii) of Regulation Y.

2. First Sleepy Eye Bancorporation, Inc., Sioux Falls, South Dakota; to acquire 100 percent of the voting shares of Nichols Financial, Inc., Storden, Minnesota, and thereby indirectly acquire Heartland State Bank, Storden, Minnesota.

Board of Governors of the Federal Reserve System, August 1, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–20137 Filed 8–6–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 37500–37502, dated June 24, 2003) is amended to (1) Establish the Office of the Chief Operating Officer; (2) abolish the Office of Management and Operations and the Office of Program Services and; (3) establish the Financial Management Office with a direct organizational reporting relationship to the Office of the Chief Operating Officer, CDC.

As a result, the following organizational changes will occur:

I. Establish the *Office of the Chief Operating Officer (CAJ).*

II. Delete the following components *Office of Program Services (CA5)* and the *Office of Management and Operations (CAD),* and transfer the components under them to the *Office of the Chief Operating Officer (CAJ): Financial Management Office (CAC), Facilities Planning and Management Office (CAD2), Human Resources Management Office (CAD3), Information Resources Management Office (CA54), Management Analysis Services Office (CA59), Procurement and Grants Office (CA58),* and *Office of Security and Emergency Preparedness (CAD4).*

III. Delete the *Financial Management Office (CA53)* as a component of the *Office of the Director, CDC (CA).*

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the title and functional statement for the *Office of Management and Operations (CAD)* and *Office of Program Services (CA5)* and insert the following:

Office of the Chief Operating Officer (CAJ). (1) Provides mission and values-based leadership, direction, support and assistance to CDC's program and activities to enhance CDC's strategic position in public health; ensure responsible stewardship; maintain core values; optimize operational effectiveness of business services; and institutionalize accountability for achieving management initiatives; (2) directs the conduct of operational activities undertaken by Agency program support and management service staff, including, among others, facilities and real property planning and management; grants, procurement and material management; human resources management; information technology and systems planning and support; internal security and emergency preparedness; and management analysis and services; (3) manage the planning, evaluation, and implementation of continuous improvement and reengineering initiatives and adoption of innovations and technologies in these areas and ensures that they are undertaken in a comprehensive and integrated manner and with consideration of strategic implications for human capital planning; (4) maintains liaison with officials of HHS responsible for the direction and conduct of DHHS program support and management services functions; (5) participates in the development of

CDC's goals and objectives; (6) provides assistance to DHHS officials and to CDC's CIOs to assure that the human resources of CDC are sufficient in numbers, training, and diversity to effectively conduct the public health mission of CDC; and, (7) provides direction for the Agency's ethics program, alternative dispute resolution activities, and activities associated with Departmental and Presidential management initiatives.

Office of the Director (CAJ1). (1) Manages and directs the activities and functions of the Office of the Chief Operating Officer; (2) provides guidance and support in the conduct and evaluation of program support, business services, and management activities performed for or by Centers/Institute/Offices; (3) participates in the development of CDC's goals and objectives; (4) advises and assists the Director, CDC, the Chief Operating Officer, and other key officials on all aspects of the mission, activities and functions of the Office of the Chief Operating Officer; (5) plans, coordinates, and provides administrative and management advice and guidance for the support of CDC's programs and activities; (6) plans and coordinates in support of the CIOs the provision of fiscal, information technology, personnel, travel, procurement, grants, property, and facility management, and other administrative services; (7) plans, coordinates, and evaluates CIO requirements relating to small purchase procurement, material management, and intra-agency agreements/reimbursable agreements; (8) ensures the direction, conduct, and evaluation of fiscal management activities necessary for the administration of CIO contracts, grants and cooperative agreements; (9) resolves and responds to external inquiries of current fiscal year funding expenditures; (10) plans and coordinates facility management issues, problems and changes, and physical security issues; and (11) plans and coordinates the implementation of various federal administrative, statutory, regulatory, and policy requirements.

Financial Management Office (CAJ2). (1) Provides leadership and coordination in the development and administration of CDC's financial management policies; (2) develops budget submissions for CDC; (3) collaborates with CDC's Office of Program Planning and Evaluation in the development and implementation of long-range program and financing plans; (4) participates in budget reviews and hearings; (5) manages CDC's system of internal budgetary planning and control of funds; (6) develops and implements CDC-wide budgetary, accounting, and fiscal systems and procedures; (7) conducts CDC-wide manpower management (including productivity measurement) activities; provides accounting and auditing services; (8) prepares financial reports; (10) serves as the focal point for domestic and international travel policy, procedures and interpretation; (11) provides legislation reference services; (12) plans, directs, and conducts internal quality assurance reviews; (13) analyzes data and makes recommendations to assure effective safeguards are in place to prevent fraud, waste and abuse; (14) assists in identifying or conducting special financial management training programs; and (15) maintains liaison with the Office of the Secretary, Department of Health and Human Services, and other Government organizations on financial management matters.

Office of the Director (CAJ21). (1) Provides leadership and guidance in all areas of financial management; (2) serves as a CDC witness in budget hearings before Committees of Congress, Office of Management and Budget, and Department of Health and Human Services; (3) participates with top management in program planning and policy determinations, evaluations conferences, and decisions concerning financial resources; (4) provides a centralized source for current information on financial management legal and regulatory requirements governing the prevention and control of diseases; (5) advises the CDC Deputy Director for Program Management concerning reprogramming of funds; and (6) provides consultation and assistance in financial management to State and local health departments when requested by CDC officials.

Financial Policy and Internal Quality Assurance Activity (CAJ212). (1) Provides leadership, consultation, guidance and advice on financial policy and internal quality assurance matters for CDC; (2) develops, analyzes, and evaluates financial management policies, guidelines, and services which have CDC-wide impact; (3) works with personnel from all disciplines within CDC to identify the areas in which financial policy needs to be strengthened; (4) reviews, assesses, and recommends financial policy that is consistent with internal controls and the hierarchy of Federal and Department of Health and Human Services policies and procedures; (5) ensures that resources are safeguarded against fraud, waste, and abuse; managed economically and efficiently; and desired results are achieved; (6) reviews and independently assesses the soundness, adequacy, and application of budgetary and accounting controls; (7) reviews the reliability and integrity of financial and budget information and the means used to identify, measure, classify, and report such information; (8) reviews the adequacy and effectiveness of systems and procedures having an impact on expenditures of funds and use of resources; (9) assesses the reliability and accuracy of accounting and budgetary data and reports developed within CDC; and (10) identifies problems and weaknesses in internal controls and provides reliable information for management to base correction action.

Accounting Branch (CAJ22). (1) In conjunction with the Financial Policy and Internal Quality Assurance Activity, develops accounting and travel policies and procedures for CDC; (2) provides financial information for management purposes, effective control and accountability of all funds, and suitable integration of CDC accounting with the accounting operations of the U.S. Treasury; (3) coordinates activities of the Accounting Branch with the FMO Director, the FMO Budget Branch, the FMO Financial Services Branch, the Financial Policy and Internal Quality Assurance Activity, and the FMO Financial Systems Branch; (4) coordinates accounting and travel policy issues with the HHS Office of Financial Policy; (5) reviews and develops accounting systems to comply with requirements of HHS and the General Accounting Office and maintains an integrated system of accounts to meet the budgetary and accounting requirements of CDC; (6) reviews and implements the legal, accounting and reporting requirements of the Chief Financial Officers' Act, the Federal Managers' Financial Integrity Act; the Principles of Appropriation Law and other regulatory requirements; (7) compiles all accounting information for the 5-Year Financial Management Plan which provides CDC's financial management vision and objectives for the ensuing 5 year period; (8) develops strategies for employee training and professional development; and (9) compiles and submits the annual financial statements required by the Chief Financial Officers' Act.

Debt and Property Management Section (CAJ223). (1) Compiles and submits the quarterly HHS Debt Management report which reports the status of all unpaid debts due to CDC from the public; (2) compiles and submits the annual Treasury report of debts due to CDC; (3) performs all debt

collection activities in accordance with the Debt Collection Act of 1982 and in accordance with requirements provided by HHS; (4) prepares customer billings; (5) collects and records all amounts billed to customers; (6) controls billings and collections processed on the On-line Payment and Collection System (OPAC/IPAC) related to debt collection; (7) reconciles accounts receivable subsidiary records to the CDC general ledger receivable accounts; (8) coordinates CDC's debt collection activities with FMO's Financial Services Branch and with CDC program administrative offices; (9) coordinates all debt collection activities with the U.S. Justice Department and with private collection agencies; (10) prepares and controls daily deposits which are delivered to the Federal Reserve Bank; (11) performs property accounting activities including maintenance of general ledger property accounts and reconciliation with the CDC Personal Property System and (12) maintains travel advance records and reconciles subsidiary records to general ledger advance accounts.

Cincinnati Accounting Section (CAJ222). (1) Maintains a system of accounts to meet the budgetary and accounting requirements of the NIOSH accounting point; (2) provides financial information for management purposes, effective control and accountability of all accounting point funds, and integration of NIOSH accounting with the accounting and reporting operations of CDC and the U.S. Treasury; (3) coordinates the NIOSH accounting point accounts payable and receivable activities including auditing of vouchers; (4) reviews the NIOSH accounting point system for compliance with CDC, HHS and General Accounting Office requirements; and (5) reconciles NIOSH accounting point general ledger accounts including cash, property and receivables.

General Ledger Section (CAJ224). (1) Compiles and submits the Report of Budget Execution which reports the obligations incurred against the current year appropriation; (2) compiles and submits the monthly Statement of Transactions report to the U.S. Treasury which reports the CDC cash disbursements by appropriation. (3) reconciles general ledger cash accounts with the U.S. Treasury monthly disbursements and receipts; (4) performs daily maintenance on the general ledger accounts including the asset, liability, capital and budgetary accounts; (5) makes recommendations for improvements to the accounting system and monitors internal controls; (6) analyzes the general ledger accounts, prepares system-wide reconciliations and interprets the effect of transactions on the CDC's financial resources; (7) develops new reports to support budget requirements and to support the needs of CDC management; (8) controls input of all funding transactions; (9) performs daily maintenance of accounting system tables; (10) controls grant awards processed through the Payment Management System (PMS) including submission of grant obligations to PMS, recording of disbursements received from PMS and reconciliation of the general ledger accounts.

Budget Branch (CAJ23). (1) Provides leadership, consultation, guidance, and advice on budgetary matters to CDC; (2) prepares consolidated appropriation budget estimates including narrative justifications; (3) conducts studies in budget planning to determine proper relationship between program planning and acquisition of funds; (4) develops criteria to be used in estimating program needs; (5) conducts CDC-wide manpower management (including productivity measurement) activities; (6) develops expenditure information for preparation of quarterly and annual budgets; and (7) designs and prepares reports, tables, and analyses to demonstrate fiscal requirements.

Congressional/Legislative Branch (CAJ24). (1) Serves as the primary CDC focal point for planning, organizing, and administering a range of activities for legislative issues related to Congressional appropriation legislation matters; (2) summarizes Congressional and legislative positions on national public health program issues in order to establish impact on CDC budgetary requirements; (3) reviews and analyzes new or amended appropriation legislation or report language concerning public health programs, health related research activities, and scientific research pertinent to CDC's mission and responsibilities and prepares related issues papers; (4) in coordination with CIOs., develops appropriation report language related to budget formulation submissions; (5) develops strategy and background documentation regarding appropriation legislative issues and prepares related materials; (6) develops appropriation legislative background materials for presentation to HHS, Office of Management and Budget (OMB) and Congressional Appropriations Committees; (7) assists the Director, FMO, as the CDC representative at appropriations hearings; (9) responds to inquiries regarding appropriation budget-related policy issues; and (10) develops training strategies on legislative issues for the professional development of staff.

Financial Systems Branch (CAJ25). (1) Responsible for the analysis, design, programming, implementation, enhancement and documentation of automated accounting systems and subsystems for FMO; (2) provides consultative services to systems implementers within CDC, the Department and other Federal agencies on a broad range of issues including policy, data integrity, systems integration and interfacing issues as they relate to financial management systems; (3) provides technical support and assistance to various committees, teams and users in the integration with FMO financial systems and the access and interpretation of financial system data; and (4) responsible for hardware and software support for microcomputers and local area network(s) within FMO.

Financial Services Branch (CAJ26). (1) In conjunction with the Financial Policy and Internal Quality Assurance Activity, develops and implements policies and procedures for all accounts payable and disbursement functions at CDC; (2) coordinates activities of the Financial Services Branch with the FMO Director, FMO Accounting Branch, FMO Budget Branch, FMO Financial Policy and Internal Quality Assurance Activity, and FMO Financial Systems Branch; (3) coordinates the development of new financial systems to automate accounts payable and disbursement operations, and maintains and serves as the CDC focal point on all existing automated payment and disbursement systems; (4) reviews obligation documents and payment requests from a variety of private sector and government sources to determine the validity and legality of the requests, and provides electronic authorization to the Department of the Treasury to issue checks or electronic funds transfers for valid payment requests; (5) compiles and submits a variety of cash management and travel reports required by the Department of the Treasury and various other outside agencies; (6) acts as liaison with the CIOs and outside customers to provide financial information, resolve problems and provide training and advice on payment, travel and disbursement issues; (7) serves as the CDC subject matter expert on all financial matters dealing with international travel, assignments and payments; and (8) analyzes internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators.

Cash Management and Quality Control Section (CAJ262). (1) Overall

responsibility for policies, procedures, internal controls and systems related to section payment and disbursement activities; (2) analyzes and reconciles disbursements made for CDC by other Federal activities, and insures that disbursements are consistent with Federal Appropriations Law requirements, GAO policies, interagency elimination entry requirements, and other governing financial regulations; (3) overall responsibility for all financial matters dealing with international travel, assignments and payments; (4) serves as the focal point at CDC for vendor, employee and CIO payment and disbursement questions and resolution of payment and disbursement problems; (5) acts as CDC liaison on all payment issues related to the implementation of the Government Purchase Card Program; (6) maintains contract advance records and coordinates the recording and reconciling of subsidiary records to general ledger advance accounts; (7) serves as the CDC focal point for cashier and imprest fund issues; (8) analyzes year-end unliquidated obligations for compliance with Federal Appropriations Laws and the Economy Act, and recommends funding changes to CIO's; and (9) prepares and reconciles all U.S. Treasury Department reports and transmissions and serves as the primary point of contact for all U.S. Treasury issues; (10) performs ongoing quality control reviews of various payment and disbursement processes and systems in the Financial Services Branch, including reviews to ensure compliance with the Prompt Payment Act and to validate the legality, propriety and accounting treatment of travel and non-travel payments at CDC, including reviews of payments processed by the Cincinnati office; (11) identifies recurring problems in payment processes and recommends corrective actions or identifies required training to correct the deficiency; (12) serves as the focal point for all Federal Income Tax issues for CDC payments, reconciles tax withholding general ledger accounts, and prepares all monthly, quarterly and annual reports to the Internal Revenue Service; and (13) establishes local policy and procedures on electronic payments and maintains the automated file containing vendor payment address and banking information.

Payment and Travel Services Section (CAJ263). Develops and implements policies and procedures related to payment processes and systems and ensures appropriate internal controls are in place and functioning to ensure the integrity and legality of CDC payments; (2) analyzes and approves payment for all equipment, supplies, travel, transportation and services procured by CDC, and ensures the validity, legality and proper accounting treatment of expenditures processed through the Accounts Payable module of the CDC Financial Management System; (3) provides expert level guidance, oversight, and interpretation of policies, laws, rules and regulations for the CIO's on all aspects of travel procedures and policies at CDC, including the use of the automated travel system, local travel, domestic and foreign temporary duty travel, and change of station travel for civil service employees, foreign service employees, commissioned officers, CDC fellows, etc.; (4) serves as the Subject Matter Expert and focal point for the development of new financial systems to automate accounts payable operations and serves as the focal point for payment systems issues for CDC; (5) researches and analyzes appropriations law issues at CDC and provide guidance consistent with legal and regulatory guidelines; (6) compiles and submits a variety of management and payment performance reports required by various outside agencies; (7) analyzes various internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators; (8) coordinates all aspects of CDC's Electronic Commerce Program in the Financial Services Branch; and (9) analyzes a variety of accounting and travel system reports to ensure that obligations are liquidated in a timely manner.

Facilities Planning and Management Officer (CAJ3). (1) operates, maintains, repairs, and modifies CDC's Atlanta area plant facilities and conducts a maintenance and repair program for CDC's program support equipment; (2) carries out facilities planning functions for CDC, including new or expanded facilities, and a major repair and improvement program; (3) develops services for new, improved, and modified equipment to meet program needs; and (4) conducts CDC's real property and space management activities, including the acquisition of leased space, the purchase and disposal of real property, and provides technical assistance in space planning to meet programmatic needs.

Office of the Director (CAJ31). (1) Plans, directs, and coordinates the functions and activities of the Facilities Planning and Management Office (FPMO); (2) provides management and administrative direction for budget planning and execution, property management, and personnel management within FPMO; (3) provides leadership and strategic support to senior managers in the determination of CDC's long term facilities needs; (4) directs the operations of FPMO staff involved in the planning, evaluation, design, construction, and management of facilities and acquisition of property; (5) processes data for management and control systems and develops reports and analyses; and (6) assists and advises senior CDC officials in the development, coordination, direction, and assessment of facilities and real property activities throughout CDC's facilities and operations, and assures consideration of facilities management implications in program decisions.

Real Property and Space Management Activity (CAJ312). (1) Conducts the Real Property and Space Management Program throughout CDC, including the acquisition of leased space, the purchase sand disposal of real property for CDC (with emphasis on current and long-range planning for the utilization of existing and future real property resources); (2) provides technical assistance in space planning to meet programmatic needs; (3) administers day-to-day management of leased facilities and ensures contract compliance by lessors; (4) provides technical assistance and prepares contract specifications for all repair and improvement projects in leased space; (5) maintains liaison with the General Services Administration Regional Offices; (6) performs all functions relating to leasing and/or acquisition of real property under CDC delegation of authority for leasing special purpose space; and (7) coordinates the relocation of CDC personnel within owned and leased space.

Design and Construction Management Office (CAJ32). (1) Develops architectural designs and engineering specifications for construction of new facilities and major modifications and renovations to CDC-owned facilities; (2) provides architectural and engineering technical services and consultation on facility project designs; (3) provides in-house construction administration services for CDC-owned facilities in Atlanta; (4) manages interior design and furnitures standards; and (5) coordinates development and determination of best methods and means for the planning and conduct of assigned projects, including selection of resources.

Facilities Engineering Office (CAJ33). (1) Operates, maintains, repairs, and modifies CDC's Atlanta area plant facilities and other designated CDC facilities throughout the United States and Puerto Rico and conducts a maintenance and repair program for CDC's program support equipment; (2)

develops services for new, improved, and modified equipment to meet program needs; (3) provides technical assistance, reviews maintenance and operation programs, and recommends appropriate action for all Atlanta area facilities and other designated CDC facilities throughout the United States and Puerto Rico; (4) provides recommendations, priorities, and services for new, improved, or modified equipment to meet program needs; (5) provides maintenance and operation of the central energy plant including structures, utilities production and utilities distribution systems and equipment; (6) conducts a program of custodial services, waste disposal, incinerations, and disposal of biological waste and other building services at all CDC Atlanta area facilities and other designated CDC facilities throughout the United States and Puerto Rico; (7) provides landscape development, repair, and maintenance at all CDC Atlanta area facilities and other designated CDC facilities throughout the United States and Puerto Rico; (8) provides hauling and moving services for CDC in the Atlanta area; (9) provides insect and rodent control services for CDC in Atlanta area facilities; (10) develops required contractual services and provides supervision for work performed in these areas; (11) establishes and maintains a computerized system for maintenance services and for stocking and ordering supplies and replacement parts; (12) provides for pick-up and delivery of supplies and replacement parts to work sites; (13) maintains adequate stock levels of supplies and replacement parts; (14) as needed, prepares designs and contract specifications and coordinates completion of contract maintenance projects; (15) manages CDC's Energy Conservation Program for all CDC facilities; (16) reviews all construction documents for energy conservation goals and compliance with applicable CDC construction standards; (17) participates on all core teams and value engineering teams; (18) provides maintenance and inspection for fire extinguishers and fire sprinkler systems; (19) provides services for the procurement of natural gas; (20) develops and maintains a standard equipment list for all CDC facilities; and (21) assists the Design and Construction Management Office and the Facilities Planning and Project Management Office with facility-related issues.

Facilities Planning and Project Management Office (CAJ34). Provides professional architectural/engineering capabilities and technical and administrative project support to CDC and the CIOs for renovations and improvements to CDC-owned facilities and construction of new facilities; (2) prioritizes design and construction needs for requested CIO projects; (3) manages and administers the CDC renovations and improvement (R&I) budget; (4) develops project management requirements (including determination of methods and means of project completion and selection of resources), funding sources, and budgets; and (5) serves as the point of contact with CIOs for administration and coordination of all facilities-related needs, i.e., project planning, evaluation, estimation, and tracking.

Human Resources Management Office (CAJ4). (1) Provides service, support, advice, and assistance to CDC organizations, management, and employees in all areas of human resources management; (2) conducts and coordinates personnel management for CDC's civil services and Commissioned Corps personnel; (3) conducts CDC's fellowship programs; (4) develops and issues policies and procedures; conducts recruitment, special emphasis, staffing, position classification, position management, pay administration, performance management systems, employee training and development, and labor relations programs; (5) maintains personnel records and reports, and processes personnel actions and documents; (6) administers the Federal life and health insurance programs; (7) administers the employee recognition, suggestion, and incentive awards programs; (8) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims; (9) conducts CDC's personnel security and substance abuse programs; (10) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses of CDC personnel and staffing to CDC management and employees; (11) maintains liaison with the Department of Health and Human Services and the U.S. Office of Personnel Management (USOPM) in the area of human resources management; and (12) administers the National Performance Review and Human Resources initiatives to meet current and future requirements.

Office of the Director (CAJ41). (1) Provides leadership and technical guidance to CDC in planning, coordinating, and conducting an effective personnel program for civil service (including the Senior Biomedical Research Service [SBRS] and the Senior Executive Service [SES]), Title 38, Commissioned Corps, and fellowship program personnel; (2) plans, directs, and evaluates the activities of the Human Resources Management Office (HRMO); (3) advises the Director, CDC, and other CDC management staff on all matters relating to human resources management; (4) administers the National Performance Review and Human Resources initiatives; (5) develops, coordinates, and disseminates personnel policies, programs, and procedures in position management, classification, compensation, and staffing; (6) establishes objectives, standards, and internal controls; evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (7) develops and monitors proposals and plans related to the implementation of CDC diversity personnel programs and projects; assists with monitoring progress and the success of existing diversity recruitment and placement programs; and (8) provides all administrative/management support as required in HRMO.

Organizational Development Branch (CAJ43). (1) Develops, designs, and implements an accredited comprehensive strategic human resource leadership development and career management program for all occupational series throughout CDC; (2) develops and implements training strategies and activities that contribute to the agency's mission, accomplishments, and organizational performance; (3) integrates a variety of learning methods to provide training; (4) provides consultation, guidance, and technical assistance to managers and employees in organizational development, career management, employee development, and training; (5) coordinates the research and acquisition of external training and educational opportunities for CDC employees; (6) conducts the career counseling program; (7) administers special career management programs including the career development program, the long-term training program, cooperative programs, the worker trainee development program, and the mentoring program; (8) conducts comprehensive training needs assessment of CDC employees nationwide; and (9) conducts new employee orientation.

Career Management Section (CAJ432). (1) Develops and administers agency intern and professional development programs; (2) provides consultation, guidance, and technical assistance to managers and employees regarding career management and employee

development; (3) implements and provides advice on distance-learning programs nationwide; (4) acquires, develops, and supports technology-based training; (5) manages the Learning Resource Center including establishing policy, scheduling room usage, providing technical and audio visual support, and maintaining a Learning Library with individualized learning options; (6) creates marketing tools for the Organizational Development Branch; (7) implements and monitors the CDC Training Management System for compliance with the Government Employees Training Act; (8) maintains employee training records; (9) collaborates with the CDC Corporate University Section to develop, implement, and administer the human resources leadership development and career management program for all occupational series throughout CDC; (10) manages formal career development and mentoring programs; (11) procures and/or instructs training courses as part of existing functional area curriculum; (12) establishes partnerships with professional organizations and academic institutions for the formalization and recognition of CDC programs and the offering of academic programs onsite and through distance learning; and (13) manages the use of technology to offer desktop instruction through web-based training, *e.g.,* interactive CD–ROM.

CDC Corporate University Section (CAJ433). (1) Develops, designs, and implements a comprehensive strategic human resources leadership development and career management program for all occupational series throughout CDC; (2) develops formal organizational and individual needs assessment tools to identify core competency requirements for each occupational series throughout the agency; (3) designs curricula that address specified competencies to inculcate continuous learning; (4) develops program plans and evaluates progress toward program goals and objectives; (5) conducts performance measurement, organizational climate surveys, and survey/focus group assessments; (6) develops internal instructor capacity; (7) provides analysis and data to correlate individual training with corporate strategic plans; (8) maximizes economies of scale through systematic planning and evaluation of agency-wide training initiatives; (9) develops new methodology to determine return on investment on human capital and intellectual investments; (10) designs executive leadership programs in collaboration with CDC C/I/Os; (11) develops agency-wide intern programs for succession planning of staffing requirements; and (12) develops and maintains continuing education unit accreditation for school curricula.

Field Operations Branch (CAJ44). (1) Plans, develops, directs, coordinates, implements and evaluates human resources management programs, policies, procedures, and systems; (2) participates in the development of CDC HRMO policy, strategic, long- and short-range plans, programs, and resource allocations; (3) serves as the primary contact for HRMO remote/field operations providing a full range of personnel management, advisory consulting, and information services; (4) provides leadership, technical direction, and guidance in human resource utilization, program development and evaluation; organizational development, position management, classification and pay administration; employment, recruitment, and staffing; employee/labor/partnership relations; benefits and services; performance management, awards, training and employee development; transactions, personnel records, and files management; (5) coordinates HRMO remote/field operations with Headquarter's staff and other CDC, HHS, Federal, State, local, and private organizations; (6) develops annual staffing and recruitment plans, special recruitment campaigns, crediting plans, announcements, advertisements, and special information materials; (7) conducts position management studies, desk audits, qualifications analyses, peer review panels, training assessments, and reductions-in-force; (8) determines title, series, and grade of positions; qualifications, rating, and ranking of applicants; and (9) executes performance, awards, training, labor relations, merit promotion, delegated examining, summer student, fellowship and special emphasis plans; appointing and classification authority; keys, journalizes and files transactions.

Work Force Relations and Partnership Branch (CAJ42). (1) Plans, develops, and provides consultation, guidance, and technical advice on available employee services and assistance; performance, award, and conduct issues; leave administration; on-the-job injuries and exposures to infectious diseases; debt complaints; and other job-related issues; (2) develops and administers labor-management and employee relations program including disciplinary actions, grievances and appeals, labor negotiations, collective bargaining, management representation before third parties, and partnership activities; (3) serves as liaison with the Office of Health and Safety and other CDC staff for personnel matters relating to substance abuse and other employee assistance programs; (4) coordinates the Fare Share and Dependent Care programs; (5) coordinates all Family Friendly programs; (6) administers the incentive and suggestion awards programs; (7) coordinates and processes garnishment, child support, and other collection actions for CDC employees; (8) serves as the primary agency contact on all matters associated with labor-management relations; (9) plans, directs, coordinates, and conducts contract negotiations on behalf of agency management with labor organizations holding exclusive recognition; (10) represents management in third party proceedings involving labor and employee relations issues; (11) serves as the authority to ensure validity, consistency, and legality of employee relations matters concerning grievances (both negotiated and agency procedures), disciplinary actions, adverse actions, and resultant third party hearings; (12) plans and coordinates all programmatic activities to include preparation of disciplinary and adverse action letters and all final agency decisions in grievances and appeals; (13) provides technical advice, consultation, and training on matters of employee conduct and performance and provides personnel services on debt complaints; (14) serves as the authority and primary agency contact on all matters associated with labor-management partnership activities; (15) provides consultation, guidance, and technical advice to personnel generalists, managers, and employees on all family programs; (16) develops, implements, and coordinates CDC Quality of Work Life initiatives; (17) provides personnel services relating to on-the-job injuries and exposures to infectious diseases; and (18) develops, implements, and coordinates performance management systems for civil service employees other than SES and SBRS.

Operations Branch (CAJ45). (1) Serves as the primary contact for CDC management and employees in obtaining the full range of personnel assistance and management services for civil service and Commissioned Corps personnel; (2) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, position classification, staffing, employee relations, reorganization, program evaluation, performance management, and personnel records and files management; (3) works as a team

with other personnel specialists and CDC organizations to develop staffing plans, identify recruitment needs, and conduct position management studies, desk audits, and job analyses; (4) plans, develops, implements, and evaluates systems to ensure consistently high quality personnel services; (5) processes personnel actions by determining position classifications, issuing vacancy announcements, assisting in development of selection criteria, conducting examining under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, and effecting appointments and other actions; (6) coordinates with other Federal agencies for the assignment of CDC personnel in other countries; (7) establishes and maintains personnel and payroll records, files, and controls; and (8) provides assistance in the implementation of HHS Plan for Drug Free Workplace.

Commissioned Corps Section (CAJ452). (1) Provides technical assistance and information on rights, benefits, and obligations of the Commissioned Corps service to Commissioned Corps personnel and CDC management; (2) provides assistance and information on Commissioned Corps policies and systems such as pay, performance management, assignments, health benefits, training, travel, relocation, promotions, and retirement; (3) provides staffing assistance for CDC's Commissioned Corps promotion and awards programs; and (4) maintains liaison and coordinates personnel services for Commissioned Corps personnel with the Division of Commissioned Personnel.

Central Staffing Section (CAJ453). (1) Implements a centralized staffing and placement program; (2) administers the delegated examining authority, the direct hiring authority, and the temporary limited appointment authority granted by USOPM; (3) oversees the overall staffing process and insures quality control; (4) reviews, evaluates, and makes recommendations on the application and implementation of the USOPM delegated authorities and merit promotion program rules and regulations; (5) provides guidance and consultation in job analyses and in development of knowledge/skills/abilities (KSAs) crediting plans; and (6) manages various staffing programs such as the CDC summer program, the Voluntary Employee Referral Program, the Interagency Career Transition Assistance Program, and the Career Transition Assistance Program.

Technical Services Section (CAJ454). (1) Provides central personnel services and assistance in the areas of employee benefits, personnel action processing, data quality control/assessment, and files/records management; (2) serves as liaison between CDC and the HHS payroll office resolving discrepancies with pay and leave; (3) administers the leave donor program and processes time and attendance amendments; (4) provides policy guidance and technical advice and assistance on retirement, the Thrift Savings Plan, health/life insurance, and savings bonds; (5) codes and finalizes all personnel actions in the automated personnel data system; (6) assists with new employee orientation; (7) establishes and maintains the official personnel files system and administers personnel records storage and disposal program; (8) responds to employment verification inquiries; (9) administers the personnel security program; (10) initiates suitability background checks and fingerprints for all CDC personnel; and (11) provides assistance in the implementation of the HHS Plan for a Drug Free Workplace.

Information Technology and Analysis Branch (CAJ46). (1) Develops strategic plans for information technology and information systems to support CDC's and HRMO's personnel information requirements; (2) acquires and implements appropriate technology and develops information systems to meet CDC-wide information needs on personnel, staffing, and work force characteristics and trends; (3) provides support to HRMO organizations and users in achieving automation of functions and use of information technology and systems; (4) develops, manages, and supports centralized information technology and systems in support of personnel activities, including the HHS personnel system; (5) researches and develops new sources of personnel information and access methods including computer-based CDC-wide surveys; (6) coordinates HRMO information resource management activities with IRMO and CDC information resource management committees; (7) conducts demographic analysis of the CDC work force and publishes results in management reports; and (8) develops methodologies to assess the impact of revised personnel policies and practices on the work force.

Outreach and Marketing Branch (CAJ47). Develops and implements human resource management marketing campaigns; (2) provides leadership in identifying the Centers/Institute/Offices' (CIOs) recruiting needs, and assesses, analyses, and develops CDC's short- and long-range recruitment plans to meet these needs; (3) provides consultation, guidance, and technical advice on recruitment and special emphasis policies, practices, and procedures, including search committees; (4) strategize on the best approach to recruitment as specific events, and designs and develops recruitment materials for events; (5) maintains and manages the Automated Applicant Listing System (AALS/Resumix) for storage and retrieval of applications of those individuals with education and experience appropriate for commonly needed and hard-to-fill positions; coordinates, with CIOs, the referral of appropriate candidates from the applicant pool for position vacancies; (6) provides leadership on recruitment activities through the development of policies and practices for effective communication of HRMO programs, coordinates the development and dissemination of information among HRMO and the CIOs, provides training and technical assistance to CIO staff; (7) manages and operates the CDC Job Information Center, including the automated telephone job line; (8) markets and manages special emphasis programs including the Program for Persons with Disabilities and the Disabled Veterans Affirmative Action Program, the Veterans Readjustment Appointment Program, the Federal Equal Opportunity Recruitment Program, and diversity recruitment and placement, college relations and student employment programs; and (9) provides leadership in assessing progress in achieving overall staffing; EEO, and Affirmative Action goals.

Information Resources Management Office (CAJ5). (1) Develops and coordinates CDC-wide plans and budgets for the management of information technology and services, including data processing, office automation, and telecommunications; (2) develops and recommends policies and procedures relating to information resources management and support services; (3) provides leadership in the implementation of policies and procedures to promote improved information management practices throughout CDC; (4) coordinates, manages, and administers CDC-wide integrated ADP, office automation, and telecommunications networks; (5) identifies CDC-wide information needs, and develops or stimulates the development of creative solutions to these needs; (6) designs, develops, catalogs, and manages data bases,

including acquisition and use of external data bases, and information systems supporting CDC-wide functions; (7) maintains state-of-the-art expertise in information science and technology to promote the efficient and effective conduct of the CDC mission; (8) provides consultation, technical advice and assistance, and training in the selection and use of equipment, systems, and services to process information; (9) manages all centralized data and word processing, voice, and data communications facilities; (10) develops and coordinates the implementation of IRMO information security programs; (11) maintains liaison with HHS, PHS, and other Federal agencies on information resources management activities.

Office of the Director (CAJ51). (1) Plans, directs, coordinates, and implements activities of the Information Resources Management Office (IRMO); (2) develops and coordinates CDC-wide plans and budgets for the management of information technology and services, including data processing, office automation, and telecommunications; (3) develops and recommends policies and procedures relating to information resources management and support services; (4) provides leadership in the implementation of policies and procedures to promote improved information management practices throughout CDC; (5) coordinates CDC-wide integrated ADP, office automation, and telecommunications networks; (6) maintains state-of-the-art expertise in information science and technology to promote the efficient and effective conduct of the CDC mission; (7) performs and coordinates research and development activities related to new information resources management technologies; (8) coordinates the design, development, and implementation of CDC-wide information resources management systems architecture; (9) identifies CDC-wide information needs, and develops or stimulates the development of creative Office solutions to these needs; (10) coordinates the provision of technical advice, assistance, and consultation in the selection and use of information technology, systems, and services; (11) develops and coordinates the implementation of IRMO information security programs; (12) provides administrative services to IRMO, as appropriate; (13) maintains liaison with HHS, PHS, and other Federal agencies on information resources management activities.

Administrative and Program Services Activity (CAJ512). (1) Plans, coordinates, and provides administrative support and management assistance IRMO-wide in the areas of fiscal management, personnel, travel, training, contract administration, and other administrative services; (2) provides assistance in formulating, developing, negotiating, managing, and administering various IRMO and CDC-wide technology and service contracts; (3) coordinates, manages, and provides review and oversight of IRMO activities relating to all areas of acquisition, materiel management, and reimbursable agreements; (4) develops and implements administrative policies, procedures, and operations, as appropriate, for IRMO, and prepares special reports and studies as required in the administrative management areas; (5) maintains liaison with the staffs of other offices within the Office of Program Support and the administrative offices of the CIOs.

CDC Information Center (CAJ55). (1) In collaboration with CDC Information Center user, CIOs, and external partners, plans, directs, develops, implements, promotes, disseminates, and evaluates CDC Information Center services and products; (2) coordinates with all CDC Information Centers in the development of strategic plans, services, and products for all CDC Information Centers; (3) provides CDC-wide coordination for Web services and document management database applications; (4) provides comprehensive information and references services for CDC scientists and the broader public health community by accessing print and electronic literature, Web products, and database services; (5) delivers training, expertise, consultation, and assistance in use of information services and products for CDC researchers and for the public health community; (6) plans and manages book and document delivery services including desktop delivery, photocopy, circulation, and interlibrary loan; (7) selects, organizes, and maintains print and electronics resources and collections to support information needs of CDC researchers and external partners; (8) plans and manages information systems to provide access to CDC information center holdings and other public health information resources; (9) provides consultation and technical assistance to other CDC organizations in planning, developing, and implementing information services and products; (10) coordinates the assessment of user needs and directs responses, including the development of new products and services, for user groups; (11) evaluates, develops, and selects new information technology for the management and dissemination of information services and products.

Large Systems Computing Branch (CAJ52). (1) Plans, directs, and evaluates activities of the Large Systems Computing Branch; (2) plans and coordinates the selection, development, management, promotion, training, and support of CDC-wide mainframe software and distributed database technologies; (3) coordinates training, advice, consultation, and assistance to users of mainframe and database software; (4) provides technical assistance in the development and support of data exchange between mainframe and distributed databases; (5) provides technical assistance and support for CDC-wide statistical analysis software; (6) manages and coordinates CDC-wide data resources ensuring integrity, availability, security, and recoverability; (7) coordinates the identification of user needs for mainframe, statistical, and distributed database technologies through user groups and other forums.

Management Information Systems Branch (CAJ53). (1) In collaboration with other CDC organizations, plans, directs, develops, implements, supports, and evaluates CDC's centralized management information systems; (2) collaborates with CDC organizations to jointly develop, test, and implement CDC-wide management information systems; (3) coordinates the development of strategies plans for CDC-wide management information systems; (4) provides consultation and technical assistance to other CDC organizations in management information systems development, access to centralized management data, and system integration; (5) determines appropriate technology architecture and methodology for each centralized management information system; (6) maintains databases, inventories, and data dictionaries for CDC's administrative data; (7) determines needs and recommends approaches for developing systems and interfaces between various information technologies for sharing data and performing cooperative applications processing; (8) determines, in consultation with users and the systems security officer, applicable database and applications security measures in accordance with sensitivity and criticality of the data or system; (9) develops standards, quality assurance procedures, and guidelines for effective and efficient approaches to applications development and database management; (10) coordinates the provision of documentation, support, and training in the use of information systems

purchased or developed by the Branch; (11) researches and develops new technologies and methodologies for management information system development and database management.

Network Technology Branch (CAJ54). (1) Designs, develops, implements, supports, and manages CDC's centralized networking facilities including voice, data, and video communications; (2) manages the design, development, and implementation of specialized systems software, utilities, routines, and other control programs to enhance and facilitate the use, integration, and communications between information processing equipment, software, and systems; (3) provides data network support services for CDC's local area networks (LANs) and wide area network (WAN) including planning, managing, installing, diagnosing problems, maintaining, and repairing data network equipment not channel-connected to the mainframe, the electronics, operating software and data communications technology such as controllers, mulitplexors, network interface boards, modems, gateways, bridges, routers, and transport media such as leased telephone lines, copper and fiber optic cabling systems; (4) performs ongoing research, evaluation, and testing of new technologies and services to improve CDC's LANs and WAN; (5) provides problem triaging, and diagnostic and repair services for CDC Computer Center network terminals and other personal workstation processors; (6) assists in assuring maximum network reliability, availability, performance, and serviceability through monitoring, testing, and evaluating network architecture, implementation, and transmission characteristics; (7) provides technical support and coordinates training for users of LAN and WAN hardware and software; (8) provides management, operational support, and user assistance for IRMO-managed office systems and LANs; (9) manages, administers, and coordinates CDC's electronic mail and communication gateways; (10) provides technical assistance to CDC organizations in selecting, installing, maintaining, and evaluating office systems and LAN software; (11) coordinates office systems and LAN user groups; (12) provides voice communications services, equipment, and support for CDC Atlanta facilities by analyzing requirements and designing, ordering, and managing the installation of appropriate equipment, software, and services; (13) performs ongoing research, evaluation, and testing of new technologies and services to improve CDC's voice communications architecture and services; (14) provides support of CDC's voice communications network by triaging problem reports, diagnosing problems, and taking corrective actions through contractors, service providers, and staff to effect software changes, equipment replacement, wiring repairs, user training, and other actions; (15) provides technical assistance to CDC field locations in telecommunications management issues.

Management Analysis and Services Office (CAJ6). (1) Plans, coordinates, and provides CDC-wide administrative, technical, management, and information services in the following areas: policy development and consultation, studies and surveys, delegations of authorities, organizations and functions, information security, Privacy Act, confidentiality management, records management, printing procurement and reproduction, classroom and meeting management, forms design and management, publications distribution, mail services, public inquiries, reports and committee management, special events coordination; (2) develops and implements policies and procedures in these areas; (3) conducts management control reviews and coordinates IG/GAO audits; (4) maintains liaison with HHS, General Services Administration, the Government Printing Office, National Archives and Records Administration, and other Government and private agencies.

Office of the Director (CAJ61). (1) Plans, directs, coordinates, and implements activities of the Management Analysis and Services Office (MASO).

Committee Management and Program Panels Activity (CAJ62). (1) Develops and manages, in conjunction with CDC's grants management requirements, a CDC-wide special emphasis panel that is the primary review mechanism for assuring scientific and programmatic review of applications for grant support; (2) coordinates committee management activities, including Federal advisory committees, for CDC; (3) plans and coordinates CDC special events.

Management Analysis Branch (CAJ64). (1) Provides consultation and assistance to CDC program officials on the establishment, modification, or abolishment of organizational structures and functions; reviews and analyzes organizational changes; and develops documents for approval by appropriate CDC or HHS officials; (2) conducts management and operational studies for CDC to improve the effectiveness and efficiency of management and administrative systems techniques, policies, and organizational structures; (3) interprets, analyzes, and makes recommendations concerning delegations and redelegations of program and administrative authorities, and develops appropriate delegating documents; (4) develops and coordinates the implementation and conduct of CDC-wide information security programs; (5) conducts a CDC-wide records management program, including provision of technical assistance in the development and conduct of electronic records management activities; (6) plans, directs, and coordinates requirements of OMB Circulars A–76 and A–123 to conduct management review activities and to determine whether certain Agency functions might be more appropriately carried out through or by commercial sources; (7) plans, develops, and implements policies and procedures in these areas, as appropriate.

Management Procedures Branch (CAJ63). (1) Manages the CDC policy issuance system to include policy development, dissemination, and advisory services; interprets HHS and other directives and assesses their impact on CDC policy, and maintains the official CDC library of administrative management policy and procedures manuals; (2) directs the agency-wide confidentiality management function to process applications for approval to collect sensitive research data in accordance with special confidentiality authorities in Sections 301(d) and 308(d) of the Public Health Service Act; (3) coordinates IG/GAO audit activities; (4) provides consultation and assistance to CDC program officials and staff in complying with the requirements of the Privacy Act and accompanying guidelines and regulations; (5) provides forms management services, including development, coordination of clearances, and inventory management; (6) plans, develops, and implements policies and procedures in these areas, as appropriate.

Management Services Branch (CAJ65). (1) Plans and conducts a publications management program, including development, production, procurement, distribution, and storage of CDC publications; (2) plans, directs, coordinates, and implements CDC-wide information distribution services and mail and messenger services, including the establishment and maintenance of mailing lists; (3) maintains liaison with contract suppliers, HHS, the Government Printing Office, and other Government agencies on matters

pertaining to printing, copy preparation, reproduction, and procurement of printing; (4) serves as the focal point for recommending policies and establishing procedures for matters pertaining to energy conservation and recycling; (5) receives and reviews requests received from the public for information and publications, and responds to the requests or forwards to the appropriate CDC program for action; (6) manages the CDC learning environment through classroom and meeting support for CDC's Atlanta campuses; (7) plans, develops, and implements policies and procedures in these areas, as appropriate.

Procurement and Grants Office (CAJ7). (1) Advise the Director, CDC, and the Director's staff, and provides leadership and direction for CDC acquisition, assistance, and materiel management activities; (2) plans and develops CDC-wide policies, procedures, and practices in acquisition, assistance, and materiel management areas; (3) obtains research and development, services, equipment, supplies, and construction through acquisition processes; (4) maintains functions relating to personal property, transportation, and warehousing operations; (5) awards, administers, and terminates contracts, purchase orders, grants, and cooperative agreements; (6) maintains a continuing review of CDC-wide acquisition, assistance, and materiel management operations to ensure adherence to laws, policies, procedures, and regulations; (7) maintains liaison with HHS, PHS, GSA, and other Federal agencies on acquisition, assistance, and materiel management policy, procedure, and operating matters.

Office of the Director (CAJ71). (1) Provides leadership and guidance in all areas of Procurement and Grants Office, (PGO) activities; (2) provides technical and managerial direction for the development of CDC-wide policies, procedures, and practices in the acquisition, assistance, and material management areas; (3) participates with senior management in program planning, policy determinations, evaluations, and decisions concerning acquisition, assistance, and materiel management; (4) provides direction for award, administration, measures of effectiveness and termination of contracts, purchase orders, grants, and cooperative agreements; (5) maintains a continuing review of CDC-wide acquisition, assistance, management, and materiel management operations to assure adherence to laws, policies, procedures, and regulations; (6) maintains liaison with HHS, GSA, and other Federal agencies on acquisition, assistance, and materiel management policy, procedure, and operating matters; (7) provides administrative services and direction for budget, property, travel, and personnel of the PGO; (8) processes data for and maintains the contract information system for CDC and HHS; (9) provides technical and managerial direction for the development, implementation and maintenance of the Integrated Contracts Expert (ICE) System on a CDC-wide basis; (10) provides administrative support activities for training and development of all PGO employees; (11) operates CDC's Small and Disadvantaged Business Program and provides direction and support to various other socioeconomic programs encompassing the acquisition and assistance activities; (12) provides cost advisory support to acquisition and assistance activities with responsibility for initiating respects for audits and evaluations, and providing recommendations to contracting officer or grants management officer; (13) as required, participates in negotiations with potential contractors and grantees, developing overhead rates for profit and nonprofit organizations, and provides professional advice on accounting and cost principles in resolving audit exceptions as they relate to the acquisition and assistance processes; (14) provides information technology support with responsibility for planning, budgeting, designing, developing, coordinating, monitoring, and implementing IT projects, activities, and initiatives; (15) develops and implements organizational strategic planning goals and objectives.

Acquisition and Assistance Branch A (CAJ74). (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance supported activities to assure compliance with appropriate HHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance supported activities and responds to requests for management information from Office of Director, headquarters, regional staff, CDC program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options and approaches in developing specification/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to State and local governments, universities, colleges, research institution, hospitals, and other public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains Branch's official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Acquisition and Assistance Branch B (CAJ75). (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms, (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for

conformity to laws, regulations, and policies, and negotiates and issues contract, grant and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance supported activities to assure compliance with appropriate HHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance supported activities and responds to requests for management information from Office of Director, headquarters, regional staffs, CDC program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options and approaches in developing specifications/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to State and local governments, universities, colleges, research institutions, hospitals, and other public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions, concerning acquisition and assistance strategies and execution; (13) maintains Branch's official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Acquisition and Assistance Field Branch (CAJ72). (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for NIOSH, NCHS, and other CIOs as directed by PGO management through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for NIOSH, NCHS, and other CIOs through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant, and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance supported activities to assure compliance with appropriate HHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance supported activities and responds to requests for management information from Office of Director, headquarters, regional staffs, NIOSH, NCHS, and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership, direction, procurement options and approaches in developing specification/statements of work and contract awards; (10) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to State and local governments, universities, colleges, research institutions, hospitals, and other public and private organizations, small businesses, and minority- and/or women-owned businesses for NIOSH, NCHS, and other CIOs as directed by PGO management; (11) participated with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution;; (12) maintains Branch's official contract assistance files; (13) maintains a close working relationship with NIOSH, NCHS, and other CIO components in carrying out their missions; (14) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Construction and Facilities Management Branch (CAJ76). (1) Directs and controls acquisition planning activities to assure total program needs are addressed and procurements are conducted in a logical, appropriate, and timely sequence; (2) Plans, directs, and conducts the acquisition of non-personal services, institutional support services, architect/engineering services, construction of new buildings, alterations and renovations, and commodities and equipment in support of CDC facilities, utilizing a wide variety of contract types and pricing arrangements; (3) provides leadership, direction, procurement options and approaches in developing specifications/statements of work and contract awards; (4) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (5) performs simplified acquisition activities in support of CDC program offices; (6) assures that contractor performance is in accordance with contractual commitments; (7) provides leadership and guidance to CDC project officers and program officials; (8) participates with senior program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (9) plans, directs, and coordinates activities of the Branch; (10) maintains Branch's official contracts files; (11) maintains a close working relationship with Facilities Planning and Management Office and other CDC components in carrying out their missions; (12) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with overall objectives of PGO.

International and Territories Acquisition and Assistance Branch (CAJ77). (1) Plans, directs and conducts the acquisition of a wide variety of services, research and development, studies, data collection, equipment, materials, and personal and nonpersonal services in support of CDC's international operations, utilizing a wide variety of contract types and pricing arrangements; (2) plans, directs and conducts assistance management activities for CDC's international programs; (3) provides leadership, direction, and acquisition options and

approaches in developing specifications/statements of work and grants announcements; (4) participates with top program management in program planning, policy determination, evaluation and direction concerning acquisition and grants strategies and execution; (5) provides innovative problem-solving methods in the coordination on international procurement and grants for a wide range plan with partners in virtually all major domestic and international health agencies dealing with United Nations Foundation health priorities/issues to include resolution of matters with the Department of State; (6) executes contracts and grants in support of international activities; (7) provides business management oversight for contracts and assistance awards.

Materiel Management Branch (CAJ73). (1) Implements CDC-wide policies, procedures, and criteria required to implement Federal and Departmental regulations governing materiel management and transportation management; (2) evaluates operations to determine procedural changes needed to maintain effective management; (3) provides technical assistance to other parts of CDC on matters pertaining to materiel management, transportation management, and agent cashier services; (4) develops, designs, and tests materiel management systems and procedures; (5) represents CDC on inter- and intra-departmental materiel and transportation management committees; (6) maintains liaison with the Department and other Federal agencies on materiel management and transportation and traffic management matters; (7) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Office of Security and Emergency Preparedness (CAJ8). (1) Plans, directs, coordinates, and evaluates a comprehensive protection and security program that requires the development of protection and security criteria to eliminate or control protection and security vulnerabilities encountered in the construction, operations, and maintenance of CDC's research laboratories, administration and support facilities, and the physical plant; (2) is responsible for all security and protection programs including education, training, technical assistance, physical security, identification badges, personnel security to include background/NACI checks, security clearances, adjudications, as well as door locks and card readers, parking and traffic control, vehicle inspections, clearing delivery vehicles, directly respond to emergency services personnel; (3) implements Federal and Departmental regulations and establishes CDC policies and procedures in the area of security, emergency management preparedness, and protection; (4) as the focal point for the receipt and transmittal of classified documents, clearances, and provides security briefing and debriefing for persons holding security clearances, and destroys outdated classified documents; (5) maintains liaison with international, national, State, and local law enforcement and emergency management agencies, with particular emphasis on the Federal Bureau of Investigation, Dekalb County Police and Fire Departments, security directors of Emory Hospital, Emory University, Egleston Children's Hospital, American Cancer Society, Wesley Woods Retirement Center, VA Medical Center, Emory Conference Center, Carter Center, GA State Patrol, Georgia Emergency Management Administration (GEMA), and the Federal Emergency Management Administration (FEMA); (6) develops, implements and maintains an agency wide and comprehensive internal Emergency Management and Continuity of Operations Plans, this includes (but is not limited to) updates, training, testing and management of the system; (7) plans, conducts and coordinates programs to protect life, property, and the environment in the event of fire, explosions, hazardous materials and natural disasters.

Dated: July 25, 2003.

William H. Gimson,

Chief Operating Officer, Centers for Disease C[ontrol and Prevention.

[FR Doc. 03–20090 Filed 8–6–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0330]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on How to Use E-Mail to Submit a Notice of Intent to Slaughter for Human Food Purposes

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 the reporting requirements for electronically submitting notices of intent to slaughter for human food purposes.

DATES: Submit written or electronic comments on the collection of information by October 6, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda/gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

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 renewal of an existing collection, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed in this document.

With respect to the proposed 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.

Guidance for Industry on How to Use E-Mail to Submit a Notice of Intent to Slaughter for Human Food Purposes—21 CFR Part 511 (OMB Control Number 0910–0450)—Extension

Section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) gives FDA the authority to issue regulations setting out the conditions for marketing animals treated with investigational new animal drugs for food use. Under this authority, FDA's regulations at § 511.1(b)(4) (21 CFR 511.1(b)(4)), provide that sponsors must obtain authorization to slaughter these animals for food. The Center for Veterinary Medicine (CVM) may grant such authorization to a sponsor under § 511.1(b)(5). If CVM authorizes the slaughter of investigational animals for food use, CVM issues a slaughter authorization letter to new animal drug sponsors which sets the terms under which such animals treated with investigational new animal drugs may be slaughtered. The authorization letter states that sponsors must submit slaughter notices each time such animals are to be slaughtered unless CVM waives this notice in the authorization letter. Currently, slaughter notices are submitted to CVM on paper. This guidance will give sponsors the option to submit a slaughter notice electronically as an e-mail attachment. The electronic submission of slaughter notices is part of CVM's ongoing initiative to provide a method for paperless submissions. The likely respondents to this collection of information are new animal drug sponsors who have conducted clinical studies under § 511.1(b).

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
FDA Form 3488	12	7	84	0.40	33.6

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Submitting a slaughter notice electronically represents a new medium for submission of information currently submitted on paper. The reporting burden for compilation and submission of this information on paper is included in OMB clearance of the information collection provisions of § 511.1 (OMB control number 0910–0117). The estimates in table 1 of this document reflect the burden associated with putting the same information on FDA Form No. 3488 and resulted from discussions with sponsors about the time necessary to complete this form.

Dated: July 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20059 Filed 8–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0329]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on How to Use E-Mail to Submit Information to the Center for Veterinary Medicine

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 the reporting requirements for persons using e-mail to electronically submit information to the Center for Veterinary Medicine (CVM).

DATES: Submit written or electronic comments on the collection of information by October 6, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

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 renewal of an existing collection, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed 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.

Guidance for Industry on How to Use E-Mail to Submit Information to the Center for Veterinary Medicine—21 CFR 11.2 (OMB Control Number 0910–0454)—Extension

CVM is responsible for developing and administering guidances that explain how to adhere to the Electronic Records; Electronic Signatures regulations (part 11 (21 CFR part 11)). These allow sponsors to submit part or all of records to FDA electronically in lieu of paper, unless the paper records are specifically required by regulation, if the requirement of part 11 are met, and the documents to be submitted electronically are identified in Docket No. 92S–0251. These regulations comply with the Government Paperwork Elimination Act (GPEA) (Public Law 105–277). The GPEA requires Federal agencies to give persons who are required to maintain, submit, or disclose information the option of doing so electronically when practicable as a substitute for paper by October 21, 2003.

This guidance document describes the procedures persons who submit information to CVM should follow if they want to file submissions electronically. This guidance instructs those who wish to submit information to CVM by e-mail to first register with the center. Registration entails sending a letter, on paper or electronically, to CVM with a sponsor password and the names, phone numbers, mail, and e-mail addresses of a sponsor coordinator, and each person who will submit information electronically to CVM. Other information collection provisions relate to electronic submissions by individuals and electronic submissions to make changes to the sponsor's registration. CVM will use all the information submitted to process electronic submissions. The likely respondents to this collection of information are new animal drug sponsors.

We estimate the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
70	2	140	.5	70

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation is based on agency communication with industry. Other information needed to calculate the total burden hours is derived from agency records and experience.

Dated: July 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20060 Filed 8–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0328]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on How to Use E-Mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter

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 the reporting requirements for sponsors electronically submitting notices of final disposition of investigational animals not intended for immediate slaughter.

DATES: Submit written or electronic comments on the collection of information by October 6, 2003.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

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: 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, 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 proposed 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 FDAs 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.

Guidance for Industry on How to Use E-Mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter 21 CFR Part 511 (OMB Control Number 0910–0453)—Extension

CVM monitors the final disposition of food animals treated with

investigational new animal drugs in situations where the treated animals do not enter the human food chain immediately at the completion of the investigational study. CVM believes that monitoring of the final disposition of such food animals is consistent with its responsibility to protect the public health under the Federal Food, Drug, and Cosmetic Act. In addition, CVM believes that acceptable standards of study conduct such as those set out in 21 CFR 514.117 would include sponsors accounting for the disposition of all animals treated with investigational new animal drugs.

This guidance document describes the procedures that should be followed by sponsors who wish to file a notice of disposition electronically on FDA Form #3487. The information sponsors should include on the form includes the sponsor's name and address, and information about the investigational animals. The form has been revised at the request of the sponsors to add a box that can be checked if the submission amends a notice of disposition previously submitted to CVM and to allow for consistency across forms. The likely respondents to this collection of information are new animal drug sponsors who have conducted clinical studies under 21 CFR 511.1(b).

FDA estimates the 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 Respondents	Total Annual Responses	Hours per Response	Total Hours
3487	12	27	324	0.81	262

[1] There are no capital costs associated with this collection of information.

The estimates in table 1 of this document resulted from discussions with new animal drug sponsors. The estimated burden includes notices of disposition submitted on paper and by e-mail.

Dated: July 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20061 Filed 8–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0327]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on How to Use E-Mail to Submit a Request for a Meeting or Teleconference to the Office of New Animal Drug Evaluation

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 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 public comment on the reporting requirements for sponsors electronically requesting meetings or teleconferences with the Center for Veterinary Medicine's (CVM), Office of New Animal Drug Evaluation (ONADE).

DATES: Submit written or electronic comments on the collection of information by October 6, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

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, 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.

Guidance for Industry on How to Use E-Mail to Submit a Request for a Meeting or Teleconference to the Office of New Animal Drug Evaluation—21 CFR Part 511 (OMB Control Number 0910–0452)—Extension

''Any person intending to file a new animal drug application or abbreviated application is entitled to request meetings and/or teleconferences to reach agreement regarding a submission or investigational requirement (21 U.S.C. 360b(b)(3)). Every person outside the Federal Government may request a meeting with representative(s) of FDA to discuss a matter (21 CFR 10.65(c))''.

Sponsors often meet with CVM scientists in CVM's Office of New Animal Drug Evaluation to formulate a rational approach to studies to be conducted and to discuss how to meet the statutory requirements for new animal drug approval under section 512 of the Federal Food, Drug, and Cosmetic

Act (21 U.S.C. 360b). Requests for meetings and teleconferences about NAD submissions are currently submitted on paper to CVM.

This guidance document describes the procedure for persons to submit a request for a meeting or teleconference electronically on FDA Form No. 3489. The information sponsors should include on the form includes the sponsor's name and address, a list of agency participants, an agenda, and notification of audiovisual equipment that will be needed. The form has been updated to allow sponsors to indicate whether the request amends a previous request for a meeting and to allow for consistency across forms. The likely respondents to this collection of information are new animal drug sponsors.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
FDA Form 3489	12	14	168	0.69	116

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

The estimates in table 1 of this document resulted from discussions with new animal drug sponsors. The estimated burden includes requests for meetings or teleconferences submitted by e-mail and on paper.

Dated: July 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20062 Filed 8–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Call for Applications for the Director's Council of Public Representatives

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), the Federal Government's primary agency for supporting and conducting medical research leading to the improvement in the Nation's health, has established a national advisory council—the Director's Council of Public Representatives (COPR). The Chair of the COPR is the Director of the NIH. This notice describes the process for the selection of new members of the COPR that the NIH will use as current members complete their terms.

DATES: The application deadline is September 15, 2003—*all applications must be postmarked on or before September 15, 2003;* the notification of selection and term start date will be in early spring 2004; and the first COPR meeting date for new members is April 29–30, 2004.

FOR FURTHER INFORMATION CONTACT: NIH Director's Council of Public Representatives (COPR), c/o Palladian Partners, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD, 20910, telephone (301) 650–8660, fax (301) 650–8676, e-mail *COPR@palladianpartners.com.* If you are interested in serving as a member of the COPR, please contact Palladian Partners, Inc., to have an application mailed to you or go on-line to *http://copr.nih.gov/application_process.shtm* to access the COPR application instructions. If you have questions about your application or the submission process, please feel free to contact the staff working on this project by mail, telephone, fax, or e-mail, as indicated in the above information.

ADDRESSES: Please mail your completed application to NIH Director's Council of Public Representatives (COPR), c/o Palladian Partners, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD, 20910, telephone (301) 650–8660, fax (301) 650–8676, e-mail *COPR@palladianpartners.com.*

SUPPLEMENTARY INFORMATION: The NIH Director created the COPR in 1999 as an important forum for information exchange between the public and the NIH at the highest level. The COPR consists of up to 21 individuals who are selected from among the many diverse communities that benefit from, and have an interest in, public input relevant to NIH research, programs, and activities. The COPR is an important avenue for representatives of the public to advise the NIH Director on the viewpoints, input, and feedback of the broader public regarding issues of public importance and relevance to emerging health and science priorities identified by the NIH Director and/or the COPR. COPR members also serve as NIH ambassadors by taking information from the NIH back to the broader public. COPR terms are *typically, but not always,* three years.

The minimum eligibility criteria are that the applicant must:

- Have some interest in the work of the NIH (such as being a patient or family member of a patient; a care giver; a volunteer in the health or science arena; a scientist or student of science; or a health communicator, educator or professional in the medical field; but certainly not limited to these examples).
- Be in a position (formally or informally) to communicate regularly with the broader public or segments of the public about the activities of the COPR and the NIH.
- Commit to participating fully in activities of the COPR, including COPR meeting discussions and conference calls, outreach activities, and working group activities that will take time in addition to COPR meeting attendance twice a year.

In addition, COPR members—while participating in COPR activities—will have to agree to subordinate disease-specific or program-specific interests to broader, crosscutting matters of importance to the NIH, such as public input, public participation, and public trust in the research enterprise. Also, members of the COPR will have to agree to be responsive to special charges from the NIH Director in priority issue areas. COPR members must also agree to represent as broad a ''public viewpoint'' as possible and to at least keep the spirit of this goal at the forefront during all COPR discussions and activities.

Please contact Palladian Partners, Inc., to have an application mailed to you or go on-line to *http://copr.nih.gov/application_process.shtm* to access the COPR application instructions. The NIH Director's COPR staff is located in the Office of Communications and Public Liaison, Office of the Director, National Institutes of Health. *Application packages postmarked after September 15, 2003,will be considered in the next*

year's application cycle, which will end in September 2004.

After applications are screened for completeness, they will be reviewed and scored by external reviewers who are familiar with the responsibilities of the COPR. The NIH Director will make the final selection of candidates with the goal of creating a Council that reflects the breadth and diversity of the public groups interested in the NIH. The NIH Director will take into consideration many varied factors, including age, gender, culture, and geography. We expect that selected candidates will be notified and processed in early spring 2004 and that all applicants will be notified of the final selection by the end of April 2004.

Dated: July 29, 2003.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 03–20121 Filed 8–6–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: September 8, 2003.

Closed: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 1 p.m. to adjournment.

Agenda: The agenda includes Opening Remarks by Director, NCCAM, Report on Botanical Research Centers Program, Concept Review: Botanical Research Centers, and other business of the Council.

Place: Neuroscience Conference Center, 6001 Executive Boulevard, Conference Rooms C and D, Rockville, MD 20852.

Contact Person: Jane F. Kinsel, Ph.D., M.B.A., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 496–6701.

The public comments session is scheduled from 4–4:30 p.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland, 20892, 301–496–6701, Fax: 301–480–0087. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on August 26, 2003. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar days (September 18, 2003) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–496–6701, Fax 301–480–0087, or via e-mail at *naccames@mail.nih.gov.* The information is also available on the web at *http://nccam.nih.gov.*

Dated: July 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 03–20120 Filed 8–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, ZMD1 (06) NCMHD Endowment Programs.

Date: August 8, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Tommy L. Broadwater, PhD, Chief of Review, National Center on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892–5465, 301–402–1366, *broadwat@ncmhd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: July 30, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20118 Filed 8–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities

Special Emphasis Panel, ZMD1 (06) NCMHD Endowment Programs.

Date: August 8, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Tommy L. Broadwater, PhD, Chief of Review, National Center on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892–5465, 301–402–1366, *broadwat@ncmhd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20119 Filed 8–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 25, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffre I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 5000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (303) 435–5337.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of U01 Application EE–21.

Date: September 5, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-fifth Street, NW., Washington, DC 20037.

Contact Person: Dorita Sewell, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Boulevard, Suite 409, MD 20892, 301–433–2890, *dsewell@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20166 Filed 8–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 6, 2003.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 7, 2003.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Fellowship Applications.

Date: September 2, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Dorita Sewell, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Boulevard, Suite 409, MD 20892, 301–443–2890, *dsewell@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20168 Filed 8–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SBIR Computerized HIV Prevention.

Date: August 18, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20170 Filed 8–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant application and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism.

Date: September 17–18, 2003.

Closed: September 17, 2003, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Closed: September 18, 2003, 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate the Board of Scientific Counselors' Report.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1–E2, Bethesda, MD 20892.

Open: September 18, 2003, 9:30 a.m. to 3 p.m.

Agenda: Program documents.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1–E2, Bethesda, MD 20892.

Contact Person: Kenneth R. Warren, PhD, Director, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–4375, *kwarren@niaaa.nih.gov.*

Information is also available on the Institute's/Center's home page: *silk.nih.gov/silk/niaaa1/about/roster.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20171 Filed 8–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Novel Cancer Therapeutics.

Date: August 4, 2003.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual System Pasticity.

Date: August 4, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 (Telephone Conference Call),

Contact Person: Michael A. Steinmetz, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Malanoma Targeted Novel Therapy.

Date: August 4, 2003.

Time: 5 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 (Telephone Conference Call),

Contact Person: Elaine Sierra-Rivera, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Emetics.

Date: August 13, 2003.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (29) Minority/Disability Predoctoral Fellowship Reviews.

Date: August 27–28, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW, Washington, DC 20037.

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902, *krauswm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, S10 Mechanism.

Date: September 4–5, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Alexandra M. Ainsztein, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

Dated: July 31, 2003.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20167 Filed 8–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: September 16, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: For discussion of planning, operational, and clinical research issues.

Place: National Institutes of Health, Building 10, 10 Center Drive, Room 2C116, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's home page: *http://www.cc.nih.gov/*, where an agenda and any additional information for the meeting will be posted when available.

Dated: July 31, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–20169 Filed 8–6–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Finding of No Significant Impact and Final Environmental Assessment for the Management of Mute Swans in the Atlantic Flyway

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a Finding of No Significant Impact (FONSI) and a Final Environmental Assessment (FEA) for the management of mute swans (*Cygnus olor*) in the Atlantic Flyway. The specific Service action under the preferred alternative of integrated population management will be the issuance of migratory bird depredation permits authorizing the take of up to 3,100 mute swans annually. The Service can also issue depredation permits that authorize egg addling, pinioning (*i.e.*, amputation of the outer wing, a commonly used method of flight restraint in waterfowl) and sterilization, and live-trapping and relocation.

ADDRESSES: The Record of Decision—including FONSI, FEA, and related documents—will be available for public inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Room 4000, Arlington, Virginia. These documents can also be viewed on the Service's Web site at *http:/migratorybirds.fws.gov.*

FOR FURTHER INFORMATION CONTACT: John L. Trapp, (703) 358–1965.

SUPPLEMENTARY INFORMATION:

Description of Action

The EA on which the FONSI is based was made available to the public on July 2, 2003 (68 FR 39593) for a 15-day public comment period. We received comments from 13 State wildlife agencies, 53 organizations, and approximately 2,620 individuals. The Service's preferred alternative was supported by 13 State wildlife agencies; 43 organizations dedicated to bird conservation or science, wildlife conservation, and wildlife management; and 24 individuals. The Service's proposed action was opposed by 10 animal-rights organizations and at least 2,589 individuals who believe that lethal take (*i.e.*, shooting) is inhumane and that the proposed action is not supported by the available scientific evidence. More than 95 percent of the individual responses were prompted by Web-based action-alert form letters.

The specific action to be undertaken by the Service will be the issuance of migratory bird depredation permits to State wildlife agencies, the Wildlife Services program of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, national wildlife refuges, and others to take mute swans in the Atlantic Flyway, in accordance with 50 CFR 21.41 and the State-specific take guidelines presented in the FEA, to allow for the

integrated population management of mute swans. Each permit application will be reviewed to ensure that the planned activity meets the goals and objectives of the Atlantic Flyway Mute Swan Management Plan (Atlantic Flyway Council 2003) as specified in the FEA, that the proposed take does not exceed the Service's State-specific take guidelines, and that the cumulative impacts will not irreparably harm the Flyway-wide population. The State-specific take guidelines will be reviewed annually and revised as necessary to ensure that Statewide and Flyway-wide populations are not reduced below target levels.

Finding of No Significant Impact

The following constitutes the full text of the FONSI signed by the Service Director:

''The U.S. Fish and Wildlife Service has proposed issuing migratory bird depredation permits authorizing the take of up to 3,100 feral mute swans (*Cygnus olor*) annually in the Atlantic Flyway for the next ten years. The primary goal in implementing this action is to minimize environmental damages attributed to mute swans in a feasible and cost-effective way, consistent with the Service's responsibility to manage and conserve mute swan populations under the Migratory Bird Treaty Act and conventions and other applicable law. A secondary goal—and the most effective means for achieving the first goal—is to reduce populations of feral mute swans to pre-1986 levels.

The need for the action stems from documented scientific evidence of the negative impacts that a growing population of mute swans is having on wetland habitats and native species of fish and wildlife, the threats that mute swans pose to human health and safety, and the damage that they can cause to commercial agricultural crops. The action will support implementation of a U.S. Fish and Wildlife Service policy on management of mute swans on national wildlife refuges, and implementation of the Atlantic Flyway Mute Swan Management Plan.

The proposed action (Integrated Population Management) was selected because:

(1) It provides Federal, State, and other wildlife managers with the broadest array of tools and management flexibility for dealing with local, regional, Statewide, and Flyway-wide problems caused by an expanding population of mute swans.

(2) Lethal take of adult birds, as authorized by the proposed action, has been shown to be the only effective method for reducing populations of long-lived birds such as the mute swan, and hence is the only effective method for reducing the detrimental impacts of mute swans on wetland habitats, native fish and wildlife species, and human interests.

(3) Egg addling—while a useful technique for arresting productivity and stabilizing populations and thus an important supplement to lethal take—is not an effective technique, in and of itself, for reducing populations.

(4) Non-lethal techniques such as harassment, exclusionary devices, translocation, and behavioral modification can be effective for dealing with nuisance problems caused by individual swans, or small groups of swans, but are not substitutes for population reduction.

The proposed management action will not have significant environmental impacts because:

(1) The mute swan will not be extirpated in the Atlantic Flyway, nor in any of the eight States that comprise the ''core'' of its range in the Atlantic Flyway.

(2) A 67 percent reduction in the number of mute swans will return the Atlantic Flyway population to a pre-1986 level of about 4,675 birds. Mute swans survived and thrived in the Atlantic Flyway at much smaller populations than this for more than 80 years.

(3) The removal of about 8,000 birds from the Atlantic Flyway will have no effect on the viability of U.S., North American, or worldwide populations of the mute swan, which number approximately 21,400, 23,000, and 614,000 birds, respectively.

(4) Pinioned mute swans of domestic origin held in captive or semi-captive conditions on private properties or in municipal parks will not be affected by the proposed action, and will remain available for viewing and enjoyment.

(5) Reduction of mute swan numbers consistent with the Atlantic Flyway management plan will prevent further damage to (a) submerged aquatic vegetation (SAV) and SAV restoration efforts, (b) populations of other fish and wildlife (including those of threatened and endangered species) and their habitats, (c) commercially and recreationally valuable shellfish and finfish, and (d) recreationally important birds (especially waterfowl), and will to some degree offset the damage that has been done by the relatively recent increase in mute swan numbers. Therefore, this action will merely help to maintain the long-term status quo.

(6) The potential risk of emotional trauma and physical injury to humans because of attacks initiated by territorial mute swans in coastal habitats frequented by people seeking outdoor recreational opportunities will be minimized.

(7) Opportunities for people to view and enjoy feral mute swans in a wild state will be reduced but not eliminated in any of the eight States that comprise the ''core'' of its range in the Atlantic Flyway, and thus such opportunities remain readily available to people willing to make a reasonable effort to seek them out.

Based on a review and evaluation of the attached Environmental Assessment entitled *Management of Mute Swans in the Atlantic Flyway,* I have determined that the issuance of migratory bird depredation permits authorizing the lethal take of up to 3,100 mute swans annually, plus addling of eggs in up to 1,750 nests, does not constitute a major Federal Action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Therefore, the preparation of an Environmental Impact Statement is not required.''

Dated: August 1, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–20281 Filed 8–5–03; 2:51 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–03–1020–PG]

Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

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) New Mexico Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on September 11–12, 2003, at the Farmington Marriott Courtyard, San Juan/La Plata Rooms, 560 Scott Avenue, Farmington, NM, beginning at 8 a.m. both days. The meeting will adjourn at approximately 5:00 p.m. on Thursday and 1 p.m. on Friday. The two established RAC subcommittees may have a late afternoon or an evening meeting on Thursday, September 11.

An optional Field Trip is planned for Wednesday, September 10. The public comment period is scheduled for Wednesday, September 10, from 6–8 p.m. in the Animas/Florida Rooms.

SUPPLEMENTARY INFORMATION: The 15 member Council advises 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 New Mexico. At this meeting, topics for discussion include:

Working Landscapes Initiative.
Oil and gas compliance.
Geology ACEC and the development of the ACEC.
Recreation and visitor services priorities.

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. New Mexico RAC meetings are coordinated with the representative of the Governor of the State of New Mexico.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of Internal Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7517.

Dated: July 29, 2003.

Richard A. Whitley,

Associate State Director.

[FR Doc. 03–20092 Filed 8–6–03; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–03–1910–BK–5065]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs (BIA), and was necessary to determine areas of accreted land. The lands we surveyed are:

Principal Meridian, Montana

T. 27 N., R. 52 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the subdivisional lines, the adjusted original meanders of the former left bank of the Missouri River, downstream through section 20, and the subdivision of section 20, and the subdivision of section 20, and the survey of the meanders of the present left bank of the Missouri River, downstream through section 20, and certain division of accretion lines in Township 27 North, Range 52 East, Principal Meridian, Montana, was accepted June 6, 2003.

We will place a copy of the plat, in three sheets, we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in three sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in three sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: July 31, 2003.

Heidi L. Pfosch,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 03–20091 Filed 8–6–03; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–456]

Express Delivery Services: Competitive Conditions Facing U.S.-Based Firms in Foreign Markets

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt of a request on July 1, 2003, from the House Committee on Ways and Means, the Commission instituted investigation No. 332–456, *Express Delivery Services: Competitive Conditions Facing U.S.-based Firms in Foreign Markets,* under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Background: As requested by the Committee, the Commission will investigate and provide a report on the current competitive conditions facing U.S.-based express delivery service suppliers in foreign markets. Specifically, the Commission will (1) examine the composition of the global industry, major market participants, and factors driving change, including regulatory reform, in major markets; (2) examine the extent to which competition among express delivery service suppliers in foreign markets may be affected by government-sanctioned monopolies competing in those markets; and (3) identify, to the extent possible, additional trade impediments encountered by U.S.-based express delivery service suppliers in foreign markets. For the purposes of its report, the Commission will define express delivery services as the expedited collection, transport and delivery of documents, printed matter, parcels and/or other goods, while tracking the location of, and maintaining control over, such items throughout the supply of the service; and services provided in connection therewith, such as customs facilitation and logistics services.

The Committee requested that the Commission furnish its report by April 1, 2004, and that the Commission make the report available to the public in its entirety.

EFFECTIVE DATE: August 1, 2003.

FOR FURTHER INFORMATION CONTACT: (1) Project Leader, Michael Nunes (202–205–3462 or *mnunes@usitc.gov*); (2) Deputy Project Leader, Joann Tortorice (202–205–3032 or *jtortorice@usitc.gov)* (3) Chief, Services and Investment Division, Richard Brown (202–205–3438 or *rbrown@usitc.gov*).

The above persons are in the Commission's Office of Industries. For information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091 or *wgearhart@usitc.gov.*

Public Hearing

A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on November 5, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on October 22, 2003. In addition, persons appearing should file prehearing briefs

(original and 14 copies) with the Secretary by the close of business on October 24, 2003. Posthearing briefs should be filed with the Secretary by the close of business on November 19, 2003. In the event that no requests to appear at the hearing are received by the close of business on October 22, 2003, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after October 22, 2003 to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on November 19, 2003. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted 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 for inspection by interested persons. The Committee has requested that the report not include any confidential business information; the Commission will not include confidential business information in the report it sends to the Committee. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules (19 CFR 201.18) (*see* Handbook for Electronic Filing Procedures, *ftp://FTP.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Issued: August 1, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–20140 Filed 8–6–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–345]

Shifts in U.S. Merchandise Trade 2003

AGENCY: United States International Trade Commission.

ACTION: Opportunity to submit written statements in connection with the 2003 report.

SUMMARY: The Commission has prepared and published annual reports on U.S. trade shifts in selected industries/commodity areas under investigation No. 332–345 since 1993. The Commission plans to publish the 2003 report in July 2004, which will cover shifts in U.S. trade in 2003 compared with trade in 2002. The Commission is considering changes to the structure of next year's report, such as converting exclusively to a web-based format that would enable timely updates of selected data and analysis on a periodic or semiannual basis with added focus on sectoral issues. This new format would include links to ITC resources allowing quick access to analyses and data, as well as links to other organizations that have related information. Comments and suggestions regarding the 2003 report to be published in July 2004 are welcome in written submissions as specified below.

The latest version of the report covering 2002 data (USITC Publication 3611, July 2003) may be obtained from the USITC's Internet server (*http://www.usitc.gov*). A printed report may be requested by contacting the Office of the Secretary at 202–205–2000 or by fax at 202–205–2104. Interested parties may also provide comments by returning the postage-paid ''Reader Satisfaction Survey'' located inside the front cover of the report issued in July 2003, or by downloading the survey form and business reply mailer for this report from the Commission's Web site.

EFFECTIVE DATE: August 1, 2003.

FOR FURTHER INFORMATION CONTACT: Questions about the trade shifts report may be directed to the project leader, Judith-Anne Webster, Office of Industries (202–205–3489). For information on the legal aspects, please contact William Gearhart, Office of General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–2648.

Background

The initial notice of institution of this investigation was published in the **Federal Register** of September 8, 1993 (58 FR 47287). The Commission expanded the scope of this investigation to cover services trade in a separate report, which it announced in a notice published in the **Federal Register** of December 28, 1994 (59 FR 66974). The merchandise trade report has been published in the current series under investigation No. 332–345 annually since September 1993.

As in past years, each report will summarize and provide analyses of the major trade developments that occurred in the preceding year. The reports will also provide summary trade information and basic statistical profiles of about 259 industry/commodity groups and 59 industry/commodity subgroups.

Written Submissions

No public hearing is planned. However, interested persons are invited to submit written comments or suggestions concerning the July 2004 report. 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 section 201.6 of the Commission's Rules and 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 to the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on December 29, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.18)(see Handbook for Electronic Filing Procedures, *ftp://FTP.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

Issued: August 1, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–20139 Filed 8–6–03; 8:45 am]

BILLING CODE 8040–01–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: COPS Making Officer Redeployment Effective Application.

The Department of Justice (DOJ), Office of Community Oriented Policing Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 68, Number 45, page 11146 on March 7, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* COPS Making Officer Redeployment Effective (MORE') Grant Program Application Kit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Department of Justice, Office of Community Oriented Policing Services (COPS) Form Number: N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary State, local and Tribal law enforcement agencies. Other: University police, housing authorities, and school districts. Abstract: The information collected will be used by the COPS Office to determine whether law enforcement agencies are eligible for one year grants specifically targeted to provide funding for technology and equipment. The grants are meant to enhance law enforcement IT infrastructure and community policing efforts in these communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 2,500 responses per year. The estimated amount of time required for the average respondent to respond is 26 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total number of annual burden hours associated with this collection is 62,500.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 1, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–20073 Filed 8–6–03; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 U.S.C. § 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that on July 25, 2003, a proposed Consent Decree in *United States* v. *American Premier Underwriters; Consolidated Rail Corporation; The City of New Bedford, Massachusetts; and Housing 70 Corporation,* Civil Action No. 03–CV–11403–NG, was lodged with the United States District Court for the District of Massachusetts.

In this action the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sought reimbursement of response costs incurred with respect to the Railroad Depot Superfund Site (the ''Site'') in New Bedford, Bristol County, Massachusetts. The Complaint alleges that the defendants are liable under section 107(a), 42 U.S.C. 9607(a), of CERCLA. Pursuant to the consent decree, defendants will pay $800,000 plus interest to reimburse the United States for costs incurred by EPA at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Premier Underwriters; Consolidated Rail Corporation; The City of New Bedford, Massachusetts; and Housing 70 Corporation,* D.J. Ref. 90–11–3–06760.

The Consent Decree may be examined at the Office of the United States Attorney, United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210, and at U.S. EPA Region I, One Congress Street, Suite 1100, Boston, Massachusetts 02203. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://*

www.usdoj.gov/enrd/open.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–20070 Filed 8–6–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment to Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed Amendment to Consent Decree entered on February 7, 1992 in *United States* v. *Beazer East, Inc.,* Civil Action No. S–91–767, was lodged with the United States District Court for the Eastern District of California on July 24, 2003.

The Consent Decree involved the settlement of claims brought by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act. The complaint contained claims seeking injunctive relief and the recovery of response costs incurred by the United States in connection with the release and threatened release of hazardous substances from a facility known as the Koppers Superfund Site in Oroville, California. The proposed and agreed upon Amendment would modify the Consent Decree by updating the Decree to accommodate two changes in the remedy and the implementation of necessary institutional controls.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Each communication should refer on its face to *United States* v. *Beazer East, Inc.,* DOJ No. 90–11–3–461A.

The proposed Amendment to Consent Decree may be examined at the Office of the United States Attorney, Eastern District of California, 501 I Street, 10th Floor, Sacramento, California 95814, and at the U.S. Environmental Protection Agency, Region 9 Office, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the proposed Amendment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.*

A copy of the proposed Amendment to Consent Decree may be obtained by (1) mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611; or by (2) faxing or emailing the request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), U.S. Department of Justice, fax number (202) 616–6584; phone confirmation (202) 514–1547. In requesting a copy, please forward the request and a check in the amount of $12.50 (25 cents per page reproduction cost), made payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–20073 Filed 8–6–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decree Pursuant to the Oil Pollution Act

In accordance with Departmental Policy, 28 CFR 50.7,38 FR 19029, notice is hereby given that a proposed consent decree in *United States and State of Louisiana* v. *Marine Oil Trade 3, Ltd. and Ermis Maritime Corp.,* Civ. No. 03–2030, Section L, DOJ #90–5–1–1–07673, was lodged in the United States District Court for the Eastern District of Louisiana on July 16, 2003. The Consent Decree resolves the liability of the named defendants to the United States and the State of Louisiana for natural resource damages with respect to the Westchester Oil Spill, pursuant to the Oil Production Act of 1990 (OPA), 33 U.S.C. 2702(b), and section 2480 of the Lousiana Oil Spill Prevention and Response Act (OSPRA), La. Rev. Stat. 30:2480. The claims arise from an oil spill in the Mississippi River at Plaquemines Parish, Louisiana, on November 28, 2000, that resulted from an accident to the vessel WESTCHESTER. The United States and the State share trusteeship of the injured resources and are coordinating restoration efforts.

Under the proposed Consent Decree, the Settlers will reimburse the state and federal trustees for 100% of unrecovered natural resource damage assessment costs and future monitoring costs. Also, they shall complete Restoration Projects to compensate the trustees for the natural resource damages. The Restoration Projects to be performed are the Splay Marsh Restoration Project and the Boat Dock Restoration Project.

The Damage of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the *United States and State of Louisiana* v. *Marine Oil Trader 3, Ltd. and Ermis Maritime Corp.,* DOJ #90–5–1–1–07673. The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Louisiana, 501 Magazine Street, New Orleans, Louisiana 70130, and at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $29.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–20072 Filed 8–06–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 U.S.C. § 50.7 and section 122 of the Comprehensive

Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. § 9622, notice is hereby given that on July 29, 2003, a proposed Consent Decree in *United States v. Reynolds Metal Co.*, Civil Action No. 03–CV–0952, was lodged with the United States District Court for the Northern District of New York.

In this action the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sought reimbursement of response costs incurred with respect to the Reynolds Metals Company Study Area (the ''Site'') in Massena, St. Lawrence County, New York. The Complaint alleges that the defendant is liable under Section 107(a), 42 U.S.C. § 9607(a), of CERCLA. Pursuant to the consent decree, defendant will pay $1,523,965.31 plus interest to reimburse the United States for costs incurred by EPA at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Reynolds Metals Co.,* D.J. Ref. 90–11–3–07968.

The Consent Degree may be examined at the Office of the United States Attorney, James T. Foley Federal Building, 445 Broadway, Albany, New York, New York, 12207, and at U.S. EPA Region II, 290 Broadway, 17th Floor, New York, 10007–1866. During the public comment period, the Consent Degree, may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Degree may also be obtained by mail from the Consent Degree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*) fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Degree Library, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Catherine McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–20071 Filed 8–6–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on July 21, 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''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change 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, Holcim Group Support (Canada) Ltd., Mississaunga, Ontario, CANADA is no longer a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA 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 February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on January 31, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 3, 2003 (68 FR 10034).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–20191 Filed 8–6–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,836]

Advanced Energy Industries Core Manufacturing Including Leased Workers of ADECCO Staffing, Fort Collins, CO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 16, 2003, applicable to workers of Advanced Energy Industries, Core Manufacturing, Fort Collins, Colorado. The notice was published in the **Federal Register** on July 3, 2003 (68 FR 39977).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of Adecco Staffing were employed at Advanced Energy Industries, Core Manufacturing to produce printed circuit board assemblies at the Fort Collins, Colorado location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Adecco Staffing, Fort Collins, Colorado employed at Advanced Energy Industries, Core Manufacturing, Fort Collins, Colorado.

The intent of the Department's certification is to include all workers of Advanced Energy Industries, Core Manufacturing who were adversely affected by the shift in production to China and Malaysia.

The amended notice applicable to TA–W–51,836 is hereby issued as follows:

''All workers of Advanced Energy Industries, Core Manufacturing, Fort Collins, Colorado including leased workers of Adecco Staffing, Fort Collins, Colorado engaged in employment related to the production of printed circuit board assemblies at Advanced Energy Industries, Core Manufacturing, Fort Collins, Colorado, who became totally or partially separated from employment on or after May 13, 2002, through June 16, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 24th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20100 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,823]

Alcoa Composition Foils, Pevely, MO; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 23, 2003, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for

Trade Adjustment Assistance (TAA). The denial notice was signed on April 28, 2003 and published in the **Federal Register** on May 9, 2003 (68 FR 25060).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Alcoa Composition Foils, Pevely, Missouri, engaged in the production of lead and tin foil for the medical, dental and x-ray industries, was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974 was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of competitive products in 2001, 2002, and January through March 2003. The respondents reported no increased imports. The subject firm did not increase its reliance on imports of lead and tin foil during the relevant period, nor did they shift production to a foreign source.

The petitioner alleges that the subject firm was sold to a foreign company which is currently supplying the subject firm customers with products like or directly competitive with those produced at the subject firm.

As established in the initial investigation, neither the company nor its customers reported importing like or directly competitive products during the relevant period of the investigation. Should the petitioners wish the Department to investigate a more recent period, they would be advised to file a new petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20114 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,659]

Brookline, Inc., Charlotte, North Carolina; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 7, 2003, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on June 23, 2003, and published in the **Federal Register** on July 10, 2003 (68 FR 41179).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Brookline, Inc., Charlotte, North Carolina was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of knit fabric. The company did not import knit fabric in the relevant period nor did it shift production to a foreign country.

The company official states that his business, as well as the cut and sew businesses he sells to, have been displaced as a result of retailers purchasing finished apparel abroad. The official concludes that the subject firm is obviously import impacted as a result of this.

In assessing import impact, the Department considers imports of like or directly competitive products (in this case, knit fabrics) to determine import impact. Thus, the imports of apparel are not relevant in determining import impact in a primary investigation of these workers. The imports of apparel would be relative in determining secondary impact on the subject firm workers if the subject firm supplied knit fabric to customers producing apparel who were under active TAA certification. The Department examined whether the subject workers were eligible for trade adjustment assistance under secondary impact and determined that only a negligible amount of the customer base was trade-affected.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 24th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20110 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR
Employment and Training Administration

[TA–W–51,548]

Cypress Semiconductor Design Center, Colorado Springs, CO; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 9, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Cypress Semiconductor Design Center, Colorado Springs, Colorado was signed on June 25, 2003, and published in the **Federal Register** on July 10, 2003 (68 FR 41179).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Cypress Semiconductor Design Center, Colorado Springs, Colorado. Subject firm workers performed computer programming related to integrated circuit test development of products manufactured abroad. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service. He further quotes a section that he describes as ''DOL Strategic Goals'' that imply that TAA is designed to help workers ''displaced by shifts in production to offshore locations'' and states that the shift of production to the Phillipines prompted an alleged subsequent shift of software development performed at the subject facility to the Philippines.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official clarified that the majority of the software was developed to be installed in test equipment at the Colorado facility or to be shipped to be installed in test equipment at other domestic facilities. A lesser portion, however, was also required to go through a ''product check requirement'' in conjunction with an internal contracting process that would be shipped to facilities both domestic and foreign (Philippines). This last portion of software would be further fine tuned at the facilities that received the software.

As a result of this clarification, it was revealed that the software was never marketed as an external product, nor was it a component part incorporated into production of a marketed product. There is no evidence that the company imports competitive software. Thus, even if the services performed by the petitioning worker group were considered production, there is no evidence of like or directly competitive products. The petitioner's allegation of a shift in work functions from the subject facility to the Philippines appears to stem from the transfer of a machine used to test integrated circuits for company products from Colorado Springs to the company's Philippines facility. The petitioner contends that if the machine was moved, so were the software development jobs that were responsible for designing software for the machine.

A company official who was questioned on this issue stated that, in affect, some software development was shifted to other domestic facilities, but not to the Philippines. The software previously exported by the subject firm to the Philippines is being maintained by existing staff that has always performed fine tuning on existing software. The official concluded that layoffs at the subject firm, as well as other company facilities including the one in the Philippines, are attributable to a general downturn in the semiconductor industry.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20101 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,128]

DT Precision Assembly Industries, Erie, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 21, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 23, 2003, and published in the **Federal Register** on May 7, 2003 (68 FR 24502).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of DT Precision Assembly Industries, Erie, Pennsylvania was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported automated assembly machines, rotary dial and in-line type machines. The company did not import automated assembly machines, rotary dial and in-line type machines in the relevant period nor did it shift production to a foreign country.

The petitioner provides a copy of what he alleges to be primary domestic and overseas competitors.

The petitioner further alleges that the subject firm is faced with competitors from Canada, Europe and Asia.

A review of competitors is not relevant to investigations concerning import impact on workers applying for trade adjustment assistance. As noted above, ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm to examine the direct impact on a specific firm. No imports were evidenced as a result of this survey.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 24th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20112 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,025]

Dynamco, Inc., Roper Pump Company, Roper Industries, Inc., McKinney, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 15, 2003, applicable to workers of Dynamco, Roper Pump Company, McKinney, Texas. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of pneumatic valves and components.

New information shows that Roper Industries, Inc. is the parent firm of Dynamco, Inc. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Roper Industries, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Dynamco, Inc., Roper Pump Company, Roper Industries, Inc., McKinney, Texas who were adversely affected by increased imports.

The amended notice applicable to TA–W–52,025 is hereby issued as follows:

All workers of Dynamco, Inc., Roper Pump Company, Roper Industries, Inc., McKinney, Texas, who became totally or partially separated from employment on or after June 11, 2002, through July 15, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20098 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,062]

Fishing Vessel (F/V) Juanderer, Elfin Cove, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 17, 2003, in response to a petition filed by a company official on behalf of workers at Fishing Vessel (F/V) Juanderer, Elfin Cove, Alaska.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20107 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,876]

Mechanical Products Company, LLC, Aerospace Division, Jackson, Michigan; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 27, 2003, the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), Region 1C and Local Union 1330, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 11, 2003, and published in the **Federal Register** on May 1, 2003 (68 FR 23322).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Mechanical Products Company, LLC, Aerospace Division, Jackson, Michigan was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported breakers for the aerospace industry. The company did not import breakers for the aerospace industry in the relevant period.

The union asserts that, in addition to producing circuit breakers for the aerospace industry, the subject firm also produced circuit breakers for other commercial purposes, specifically in the ''1600'' and ''2000'' series.

A company official was contacted in regard to these allegations. The official stated that, from the end of 2001 and into 2002, the subject facility briefly did some production of the 1600 series circuit breakers while the firm was in the process of shifting this production from an affiliate in Maryland to foreign sources; however, subject firm production for series 1600 circuit breakers was negligible in relation to overall plant production and no layoffs resulted from this production cessation in Jackson. The official further stated that there had been some ''rework'' done on series 2000 circuit breakers shipped from a foreign facility to Jackson; again, however, this work constituted a negligible portion of plant production. Finally, the company official clarified that subject firm layoffs were entirely attributable to the sale of the company's Aerospace Division to another company that subsequently moved production to an existing facility in Sarasota, Florida.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20104 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,706]

Oregon Steel Mills, Inc., Portland Steel Works, Including Temporary Workers of Madden Industrial Craftsmen, Portland, Oregon; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 9, 2003, applicable to workers of Oregon Steel Mills, Inc., Portland Steel Works, Portland, Oregon. The notice was published in the **Federal Register** on June 3, 2003 (68 FR 33197).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Madden Industrial Craftsmen were employed at Oregon Steel Mills, Inc., Portland Steel Works to produce slabs and hot-rolled steel plate at the Portland, Oregon location of the subject firm.

Based on these findings, the Department is amending the certification to include temporary workers of Madden Industrial Craftsmen employed at Oregon Steel Mills, Inc., Portland Steel Works, Portland, Oregon.

The intent of the Department's certification is to include all workers of Oregon Steel Mills, Inc., Portland Steel Works who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,706 is hereby issued as follows:

All workers of Oregon Steel Mills, Inc., Portland Steel Works, Portland, Oregon, and temporary workers of Madden Industrial Craftsmen engaged in employment related to the production of slabs and hot-rolled steel plate working at Oregon Steel Mills, Inc., Portland Steel Works, Portland, Oregon, who became totally or partially separated from employment on or after January 27, 2002, through May 9, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20105 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,730]

PPG Industries, Inc., Automotive Coating Division, Troy, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application post marked on April 17, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on March 26, 2003 and published in the **Federal Register** on April 7, 2003 (68 FR 16833).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at PPG Industries, Inc., Automotive Coating Division, Troy, Michigan engaged in the production of pretreatment and specialty products, was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject company's major customers regarding their purchases of pretreatment and specialty products. The survey revealed that none of the customers increased their import purchases of pretreatment and specialty products during the relevant period.

The petitioner alleges that the company shifted production to a company affiliate in Mexico. To support this, the petitioner provides what are described as ''ship histories'' dating back to 1997, alleging that these documents indicate products that were sent from the subject firm to the facility in Mexico. In addition, the petitioner indicates that production at the Mexican facility was ''formulated and produced'' at the Troy facility, and that the Troy facility ''supplemented'' the inventory at the Mexican facility.

A company official was contacted in regard to these allegations. Concerning the production conducted at the Mexican affiliate, the official confirmed that the Technical Division at the Troy facility had developed products that were later produced at the Mexican facility. The official also confirmed that there was similar production conducted at both facilities; however, the Mexican facility has exclusively served a foreign customer base with no overlap from the subject firm's customer base. As a result, there is no indication of a shift in production in this instance. In regard to the allegation that the Troy facility supplemented the inventory of the Mexican affiliate, a fact of this nature does not in and of itself provide proof of a shift in production. Further, when questioned on the issue of shipments from the subject firm to the Mexican affiliate, a company official stated that, having reviewed company invoices of shipments from the subject firm in the relevant period (specifically, 2001 and 2002), it was revealed that the Troy facility shipped a negligible amount of products to the Mexican affiliate. Finally, the official confirmed directly that there had not been a shift in production from the subject firm to the Mexican affiliate in the relevant period.

The petitioner also alleges that there was a shift in production from the subject firm to Canada in the relevant period.

In the initial investigation, a shift in production to Canada was acknowledged; however the shift was not considered significant. In the investigation pursuant to the reconsideration, the company official indicated that the shift in production to Canada represented a negligible portion of production at the subject plant, and was not projected to increase.

The petitioner further alleges that a specific product (Rinse Conditioner GL) was shifted to Canada.

The company official indicated that this product was temporarily shifted to Canada while the machinery in Euclid, Ohio was being set up. However, this production, in tandem with all other production shifted to Canada, was not considered significant.

Finally, the company official was asked to provided a detailed list of imports like or directly competitive with those produced at the Troy facility. The total volume of imports since 2001 is negligible relative to subject firm production, and thus could not have contributed importantly to layoffs at the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 23rd day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20115 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,001]

Risdon-AMS USA, Inc., A Wholly-Owned Subsidiary of Crown Holdings, Including Temporary Workers of Central New Hampshire Employment, Laconia, New Hampshire; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 24, 2003, applicable to workers of Risdon-AMS USA, Inc., a wholly-owned subsidiary of Crown Holdings, Laconia, New Hampshire. The notice was published in the **Federal Register** on July 10, 2003 (68 FR 41180).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly identified the temp agency firm name. Therefore, the Department is amending the certification determination to correctly identify the temp agency firm title name to read Central New Hampshire Employment.

The amended notice applicable to TA–W–52,001 is hereby issued as follows:

''All workers of Risdon-AMS USA, Inc., a wholly-owned subsidiary of Crown Holdings, Laconia, New Hampshire, and temporary workers of Central New Hampshire Employment producing mascara brush and cup assemblies at Risdon-AMS USA, Inc., a wholly-owned subsidiary of Crown Holdings, Laconia, New Hampshire, who became totally or partially separated from employment on or after June 10, 2002, through June 24, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 28th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20099 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,120]

Sun Apparel of Texas, Jones Apparel of Texas Ltd, Armour Facility Print Shop, El Paso, Texas; Amended Notice of Determinations Regarding Application for Reconsideration

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Determinations Regarding Application for Reconsideration on July 1, 2003, applicable to workers of Sun Apparel of Texas, Armour Facility, El Paso, Texas. The notice was published in the **Federal Register** on July 15, 2003 (68 FR 41847–41848).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of jokers (waist band labels) and stickers (leg stickers used to designate size).

New information shows that Jones Apparel of Texas Ltd is the parent firm of Sun Apparel of Texas. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Jones Apparel of Texas Ltd.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the Print Shop working at Sun Apparel of Texas, Jones Apparel of Texas Ltd, Armour Facility, El Paso, Texas who were adversely affected by increased imports.

The amended notice applicable to TA-W–51,120 is hereby issued as follows:

All workers of Sun Apparel of Texas, Jones Apparel of Texas Ltd, Armour Facility, Print Shop, El Paso, Texas, who became totally or partially separated from employment on or after January 8, 2002, through July 1, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 24th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20103 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,758]

Teleflex Automotive, Inc., a Division of Teleflex, Inc., Van Wert, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 13, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on June 6, 2003, and published in the **Federal Register** on June 19, 2003 (68 FR 36846).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Teleflex Automotive, Inc., a division of Teleflex, Inc., Van Wert, Ohio, engaged in the production of patterns, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of competitive products in 2000 through April 2003. The respondents reported no increased imports. The subject firm did not increase its reliance on imports of

accelerator cable during the relevant period, nor did it shift production to a foreign source.

The petitioner alleges that the layoffs are attributable to a shift in production to Mexico.

A review of the initial investigation revealed that the company will shift production to Mexico in the third or fourth quarter of 2003; however, the scheduled shift is beyond the relevant period of this investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20109 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,658]

TNS Mills, Inc., Gaffney Weaving Division, Now Known as Wellstone Mills, LLC, Gaffney, South Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 10, 2002, applicable to workers of TNS Mills, Inc., Gaffney Weaving Division, Gaffney, South Carolina. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67422).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of greige goods and yarn.

New information shows that Wellstone Mills, LLC purchased TNS Mills, Inc., Gaffney Weaving Division, Gaffney, South Carolina in March 2003 and is now known as Wellstone Mills, LLC. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Wellstone Mills, LLC.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of TNS Mills, Inc., Gaffney Weaving Division, Gaffney, South Carolina who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,658 is hereby issued as follows:

All workers of TNS Mills, Inc., Gaffney Weaving Division, now known as Wellstone Mills, LLC, Gaffney, South Carolina, who became totally or partially separated from employment on or after May 10, 2001, through October 10, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20106 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,103]

Toshiba America Electronic Components, Inc. Design Center, Beaverton, OR; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 16, 2003, a state agency representative requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Toshiba America Electronic Components, Inc. Design Center, Beaverton, Oregon was signed on April 30, 2003, and published in the **Federal Register** on May 9, 2003 (68 FR 25060).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Toshiba America Electronic Components, Inc. Design Center, Beaverton, Oregon engaged in electronics design. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The state agency representative alleges that the services performed by the workers are essential to production and therefore the workers should be eligible to apply for TAA.

Design services do not constitute production according to the eligibility requirements for trade adjustment assistance.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20113 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,230]

Vanguard EMS, Inc., a/k/a Viasystems Portland, Inc., Beaverton, Oregon; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 30, 2003, the State of Oregon requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on April 16, 2003, and published in the **Federal Register** on May 1, 2003 (68 FR 23322).

The Department reviewed the request for reconsideration and will conduct further investigation to determine if the workers meet the eligibility requirement under Section 223 of the Trade Act.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 25th day of July, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20102 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,224]

VF Imagewear, Inc., Brownsville, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 18, 2003, applicable to workers of VF Imagewear, Inc., Brownsville, Texas. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce men's and boys' workpants.

New findings show that there was a previous certification, TA–W–39,146, issued on May 31, 2001, for workers of VF Imagewear, Inc., Brownsville, Texas who were engaged in employment related to the production of men's and boys' workpants. That certification expired May 31, 2003. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from July 2, 2002 to June 1, 2003, for workers of the subject firm.

The amended notice applicable to TA–W–52,224 is hereby issued as follows:

All workers of VF Imagewear, Inc., Brownsville, Texas, who became totally or partially separated from employment on or after June 1, 2003, through July 18, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20097 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,113]

The Wackenhut Corporation, San Manuel, AZ; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Wackenhut Corporation* v. *U.S. Secretary of Labor,* No. 02–00758.

October 15, 2002, the Department of Labor (Department) issued a denial of Trade Adjustment Assistance (TAA) certification for the workers of The Wackenhut Corporation, San Manuel, Arizona. The decision was based on the investigation finding that the workers firm provided security services and did not produce an article in accordance with section 222(3) of the Trade Act of 1974. The notice of negative determination regarding eligibility for workers of The Wackenhut Corporation, San Manuel, Arizona (hereafter referred to as Wackenhut), was published in the **Federal Register** on November 5, 2002 (67 FR 67421–67423).

The initial TAA investigation showed that Wackenhut in Phoenix, Arizona, supplied workers to perform security services at BHP Copper, Inc. in San Manuel, Arizona. Workers of BHP Copper, Inc., in San Manuel, Arizona produced copper cathodes. On March 25, 2002, the Department issued a certification of eligibility for workers of BHP Copper, Inc., Pinto Valley, Miami, Arizona, to apply for TAA (TA–W–39,949). On August 8, 2002, the Department amended that certification to include workers of BHP Copper, Inc. (hereafter referred to as BHP), Tucson/San Manuel Operations, Tucson/San Manuel, Arizona (TA–W–39,949A). The workers of BHP in Tucson/San Manuel, Arizona produced copper cathodes.

The Wackenhut petitioners did not file a request with the Department for administrative reconsideration, but chose instead to seek judicial review with the U.S. Court of International Trade. The U.S. Department of Labor submitted to the Court the administrative record for the Wackenhut petition investigation (TA–W–42,113).

The plaintiffs' counsel subsequently submitted declarations about the work performed at the BHP site by the Wackenhut employees. The declarations alleged that the worker group performed work involving copper production.

A former Wackenhut employee, the Captain, also known as Officer in Charge (OIC) of Wackenhut operations at BHP in San Manuel, Arizona, declared that by 2002, Wackenhut employees' responsibility for copper production-related work at BHP included, but was not limited to: (1) Preparation of finished copper cathodes for shipment, including completion of paperwork relating to the shipping and inspecting; (2) receipt of shipments of sulfuric acid necessary for the production processes of copper cathodes, and (3) the disposal operations for byproducts.

A former BHP official, the Corporate Manager for Safety, Health and Security, who spent about 60 percent of his time at the Tuscon/San Manuel facility, made similar statements and declared that Wackenhut employees at BHP in San Manuel, Arizona were an integral part of production and shipping operations, in addition to their security functions. He declared that as layoffs of BHP employees occurred, the responsibilities of Wackenhut employees increased; they were asked to assume increasing responsibilities relating to the production of copper at the facility.

On remand, the Department contacted the BHP Vice President, Administration, to obtain information about the work performed by Wackenhut at the BHP San Manuel, Arizona facility. He provided a copy of the contract between BHP and Wackenhut. It is noted that the contract includes BHP facilities other than the San Manual, Arizona location. The contract was for a 3-year period, between January 1998 and January 2001 and was informally extended on a month-to-month basis until terminated in August of 2002. The BHP Vice President, Administration, consulted with BHP officials that were responsible for operations and production of copper cathodes at San Manuel. The primary duties of Wackenhut, as described in the contract between Wackenhut and BHP, were to control ingress and egress of all employees, visitors, deliveries and service providers, and to escort material deliveries to appropriate unloading areas and assure correct paperwork is completed.

Under the contract, Wackenhut provided security services. The Department determined that such

services are not related to the production of copper cathodes.

The Department contacted the Wackenhut official at the Phoenix, Arizona, office about who would be the Wackenhut person most knowledgeable about the day-to-day activities for the Wackenhut employees at BHP in San Manuel. Although the TAA petition for workers of Wackenhut identified the Area Manager as the contact person, the plaintiffs cited that this individual would not have the day-to-day knowledge of the work performed by Wackenhut employees at the BHP operations. The Area Manager, however, identified himself and the Captain/OIC at BHP in San Manuel, Arizona.

The Department asked the Area Manager for Wackenhut how the workers were involved in production and shipping of copper cathodes at BHP in San Manuel, Arizona. He responded that the workers of Wackenhut did not produce any sort of tangible product for BHP; involvement of copper cathode production was limited to access/egress control and building/perimeter patrol at the mine site. He added that Wackenhut did perform some OSHA/MSHA and First Responder training to BHP mine personnel in support of mine operations. The Area Manager was also asked if the Wackenhut employees at BHP in San Manuel did work other than that specified in the contract. He responded that all duties would be detailed in the site's security Post Orders and any amendment to those Orders. Furthermore, Wackenhut employees were not authorized to perform any duties other than those in the Post Orders.

Under the Post Orders, Wackenhut provided security services. The Department determined that such services are not related to the production of copper cathodes.

Since the services described by the OIC cannot be considered producing the article, on remand the Department asked the Wackenhut OIC to explain how they prepared the finished copper cathodes for shipment. She responded that after the BHP Shipping Clerks were laid off, Wackenhut was left with the responsibility to inspect the load and complete the paperwork. Without the proper paperwork completed and signed by security, the load was not allowed to leave BHP San Manuel. She made similar statements with respect to the receipt and delivery of a wide variety of products and by-products essential to BHP manufacturing.

The former Corporate Manager for Safety, Health and Security for BHP was asked how Wackenhut workers were engaged in the production of copper cathodes. He responded that they would weigh out and count the number of copper cathodes leaving the BHP premises. Furthermore, they would weigh in copper anodes that were entering the BHP premises for further processing.

When a worker group applies for Trade Adjustment Assistance TAA, the fundamental test the Department of Labor applies is whether the workers' firm or appropriate subdivision is producing an import-impacted article during the relevant time period. If the worker group produces an article they are considered production workers.

Section 222 of the Trade Act establishes that the Department must not certify a group unless increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production. The phrase of particular importance in this case is ''articles produced by such workers' firm or an appropriate subdivision thereof.'' Under this requirement, the Department cannot issue a certification of eligibility to a worker group unless the workers' firm or an appropriate subdivision of the workers' firm produces an import-impacted article.

An appropriate subdivision is limited to the workers' firm and section 90.2 of the Trade Adjustment Assistance program regulations permits the inclusion of multiple entities within the firm only if they are affiliated entities. The Department's investigation indicates that substantially the same persons do not control Wackenhut or BHP. The contract between Wackenhut and BHP indicate that they are separate corporations. Therefore, the Department finds that Wackenhut and BHP are not controlled or substantially beneficially owned by the same persons. They are independent business entities and as such the word firm as defined in section 90.2, workers' firm cannot mean both Wackenhut and BHP.

The Department's interpretation of ''appropriate subdivision hereof'' is limited to related or affiliated firms and cannot be expanded to encompass an unaffiliated firm. This interpretation is consistent with section 222 of the Trade Act of 1974 which requires the Department to consider whether a significant number of workers have been separated from the workers' firm or appropriate subdivision of the firm.

The contract between BHP and Wackenhut (the independent contractor) establishes that all persons employed by the contractor shall be deemed to be employees of the contractor; in this case Wackenhut. The Department has consistently determined that the critical employment factor is which firm was obligated to pay the employee during the relevant period. Because Wackenhut was so obligated, the Department has determined that Wackenhut is the workers' firm.

Therefore, the Department finds that the petitioners are employees of Wackenhut and cannot be certified as an appropriate subdivision (or as part of an appropriate subdivision) of BHP.

In order to consider the petitioners producing articles, the Wackenhut workers would have to transform a thing into something new and different. Security services, weighing incoming and outgoing shipments, completing paperwork for incoming and outgoing shipments, escorting trucks to the proper location, and providing safety training for both BHP and Wackenhut employees could be considered ''services'' related to the production of the articles produced at BHP. The Department thoroughly investigated and could not find any evidence that any employees of Wackenhut actually produced any articles or that the petitioners transformed anything into something new and different. Consequently, they are not eligible for certification as production workers.

Conclusion

Whether the performance of services by the petitioners is related or unrelated to production is not relevant to determining their eligibility for certification. Under section 222 of the Act, what is relevant is whether the workers' firm or an appropriate subdivision of the workers' firm produces an article. The workers' firm in this case is Wackenhut. Wackenhut is not affiliated with BHP. The evidence clearly establishes that Wackenhut does not produce, directly or through an appropriate subdivision, an import-impacted article. Once the Department concludes that the workers' employer was not a firm that produced an import-impacted article, it may conclude that the workers are not eligible for assistance without further analysis. Because the petitioners are employees of a firm or subdivision that does not produce a trade-impacted article, they are not eligible for certification.

After reconsideration on voluntary remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of The Wackenhut Corporation, San Manuel, Arizona.

Signed at Washington, DC, this 29th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20116 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,194]

Weyerhaeuser Company, Plymouth, North Carolina; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 17, 2003, two petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on June 13, 2003, and published in the **Federal Register** on July 3, 2003 (68 FR 39976).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Weyerhaeuser Company, Plymouth, North Carolina was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The company did not import fluff pulp, packaging liner and corrugated filler products, and uncoated freesheet in the relevant period nor did it shift production to a foreign country.

The initial investigation established that most of the layoffs are attributable to the shutdown of machinery for corrugated packaging filler. Corrugated packaging filler and linerboard produced is sold within the Weyerhaeuser Company. Fluff pulp produced at the subject firm was mostly exported, and there were no significant declines associated with the production of uncoated freesheet.

Two requests for reconsideration were received from separate petitioners on the same day. One petitioner includes copies of newspaper articles that draw particular attention to industry experts indicating that the market timber and paper products, including fluff pulp and fine paper are shifting from the U.S. to foreign sources. Another petitioner alleges that, for years, the company has been reporting that paper product declines are attributable to import competition.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm. As all of the production of corrugated packaging filler was used to supply internal demand, and the company reported no imports, there is no evidence of import impact in regard to this product in conjunction with an assessment of eligibility for affected workers at the subject plant. Further, an examination of associated aggregate U.S. Trade data revealed that there was no increase of imports in the relevant period.

The petitioners state that the paper packaging components produced by the subject firm have been displaced as a result of an increase in imports of packaged goods.

As noted above, the Department considers imports of like or directly competitive products (in this case, corrugated packaging filler, as the initial investigation established that layoffs are predominantly attributable to the shut down of this product) when conducting TAA investigations. Thus, although the products produced by the subject firm workers may be indirectly import impacted, the import impact of packaged goods is not relevant to an investigation of eligibility for trade adjustment assistance on behalf of subject firm workers producing corrugated packaging filler.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 24th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20111 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,036]

WiCat Systems, Inc., Linden, UT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 13, 2003, in response to a worker petition filed by a state agency representative on behalf of workers at WiCat Systems, Inc., Linden, Utah.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–20108 Filed 8–6–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Institute of Museum and Library Services.

ACTION: Final guidance.

SUMMARY: The Institute of Museum and Library Services (IMLS) is publishing final policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: This policy guidance is effective immediately.

FOR FURTHER INFORMATION CONTACT: Nancy Weiss, Office of General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Suite 802, Washington, DC 20506 or by telephone at 202–606–8696, e-mail: *nweiss@imls.gov.*

SUPPLEMENTARY INFORMATION: On April 10, 2003, the IMLS published in the **Federal Register** at 68 FR 17679, proposed policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons. The agency publishes this as its Final Guidance.

Under IMLS regulations implementing Title VI of the Civil

Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), recipients of Federal financial assistance from the IMLS (''recipients'') have a responsibility to ensure meaningful access by persons with limited English proficiency (LEP) to their programs and activities. See 45 CFR 1170. Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that extends assistance subject to the requirements of Title VI to publish, after review and approval by the Department of Justice, guidance for its recipients clarifying that obligation. The Executive Order also directs that all such guidance be consistent with the compliance standards and framework detailed in DOJ Policy Guidance entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency.'' See 65 FR 50123 (August 16, 2000).

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report To Congress titled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons With Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the Department of Justice (DOJ) published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance by other Federal grant agencies. See 67 FR 41455 (June 18, 2002). This guidance is based upon and incorporates the legal analysis and compliance standards of the model June 18, 2002, DOJ LEP Guidance for Recipients.

It has been determined that the guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. It has also been determined that this guidance is not subject to the requirements of Executive Order 12866.

The text of the complete final guidance document appears below.

Dated: _____, 2003.

Nancy E. Weiss, General Counsel, Institute of Museum and Library Services.

I. Introduction

Most individuals living in the United States read, write, speak, and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.''

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance. Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the civil rights Act of 1964, 42 U.S.C. 200d and Title VI regulations against national origin discrimination.

The purpose of this policy guidance is to clarify the responsibilities of recipients of Federal financial assistance from the Institute of Museum and Library Services (IMLS), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons pursuant to Title VI of the Civil Rights Act of 1964 and the IMLS implementing regulations. The policy guidance reiterates IMLS's longstanding position that, in order to avoid discrimination against LEP person on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide.

This policy guidance is modeled on and incorporates the legal analysis and compliance standards and framework set out in Section I through Section VIII of Department of Justice (DOJ) Policy Guidance titled ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,'' published at 67 FR 41455, 41457–41465 (June 18, 2002) (DOJ Recipient LEP Guidance). To the extent additional clarification is desired on the obligation under Title VI to ensure meaningful access by LEP persons and how recipients can satisfy that obligation, a recipient should consult the more detailed discussion of the applicable compliance standards and relevant factors set out in DOJ Recipient LEP Guidance. The DOJ Guidance may be viewed and downloaded at *http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJune182002.htm* or at *http:www.lep.gov.* In addition, IMLS recipients also receiving Federal financial assistance from other Federal agencies, such as the National Endowment for the Humanities, should review those agencies' guidance documents at *http:www.lep.gov* for a more focused explanation of how they can comply with their Title VI and regulatory obligations in the context of similar Federally assisted programs or activities.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. The IMLS and the Department of Justice have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that Federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Purpose and Application

This policy guidance provides a legal framework to assist recipients in developing appropriate and reasonably language assistance measures designed to address the needs of LEP individuals. The IMLS Title VI implementing regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient entity's policy or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services.

Recipient entities have considerable flexibility in determining how to comply with their legal obligation in the LEP setting and are not required to use the suggested methods and options that follow. However, recipient entities must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services.

III. Policy Guidance

1. Who Is Covered

All entities that receive Federal financial assistance from IMLS, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, are covered by this policy guidance. Title VI applies to all Federal financial assistance, which includes but is not limited to awards and loans of Federal funds, awards or donations of Federal property, details of Federal personnel, or any agreement, arrangement or other contract that has as one of its purposes the provision of assistance.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. In most cases, when a recipient receives Federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance were used only by one part.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted services to persons with limited English proficiency.

2. Basic Requirement: All Recipients Must Take Reasonable Steps To Provide Meaningful Access to LEP Persons

Title VI and the IMLS implementing regulations require that recipients take reasonable steps to ensure meaningful access to the information, programs, and services they provide. Recipients of Federal assistance have considerable flexibility in determining precisely how to fulfill this obligation.

It is also important to emphasize that museums and libraries are in the business of maintaining, sharing, and disseminating vast amounts of information and items, most of which are created or generated by third parties. In large measure, the common service provided by these recipients is *access* to information, whether maintained on-site or elsewhere, not the generation of the source information itself. This distinction is critical in properly applying Title VI to museums, libraries, and similar programs. For example, in the context of library services, recipients initially should focus on their procedures or services that directly impact access in three areas. First, applications for library or membership cards, instructions on card usage, and dissemination of information on where and how source material is maintained and indexed, should be available in appropriate languages other than English. Second, recipients should, consistent with the four factor analysis, determine what reasonable steps could be taken to enhance the value of their collections or services to LEP persons, including, for example, accessing language-appropriate books through inter-library loans, direct acquisitions, and/or online materials. Third, to the extent a recipient provides services beyond access to books, art, or cultural collections to include the generation of information about those collections, research aids, or community educational outreach such as reading or discovery programs, these additional or enhanced services should be separately evaluated under the four-factor analysis. A similar distinction can be employed with respect to a museum's exhibits versus a museum's procedures for meaningful access to those exhibits.

What constitute reasonable steps to ensure meaningful access in the context of federally-assisted programs and activities in the area of museums and library services will be contingent upon a balancing of four factors: (1) The number and proportion of eligible LEP constituents; (2) the frequency of LEP individuals' contact with the program; (3) the nature and importance of the program; and (4) the resources available, including costs. Each of these factors is summarized below. In addition, recipients should consult Section V of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR at 41459–41460 or *http://www.lep.gov,* for additional detail on the nature, scope, and application of these factors.

(1) Number of Proportion of LEP Individuals

The appropriateness of any action will depend on the size and proportion of the LEP population that the recipient serves and the prevalence of particular languages. Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. The first factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be effectively excluded from meaningful access to the benefits or services if efforts are not made to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day.

(2) Frequency of Contact with the Program

Frequency of contact between the program or activity and LEP individuals is another factor to be weighed. If LEP individuals must access the recipient's program or activity on a daily basis, a recipient has greater duties than if such contact is unpredictable and infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

(3) Nature and Importance of the Program

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have serious, or even life or death implications than in programs that are not crucial to one's day-to-day existence, economic livelihood, safety, or education. For example, the obligations of a Federally assisted school or hospital differ from those of a Federally assisted museum or library. This factor implies that the obligation to provide translation services will be highest in programs providing education, job training, medical/health services, social welfare services, and similar services. As a general matter, it is less likely that museums and libraries receiving assistance from the IMLS will provide services having a similar immediate and direct impact on a person's life or livelihood. Thus, in large measure, it is the first factor (number or promotion of LEP individuals) that will have the greatest impact in determining the initial needs for language assistance services.

In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. Another aspect of this factor is the nature of the program itself. Some museum content may be extremely accessible regardless of language. In these instances, little translation might be required.

(4) Resources Available

IMLS is aware that its recipients may experience difficulties with resource allocation. Many of the organizations' overall budgets, and awards involved are quite small. The resources available to a recipient of Federal assistance may have an impact on the nature of the

steps that recipient must take to ensure meaningful access. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not providing an important service or benefit from, for instance, a health, education, economic, or safety perspective. Translation and interpretation costs are appropriately included in award budget requests.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Even those award recipients who serve very few LEP persona on an infrequent basis should use a balancing analysis to determine whether the importance of the service(s) provided and minimal costs make language assistance measures reasonable even in the case of limited and infrequent interactions with LEP persons. Recipients have substantial flexibility in determining the appropriate mix.

IV. Strategies for Ensuring Meaningful Access

Museums and libraries have a long history of interacting with people with varying language backgrounds and capabilities within the communities where they are located. The agency's goal is to continue to encourage these efforts and share practices so that other museums and libraries can benefit from other institutions' experiences.

The following are examples of language assistance strategies that are potentially useful for all recipients. These strategies incorporate a variety of options and methods for providing meaningful access to LEP beneficiaries and provide examples of how recipients should take each of the four factors discussed above into account when developing an LEP strategy. Not every option is necessary or appropriate for every recipient with respect to all of its programs and activities. Indeed, a language assistance plan need not be intricate; it may be as simple as being prepared to use a commercially available ''language line'' to obtain immediate interpreting services and/or having bilingual staff members available who are fluent in the most common non-English languages spoken in the area. Recipients should exercise the flexibility afforded under this Guidance to select those language assistance measures which have the greatest potential to address, at appropriate levels and in reasonable manners, the specific language needs of the LEP populations they serve.

Finally, the examples below are not intended to suggest that if services to LEP populations aren't legally required under Title VI and Title VI regulations, they should not be undertaken. Part of the way in which libraries and museums build communities is by cutting across barriers like language. A small investment in outreach to a linguistically diverse community may well result in a rich cultural exchange that benefits not only the LEP population, but also the library or museum and the community as a whole.

Examples

- Identification of the languages that are likely to be encountered in, and the number of LEP persons that are likely to be affected by, the program. This information may be gathered through review of census and constituent data as well as data from school systems and community agencies and organizations;
- Posting signs in public areas in several languages, informing the public of its right to free interpreter services and inviting members of the public to identify themselves as persons needing language assistance;
- Use of ''I speak'' cards for public-contact personnel so that the public can easily identify staff language abilities;
- Employment of staff, bilingual in appropriate languages, in public contact positions;
- Contracts with interpreting services that can provide competent interpreters in a wide variety of languages in a timely manner;
- Formal arrangements with community groups for competent and timely interpreter services by community volunteers;
- An arrangement with a telephone language interpreter line for on-demand service;
- Translations of application forms, instructional, informational and other key documents into appropriate non-English languages and provide oral interpreter assistance with documents for those persons whose language does not exist in written form;
- Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls to or from LEP persons;
- Notice to and training of all staff, particularly public contact staff, with respect to the recipient's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner;
- Insertion of notices, in appropriate languages, about access to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff; and
- Notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters.

In identifying language assistance measures, recipients should avoid relying on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities. However, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. But where a balancing of the four factors indicate that recipient-provided language assistance is warranted, the recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

The use of family and friends as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided language assistance is not necessary. An example of this might be a bookstore or cafeteria associated with a library or archive. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for technical accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or other informal ad hoc interpreters may be appropriate.

As noted throughout this guidance, IMLS award recipients have a great deal of flexibility in addressing the needs of their constituents with limited English skills. That flexibility does not diminish, and should not be used to minimize, the obligation that those needs be addressed. IMLS recipients should apply the four factors outlined

above to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons. By balancing the number or proportion of people with limited English skills served, the frequency of their contact with the program, the importance and nature of the program, and the resources available, IMLS awardees' Title VI obligations in many cases will be satisfied by making available oral language assistance or commissioning translations on an as-requested and as-needed basis. There are many circumstances where, after an application and balancing of the four factors noted above, Title VI would not require translation. For example, Title VI does not require a library to translate its collections, but it does require the implementation of appropriate language assistance measures to permit an otherwise eligible LEP person to apply for a library card and potentially to access appropriate-language materials through inter-library loans or other reasonable methods. The IMLS views this policy guidance as providing sufficient flexibility to allow the IMLS to continue to fund language-dependent programs in both English and other languages without requiring translation that would be inconsistent with the nature of the program. Recipients should consult Section VI of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR at 41461–41464 or *http://www.lep.gov,* for additional clarification on the standards applicable to assessing interpreter and translator competence, and for determining when translations of documents vital to accessing program benefits should be undertaken.

The key to ensuring meaningful access for people with limited English skills is effective communication. A library or museum can ensure effective communication by developing and implementing a comprehensive language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP constituents. Such a program should also provide for a range of oral language assistance options, notice to LEP persons of the right to language assistance, periodic training of staff, monitoring of the program and, in certain circumstances, the translation of written materials.

Each recipient should, based on its own volume and frequency of contact with LEP clients and its own available resources, adopt a procedure for the resolution of complaints regarding the provision of language assistance and for notifying the public of their right to and how to file a complaint under Title VI. State recipients, who will frequently serve large numbers of LEP individuals, may consider appointing a senior level employee to coordinate the language assistance program and to ensure that there is regular monitoring of the program.

V. Compliance and Enforcement

Executive Order 13166 requires that each Federal department or agency extending Federal financial assistance subject to Title VI issue separate guidance implementing uniform Title VI compliance standards with respect to LEP persons. Where recipients of Federal financial assistance from IMLS also receive assistance from one or more other Federal departments or agencies, there is no obligation to conduct and document separate but identical analyses and language assistance plans for IMLS. IMLS, in discharging its compliance and enforcement obligations under Title VI, looks to analyses performed and plans developed in response to similar detailed LEP guidance issued by other Federal agencies. Recipients may rely upon guidance issued by those agencies.

IMLS's regulations implementing Title VI contain compliance and enforcement provisions to ensure that a recipient's policies and practices overcome barriers resulting from language differences that would deny LEP persons an equal opportunity to participate in and access to programs, services and benefits offered by IMLS. See 45 CFR, part 1110. The agency will ensure that its recipient entities fulfill their responsibilities to LEP persons through the procedures provided for in the Title VI regulations.

The Title VI regulations provide that IMLS will investigate (or contact its State recipient of funds to investigate, if appropriate) whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, IMLS will inform the recipient in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, IMLS must information the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the step that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, the IMLS will secure compliance through (a) the suspension or termination of Federal assistance after the recipient has been given an opportunity for an administrative hearing, (b) referral to the Department of Justice for injunctive relief or other enforcement proceedings, or (c) any other means authorized by Federal, State, or local law.

Under the Title VI regulations, the IMLS has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. IMLS will engage in voluntary compliance efforts and will provide technical assistance to recipients at all stages of its investigation. During these efforts to secure voluntary compliance, IMLS will propose reasonable timetables for achieving compliance and will consult with and assist recipients in exploring cost effective ways of coming into compliance.

In determining a recipient's compliance with Title VI, the IMLS's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits. A recipient's appropriate use of the methods and options discussed in this policy guidance will be viewed by the IMLS as evidence of a recipient's willingness to comply voluntarily with its Title VI obligations. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a recipient/covered entity's program, or if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services (such as timely effective oral interpretation of vital documents), IMLS will not find the recipient/covered entity in noncompliance.

If you have any questions related to this policy, please contact the IMLS Office of the General Counsel.

Nancy E. Weiss,

General Counsel.

[FR Doc. 03–20160 Filed 8–6–03; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

Amergen Energy Company, LLC, Oyster Creek Nuclear Generating Station; Exemption

1.0 Background

AmerGen Energy Company, LLC (the licensee) is the holder of Facility Operating License No. DPR–16, which authorizes operation of the Oyster Creek Nuclear Generating Station (Oyster Creek). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of one boiling-water reactor located in Ocean County, New Jersey.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) Section 55.59 requires that a facility's licensed operator requalification program be conducted for a continuous period not to exceed 2 years (24 months) and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs. Each 2-year requalification program must include a biennial comprehensive written examination and annual operating tests.

By letter dated May 30, 2003, the licensee requested a one-time exemption under 10 CFR 55.11 from the schedule requirements of 10 CFR 55.59. Specifically, due to the current labor strike at Oyster Creek, the exemption requested would allow 90 days following resolution of the strike, but no later than December 31, 2003, to complete the current licensed operator requalification program. The next requalification program period would begin upon conclusion of the current program and continue to June 30, 2005, with successive periods running for 24 months. This requested exemption would allow an extension of the current operator requalification program, which was originally scheduled to conclude on June 30, 2003, by up to 6 months beyond the 24-month requalification program schedule required by 10 CFR 55.59.

3.0 Discussion

Pursuant to 10 CFR 55.11, the Commission may, upon application by an interested person, or upon its own initiative, grant exemptions from the requirements of 10 CFR part 55 when the exemptions are authorized by law and will not endanger life or property and are otherwise in the public interest. The exemption being requested for Oyster Creek is due to an ongoing labor strike, which began on May 22, 2003, and included Oyster Creek licensed reactor operators. As a result of the strike, licensed reactor operators are not available to complete the current requalification program, and licensed senior reactor operators, who are filling the reactor operator vacancies, would be significantly challenged to complete the requalification program while operating the plant.

Although the 24-month schedule requirement of 10 CFR 55.59 at Oyster Creek would be exceeded, operator performance continues to be satisfactory. The licensee has a sound compensatory plan in place for completing the current requalification program and returning to licensed duties the reactor operators currently on strike, and granting this exemption would support this plan. Granting this exemption will allow Oyster Creek to continue with safe plant operations without undue hardship to plant personnel and Oyster Creek licensed operators.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 55.11, granting an exemption to the licensee from the schedule requirements in 10 CFR 55.59, by allowing Oyster Creek a one-time extension in the allowed time for completing the current licensed operator Enclosure requalification program, is authorized by law and will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants AmerGen Energy Company, LLC, an exemption on a one-time only basis from the schedule requirement of 10 CFR 55.59, to allow Oyster Creek Nuclear Generating Station 90 days following resolution of the current labor strike, but no later than December 31, 2003, to complete the current licensed operator requalification program. The next requalification program period would begin upon conclusion of the current program and continue to June 30, 2005, with successive periods running for 24 months.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 38400).

This exemption is effective upon issuance and expires on January 1, 2004.

Dated at Rockville, Maryland, this 27th day of June, 2003.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Acting Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–20150 Filed 8–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

FPL Energy Seabrook, LLC, Seabrook Station, Unit 1; Exemption

1.0 Background

At the time that this exemption request was submitted (October 2002), North Atlantic Energy Service Corporation (NAESCO, or the licensee) was the holder of Facility Operating License No. NPF–86 which authorizes operation of the Seabrook Station, Unit No. 1 (Seabrook). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, or the Commission) now, or hereafter, in effect.

On November 1, 2002, the Commission approved the transfer of the license for Seabrook, to the extent held by NAESCO, and certain co-owners of the facility, on whose behalf NAESCO was also acting, to FPL Energy Seabrook, LLC (FPLE Seabrook). By letter dated December 20, 2002, FPLE Seabrook requested that the NRC continue to review and act upon all requests before the Commission that had been submitted by NAESCO.

The facility consists of a pressurized water reactor located in Seabrook, New Hampshire.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.60(a), requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, appendix G to 10 CFR part 50 states that ''The appropriate requirements on both the pressure-temperature limits and minimum permissible temperature must

be met for all conditions.'' Further, appendix G of 10 CFR part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code). The provisions of ASME Code Case N–641 were incorporated in Appendix G of Section XI of the ASME Code in the 1998 Edition through the 2000 Addenda, which is the edition and addenda of record in the 2003 Edition of 10 CFR part 50. However, in this case, the licensee is still required to request an exemption to apply Code Case N–641 since the Seabrook licensing basis has only been updated to include the 1995 Edition through the 1996 Addenda of the ASME Code.

In order to address provisions of amendments to the Seabrook, Technical Specification (TS) P–T limit curves, FPLE Seabrook requested, in its submittal dated October 11, 2002, that the staff exempt Seabrook from application of specific requirements of appendix G to 10 CFR part 50, and substitute use of ASME Code Case N–641. ASME Code Case N–641 permits the use of an alternate reference fracture toughness curve (*i.e.*, use of ''K_{IC} fracture toughness curve'' instead of ''K_{IA} fracture toughness curve,'' where K_{IC} and K_{IA} are ''Reference Stress Intensity Factors,'' as defined in ASME Code, Section XI, Appendices A and G, respectively) for RPV materials and permits the postulation of a circumferentially-oriented flaw for the evaluation of circumferential RPV welds when determining the P–T limits. The proposed exemption request is consistent with, and is needed to support, the Seabrook TS amendment that was contained in the same submittal. The proposed Seabrook TS amendment will revise the P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) through 20 effective full-power years of operation.

Code Case N–641

The licensee has proposed an exemption to allow use of ASME Code Case N–641 in conjunction with Appendix G to ASME Section XI, 10 CFR 50.60(a) and 10 CFR part 50, appendix G, to establish the P–T limits for the Seabrook RPV.

The proposed TS amendment to revise the P–T limits for Seabrook relies, in part, on the requested exemption. These revised P–T limits have been developed using the lower-bound K_{Ic} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1, in lieu of the lower-bound K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1, as the basis fracture toughness curve for defining the Seabrook P–T limits. In addition, the revised P–T limits have been developed based on the use of a postulated circumferentially-oriented flaw for the evaluation of RPV circumferential welds, in lieu of the axially-oriented flaw which would be required by Appendix G to Section XI of the ASME Code. The other margins involved with the ASME Section XI, Appendix G process of determining P–T limit curves remain unchanged.

Use of the K_{Ic} curve as the basis fracture toughness curve for the development of P–T operating limits is more technically correct than use of the K_{Ia} curve. The K_{Ic} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a RPV, whereas the K_{Ia} fracture toughness curve codified into Appendix G to Section XI of the ASME Code was developed from more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{Ia} fracture toughness curve was initially codified in Appendix G to Section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. However, additional knowledge has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} fracture toughness curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure.

Likewise, the use of a postulated circumferentially-oriented flaw in lieu of an axially-oriented one for the evaluation of a circumferential RPV weld is more technically correct. The size of a flaw required to be postulated for P–T limit determination has a depth of one-quarter of the RPV wall thickness and a length six-times the depth. Based on the direction of welding during the fabrication process, the only technically-reasonable orientation for such a large flaw is for the plane of the flaw to be circumferentially-oriented (*i.e.*, parallel to the direction of welding). Prior to the development of ASME Code Case N–641 (and the similar ASME Code Case N–588), the required postulation of an axially-oriented flaw for the evaluation of a circumferential RPV weld has provided an additional and unnecessary level of conservatism to the overall evaluation.

In addition, P–T limit curves based on the K_{Ic} fracture toughness curve and postulation of a circumferentially-oriented flaw for the evaluation of RPV circumferential welds will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations. The operating window through which the operator heats up and cools down the RCS is determined by the difference between the maximum allowable pressure defined by Appendix G of ASME Section XI, and the minimum required pressure for the reactor coolant pump seals adjusted for instrument uncertainties. A narrow operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent overpressure protection system actuation due to pressure surges associated with normal plant evolutions such as RCS pump starts and swapping operating charging pumps with the RCS in a water-solid condition.

Since application of ASME Code Case N–641 provides appropriate procedures to establish maximum postulated defects and to evaluate those defects in the context of establishing RPV P–T limits, this application of the Code Case maintains an adequate margin of safety for protecting RPV materials from brittle failure. Therefore, the licensee concluded that these considerations were special circumstances pursuant to 10 CFR 50.12(a)(2)(ii), which states: ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

In summary, the ASME Section XI, Appendix G procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor coolant pressure boundary materials and the estimated effects of operation. Since 1974, the level of knowledge about the fracture mechanics behavior of RCS materials has been greatly expanded, especially regarding the effects of radiation embrittlement and the understanding of fracture toughness properties under static and dynamic loading conditions. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–641, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an

acceptable margin of safety against brittle failure of the RPV.

The NRC staff has reviewed the exemption request submitted by FPLE Seabrook and has concluded that an exemption should be granted to permit the licensee to utilize the provisions of ASME Code Case N–641 for the purpose of developing Seabrook RPV P–T limit curves.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present in that continued operation of Seabrook with the P-T limit curves developed in accordance with ASME Section XI, Appendix G without the relief provided by ASME Code Case N–641 is not necessary to achieve the underlying purpose of appendix G to 10 CFR part 50. Application of ASME Code Case N–641 in lieu of the requirements of ASME Code Section XI, Appendix G provides an acceptable alternative methodology which will continue to meet the underlying purpose of appendix G to 10 CFR part 50. The underlying purpose of the regulations in appendix G to 10 CFR part 50 is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime.

The staff examined the licensee's rationale to support the exemption request, and concluded that the use of ASME Code Case N–641 would satisfy 10 CFR part 50, section 50.12(a)(1) as follows:

(1) The requested exemption is authorized by law:

No law exists which precludes the activities covered by this exemption request. The regulation 10 CFR part 50, section 50.60(b), allows the use of alternatives to 10 CFR part 50, appendices G and H, when an exemption is granted by the Commission pursuant to 10 CFR part 50, section 50.12.

(2) The requested exemption does not present an undue risk to the public health and safety:

ASME Code Case N–641 permits the use of alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{IA} fracture toughness curve) for RPV Materials in determining the P–T limits. The use of the K_{IC} curve provides greater allowable fracture toughness than the corresponding K_{IA} curve. The other margins involved with the ASME Code, Section XI, Appendix G process of determining P–T limit curves remain unchanged.

Use of the K_{IC} curve in determining the lower-bound fracture toughness, which is, in turn, used in the development of the P–T operating limits curve, models the slow heatup and cooldown process of a reactor vessel. The K_{IC} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of an RPV.

Use of this approach is justified by the initial conservatism of the K_{IA} curve when it was codified in 1974. This initial conservatism was necessary due to limited knowledge of RPV material fracture toughness. Since 1974, additional knowledge has been gained about the fracture toughness of vessel materials and their fracture response to applied loads. The additional knowledge demonstrates that the lower-bound fracture toughness provided by the K_{IA} curve is well beyond the margin of safety required to protect against potential RPV failure. The lower-bound K_{IC} fracture toughness provides an adequate margin of safety to protect against potential RPV failure and does not present an undue risk to public health and safety.

(3) The requested exemption will not endanger the common defense and security:

The common defense and security are not affected and, therefore, not endangered by this exemption.

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of appendix G to 10 CFR part 50; Appendix G to Section XI of the ASME Code; and Regulatory Guide 1.99, Revision 2; the staff concluded that application of ASME Code Case N–641, as described, would provide an adequate margin of safety against brittle failure of the RPV. Therefore, the staff concludes that pursuant to 10 CFR 50.12(a)(1), an exemption from the requirements of 10 CFR part 50, appendix G is appropriate, and that the methodology of Code Case N–641 may be used to revise the P–T limits for the Seabrook RPV.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants FPL Energy Seabrook, LLC an exemption from the requirements of 10 CFR 50.60(a) and 10 CFR part 50, Appendix G, to allow application of ASME Code Case N–641 in establishing TS requirements for the reactor vessel pressure limits at low temperatures for Seabrook.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 44109).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of August, 2003.

For The Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–20151 Filed 8–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08798]

Notice of Consideration of Request for License Termination of Hitchcock Industries, Inc. License and Release of Its Facility in Minneapolis, Minnesota, Amendment, and Opportunity To Provide Comments and Request a Hearing

ACTION: Notice of consideration of amendment request to terminate Source Material License No. SMB–1404 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 Hitchcock Industries, Inc. (Hitchcock) Source Material License No. SMB–1404, to terminate the license and release its facility located at 8701 Harriet Avenue South in Minneapolis, Minnesota, for unrestricted use. In 1982, this license

was approved for the fabrication of magnesium and thorium alloy castings for the aircraft industry. This license authorized alloying thorium ingots, containing up to 41 percent by weight of thorium, with magnesium and other additives to produce magnesium/thorium alloy castings containing up to 4 percent by weight of thorium. On January 28, 2003, Hitchcock notified the NRC of the license termination.

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 Hitchcock's request and the information that the licensee has provided in support of its request, including the surveys performed by Hitchcock to demonstrate compliance with 10 CFR 20.1402, "'Radiological Criteria for Unrestricted Use,'" to ensure that the NRC's decision protects the public health and safety and the environment. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the unrestricted use of Hitchcock Industries, Inc. facilities are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the Hitchcock facility is in compliance with the 10 CFR part 20.1402.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of Hitchcock's proposed license amendment to release the Minneapolis 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," Hitchcock'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 Hitchcock's letter dated January 28, 2003, and faxes dated April 8, 11, and 21, 2003, with enclosures (Accession

No. ML031990158); fax dated May 16, 2003, with enclosures (Accession No. ML031990380); and the EA summarized above (Accession No. ML032120132). 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 31st day of July, 2003.

For the Nuclear Regulatory Commission.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 03–20149 Filed 8–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143, License No. SNM–124 EA–03–132]

In the Matter of Nuclear Fuel Services, Inc., Erwin, TN; Confirmatory Order Modifying License (Effective Immediately)

I

Nuclear Fuel Services, Inc., (NFS) is the holder of Special Nuclear Material License No. SNM 124 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to 10 CFR part 70. NFS is authorized by their license to receive, possess, and transfer special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 70. The NFS license, originally issued on September 18, 1957, was renewed on July 2, 1999, and is due to expire on July 31, 2009.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are warranted as prudent, interim measures to address the current threat environment. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1[1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

III

In February 2003, NRC issued Orders to Category III fuel cycle licensees directing each licensee to implement interim compensatory measures (ICMs) to enhance physical security at its facilities. NFS did not receive an order at that time because an amendment authorizing operation of a new Category III complex was still pending. In a letter to NFS dated February 11, 2003, NRC provided a copy of the ICMs to NFS for its information and use in designing the new complex. NFS responded on March 25, 2003, indicating its intention to comply with the ICMs.

The Commission recognizes that some of the requirements set forth in Attachment 1[2] to this Order have already been initiated by NFS in response to previously-issued advisories, or on its own[3] and that some measures have been tailored to specifically accommodate the specific circumstances and characteristics existing at NFS's facility to achieve the

[1] Attachment 1 contains safeguards information and will not be released to the public.

[2] To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to NFS's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

[3] See letter from B. Marie Moore, Vice President, NFS, to Mary T. Adams, NRC, dated July 3, 2003.

intended objectives and avoid any unforeseen effect on safe operation.

By letter dated July 3, 2003, NFS consented to this Order with the commitments as described in Section IV below. NFS further agreed in its July 3, 2003, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing. Implementation of this commitment provides enhanced assurance that sufficient resources will be applied to the physical protection program.

I find that NFS' commitment as set forth in its letters of March 25 and July 3, 2003, is acceptable and necessary, and conclude that with this commitment, the public health and safety, and common defense and security, are reasonably assured. In view of the foregoing, I have determined that the public health and safety, and common defense and security, require that NFS' commitment be confirmed by this Order. Based on the above and NFS' consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 53, 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 70, *it is hereby ordered, effective immediately, that material license SNM–124 is modified as follows:*

A. NFS shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order. NFS shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation *before the introduction of Category III quantities of special nuclear material into the Blended Low-Enriched Uranium Complex.*

B. NFS shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

C. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

NFS's response to Condition B above shall be submitted in accordance with 10 CFR 70.5. In addition, NFS's submittals that contain safeguards information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by NFS of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within twenty (20) days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, Sam Nunn Atlanta Federal Center, Suite 23 T85, 61 Forsyth Street, SW Atlanta, GA 30303–3415, and to NFS. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 8th day of July, 2003.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–20145 Filed 8–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Notice of Issuance of License Amendment 39 for Nuclear Fuel Services, Inc., Blended Low-enriched Uranium Project Uranyl Nitrate Building

ACTION: Notice of issuance of Amendment 39 to Materials License SNM–124.

FOR FURTHER INFORMATION CONTACT: Mary Adams, Fuel Cycle and Safety Branch, Office of Nuclear Materials, Safety and Safeguards, 11554 Rockville Pike, Rockville, MD 20852; telephone (301) 415–7249; or by e-mail at *mta@nrc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 10 CFR 2.106, the U.S. Nuclear Regulatory Commission (NRC) is noticing the issuance of Amendment 39 to Special Nuclear Material License SNM–124, held by Fuel Services, Inc., (NFS) to authorize: (1) The receipt and storage of low-enriched uranyl nitrate solution in a new uranyl nitrate storage building and (2) the possession and use of an increased quantity of special nuclear material at the NFS facility located in Erwin, TN.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954 as amended, and NRC's rules and regulations as set forth in 10 CFR chapter 1. Accordingly, this amendment was issued on July 7, 2003, and is effective immediately.

NRC prepared a non-proprietary (public) version of the Safety Evaluation Report (SER) that documents the information that was reviewed and NRC's conclusions. This SER is included in the license amendment package which is available electronically for public inspection and copying for a fee in the NRC Public Document Room, One White Flint North Building, 11555 Rockville, MD 20852, or from the Publicly Available Records (PARS) component of NRC's Agency-wide Documents Access and

Management System (ADAMS) under accession number ML031890762. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). If you do not have access to ADAMS, or if there are problems accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209 or by e-mail at *pdr@nrc.gov.*

For the U.S. Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 1st day of August, 2003.

Kevin M. Ramsey,

Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–20146 Filed 8–6–03; 8:45 am]

BILLING CODE 7950–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34730]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 07–00445–40, Bristol-Meyers Squibb Pharma Company, Newark, DE

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Bristol-Meyers Squibb Pharma Company (Squibb) for Materials License No. 07–00445–40, to authorize release of its facility in Newark, Delaware for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Newark, Delaware facility for unrestricted use. Squibb was authorized by NRC since October 9, 2001, to use radioactive materials for research and development purposes at the site. On October 23, 2002, Squibb requested that NRC release the facility for unrestricted use. Squibb has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Squibb's request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML022980441, ML030380296, ML030500216, ML031410751, ML032090243, ML031490539, and ML032110460. These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. Any questions with respect to this action should be referred to Judy Joustra, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5355, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania, this 30th day of July, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–20147 Filed 8–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on August 19 and 20, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, August 19, 2003—8:30 a.m. until the conclusion of business:*

The Subcommittee will discuss the ''Review Standard for Extended Power Uprates.'' *Wednesday, August 20, 2003—8:30 a.m. until the conclusion of business:*

The Subcommittee will review the staff's resolution of public comments associated with the Draft Regulatory Guide DG–1107, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–1813), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: July 31, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–20143 Filed 8–6–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation, McGuire Nuclear Station, Units 1 and 2; Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on July 22, 2003, (68 FR 43399), that

incorrectly referenced the McGuire, Unit 2, amendment number. This action is necessary to correct an erroneous amendment number.

FOR FURTHER INFORMATION CONTACT: Robert Martin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1493, e-mail: *REM@NRC.GOV.*

SUPPLEMENTARY INFORMATION: On page 43399, in the second column, in the sixth complete paragraph, it is corrected to read from ''[Amendment Nos.: 215 & 195]'' to ''[Amendment Nos.: 215 & 196]''.

Dated in Rockville, Maryland, this 29th day of July, 2003.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–20148 Filed 8–6–03; 8:45 am]

BILLING CODE 7950–01–P

POSTAL RATE COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: August 11, 2003 at 10:30 a.m.

PLACE: Commission conference room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Discussion and vote on the Postal Rate Commission's fiscal year 2004 budget.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, 202–789–6820.

Dated: August 5, 2003.

Garry J. Sikora,

Acting Secretary.

[FR Doc. 03–20333 Filed 8–5–03; 3:56 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 8263/August 1, 2003 and Securities Exchange Act of 1934 Release No. 48277/August 1, 2003]

Order Regarding Review of FASB Accounting Support Fee Under Section 109 of the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (the ''Act'') establishes criteria that must be met in order for the accounting standards established by an accounting standard-setting body to be recognized as ''generally accepted'' for purposes of the federal securities laws. Section 109 of the Act provides that all of the budget of an accounting standard-setting body satisfying these criteria shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f), the annual accounting support fee shall not exceed the amount of the standard setter's ''recoverable budget expenses.'' Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (''FASB'') and its parent organization, the Financial Accounting Foundation (''FAF''), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as ''generally accepted'' under section 108 of the Act.[1] As a consequence of that recognition, the Commission undertook a review of the FASB's proposed accounting support fee for calendar year 2003. In connection with its review, the Commission also reviewed the proposed budget for the FAF and the FASB for calendar year 2003.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB and the Government Accounting Standards Board (''GASB''), the FASB's sister organization, which sets accounting standards to be used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB nor the GASB will accept contributions from the accounting profession.

After its review, the Commission determined that the 2003 annual accounting support fee for the FASB is consistent with section 109 of the Act. Accordingly,

It is ordered that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20133 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

[1] Financial Reporting Release No. 70.

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 8262/August 1, 2003 and Securities Exchange Act of 1934, Release No. 48276/August 1, 2003]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2003

The Sarbanes-Oxley Act of 2002 (the ''Act'') established the Public Company Accounting Oversight Board (''PCAOB'') to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms, standard setting, inspection, and disciplinary programs. Section 109 of the Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Section 109(h) amends section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Act. The aggregate annual accounting support fee may not exceed the PCAOB's aggregate ''recoverable budget expenses.'' section 109(f) of the Act provides that ''recoverable budget expenses'' may include operating, capital and accrued items. Section 109(b) of the Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures. Section 109(b) of the Act also provides that the PCAOB's budget is subject to approval by the Commission.

The PCAOB adopted a budget for calendar year 2003 at an open meeting on April 23, 2003, and submitted that budget to the Commission for approval on May 14, 2003. In accordance with its

responsibilities to oversee the PCAOB, the Commission has reviewed the budget proposed by the PCAOB for 2003. During the course of that review, among other things, we reviewed and relied upon representations and supporting documentation from the PCAOB. The Commission also has reviewed the aggregate accounting support fee for 2003, which will fund the PCAOB's expenditures. The Commission did not identify any proposed disbursements in the budget that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2003 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2003. After its review, the Commission determined that the PCAOB's 2003 budget and annual accounting support fee are consistent with section 109 of the Act. Accordingly,

It is ordered, pursuant to section 109 of the Act, that the PCAOB budget and annual accounting support fee for calendar year 2003 are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20132 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48278; File No. PCAOB–2003–02]

Public Company Accounting Oversight Board; Order Approving Proposed Rules on Funding and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rules on Funding

August 1, 2003.

I. Introduction

On April 17, 2003, the Public Company Accounting Oversight Board (''Board'' or ''PCAOB'') filed with the Securities and Exchange Commission (''Commission'') proposed rules PCAOB–2003–02 pursuant to sections 107 and 109 of the Sarbanes-Oxley Act of 2002 (''Act''). Notice of the proposed rules was published in the **Federal Register** on June 27, 2003.[1] The Commission received five comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rules.

On July 30, 2003, the PCAOB adopted Amendment No. 1 to its proposed rules and submitted that amendment to the Commission.[2] We find there is good cause to approve this amendment prior to the thirtieth day after publication in the **Federal Register** and, for the reasons discussed below, we are approving the amendment.

II. Description

In accordance with the Act,[3] the PCAOB has adopted proposed rules[4] that would establish a mechanism to fund the operations of the PCAOB with an annual accounting support fee to be collected from issuers.[5] Under sections 107 and 109 of the Act, such rules are subject to the approval of the Commission. In addition, section 109(h) of the Act amends Section 13(b)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

The following is a brief summary of certain key provisions contained in the proposed funding rules.

Proposed PCAOB Rule 7100 provides, among other things, that the annual accounting support fee shall equal the approved budget of the Board, less the sum of all registration fees and annual fees collected during the preceding year from registered public accounting firms.

Proposed PCAOB Rule 7101 provides for the accounting support fee to be allocated to four classes of issuers, two of which are: (1) Publicly-traded companies with average, monthly U.S. equity market capitalizations[6] during the preceding year, based on all classes of common stock, of greater than $25 million, and (2) investment companies with average, monthly U.S. equity market capitalizations (or net asset values) of greater than $250 million.[7] In recognition of the structure of investment companies and the relatively less-complex nature of investment company audits (as compared to operating company audits), investment companies would be assessed at a lower rate than operating companies. Other classes of issuers would be allocated shares of zero.[8]

Proposed PCAOB Rule 7102 governs the assessment of the Board's accounting support fee. Shares of the accounting support fee would be rounded to the nearest $100.

Proposed PCAOB Rule 7103 governs the collection of the accounting support fee. The fee would be due 30 days after notice is sent. Interest would accrue at 6 percent per annum commencing on the 31st day after the notice is sent. The proposed rule also provides that no registered public accounting firm may sign an unqualified opinion[9] with respect to an issuer's financial statements, or issue a consent to include an audit opinion issued previously, unless the auditor has ascertained that the issuer has no past due fees payable to the Board.[10] In addition, the Commission notes that failure to pay the accounting support fee would be a violation of section 13(b)(2)(C) of the Exchange Act.

Proposed PCAOB Rule 7104 provides that if the accounting standard setting body recognized by the Commission under Section 108(b)(1)(B) of the Act[11]

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[1] Securities Exchange Act Release No. 48075 (June 23, 2003); 68 FR 38406 (June 27, 2003).

[2] Amendment No. 1 was delivered to the Commission's Office of the Secretary on July 30, 2003.

[3] *See, e.g.*, Section 109(d) of the Act.

[4] PCAOB Rules 7100 through 7104.

[5] The term ''issuer'' is defined in section 2(a)(7) of the Act to mean ''an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78(c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.''

[6] Rule 1001(i)(i) defines ''issuer market capitalization'' to include only the aggregate market value of securities traded in the United States, whether those securities are issued by entities based in the United States or elsewhere. The definition excludes the market value of securities traded outside the United States.

[7] This class would include both registered investment companies and issuers that have elected to be regulated as business development companies pursuant to Section 54 of the Investment Company Act of 1940 (''Investment Company Act''). In the case of an investment company with multiple series of funds, the average, monthly U.S. equity market capitalization, or net asset value, of each series would be measured against the $250 million threshold separately.

[8] For example, an issuer would be allocated a share of zero if: its average, monthly U.S. equity market capitalization during the preceding year is less than $25 million (or, in the case of investment companies, of less than $250 million), its only outstanding public securities are debt securities, or its share price (or net asset value) on a monthly, or more frequent, basis is not publicly available. Other issuers that would be allocated shares of zero include: (1) Those that are not required to file audited financial statements with the Commission, (2) employee stock purchase, savings and similar plans, and (3) bankrupt issuers that file modified reports.

[9] ''An unqualified opinion states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles.'' AICPA, Statements on Auditing Standards (''SAS'') No. 58, Codification of Statements on Auditing Standards (''AU'') 508.10.

[10] *See* Accelerated Approval of Amendment No. 1, *infra*.

[11] The Commission has designated the Financial Accounting Standards Board (''FASB'') as an

Continued

designates the PCAOB as the collection agent for that body's support fee then the PCAOB's collection and assessment rules (PCAOB proposed rules 7102 and 7103) would apply to that accounting standard setting body's support fee. Proposed rule 7104 states that the PCAOB, however, would not be responsible for calculating the standard setting body's support fee or the allocation of such fee among issuers.

III. Discussion of Comment Letters

The Commission received five comment letters regarding the PCAOB's proposed rules on the support fee. One letter was from the Investment Company Institute, one letter was from a financial services company,[12] one was from the Federation of German Industries, and two letters were from accounting firms.[13]

The Investment Company Institute (''ICI'') expressed concern that the funding rules would cause issuers of variable insurance contracts to pay twice the amount of support fees charged to other types of investment companies. Variable contracts are typically issued by an investment company that invests its assets in one or more other underlying investment companies, and the ICI noted that, under the proposed rules, both the variable contract issuer and the underlying investment company would pay a support fee.[14] While we appreciate the ICI's concerns, we note that the financial statements of both investment companies must be audited, and that the PCAOB would oversee both audits. Further, we note that under the proposed rules investment companies already are assessed at a lower rate than other issuers. Accordingly, we believe that the PCAOB rule is reasonable in this regard.

The ICI also requests additional advice on how the rules apply to ''master-feeder fund arrangements'' where feeder funds sell shares to the public and then use the proceeds to purchase shares of a master fund, which are offered in private placements. We encourage the PCAOB to consider whether additional guidance is appropriate.

The Federation of German Industries noted, among other things, that many foreign private issuers are not required to disclose the number of shares outstanding in the United States in their periodic reports filed with the Commission but that such information should be available from applicable stock exchanges in the United States.[15]

The comment letters from the accounting firms noted concerns and requested guidance regarding, among other things, PCAOB proposed rule 7103(b), which provides that auditors may not sign an unqualified audit opinion with respect to an issuer's financial statements, or issue a consent to the use of a previously issued audit opinion, unless the registered public accounting firm has ascertained that the issuer either has no outstanding past-due share of the accounting support fee or has a pending petition for correction of the fee.

One accounting firm also indicated that proposed rule 7103(b) was unnecessary given other incentives on issuers to pay the fee, was counter to the policy of encouraging the issuance of timely audit reports, was inappropriate in that the PCAOB was in a better position than the auditor to ascertain if payment had been made, and placed an inappropriate burden on auditors.[16] We observe, however, that a Note to proposed rule 7103 states that auditors may ascertain that no past-due fee is outstanding by obtaining a representation from the issuer or a confirmation from the PCAOB. Auditors routinely obtain representations from management and seek confirmations from outside sources as part of their audit processes. Further, because the limitation in proposed rule 7103 pertains only to the issuance of unqualified audit opinions and consents, the rule would not prevent an auditor from signing a qualified or adverse audit opinion regardless of whether the issuer has paid its portion of the support fee. [17] As discussed below, the PCAOB has adopted an amendment to this provision.

IV. Accelerated Approval of Amendment No. 1; Solicitation of Comments

Amendment No. 1 to the proposed rule change would provide that the auditor of an issuer's financial statements may sign an unqualified audit opinion with respect to the issuer's financial statements, or issue a consent to the use of previously issued auditor opinions, even if the issuer has outstanding a past-due share of the accounting support fee and has not filed a petition for correction of that fee, if the issuer needs the auditor opinion or consent in order to submit a report to, or make a filing with, the Commission. Under the amendment, the issuer would submit to the PCAOB a notice of the signing of the audit opinion or issuance of the consent not later than one business day after the related filing is made with the Commission. This exception would not continue longer than 15 business days after the earlier of the submission of the notice to the PCAOB or the filing of the report or registration statement with the Commission, and may not be invoked for more than one such 15-business day period with respect to any share of the accounting support fee that the issuer is assessed under rule 7102.

We find good cause to approve Amendment No. 1 to the proposed rule prior to the thirtieth day after the date of publication of notice of filing Amendment No. 1 in the **Federal Register**. The original proposed rules, as noted above, were published in the **Federal Register**. We believe that Amendment No. 1 refines the rules and facilitates capital formation by assuring that an issuer, due to the inability to obtain an unqualified audit report or auditor consent, would not be denied access to the capital markets due to an inadvertent issue with respect to payment of the support fee. Amendment No. 1 also clarifies the obligations of auditors when an issuer or the auditor, upon the eve of a report or registration statement being filed with the Commission, becomes aware that the issuer has not paid or sought correction of a support fee. Amendment No. 1 does not contain major modifications from the scope and purpose of the rules as originally proposed, and was developed from the original proposal. We believe, moreover, that approving Amendment No. 1 will provide greater clarity and facilitate capital formation, thus furthering the public interest and the investor protection goals of the Act and of the securities laws. Finally, we also

accounting standard setting body under section 108. *See* Financial Reporting Release No. 70 (April 25, 2003) (68 FR 23333 (May 1, 2003)). The Financial Accounting Foundation (''FAF''), which is the board of trustees that provides administrative and operational functions for the FASB in accordance with section 19(b)(1)(A)(ii) of the Securities Act of 1933, 15 U.S.C. 77s(b)(1)(A)(ii), has informed the Commission that it intends to appoint the PCAOB as its collection agent and to utilize the formula in PCAOB rule 7101 as the allocation to be used for the FASB support fee. *See* letter dated June 11, 2003 from Joseph S. LaGambina, Executive Vice President, FAF, addressed to Mr. Scott Taub, Deputy Chief Accountant.

[12] Letter from Nationwide Financial Services, Inc.

[13] *See* letters from KPMG LLP and Deloitte & Touche LLP.

[14] Nationwide Financial Services, Inc., expressed similar concerns.

[15] The number of shares traded in the United States is a necessary component of the fee calculation under the PCAOB's proposed rules. *See* PCAOB rules 1001(i)(i) and 7101.

[16] Letter from Deloitte & Touche LLP.

[17] Under the PCAOB's proposed rules, an issuer may not delay publication of a qualified or adverse audit report simply by not paying its portion of the support fee.

find that it is in the public interest to approve the rules as soon as possible to expedite the implementation of the proposed rules.

Accordingly, we believe good cause exists, consistent with sections 107 and 109 of the Act, and Section 19(b) of the Exchange Act, to approve Amendment No. 1 to the proposed rules on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendments are consistent with the Act and the securities laws or are necessary or appropriate in the public interest or for the protection of investors. 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 amendments that are filed with the Commission, and all written communications relating to the amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room.

All submissions should refer to File No. PCAOB–2003–02 and should be submitted by September 8, 2003.

V. Conclusion

Title I of the Act assigns to the PCAOB the task of designing and implementing registration, standard-setting, inspection, and disciplinary systems that promote the preparation of accurate, informative and independent audit reports. To fulfill these functions, the PCAOB must have a reliable source of funds and rules that provide for the allocation, assessment, and collection of fees in an equitable manner in accordance with section 109(d) of the Act.

Congress, in enacting section 109, required that the recoverable budget expenses of the PCAOB and the accounting standard setting body be payable through accounting support fees assessed on issuers. Congress also set forth the basic formula for calculating the support fees based on issuers' relative market capitalizations.

The PCAOB is charged under section 109 to adopt rules, subject to the Commission's approval, that establish a reasonable annual accounting support fee (or a formula for the computation thereof) as may be necessary or appropriate to establish and maintain the Board, and provide for the equitable allocation and assessment of the support fees among, and collection of the support fees from, issuers. Section 109 directs the PCAOB to allow for differentiation of the fees among classes of issuers, as appropriate.

On the basis of the foregoing, the Commission finds that the proposed rules, as amended, are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to sections 107 and 109 of the Act, and section 19(b)(2) of the Exchange Act, that the proposed rules (File No. PCAOB–2003–02), as amended, be and hereby are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20134 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48271; File No. SR–BSE–2003–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Initial Allocation Plan for the Proposed Boston Options Exchange Facility

August 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2003, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to add new Chapter XXXVII for the purpose of setting forth an Initial Allocation Plan for the proposed Boston Options Exchange facility (''BOX'').[3] Proposed new language is *italicized.*

* * * * *

Chapter XXXVII

Boston Options Exchange, Inc.

Initial Class Allocation—Parameters and Criteria

Sec. 1. In order to manage the initial allocation of classes for the proposed Boston Options Exchange (''BOX''), the BSE intends to launch trading on the proposed BOX market for the top 250 classes (as determined by OCC volume statistics). 1886 assignments will be allocated first, to be phased in for trading during the first three months following the launch date. The remaining assignments within the initial 250 classes will be allocated on a class by class basis during the following three months.

(a) Parameters. The following categories and criteria are the basis for the initial allocation process.

Category	Ranking of classes	Number of market makers per class	OCC average daily volume (No. of contracts)
A	1	12	>100,000.
B	2–6	12	50,000 to 99,999.
C	7–11	12	25,000 to 49,999.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47186 (January 14, 2003), 68 FR 3062 (January 22, 2003) (SR–BSE–2002–15).

Category	Ranking of classes	Number of market makers per class	OCC average daily volume (No. of contracts)
D	12–53	12	10,000 to 24,999.
E	54–106	10	5,000 to 9,999.
F	107–250	5	Less than 5,000.

The names and ranking of the 250 classes to be listed at launch are based on OCC volume.

(b) Criteria to determine firm experience. In order to ensure market quality, some appointments in each class will be allocated to ''experienced'' firms. The following criteria will be used as consideration to determine which market making firms qualify as experienced:

(1) The applicant has been a market maker or specialist on an organized fully automated market on a minimum of 50 classes for at least 6 months;

(2) The applicant has sufficient capital committed to its options activities to effectively support an automated market in BOX, as determined by the Exchange.

(c) Any applicant denied any privilege under the provisions of this Chapter XXXVII, including denial of acceptance as an ''experienced'' market maker, may appeal such decision according to the procedures set forth in Chapter XXX, Disciplining of Members, Denial of Membership.

Allocation process

Sec. 2. Subject to an applicant's approval as an Options Participant and a Market Maker on the BOX Market, the BSE will allocate classes based on the procedures set forth in this Section 2.

The model is based on the allocation of assignments sequentially by way of two rounds. This process will ensure that all firms will get a fair share of assignments while ensuring market quality by giving some priority to experienced firms. The allocation will be controlled by the Exchange using a random lottery program (the ''program'').

(a) Round 1—allocate assignments to experienced firms. In the first round, 50% of all assignments will be available for allocation to experienced firms from categories A, B, C, D and E, and 40% of assignments will be available from category F. Accordingly, a total of 871 assignments will be allocated to experienced firms. If for a given class, the number of assignments available for the first allocation is smaller than the number of assignments requested by the firms who qualify as experienced, a lottery program will be used whereby the names of all experienced firms requesting the class will be put in a pool, and the names will be drawn one by one until the assignments available on the class for this round are exhausted.

(b) Round 2—allocate remaining assignments. All applicants will participate in this round during which a total of 1,015 assignments will be allocated. On classes where the demand is smaller than or equal to the number of assignments available for the first allocation, all firms requesting an assignment will be allocated. On classes where the demand is greater than the number of assignments available for the first allocation, the lottery program will be used whereby the names of all firms requesting the class (including experienced firms which did not receive the allocation as a result of Round 1) will be put in a pool, and the names will be drawn one by one until the assignments available on the class for this round are exhausted

(c) Priority for subsequent assignments. In order to establish priority between applicants not having received appointments for the first allocation period, the process will continue until all the candidates have been drawn, and a waiting list has been established. This order of priority on the waiting list will be used in order to allocate new assignments as they become available within 6 months following the launch date, or if a selected market maker decides to withdraw.

Initial Class Allocation Process Deposit

Sec. 3. In order to ensure that applicants are not overbidding to maximize the number of posts they will be allocated in the initial allocation and to ensure their commitment to make market on their requested assignments, a deposit will be required from each market-making firm immediately prior to the allocation lottery. The funds received from each market making firm will be deposited into a separate account maintained by the Exchange specifically for this purpose. Commencing on the launch date of the proposed BOX, deposits for those assignments that become live (i.e. available for a market maker to trade on BOX) will be released to BOX and be: (a) nonrefundable, (b) considered as pre-paid fees, and (c) credited against applicant's BOX account to offset trading, technology and other related fees and charges. Before any class becomes live for a particular market maker, if the applicant notifies the Exchange that the applicant wishes to drop any allocated classes, the BSE will refund 50% of the related deposit. If an applicant does not receive an allocation in any requested class as a result of the initial allocation process, the deposit for those classes not allocated will be refunded to the applicant within fifteen (15) days of the date of the allocation process.

The deposit required for each class will be determined based on the ranking of the class, as categorized in Section 1 of this Chapter XXXVII, as follows:

Category A—$45,000 per class

Category B—$9,000 per class

Category C—$6,000 per class

Category D—$2,250 per class

Category E—$750 per class

Category F—$300 per class.

Expiration

Sec. 4. The Allocation Process set forth in Sections 1–3 of this Chapter XXXVII, will expire no later than six months beyond the initial launch date of the proposed BOX market.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Chapter XXXVII to its Rules of the Board of Governors of the Boston Stock Exchange, Inc. The purpose of the new chapter will be to set forth the Allocation Process for BOX Market Maker[4] appointments and accompanying deposit requirements related to the launch of the proposed Boston Options Exchange (''BOX''), an options trading facility of the Exchange currently being proposed.

The proposed BOX market model provides for an ''open'' policy where the goal is to have no restrictions on the number of market makers assigned per class. To properly manage the launch of the initial 250 classes, BOX will request that prospective market maker firms declare their interest for market making assignments. BOX will fully allocate all the assignments requested by the market maker firms within 6 months of the start date of the proposed BOX market (''initial allocation'').

Nevertheless, as with any exchange venture the size and complexity of the proposed BOX, prudence requires that the rollout of trading occur in a planned and controlled manner that will ensure the maintenance of a fair and orderly market. In this regard, BOX intends to phase in trading, during the first three months following the launch date, the 250 classes with 1,886 assignments allocated first. Then, any remaining assignments will be assigned on a class-by-class basis during the following three months.

Accordingly, a market maker class allocation plan is necessary to manage the rollout, and to select on a fair and transparent basis the assignments that will be initially allocated. The process will be managed by the BSE.

The following categories and criteria are proposed for the initial allocation process:

Category	Ranking of classes	Number of market makers per class	OCC average daily volume (# of contracts)
A	1	12	>100,000.
B	2–6	12	50,000 to 99,999.
C	7–11	12	25,000 to 49,999.
D	12–53	12	10,000 to 24,999.
E	54–106	10	5,000 to 9,999.
F	107–250	5	Less than 5,000.

The names and ranking of the 250 classes to be listed at launch are based on OCC volume.

Furthermore, in order to ensure market quality, the model proposes to allocate in priority some appointments in each class to experienced firms. The following criteria will be used as consideration to determine which market making firms qualify as experienced:

1. Have been a market maker or specialist on an organized fully automated market on a minimum of 50 classes for at least 6 months; and,

2. Have sufficient capital committed to its options activities to effectively support an automated market in BOX, as determined by the BSE.

Subject to an applicant's approval as an Options Participant[5] and a Market Maker on the BOX Market, the BSE will allocate classes based on the procedures set forth in the proposed allocation plan model. The model is based on the allocation of assignments sequentially by way of two rounds. This process will ensure that all firms will get a fair share of assignments while ensuring market quality by giving some priority to experienced firms. The allocation will be run by the BSE using a random lottery program (the ''program'') developed by BOX, and externally audited to verify its integrity, neutrality and fairness.

Round 1—allocate assignments to experienced firms. The first round provides for the allocation to experienced firms of 50% of all assignments available for the first allocation in categories A, B, C, D and E, and 40% of assignments available for the first allocation in category F. Accordingly, a total of 871 assignments will be allocated. If for a given class, the number of assignments available for the first allocation is smaller than the number of assignments requested by the firms who qualify as experienced, the lottery program will be used. The program will work based upon the following principles: the names of all experienced firms requesting the class will be put in a pool; and the names will be drawn one by one until the experienced assignments available on the class for this round are exhausted.

Round 2—allocate remaining assignments. All applicants will participate in this round during which a total of 1,015 assignments will be allocated. On classes where the demand is smaller than or equal to the number of assignments available for the first allocation, all firms requesting an assignment will be allocated. On classes where the demand is greater than the number of assignments available for the first allocation, the lottery program will be used. The program will work based upon the following principles: the names of all the firms requesting the class, including experienced candidates not selected in Round 1, will be put in a pool; and the names will be drawn one by one until the assignments available for the first allocation on the class are exhausted.

To establish priority between applicants not having received appointments in this first allocation, the process will continue until all the applicants have been drawn and a waiting list is established. This order of priority on the waiting list will be used in order to allocate new assignments as they become available within 6 months following the launch date, or if a selected market maker decides to withdraw.

To ensure that firms are not overbidding to maximize the number of posts they will be allocated in the first allocation and to ensure their commitment to make markets on their requested assignments, a deposit will be required from each market-making firm immediately prior to the allocation

[4] *See* proposed BOX Rules, Chapter I, *General Provisions,* Sec. 1(a)(31) (definition of ''Market Maker'').

[5] *See* proposed BOX Rules, Chapter I, *General Provisions,* Sec. 1(a)(39) (definition of ''Options Participant'').

lottery. The funds received from each market making firm will be deposited into a separate account maintained by the BSE specifically for this purpose. Commencing on the launch date of the proposed BOX, deposits for those assignments that become ''live'' (*i.e.* available for a particular market maker to trade on BOX) will be released to BOX and be: (a) nonrefundable, (b) considered as pre-paid fees, and (c) credited against applicant's BOX account to offset trading, technology and other related fees and charges. Before any class becomes live for a particular market maker, if the applicant notifies BOX that he wishes to drop certain allocated classes, BOX will refund 50% of the related deposit. If an applicant does not receive an allocation in any requested class as a result of the initial allocation process, the deposit for those classes not allocated will be refunded to the applicant within fifteen (15) days of the date of the allocation process. The deposit amounts will vary for each class in the following manner: Category A $45,000 per class, Category B $9,000 per class, Category C $6,000 per class, Category D $2,250 per class, Category E $750 per class, Category F $300 per class. For example, if a firm applies to be market maker on all of the 250 classes to be listed at launch, the required deposit will be $297,450.

Due to the fact that this proposed allocation plan is deemed to be a temporary process specifically designed to control the launch of the proposed BOX market, the Exchange is seeking approval of this proposal for a limited time, and will not, in any case, utilize this process, as currently set forth, any later than six months beyond the initial launch date of the BOX market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b) of the Act,[6] in general, and furthers the objective of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE–2003–13 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20129 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48267; File No. SR–CBOE–2003–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend CBOE Rule 6.24 Relating to Systematizing Orders

July 31, 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 May 5, 2003, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On July 29, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submitted this proposed rule change in order to comply with the requirement to implement a consolidated options audit trail system (''COATS''). The Exchange is submitting the proposed rule change to CBOE Rule 6.24 in connection with subparagraph IV.B.e(v) of the Commission's September 11, 2000 Order (''Order'').[4]

The text of the proposed rule change is set forth below. New text is in italics; deletions are in brackets.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supercedes the original filing in its entirety.

[4] Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

Chapter VI

* * * * *

Section B: Member Activities on the Floor

* * * * *

[Orders Required To Be in Written Form] *Required Order Information*
Rule 6.24

(a) [Transmitted to the Floor. Each order transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the floor. Each such order must be in legible written form when taken to the post for attempted execution.] *Orders Must Be Systematized. Commencing not later than August 29, 2003, each order, cancellation of, or change to an order transmitted to the Exchange must be systematized, in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the floor of the Exchange.*

An order is systematized if:

1. it is sent electronically to the Exchange; or

2. it is input electronically into the Exchange's systems immediately upon receipt on the Exchange, e.g., telephone orders.

(b) [Cancellations and Changes. Each cancellation of, or change to, an order that has been transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such cancellation or change must record the time of its receipt on the floor.] *Exempt classes. The Exchange may exempt non-multiply listed index and other option classes traded exclusively on the Exchange other than equity option classes (exempt classes) from the requirements in paragraph (a) of this Rule. With respect to orders for exempt classes:*

(i) Transmitted to the Floor. Each order for an exempt class transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the floor. Each such order must be in legible written form when taken to the post for attempted execution.

(ii) Cancellations and Changes. Each cancellation of, or change to, an order for an exempt class that has been transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such cancellation or change must record the time of its receipt on the floor.

([c]*iii)* Executions. A member transmitting from the floor a report of the execution of an order *for an exempt class* must record the time at which a report of such execution is received by such member.

([d]*iv)* On-floor Market-Maker Orders. Each order *for an exempt class* transmitted by a Market-Maker while on the floor, including any cancellation of or change to such order, must be recorded legibly in a written form that has been approved by the Exchange, and must be time stamped immediately prior to its transmission.

* * * Interpretations and Policies

.01 Any member desiring to use an order form other than those provided by the Exchange must submit such form to the appropriate Floor Procedure Committee and obtain its approval prior to using such form on the Floor.

.02 (a) [Without limiting the applicability of the foregoing, the] *The* use of hand signal communications on the floor of the Exchange may be used to initiate an order, to increase or decrease the size of an order, to change an order's limit, to cancel an order, or to activate a market order. [Unless an options class is exempted by the Exchange, a]*Any* initiation, cancellation, or change of an order relayed to a floor broker through the use of hand signals also must be relayed to the floor broker in [written] *electronic* form[, time-stamped,] immediately thereafter, *unless the Exchange exempts an option class from this requirement.* All other rules applicable to order preparation and retention, and reporting duties are applicable to orders in exempted options classes *under this Interpretation,* except that the record-keeping obligation lies with the member signaling the order where a hand signal is used. All cancellations and changes of orders held by the Board Broker or Order Book Official must be provided in [written] *electronic* form.

(b) [Until further notice the following are exempt options classes under this Interpretation: OEX, SPX, NSX, and DJX.] *The Exchange may exempt non-multiply listed index and other option classes traded exclusively on the Exchange other than equity option classes under this Interpretation. The Exchange will publish via regulatory circular those options classes that it has exempted under this Interpretation.*

.03 The appropriate Floor Procedure Committee will from time to time prescribe the form of Telephone and Terminal Order Formats in a Manual and the contents of this Manual are hereby incorporated in these Rules and will have full force and effect as if fully set forth herein.

.04 *Stop-limit orders as defined in Rule 6.53(c)(iv) are exempt from the requirements of paragraph (a) of this Rule until December 11, 2003, or such earlier date as the Exchange's order routing and execution systems have the functionality to handle stop-limit orders.*

.05 Accommodation liquidations as described in Rule 6.54 are exempt from the requirements of paragraph (a) of this Rule.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this amendment to its current rules to comply with the requirement to implement COATS. The Exchange is submitting the proposed rule change to CBOE Rule 6.24 in connection with subparagraph IV.B.e(v) of the Commission's Order,[5] which requires the options exchanges to design and implement COATS to ''incorporate into the audit trail all non-electronic orders (such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on such respondent exchange, beginning with the receipt of an order by such respondent exchange and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order * * *'' (''Phase V'').

In order to assure that all non-electronic orders are incorporated into COATS for Phase V, the proposed rule change would amend CBOE Rule 6.24, which currently requires orders to be in written form. The proposed rule change would require that each order, change to

[5] *Id.*

an order, or cancellation of an order transmitted to the Exchange must be ''systematized'', in a format approved by the Exchange, either before it is sent to the Exchange or immediately upon receipt on the floor of the Exchange.[6]

Each order, change to an order, or cancellation of an order may be systematized in one of two ways. If an order, change to an order, or cancellation of an order is sent electronically to the Exchange, it is systematized. Alternatively, if an order, change to an order, or cancellation of an order is input electronically into the Exchange's systems immediately upon receipt on the Exchange, it is systematized.

The Exchange believes that the systematization requirement may be fulfilled in practice in a number of ways. The key is that the order must be systematized when the order is routed to the floor for execution. For example, under the proposed rule change, an order would meet the requirements of the rule if a floor broker in the trading crowd received an order over the phone and at the same time had a person from his or her booth input the order electronically. The requirements of the rule also would be satisfied if someone from the upstairs trading desk called a floor broker in the trading crowd on the floor with an order, while a clerk at the upstairs trading desk was simultaneously sending the order to the floor electronically. While it is possible that the floor broker in each of these situations would receive and begin the representation of the order prior to the arrival of the electronic order, the order entered electronically would be entered and routed in a manner consistent with the record keeping obligations and the requirements of COATS.[7]

Currently, the deadline to implement Phase V of COATS is August 29, 2003.[8] The Exchange intends to make the proposed changes to CBOE Rule 6.24 effective not later than August 29, 2003, or such later date as authorized in writing by the Directors of the Commission's Division of Market Regulation, Division of Enforcement, and the Office of Compliance, Inspections and Examinations.

Under the proposed change to Interpretation and Policy .04, the Exchange proposes to exempt from the systematization requirement stop-limit orders as defined in CBOE Rule 6.53(c)(iv) until December 11, 2003, or such earlier time as the Exchange's order routing and execution systems (such as COMPASS, ORS, PAR) have the functionality to handle stop-limit orders. The Exchange represents that stop-limit orders as defined in CBOE Rule 6.53(c)(iv) represent a very small percentage of the types of orders sent to and executed on the Exchange. The Exchange has an active systems project that will provide the functionality to handle stop limit orders in its order routing and execution systems.[9]

The proposed rule change would also permit the Exchange to exempt from the systematization requirement non-multiply listed index option classes and other option classes traded exclusively on the Exchange other than equity option classes (''exempt classes''). For example, the Exchange could exempt from the systematization requirement the following option classes traded exclusively on the Exchange: the Standard & Poor's 100® index option class (OEX), the Standard & Poor's 100® index option class (SPX), options on the Dow Jones Industrial Average℠ (DJX), and options on the Diamonds® (DIA). Equity option classes traded solely on the Exchange would not be exempted from the systematization requirement. Orders in exempt classes would be required to be in a legible written form approved by the Exchange. This proposed change is consistent with the current practice permitted under CBOE Rule 6.24.

The proposed rule change would also keep the current Interpretation and Policy .02(a) of CBOE Rule 6.24, which permits the use of hand signal communications on the floor to, among other things, initiate an order, cancel an order or to change material terms of an order provided that such communications are immediately thereafter relayed in written form, except in certain classes exempted by the Exchange. The proposed rule change would require that such communications be relayed immediately in electronic form rather than written form, unless an option class is exempted from this requirement. Currently, as provided in Interpretation and Policy .02(b) of CBOE Rule 6.24, the Exchange exempts the OEX, SPX, and DJX option classes, which are non-multiply listed index option classes. The Exchange proposes to amend subparagraph (b) of Interpretation .02 to state it may exempt non-multiply listed index and other option classes traded exclusively on the Exchange other than equity option classes under this Interpretation. The Exchange will publish via regulatory circular those options classes that it has exempted under Interpretation .02.

Finally, the Exchange has added a new Interpretation and Policy .05 to CBOE Rule 6.24, which states that accommodation liquidations as defined in CBOE Rule 6.54 are exempted from the systematization requirement.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of the Act[10] in general and furthers the objectives of Section 6(b)(5)[11] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change will promote just and equitable principles of trade and protect investors and the public interest by electronically enhancing the audit trail for orders by incorporating orders into COATS. This enhanced audit trail will permit CBOE to conduct surveillance of the activity on the Exchange and reconstruct markets in a more efficient and effective manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[6] CBOE notes that the execution or partial execution of an order has been incorporated into COATS in Phase II, and as described in Paragraph II of the formal COATS Plan that the options exchanges previously have provided to the Commission.

[7] The Exchange recognizes the need for effective and proactive surveillance for activities such as trading ahead and front-running. It currently conducts automated surveillance for such activities and will incorporate a review of order systemization as part of such surveillance. The Exchange also intends to implement supplementary surveillance and examination programs related to the systemization of orders requirement promptly after this requirement is instituted, which are designed to address, among other things, trading ahead and front-running.

[8] On June 10, 2003, the Directors of the Commission's Division of Market Regulation, Office of Compliance Inspections and Examinations, and Division of Enforcement granted CBOE and the other floor-based options exchanges an extension of time until August 29, 2003, to implement Phase V of COATS.

[9] In their June 10, 2003, letter to the Exchange, the Directors of the Commission's Division of Market Regulation, Office of Compliance Inspections and Examinations, and Division of Enforcement also granted CBOE an extension of time until December 11, 2003, so that CBOE can modify its order routing and execution systems such that they would have the functionality to handle stop-limit orders.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2003–18 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20126 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48274; File No. SR–NASD–2003–102]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Modifying Interpretive Material 4613 To Provide a New Approval Process for Authorizing Computer Generated Quoting

August 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. Nasdaq amended the proposed rule change on July 17, 2003.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Interpretive Material 4613 (''IM 4613''). The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* July 17, 2003 letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, Nasdaq provided new rule language that completely replaces and supersedes the original proposed rule language, and made corresponding changes to the description of the rule in the notice. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on July 17, 2003, the day Nasdaq filed Amendment No. 1.

IM–4613. Autoquote Policy

(a) No change.

(b) No change.

(c) Computer Generated Quoting—

(1) Definition—''Computer Generated Quoting'' means the practice of effecting, without a physical entry, a quote update that is not designed to keep a market maker's quote away from the Nasdaq and/or national best bid/best offer, but does not include the activity set forth in subparagraph (b) of this interpretive material.

(2) Prohibition—The prohibitions against autoquoting contained in paragraph (a) of this interpretative material shall also apply to the practice of Computer Generated Quoting unless the market maker [meets the conditions in]*obtains Nasdaq's prior approval, pursuant to* subparagraph (c)(3) of this interpretive material, *to engage in Computer Generated Quoting and such approval has not been revoked or otherwise withdrawn.*

(3) Exception—A market maker may *request approval to* engage in the practice of Computer Generated Quoting [if the market maker: prior to engaging in such activity provides Nasdaq a description of its Computer Generated Quoting system; requests and obtains written interpretive relief from Nasdaq staff stating that the market maker's Computer Generated Quoting system is permissible under Interpretive Material 4613; and complies with terms that are set forth in the interpretive relief.] *by submitting to Nasdaq a completed application in the form prescribed by Nasdaq and by agreeing, in the form prescribed by Nasdaq, to notify Nasdaq at least five business days in advance of any changes to the information previously provided, to comply with the terms of this Interpretive Material 4613, and to abide by any additional conditions related to Computer Generated Quoting, which Nasdaq may impose from time to time. A properly completed application is deemed approved at close of business on the fifth business day after the day on which it is received by Nasdaq unless Nasdaq notifies the applicant by e-mail or fax that the application has been denied; provided, however, that any approval deemed granted hereunder may be withdrawn by Nasdaq at any time and is subject to any and all terms, conditions and limitations that Nasdaq may impose from time to time.* [In establishing terms of the interpretive relief,] Nasdaq *may reject an application, impose conditions or revoke a previously granted approval: (i) In furtherance of applicable laws or NASD rules, (ii) in order to protect the*

integrity of Nasdaq's systems, considering [shall consider] the applicant's impact on Nasdaq's capacity, in conjunction with the overall impact on Nasdaq's capacity of existing Computer Generated Quoting systems authorized by Nasdaq, *or (iii) in order to protect* [as well as the protection of] investors and the public interest. [If a market maker that engages in Computer Generated Quoting fails to comply with the terms set forth in the interpretive relief,] *Furthermore,* Nasdaq may summarily modify or revoke *the approval* [interpretive relief] and/or summarily suspend [such quoting] *a firm's Computer Generated Quoting* activity if *the firm has not complied with any, some or all of the terms of approval and/or with any previously imposed conditions* [necessary to preserve capacity and to protect investors and the public interest].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq seeks to streamline the process of obtaining an authorization pursuant to IM 4613 to engage in Computer Generated Quoting (''CGQ''). Currently, a firm seeking such an authorization provides certain information about its CGQ system in a letter to Nasdaq. Nasdaq then grants approval by sending an appropriate response letter to the requesting firm; such a letter also details the applicable conditions of the approval.[6]

Under the proposed rule change, a firm wishing to obtain CGQ authorization would be required to submit to Nasdaq a standard application form, which seeks certain information that Nasdaq needs in order to ensure that the proposed CGQ activity will not degrade Nasdaq's systems or otherwise undermine Nasdaq's ability to protect investors and the public interest. The information sought in the application form is of the same type as the information Nasdaq has sought from firms requesting CGQ authorization in the past. The application form also contains a certification and agreement section, to be executed by the applicant firm, in which the firm would promise to notify Nasdaq of any changes to the information previously provided in connection with CGQ and to comply with any existing or future restrictions on (including termination of) the practice of CGQ with respect to some or all quotes. Nasdaq represents that it will notify approved firms of any future conditions on CGQ authorization in writing either individually, if the condition applies to a particular firm, or through a rule filing with the Commission, if it applies globally.[7]

Under the proposed rule change, Nasdaq will have five business days to reject an application. If an application is not rejected within this time frame, it will be deemed approved. In the case of rejection, Nasdaq will notify the applicant firm by e-mail or fax and, if possible, by telephone (one call will be made to the number listed in the application; if the listed contact is not available, a message will be left if possible).

Nasdaq may reject an application, impose conditions (either at the time of initial approval or at any time thereafter), or revoke a previously granted approval: (a) In furtherance of applicable laws or NASD rules; (b) in order to protect the integrity of Nasdaq's systems, including preserving sufficient system capacity; or (c) in order to protect investors and the public interest. Furthermore, Nasdaq may further condition or revoke approval at any time if a firm has not complied with any, some, or all of its obligations contained in the certification and agreement section of the application (such as, but not limited to, the obligation to notify Nasdaq in advance of any changes) and/or with any previously imposed conditions.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] including Section 15A(b)(6) of the Act,[9] which requires that the rules of the NASD foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market. Nasdaq believes that the proposed rule change will make the process of applying for CGQ authorization simpler and add speed and certainty to the process. Since an authorization would be deemed granted five business days after a completed application is received by Nasdaq, applicant firms would be able to plan the relevant aspects of their business accordingly.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,[10] and Rule 19b–4(f)(1)[11] thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission,

[6] Firms that have already received approval to engage in CGQ will not need to re-apply by virtue of this proposed rule change so long as such firms remain in compliance with the conditions stated in their respective approval letters.

[7] Telephone conversation between Katherine A. England, Assistant Director, Joseph A. Morra, Special Counsel, and Leah Mesfin, Attorney, Commission and Alex Kogan, Associate General Counsel, Nasdaq on July 30, 2003.

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(1).

all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–102 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20124 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48279; File No. SR–NASD–2003–52]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Fee for Receipt of Mutual Fund Quotation Service Data by Distributors

August 1, 2003.

On March 24, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a $1,000 per month distributor fee for receipt of mutual fund information through Nasdaq's Mutual Fund Quotation Service (''MFQS''). The fee would be assessed on all distributors, as defined in proposed NASD Rule 7090(e)—*i.e.*, firms that receive the data and distribute it to third parties.

The proposed rule change was published for comment in the **Federal Register** on April 24, 2003.[3] By letters dated, respectively, May 30, 2003 and July 18, 2003, Nasdaq clarified the scope and purpose of the fee.[4] The Commission received no comments on the proposed rule change.[5]

The Commission has carefully reviewed the NASD's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A of the Act[6] and the rules and regulations thereunder.[7] The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5) of the Act[8] because the fee will be assessed against all firms that receive the Nasdaq MFQS data and distribute it to third parties. In addition, Nasdaq represents that the amount of the fee is sufficient to compensate Nasdaq for services it provides to distributors and their subscribers by collecting and processing the mutual fund data feed, producing the data feed, and providing data quality services. At the same time, Nasdaq believes the amount of the fee will not discourage wide distribution of the data.[9]

Finally, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act[10] because vendors are free to choose whether to receive the data, and the fee is uniformly charged to all firms that receive the data and distribute it to third parties; to the extent that Nasdaq.com chooses to so receive and distribute the data, it too will be assessed the fee.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–2003–52) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20125 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48280; File No. SR–NASD–2003–119]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Index Leveraged Stock Market Return Securities Based Upon the Nasdaq-100 Index

August 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 1, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47688 (April 17, 2003), 68 FR 20199.

[4] *See:* letter from Eleni Constantine, Office of the General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), dated May 30, 2003 (''first clarifying letter''); and letter from Eleni Constantine, Office of the General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division, dated July 18, 2003 (''second clarifying letter'').

[5] Nasdaq has consented to an extension of time for Commission action on the proposal until August 1, 2003, under Section 19(b)(2)(B) of the Act.

[6] 15 U.S.C 78o–3.

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] Section 15A(b)(5) of the Act requires that the rules of national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. 15 U.S.C. 78o–3(b)(5).

[9] In its first clarifying letter, Nasdaq represented that mutual fund data is delivered through the legacy data feeds. Nasdaq stated that these products provide MFQS data, OTC Bulletin Board data and index data. Nasdaq represented that the legacy data feed products operate at a very substantial deficit without this new fee. In determining how to reflect these costs in the fee Nasdaq estimated the likely population of users. Its best estimate was that the population of users was probably similar to the firms that pay Nasdaq's index distribution fee. Nasdaq believed that it could most fairly spread the costs over the estimated population if the fee were set at $1,000.

[10] Section 15A(b)(6) of the Act requires that the rules of an association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. 15 U.S.C. 78o–3(b)(6).

[11] In this regard, in its second clarifying letter, Nasdaq represents that, before creation of the internal securities information processor (''SIP'') about a year ago, the Nasdaq proprietary data that comprises the mutual fund data was built into the feed that dealers were required to take. Nasdaq also represents that, with the creation of the internal SIP, the mutual fund data at issue has been separated out from the core SIP data and is provided over a feed that only contains Nasdaq proprietary data. Nasdaq states that this proposal enables vendors to choose whether to take the mutual fund data, without affecting their ability to take the required consolidated data through the SIP. Finally, Nasdaq states that, to the extent that vendors (including Nasdaq.com) choose to take this data and to gain value by redistributing it, Nasdaq will charge a fee for this data, which it incurs costs in compiling.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade Index LeverAged StockMarkEt Return Securities SM linked to the Nasdaq-100® Index (''Notes'') issued by Citigroup Global Markets Holdings Inc. (''CGMHI'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to list and trade Index LeverAged StockmarkEt Return Securities, the return on which is based upon the Nasdaq-100 Index.[3]

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading securities which cannot be readily categorized under traditional listing guidelines.[4] Nasdaq proposes to list for trading notes based on the Nasdaq-100 Index under NASD Rule 4420(f).

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(D) The aggregate market value/principal amount of the security will be at least $4 million.

CGMHI and the Notes will satisfy the criteria set forth above. In addition, CGMHI satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[5] Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least $1 million. The Notes also must have at least two registered and active market makers as required by NASD Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if CGMHI is not able to meet its obligations on the Notes.

The Notes are a series of senior unsecured debt securities that will be issued by CGMHI. Each Index LASERS represents a principal amount of $10. Index LASERS may be transferred only in units of $10 and integral multiples of $10. The Notes will not pay interest and are not subject to redemption by CGMHI or at the option of any beneficial owner before maturity, which is expected on or about one year after the issue date.[6]

At maturity, a beneficial owner will receive an amount in cash equal to $10 plus an index return amount, which may be positive, zero or negative. Because the index return amount may be negative, the maturity payment could be less than the $10 principal amount per Index LASERS and could be zero.

The index return amount will be based on the index return of the Nasdaq-100 Index. The index return will equal a fraction, the numerator of which is the Ending Value[7] minus the Starting Value[8] and the denominator of which is the Starting Value, provided that the index return will not in any circumstances be greater than a cap which is expected to be approximately 5% to 6%.[9] How the index return is calculated will depend on whether the index return is positive, zero or negative.

If the index return is positive, the index return amount will equal the

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[3] The Nasdaq-100 Index is a modified capitalization-weighted index of 100 of the largest non-financial companies listed on The Nasdaq National Market tier of The Nasdaq Stock Market. The Index constitutes a broadly diversified segment of the largest securities listed on The Nasdaq Stock Market and includes companies across a variety of major industry groups. The securities in the Index must, among other things, have an average daily trading volume on Nasdaq of at least 200,000 shares.

In order to limit domination of the Index by a few large stocks, the Index is calculated under a ''modified capitalization-weighted'' methodology, which is a hybrid between equal weighting and conventional capitalization weighting. Under the methodology employed, on a quarterly basis coinciding with Nasdaq's quarterly scheduled weight adjustment procedures, the Index Securities are categorized as either ''Large Stocks'' or ''Small Stocks'' depending on whether their current percentage weights (after taking into account such scheduled weight adjustments due to stock repurchases, secondary offerings, or other corporate actions) are greater than, or less than or equal to, the average percentage weight in the Index (*i.e.*, as a 100-stock index, the average percentage weight in the Index is 1.0%). Such quarterly examination will result in an Index rebalancing if either one or both of the following two weight distribution requirements are not met: (1) The current weight of the single largest market capitalization Index component security must be less than or equal to 24.0%, and (2) the ''collective weight'' of those Index component securities whose individual current weights are in excess of 4.5%, when added together, must be less than or equal to 48.0%. Index securities are ranked by market value and are evaluated annually to determine which securities will be included in the Index. Moreover, if at any time during the year an Index security is no longer trading on the Nasdaq Stock Market, or is otherwise determined by Nasdaq to become ineligible for continued inclusion in the Index, the security will be replaced with the largest market capitalization security not currently in the Index that meets the Index eligibility criteria.

For a detailed description of the Nasdaq-100 Index, see the prospectus supplement that will be filed by CGMHI with the Commission prior to the issuance of the Notes.

[4] See Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993).

[5] NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange (''NYSE'') or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

[6] The actual maturity date will be determined on the day the Notes are priced for initial sale to the public.

[7] The Ending Value will be the closing value of the Nasdaq-100 Index on approximately the third index business day before the maturity date of the Notes.

[8] The Starting Value will equal the closing value of the Nasdaq-100 Index on the date the Notes are priced for initial sale to the public.

[9] The actual cap will be determined on the date the Notes are priced for initial sale to the public.

product of: (i) $10, (ii) the upside participation rate, and (iii) the index return. The upside participation rate is expected to be approximately 500% to 600%.[10] Thus, if the ending value of the Nasdaq-100 Index exceeds its starting value by approximately 5% to 6% or less, the appreciation on an investment in the Notes will be approximately 5 to 6 times the return on an instrument directly linked to the Nasdaq-100 Index because of the upside participation rate. However, because the appreciation cap, together with the upside participation rate, limits the maximum index return amount at maturity to approximately 25% to 36% of the principal amount of the Notes, in no circumstances will the payment received by a beneficial owner at maturity be more than approximately $2.50 to $3.60 per Index LASERS.

If the index return is negative and the value of the Nasdaq-100 Index on any index business day after the date the Notes are priced for initial sale to the public up to and including approximately the third index business day before maturity (whether intra-day or at the close of trading on any index business day) is less than or equal to approximately 75% to 80% of the starting value of the Nasdaq-100 Index, then the index return amount will equal the product of (i) $10, (ii) the downside participation rate, and (iii) the index return. The downside participation rate is expected to be approximately 200%.[11] Thus, the return on the Notes will be less than the return from an investment in an instrument directly linked to the Nasdaq-100 Index because the downside participation rate increases the participation in the index's depreciation by approximately 200%. Because of the downside participation rate, the payment at maturity will be zero if the ending value of the Nasdaq-100 Index is less than or equal to approximately 50% of its starting value. Consequently, investors could lose all or a significant portion of their investment if the Nasdaq-100 Index decreases as described above.

If the index return is negative and the value of the index on any index business day after the date the Notes are priced for initial sale to the public up to and including approximately the third index business day before maturity is not less than or equal to approximately 75% to 80% of the starting value of the Nasdaq-100 Index, then the index return amount will be zero and the maturity payment will be $10 per Index LASERS.

If the index return is zero, then the index return amount will be zero and the maturity payment will be $10 per Index LASERS.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Nasdaq-100 Index. The Commission has previously approved the listing of options on, and other securities the performance of which have been linked to or based on, the Nasdaq-100 Index.[12] These options and other securities, however, do not have a downside participation rate as described above.

As of May 31, 2003, the adjusted market capitalization of the securities included in the Nasdaq-100 Index ranged from a high of $170.3 billion to a low of $2.2 billion. The average daily trading volume for these same securities for the last five months, as of the same date, ranged from a high of 68.1 million shares to a low of 527,400 shares.

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. Specifically, the Notes will be subject to the equity margin rules. In addition, the regular equity trading hours of 9:30 am to 4:00 pm will apply to transactions in the Notes.

Due to the leveraged nature of the Notes, Nasdaq proposes requiring that the Notes only be sold to investors whose accounts have been approved for options trading pursuant to NASD Rule 2860(b)(16). In addition, the NASD's options suitability standards will apply to recommendations regarding the Notes.[13] Furthermore, discretionary orders in the Notes must be approved and initialed on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, such approval shall be confirmed within a reasonable time by a Registered Options Principal.[14] Lastly, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes.

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

CGMHI will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as CGMHI's current procedure involving primary offerings.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6(b)(5),[15] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will provide investors with another investment vehicle based on the Nasdaq-100 Index.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[10] The upside participation rate will be determined on the date the Notes are priced for initial sale to the public.

[11] The downside participation rate will be determined on the date the Notes are priced for initial sale to the public.

[12] *See* Securities Exchange Act Release No. 45429 (February 11, 2002), 67 FR 7438 (February 19, 2002) (approving the listing and trading of Enhanced Return Notes Linked to the Nasdaq-100 Index); Securities Exchange Act Release No. 45024 (November 5, 2001), 66 FR 56872 (November 13, 2001) (approving the listing and trading of Enhanced Return Notes Linked to the Nasdaq-100 Index); Securities Exchange Act Release No. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (approving the listing and trading of Performance Leveraged Upside Securities based upon the performance of the Nasdaq-100 Index); Securities Exchange Act Release No. 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (approving the listing and trading of options based upon one-tenth of the value of the Nasdaq-100 Index); Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (approving the listing and trading of Portfolio Depositary Receipts based on the Nasdaq-100 Index); Securities Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (approving the listing and trading of options on the Nasdaq-100 Index).

[13] *See* NASD Rule 2860(b)(19).

[14] *See* NASD Rule 2860(b)(18).

[15] 15 U.S.C. 78f(b).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq has requested that the Commission shorten the comment period and approve the filing on an accelerated basis in order to allow the listing and trading of the Notes to begin the week of August 25th, 2003. Accordingly, Nasdaq requests that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act, by August 22, 2003. Persons making written ssubmissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–119 and should be submitted by August 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20183 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48264; File No. SR–PCX–2002–57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Implementation of a New Order Audit Trail System

July 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On July 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On July 30, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing the proposed rule change, as amended, to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt new rules relating to the creation of an order audit trail system called Electronic Order Capture System (''EOC''). The proposal will require that every member or member organization that receives an order for execution on the Exchange must immediately record the details of the order (including any modification of the terms of the order or cancellation of the order) into EOC, unless such order has been entered into the Exchange's other electronic order processing facilities.

The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

* * * * *

Rule 6—Options Trading Applicability, Definitions and References

Rule 6.1(a)–No change.

(b) Definitions. The following terms as used in Rule 6 shall, unless the context otherwise indicates, have meanings herein specified:

(1)–(38)—No change.

(39) The term ''Electronic Order Capture System'' (''EOC'') means the Exchange's electronic audit trail and order tracking system that provides a time-sequenced record of all orders and transactions on the Exchange. EOC records the receipt of an order and documents the life of the order through the process of execution, partial execution, or cancellation. This system includes the electronic communications interface between EOC booth terminals and the Floor Broker Hand Held applications. Each member's EOC booth terminal and each Floor Broker Hand Held Terminal contains an electronic order entry screen that displays the terms and conditions of each order received by that member.

(c)–(e)—No change.

* * * * *

Admission to and Conduct on the Options Trading Floor

Rule 6.2(a)–(g)—No change.

(h)(1)–(2)—No change.

(3) Requirements and Conditions.

(A)—No change.

(B) Orders transmitted by registered Exchange Market Makers may be entered directly to the trading posts. All other orders may be entered directly to the trading posts only during outgoing telephone calls that are initiated at the option posts. *Pursuant to Rule 6.67(c), all such orders must be immediately recorded into the EOC unless there is a disruption or malfunction to the EOC, in which case the EOC Contingency Procedures will be in effect in accordance with Rule 6.67(d)(1).*

(C)—No change.

(4)—No change.

(5) Floor Brokers.

(A)–(B)—No change.

(C) Ticket to Follow. *In the event of a disruption or malfunction of EOC, pursuant to Rule 6.67(d), a* [A] Floor Broker in a trading crowd *may represent immediately in the trading crowd a telephonic order received from a Member or Member Firm representative located in a firm member booth* [who receives a telephonic an order from a Member or Member Firm representative located on the Trading Floor may represent that order immediately in the trading crowd], provided (a) that an order ticket for the order must be prepared and time stamped in the member firm booth before the order is transmitted telephonically to the Floor Broker in the trading crowd; and (b) that the written, time-stamped order ticket

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] *See* letter from Tania J. Cho, Staff Attorney, PCX, to Jennifer Colihan, Special Counsel, Division of Market Regulation, (''Division''), Commission, dated July 30, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange clarified that it will not conduct an issue-by-issue roll out of the Electronic Order Capture System as originally proposed.

for the order must be taken to the Floor Broker in the trading crowd immediately after it has been prepared.

(D)—No change.

(6)–(10)—No change.

Commentary

.01–.02—No change.

.03 While on the Trading Floor, clerks *must* [shall] display at all times the badge(s) supplied to them by the Exchange. [Any Market-Maker clerk who writes up an option order on the Options Floor must give his employer a copy of that order before it is delivered; the employer must retain the copy on his person until it is executed.] A clerk receiving a phone order must *immediately record the details of the order into EOC pursuant to Rule 6.67(c).* [must initial, must mark as opening or closing and must time-stamp the order.]

.04 For orders excepted from EOC, pursuant to Rule 6.67(d), a Market-Maker clerk who writes up an option order on the Options Floor must give his employer a copy of that order before it is delivered; the employer must retain the copy on his person until it is executed. A clerk receiving a phone order must initial, must mark as opening or closing and must time-stamp the order.

.05[.04]—No change.

* * * * *

Fast Markets and Unusual Market Conditions

Rule 6.28(a)—No change.

(b)(1)—No change.

(2) *For orders excepted from EOC, pursuant to Rule 6.67(d),* [T]*t*he OBO may temporarily move less active issues to another post if the Book is extremely active. [Books left at the post may be separated and order shoes provided for the most active series to facilitate order flow. A special time stamp will be placed behind the Book to stamp incoming transactions before they go to Price Reporting.]

(3)–(6)—No change.

(c)–(d)—No change.

* * * * *

Appointment of Market Makers

Rule 6.35—No change.

Commentary

.01–.03—No change.

.04 For the purposes of this rule, temporarily undertaking the obligations of a Primary Appointment with respect to non-Primary Appointment classes of option contracts at the request of an Options Floor Trading Committee member shall not be deemed trading in non-Primary Appointment classes. In addition, a Market Makers' trades effected through a floor broker do not count for nor against the Market Maker's 75% requirement, regardless of whether the trades are in issues within or without his Primary Appointment. Also, Market Makers who are solicited on an order on behalf of an account other than that of another Market Maker may accommodate such orders, provided that the orders are clearly announced in the trading crowd as solicited, and such transactions shall not count for nor against the 75% requirement. Such *orders* [trades] *must* [shall] be designated by the Market Maker with an ''S'' in the ''[o]*O*ptional Data'' *field* [section] of the *electronic order entry screen or, for orders excepted from EOC pursuant to Rule 6.67(d), in the ''Optional Data'' section of the* trade ticket.

.05—No change.

* * * * *

''Crossing'' Orders and Stock/Option Orders

Rule 6.47(a)—No change.

(b) Crossing of Facilitation Orders. A Floor Broker who holds an order for a public customer of a member organization and a facilitation order may cross such orders provided that he proceeds in the following manner:

(1)—No change.

(2) [The option order tickets for both the [f]*F*acilitation order*s* and [the] customer order*s* must *be entered into EOC and* [display] all of the terms of such orders, including any contingencies involving, and all related transactions in, either options or underlying or related securities, *must be displayed on the electronic order screen. If facilitation orders and customer orders are excepted from EOC, pursuant to Rule 6.67(d), then order tickets must display this same information.* The Floor Broker must disclose all securities that are components of the customer order.

(3)–(6)—No change.

(c)—No change.

(1)–(3)—No change.

(4) ''Solicited'' *must* [shall] be *entered* [written] in the ''Optional Data'' *field of the electronic order entry screen or, for orders excepted from EOC pursuant to Rule 6.67(d), written in the ''Optional Data'' section of the trade ticket.* [area on the order ticket of the solicited order. If the solicited order is for a market maker account, the order ticket shall be personally initialed by the solicited market maker, who must have in his possession a copy of such order ticket at all times such order is active.]

(5)—No change.

(d)–(e)—No change.

(f) Stock/Option Orders. When a stock/option order is taken to a crowd for execution, the stock transaction must be effected prior to the option transaction pursuant to Rule 6.47, Commentary .04. The following procedure applies to all executions of stock/option orders: [A]*a*fter an agreement with other members of the crowd has been reached as to the terms of the transaction, the option order *must be entered into EOC or, for orders excepted from EOC, pursuant to Rule 6.67(d), written on* tickets [must be written up] and time stamped. However, the *option transaction will* [order tickets should] not be *reported to Options Price Reporting Authority (''OPRA'') by EOC or, for orders excepted from EOC, pursuant to Rule 6.67(d),* turned in to the Order Book Official at this time. The members *will* [shall] attempt to immediately effect the transaction in the underlying or related security. If the stock transaction cannot be executed immediately or is effected at a price other than *an* [the] agreed-upon price, the members *will* [shall] not be held to the option transaction. If the stock transaction is effected at *an* [the] agreed-upon price, then all the members who participated in the option transaction *will* [shall] be held to their agreed-upon price. At the time the stock transaction is effected, the option *transaction must be immediately entered into EOC and reported to OPRA or, for orders excepted from EOC, pursuant to Rule 6.67(d),* trade tickets *must* [should] be given to the Order Book Official.

Commentary

.01–.06—No change.

* * * * *

Discretionary Transactions

Rule 6.48.(a)–(b)—No change.

(c) A Market Maker shall not exercise discretion in an account unless he has a direct interest in such account. Market Makers may not exercise discretion over any account other than: a joint account approved pursuant to Rule 6.39, or an account in which the Market Maker has a direct interest. For purposes of this Rule, the term ''direct interest'' in an account is limited in its meaning to include only a participation in the profits and losses in such account, or in the case of a partnership or corporation, a representative of such partnership or corporation who has a supervisory responsibility over such account. Only persons registered as Market Makers and subject to the performance obligations set forth in Rule 6.37, may exercise discretion over an account.

(1) A Market Maker wishing to effect such discretionary transactions for

accounts other than the Market Maker's personal account or a joint account must enter the order with a Floor Broker and the procedures set forth in Rule 6.85. The identification of the order as a discretionary order is required pursuant to [PCX] Rule 6.68(a)*(5)*. [(7), ''Record of Orders.'']

(A) *The clearing acronym* [name] of the Market Maker for whom the transaction is being executed must be [printed at the bottom of the ticket (B–6–1(c)),] *entered into EOC or, for orders excepted from EOC, pursuant to Rule 6.67(d), written on the ticket* along with the *clearing acronym* [badge number] of the Market Maker exercising discretion [(i.e.e.g., Joe Trader/MO7)]; and

(B) A ''D'' must be placed after the Market Maker's *clearing acronym* [number,] for whose account the trade is executed[, in the firm box (e.g., MO5 D)].

Solicited Transactions

Rule 6.49(a)–(b)—No change.

(c) ''Solicited'' *must* [shall] be *entered* [written] in the ''Optional Data'' *field of the electronic order entry screen for* [area on the order ticket of] the Solicited order. *For orders excepted from EOC, pursuant to Rule 6.67(d), ''Solicited'' must be written in the ''Optional Data'' section on the order ticket of the Solicited order.*

* * * * *

ORDER BOOK OFFICIALS

Order Book Official Defined

Obligations for Orders

Rule 6.52(a)–(d)—No change.

Commentary

.01.—.03—No change.

.04 For purposes of this Section, orders *excepted from EOC, pursuant to Rule 6.67(d),* will be within the custody of Order Book Officials only when they have been deposited, properly time-stamped and marked, in the proper receptacle.

.05—No change.

* * * * *

Certain Types of Orders Defined

Rule 6.62(a)–(b)—No change.

(c) A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied. [while the order is at the Post.]

(d)—No change.

(e) Not held order. *A not held order is an order that provides a broker with discretion as to price or time in executing the order. A ''not held'' order must be designated as such in the ''Optional Data'' field of the electronic order entry screen. For orders excepted from EOC, pursuant to Rule 6.67(d), a* [A] not held order [is an order that] is marked ''not held'', ''NH'', ''take time'' or *marked with some* [that bears any] qualifying notation giving discretion as to the price or time at which such order is to be executed. The ''not held'' designation must appear in the ''special instructions'' portion of the order ticket. Orders that merely include a ''not held'' designation as part of the time stamp will not be deemed to be ''not held'' orders.

(f)–(j)—No change.

* * * * *

Order Format and System Entry Requirements

[Orders Required To Be in Written Form]

Rule 6.67(a). Transmitted to the Floor. Each order transmitted to the Floor must be recorded legibly in a *format* [written form] that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the Floor. Each such order must be in *a* legible *format* [written form] when *transmitted* [taken] to the post for attempted execution. Orders sent electronically through the Exchange's Member Firm Interface *or orders entered into the Exchange's EOC* are [deemed to be written] *approved formats for transmitting orders* for purposes of Rule 6.67.

(b) Order Format Requirements. Orders sent to the Exchange for execution must comply with the order format requirements established by the Exchange relating to, among other things, option symbol, expiration month, exercise price, type of option (call or put), quantity of option contracts, clearing member organization, whether the order is to buy or sell, and whether the order is market or limit.

[(b) Cancellations and changes. Each cancellation of, or change to, an order that has been transmitted to the Floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such cancellation or change must record the time of its receipt on the Floor.]

(c) EOC Entry Requirement. Every member or member organization that receives an order for execution on the Exchange must immediately record the details of the order (including any modification of the terms of the order or cancellation of the order) into EOC, unless such order has been entered into the Exchange's other electronic order processing facilities (e.g., orders sent electronically through the Exchange's Member Firm Interface). The details of each order required to be recorded upon receipt must include the data elements prescribed in Rule 6.68(a)(1) through (9), and such other information as may be required by the Exchange from time to time.

[(c) Executions. A member transmitting from the Floor a report of the execution of an order must record the time at which a report of such execution is received by such member.]

(d) Exceptions to EOC Entry Requirement. The EOC entry requirement provision of subsection (c) will not apply during any disruption or malfunction of EOC or any Exchange system relied on by a Floor member to record the details of an order.

[(d) A Floor Broker may represent a telephonic order, with the ticket to follow, as provided in Rule 6.2(h)(4)(C).]

(1) EOC Contingency Procedures. In the event of an EOC system disruption or malfunction, the EOC entry requirement will be suspended upon approval by two Floor Officials. At this time, member firms shall use a backup supply of tickets to record the details of all orders received through non-electronic means. All order events (i.e., receipt, changes, execution, partial execution, cancellation, or nothing done) must be immediately time stamped (a time stamp synchronized with the atomic clock will be available at all trading posts). During such circumstances, existing rules on manual processing of order tickets are applicable. Once the disruption or malfunction to the EOC system has been corrected, as determined by two Floor Officials, all member firms must input all orders into an EOC device via the ''as-of'' field, noting the times of events of the orders. Any member firm who fails to follow such procedures will be subject to disciplinary action pursuant to Rule 10.

(e) Hand Signals. The following regulations govern the proper use of hand signals on the Options Trading Floor: [(1)] Hand signals may always be used to request and to relay information regarding current quotations and market size. Hand signals may also be used to increase or decrease the size of an order, to change the order's limit, to cancel an order or to activate a market order.

(1) EOC Eligible Orders. Any cancellation of or change to an order relayed to a Floor Broker through the use of hand signals *must be entered into EOC* [also must be relayed to the Floor Broker in a time stamped, written form immediately thereafter]. All cancellations and changes of orders held by the Order Book Official must be *immediately submitted electronically.* [in written form. Executing brokers who

receive such communications must have a written order in their possession with all of the following information on the ticket:]

(2) Orders Excepted from EOC Pursuant to Rule 6.67(d). Executing brokers who receive any cancellation of or change to an order relayed to a Floor Broker through the use of hand signals must be relayed to the Floor Broker in a time stamped, written form immediately thereafter. All cancellations and changes of orders held by the Order Book Official must be in written form. Executing brokers who receive such communications must have a written order in their possession with all of the following information on the ticket:

Underlying security ticker symbol
Expiration month
Striking price
Volume
Purchase or Sale Notation
Whether Market or Limit Order

(A)[(2)] Cancellation of orders held by the Floor Broker must be in written form in accordance with current practice. A Floor Broker may cancel an order through the use of hand signals if it is followed immediately by written cancellation.

(B)[(3)] Any change to an order must be documented in writing outside of the crowd and the ticket time-stamped, before the revised order may be represented.

[(f) Any member desiring to use an order form in a format other than that provided by the Exchange must submit such form to the Options Floor Trading Committee and obtain its approval prior to using such form on the Floor.]

(f) The system entry requirement prescribed in subsection (c), above, will be operative on or before August 29, 2003.

* * * * *

Record of Orders

Rule 6.68(a). Every member organization *must* [shall] maintain and preserve for the period specified under SEC Rule 17a–4, a [written] record of every order and of any other instruction given or received for the purchase or sale of option contracts. Such record *must* [shall] show the terms and conditions (market order, limit order, etc.) of the order or instruction and of any modification or cancellation thereof, and in addition *must* [shall] include:

[(1) The account designation for which such order is to be executed;

(2) the date and time stamp indicating the time the order was entered and executed or cancelled;

(3) the type of option and the underlying stock;

(4) the expiration month, the exercise price, the number of option contracts and the execution price (premium);

(5) whether the order is a purchase or a sale (writing) and whether the order is an opening or a closing transaction;

(6) whether the order is solicited or unsolicited; and

(7) whether the order is discretionary.]

(1) Clearing member organization;

(2) Option symbol, expiration month, exercise price, and type of option (call or put);

(3) Side of market (buy or sell);

(4) Quantity of option contracts;

(5) Any limit price, stop price, or special conditions;

(6) Opening or closing transaction;

(7) Time in force;

(8) Account origin code;

(9) Solicited or unsolicited;

(10) Order identification number;

(11) Order entry date and time, or the date and time of any modification of the terms of the order or cancellation of the order;

(12) Order execution time and price;

(13) Identity of the executing broker and the other party to the transaction; and

(14) Such other information as may be required by the Exchange.

(b) *EOC* Record Retention. *Members and member organizations will comply with their record keeping obligations under this Rule by immediately entering orders upon receipt (including any modifications and cancellations) into EOC or the Member Firm Interface and retaining the record of such orders.*

(c) Record Retention for Orders Excepted from EOC Pursuant to Rule 6.67(d). In addition to the white (control) copy, and/or hard copy, which must be kept for the entire amount of time specified in Securities Exchange Act Rule 17a–4, the green (commission) copy must also be retained for a minimum of 48 hours from the trade date. In the case of those orders executed by independent Floor Brokers, it is their responsibility to retain the green (commission) copy, and the executing member firm must retain the white or hard copy. Also, all such records must be readily available for use on the trading floor for the resolution of any problems relating to the execution of these orders.

* * * * *

Reporting Duties

Rule 6.69(a)–(e)—No change.

Commentary

.01 *EOC Reporting Procedure.* The Options Floor Trading Committee has established the following procedure for reporting of transactions pursuant to Rule 6.69. For each transaction on the Exchange in which *a member* [he] participates as seller, *that* [a floor] member *will* [shall] immediately record into *EOC,* [on a card or ticket in a form acceptable to the Committee his] *its* assigned broker initial code, the symbol of the underlying security, the type, expiration month and exercise price of the option contract sold, the transaction price, the number of contract units comprising the transaction, the name of the contra clearing member, and the assigned broker initial code of the contra member. Members *must report any* [shall identify price reporting tickets which represent the] partial execution of a larger order in*to EOC* [the manner prescribed by the Exchange. The card or ticket for a] Any agency order *must* [shall] also include the account origin code[,]. [as set forth in Commentary .02 below. This reporting card or ticket shall immediately be time-stamped at the station where option contracts of the class involved are traded and attached to the appropriate ''buy'' ticket. The card or ticket shall then be placed in the price reporting card box provided at the station. Before placing the tickets in the box, the member shall use his best efforts to make sure that the Order Book Official with respect to option contracts of the class involved, or the Order Book Official clerk, is aware of the transaction and its price. In transactions when the buyer accepts tickets from the seller(s), it shall be the buyer's responsibility to time-stamp the tickets, use best efforts at securing the Order Book Staff's attention to the transaction, and submit the tickets into the box.] Any floor member failing to immediately report a transaction in accordance with Rule 6.69 *will* [shall] be subject to [being fined] *disciplinary action pursuant to Rule 10.* [by the Options Floor Trading Committee.]

.02 Reporting Procedures for Orders Excepted from EOC Pursuant to Rule 6.67(d). The Options Floor Trading Committee has established the following procedure for reporting of transactions pursuant to Rule 6.69. For each transaction on the Exchange in which a member participates as seller, that floor member will immediately record, on a card or ticket in a form acceptable to the Committee, its assigned broker initial code, the symbol of the underlying security, the type, expiration month and exercise price of the option contract sold, the transaction price, the number of contract units comprising the transaction, the name of the contra

clearing member, and the assigned broker initial code of the contra member. Members must identify price reporting tickets that represent the partial execution of a larger order in the manner prescribed by the Exchange. The card or ticket for any agency order must also include the account origin code, as set forth in Commentary .03 below. This reporting card or ticket shall immediately be time-stamped at the station where option contracts of the class involved are traded and attached to the appropriate ''buy'' ticket. The card or ticket shall then be placed in the price reporting card box provided at the station. Before placing the tickets in the box, the member shall use his best efforts to make sure that the Order Book Official with respect to option contracts of the class involved, or the Order Book Official clerk, is aware of the transaction and its price. In transactions when the buyer accepts tickets from the seller(s), it shall be the buyer's responsibility to time-stamp the tickets, use best efforts at securing the Order Book Staff's attention to the transaction, and submit the tickets into the box. Any floor member failing to immediately report a transaction in accordance with Rule 6.69 will be subject to disciplinary action pursuant to Rule 10.

[.02 Reporting of Trade Information. The responsibility for time stamping and reporting of trades to the Order Book is as follows:

(a) One buyer, multiple sellers—responsibility is with the buyer

(b) one seller, multiple buyers—responsibility is with the seller

(c) one buyer, one seller—responsibility is with the seller]

.03 *Origin Codes for Orders Excepted from EOC Pursuant to Rule 6.67(d).* For purposes of Rule 6.69(d), trade information includes the proper account origin codes, which are as follows: ''C'' for non-broker-dealer customer accounts; ''F'' for firm proprietary accounts; ''M'' for member Market Maker accounts; and ''B/D'' for firm orders of non-member broker-dealer accounts, stock specialist accounts, or customer account trades of the broker-dealer or non-member broker-dealer. In addition, Market Maker clearing firms are directed to instruct their respective trading desks to identify Market Maker orders that are entered from off the floor and not entitled to Market Maker margin treatment by placing a ''C'' after the Market Maker's number in the ''firm'' box on the ticket. Floor Brokers, when accepting an order by phone from a Market Maker, are similarly directed to identify that order in the same manner.

.04—No change.

* * * * *

Priority and Order Allocation Procedures

Rule 6.75(a)–(h)—No change.

Commentary

.01–.03—No change.

.04 Combination, Spread and Straddle Orders. Following are the proper trading procedures for combination, spread and straddle orders:

(a) Announcing the Order. Any member holding a combination, spread, or straddle order must [write it on one ticket and must] bid or offer for each series in the order. *For orders excepted from EOC, pursuant to Rule 6.67(d), such orders must be written on a ticket.* The member may express the order as it applies to each separate series or may express the order at its total or net debit/credit alone, so long as it is clear that the member is attempting to execute both series as a combination, spread, or straddle. The executing member must ensure that the trading crowd is aware of the request for a market and has an opportunity to participate in the transaction.

(b)–(g)—No change.

* * * * *

Joint Accounts

Rule 6.84(a)–(h)—No change.

Commentary

.01–.02—No change.

.03 Transactions on the Floor will be presumed to be for the proprietary account of the individual members unless the *executing member enters the* joint account symbol *into EOC. For orders excepted from EOC, pursuant to Rule 6.67(d), transactions on the Floor will be presumed to be for the proprietary account of the individual members unless the joint account symbol* is given up and used on the trade ticket to represent the joint account as the executing member.

.04 Any order of a joint account participant[,] *that* [which] is executed by a Floor Broker, *must* [shall] be in accordance with *the* procedures set forth in Rule 6.85, except that the joint account trading number with its alpha identification *must be entered into EOC, or, for order excepted from EOC, pursuant to Rule 6.67(d), the joint account trading number with its alpha identification must* [should] appear in the ''executing firm'' area. Additionally, a joint account may not bid, offer, purchase, sell, or enter orders in an option series in which a Floor Broker holds an order on behalf of the joint account or for the proprietary account of another participant in the joint account. Orders of joint account participants in a particular option series may not be concurrently represented[,] by one or more Floor Brokers.

.05–07—No change.

* * * * *

Market Maker Orders Executed By Floor Brokers

Rule 6.85(a)–(c)—No change.

Commentary

.01–.02—No change.

.03 *Orders Excepted from EOC Pursuant to Rule 6.67(d).* Market Maker order tickets should be prepared by the Market Maker, when possible. All orders *must* [shall] be recorded and time-stamped, pursuant to Rule 6.67. Order tickets *must* [shall] include the acronym of the Market Maker entering the order in the area marked ''buying firm/selling firm,'' with the Market Maker's name printed at the bottom of the ticket. Order tickets must be marked to indicate whether the order is ''GTC'' or day only. The acronym of the executing Floor Broker *must* [shall] be written in the area marked ''executing member.'' When utilizing a ''partial order'' ticket to facilitate the completion of an order, the control number of the original order ticket must be written on the partial order ticket.

Except as provided in Rule 6.2(h)(*5*)[(4)](C) (Ticket to Follow Rule), when a Floor Broker receives a verbal order from a Market Maker, or when a Floor Broker is requested by a Market Maker to alter an order in his possession in any way, the Floor Broker *must* [shall] immediately prepare an order ticket from outside the trading crowd and timestamp it.

* * * * *

Floor Broker Hand-Held Terminals

Rule 6.89(a)—No change.

(b) Proprietary Brokerage Order Routing Terminals:

(1)–(3)—No change.

(4)(A)—No change.

(B) *Orders Excepted from EOC Pursuant to Rule 6.67(d).* When a Member executes an order that was received over a Terminal, the Member must fill out and *immediately* time stamp a trading ticket [within one minute of the execution]. Exchange rules on record keeping and trade reporting are unchanged.

(C)–(D)—No change.

(5)–(7)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange is proposing to effect rule changes to support the implementation of its new audit trail system known as Electronic Order Capture System (''EOC'').[5] EOC is intended to fulfill one of the undertakings contained in the Commission's Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. (''Order'').[6] Specifically, this rule filing is intended to respond to Section IV.B.e.(v) of the Order, which requires, among other things, that the PCX incorporate into its audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions, beginning with the receipt of the order and documenting the life of the order through the process of execution, partial execution, or cancellation.[7]

Currently, the PCX operates an electronic order routing and execution system called Pacific Options Exchange Trading System (''POETS''),[8] and several other peripheral systems including the Pacific Options Processing System (''POPS'')[9] and the Floor Broker Hand Held trading system,[10] in conjunction with traditional open outcry trading with Floor Brokers and competing Market Makers. The Exchange's Member Firm Interface (''MFI'') enables Member Firms to send orders electronically to the Exchange for delivery to either POETS, a Floor Broker Hand Held Terminal, or to a Member Firm's default destination.[11] While all executions using POETS and electronic hand-held devices carry immediately assigned system times, orders that are routed to the Floor by telephone or sent to Member Firm printers located on the Floor generally require manual trade ticket processing. Under the proposal, EOC will eliminate the manual processing of order tickets and will further facilitate the creation and development of a comprehensive audit trail and automated surveillance systems.

Summary of Proposed Rule Changes

The Exchange is proposing to adopt a number of changes to its rules regarding the record of orders (principally PCX Rules 6.67 and 6.68) to enhance the Exchange's audit trail and self-regulatory capabilities. The proposed changes to the text of the PCX rules are summarized below.

(1) Electronic Order Capture System (''EOC'')

EOC is the Exchange's proposed electronic audit trail and order tracking system that will provide a time-sequenced record of all orders and transactions on the Exchange.[12] EOC will record the receipt of an order and will document the life of the order through the process of execution, partial execution, or cancellation. This system includes the electronic communications interface between EOC booth terminals and the Floor Broker Hand Held Terminal applications. Each Member's EOC booth terminal and each Floor Broker Hand Held Terminal will contain an electronic order entry screen that displays the terms and conditions of each order received by that Member.

The Exchange is proposing to adopt new PCX Rule 6.67(c),[13] which requires that every Member or Member Organization that receives an order for execution on the Exchange must immediately[14] record the details of the order (including any modification of the terms of the order or cancellation of the order) into EOC, unless such order has been entered into the Exchange's other electronic order processing facilities[15] (*e.g.*, orders sent electronically through the Exchange's MFI).[16] The details of each order that will be required to be recorded upon receipt include the following:[17] (1) Clearing member organization; (2) Option symbol, expiration month, exercise price, and type of option (call or put); *(3)* Side of market (buy or sell); *(4)* Quantity of option contracts; *(5)* Any limit price, stop price, or special conditions; *(6)* Opening or closing transaction; *(7)* Time in force; *(8)* Account origin code; and *(9)* Solicited or unsolicited.[18]

Member Firms may comply with the proposed rule in one of three ways: (1) Required order details may be transmitted via the Exchange's other electronic order processing facilities that electronically assign the time of receipt on the Exchange; (2) Order details may be routed to the Member

[5] PCX is currently working with the other options exchanges through the Intermarket Surveillance Group (''ISG'') in the design and implementation of the Consolidated Options Audit Trail System (''COATS''). Upon its completion, COATS is expected to be a fully integrated intermarket audit trail using quote and trade data from all the options exchanges. EOC is a project specific to PCX and it will contain certain trade information for inclusion into COATS.

[6] *See* Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3–10282.

[7] *Id.* at 13–14.

[8] POETS is the Exchange's automated trading system comprised of an options order routing system, an automatic execution system (''Auto-Ex''), an on-line limit order book system (''Auto-Book''), and an automatic market quote update system (''Auto-Quote'').

[9] POPS is the Exchange's automated system that compares trade information entered by Member Firms and submits trades to the Options Clearing Corporation for clearance and settlement.

[10] The Floor Broker Hand Held interface is an automated order delivery system that enables Floor Brokers to receive and execute orders electronically, and to report trade executions to the tape via the Options Price Reporting Authority (''OPRA'') and to POPS for clearing. *See* PCX Rule 6.89.

[11] A Member Firms'' default destination may be either a particular firm booth or a remote entry site, to which orders that fail to meet the eligibility criteria necessary for Auto-Ex or Auto-Book will be delivered.

[12] *See* proposed PCX Rule 6.1(b)(39) (definition of ''Electronic Order Capture System'').

[13] Former PCX Rules 6.67(b), (c) and (d) are being deleted as they are redundant and superfluous provisions pursuant to proposed PCX Rules 6.67(c), 6.67(d) and 6.67(d)(1).

[14] The Exchange commits that it will implement proactive and effective surveillance procedures for violations of Exchange rules and federal securities laws, including, but not limited to, rules prohibiting trading ahead and front running, related to the entry of customer orders into the EOC system.

[15] The EOC entry requirement will also apply to PCX Plus.

[16] The systemic entry requirement would not be applicable to transactions initiated on the Floor and executed by a registered Market Maker or a Lead Market Maker for their own account, as such trades that may be initiated on the Floor and that are already reported to POETS via proprietary hand-held devices.

[17] The Exchange notes that the order entry time and identification number are automatically assigned upon entry into EOC. Further, the Exchange notes that certain data elements tied to execution, such as executing broker, contra broker, execution time and price are not available at the time that order details are entered into EOC. This information will be captured automatically by EOC at the time of execution of an order. Telephone call between Peter D. Bloom and Tania J. Cho, Attorneys, PCX, and Jennifer Colihan, Special Counsel, Division, Commission, on July 29, 2003.

[18] The proposed rule also includes a provision that would require Member Firms to record such other information as may be required by the Exchange from time to time.

Firm booth by telephone or be sent to the Member Firm's printer located on the Floor, and immediately entered into the EOC booth device, which will electronically assign the time of receipt on the Exchange; or (3) Orders may be received during outgoing telephone calls that are initiated at the option post, and then immediately entered into the EOC booth device, which will electronically assign the time of receipt on the Exchange pursuant to PCX Rule 6.2(h)(3)(B).[19] The EOC booth device that is used to record the details of the order upon receipt on the Floor is an Exchange provided system.[20] The EOC booth device and the enhancements to the existing Floor Broker Hand Held Terminal applications will support the entry of all order types (including contingency and complex orders, *i.e.*, multiple-leg option and stock/option orders) and all required information, as well as provide quick entry templates to speed data entry. Once a Member Firm's booth clerk records the details of an order into EOC or in the case when a Floor Broker receives an order pursuant to PCX Rule 6.2(h)(3)(B), the order is routed electronically to a Floor Broker Hand Held Terminal for representation in the trading crowd.[21] Member Firms will have the capability to track and display all orders that are submitted through the EOC booth device, as all orders will be assigned an unique identifier that will be used throughout the life of the order.

Once an order has been executed, the Floor Broker Hand Held Terminal system will route trade information to POETS (via the EOC interface), which will then route the information to POPS for trade match and clearing purposes. At the same time, the Exchange will send a report to the Member Firm that entered the order and will transmit trade information to OPRA.

The Exchange believes that the implementation of EOC, as described above, will improve order information management features resulting in operational efficiencies for Member Firms.

(2) Order Format Requirements

The Exchange's current rules governing the order format requirements in transmitting orders to the Exchange are set forth in PCX Rule 6.67(a). The Exchange is proposing to add interpretive language to make it clear that EOC is an approved format for transmitting orders for purposes of this Rule. In addition, proposed PCX Rule 6.67(b) requires that orders sent to the Exchange for execution must comply with the order format requirements established by the Exchange relating to, among other things, option symbol, expiration month, exercise price, type of option (call or put), quantity of option contracts, clearing member organization, whether the order is to buy or sell, and whether the order is market or limit.

(3) Exceptions to EOC Entry Requirement

An exception to the requirement for recording order information into EOC is contained in proposed PCX Rule 6.67(d). Under this proposed rule, if a disruption or malfunction to EOC or any other Exchange electronic order processing system occurs, the EOC entry requirement will be suspended upon the approval of two Floor Officials, and the EOC Contingency Procedures will be in effect pursuant to PCX Rule 6.67(d)(1).[22] If the Exchange is still able to process and disseminate quotes accurately, then any orders received by the Exchange will be processed manually through the use of paper tickets. In such circumstances, all other Exchange rules governing options trading will remain in effect. Accordingly, the Exchange intends to retain its existing rules that are applicable to the manual processing of order tickets. Minor changes have been made throughout the existing options trading rules to allow for manual processing of trade tickets when necessary.

(4) Record of Orders

Current PCX Rule 6.68(a) requires Member Organizations to maintain and preserve certain information items relating to the terms of each option order. The Exchange is proposing to make minor technical changes to the text by renaming and renumbering certain information items enumerated in the Rule for clarity. The proposed rule change does not replace existing requirements for recording orders contained in this Rule.

The Exchange is also proposing to add new PCX Rule 6.68(b) to make it clear that Members and Member Organizations must comply with their record keeping obligations under this Rule by immediately entering orders upon receipt (including any modifications and cancellations) into EOC or the MFI and retaining the record of such orders.[23]

(5) Reporting of Trade Information

The Exchange proposes to rescind current PCX Rule 6.69, Commentary .02, which relates to the trade reporting requirements of Members. The Exchange believes that this rule is superfluous and that it is inconsistent with PCX Rule 6.69(b), which already requires that the Member representing the sell side of a transaction is responsible for reporting the transaction to the Exchange in a form and manner prescribed by the Exchange. Therefore, because current PCX Rule 6.69(b) accurately reflects the PCX's existing trade reporting requirements, the Exchange is proposing to eliminate Commentary .02 of this rule for clarity.

Proposed new PCX Rule 6.69, Commentary .02 specifies the reporting procedures for orders that are manually processed when there is a disruption or malfunction with the EOC pursuant to PCX Rule 6.67(d). This proposed new rule was adapted from current PCX Rule 6.67, Commentary .01.

(6) Implementation Date

The system entry requirement proposed in this rule change will be operative on or before August 29, 2003.[24] This date is consistent with the extension deadline provided by the Commission to the PCX (and other respondent exchanges) for compliance with Section IV.B.e.(v) of the SEC Order to incorporate into the audit trail all non-electronic orders.[25]

(7) Miscellaneous Changes

The Exchange proposes to make several minor, non-substantive changes to the text of several existing PCX Rules to correct stylistic, grammatical and typographical errors and to conform the

[19] The Exchange's order processing systems have been designed so that the clocking mechanisms do not deviate by more than three seconds from the Naval Observatory atomic clock in Washington, D.C.

[20] The EOC will not initially support the use of a Member Firm's proprietary system to comply with the proposed order entry requirements.

[21] Orders sent via the EOC interface to a Floor Broker in the trading crowd may subsequently be transmitted electronically to another Floor Broker on the Floor. When an order is transmitted from one Member to another, the EOC will capture each phase of processing as the order moves from entry to execution.

[22] Under the proposed rule, member firms must use a backup supply of tickets to record the details of the order received through non-electronic means and time stamp the order of events. Once the disruption or malfunction has been corrected, as determined by two Floor Officials, member firms must input all orders into an EOC device using the ''as-of'' field.

[23] Former PCX Rule 6.68(b) is being renumbered as new Rule 6.68(c).

[24] *See* proposed PCX Rule 6.67(f).

[25] *See* Letter from Annette L. Nazareth, Director, Division of Market Regulation, Stephen M. Cutler, Director, Division of Enforcement, and Lori A. Richards, Director of Office of Compliance Inspections and Examinations, Securities and Exchange Commission to Kathryn L. Beck, Pacific Exchange, Inc., dated June 10, 2003.

proposed rules to the new EOC requirements.[26]

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[27] of the Act, in general, and further the objectives of Section 6(b)(5),[28] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B) of the Act,[29] which states that the new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–57 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20131 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

[26] *See e.g.*, proposed PCX Rules 6.48 and 6.62(e).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78k-1(a)(1)(B).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48266; File No. SR–Phlx–2003–56]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Pilot Program to Deploy the Options Floor Broker Management System

July 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated basis. The pilot will expire on August 29, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to effect a pilot program to deploy a new component of the Exchange's Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)[3] by adopting new Phlx Rules 1063(e) and 1080, Commentary .06 relating to the Exchange's Options Floor Broker Management System (the ''System'') on a pilot basis beginning not later than July 31, 2003, extending through full deployment of the System not later than August 29, 2003 (''the pilot'').

In order to have enforceable rules in place concerning the System, and to ensure that Floor Brokers using the System during the month-long deployment would not be in violation of current Exchange rules concerning ticket marking requirements, the Exchange proposes that the following rule text, which would apply to Floor Brokers using the System during the pilot, become effective on a pilot basis, to expire on August 29, 2003.[4]

The text of the proposed rule change is set forth below. New text is in italics; deletions are in brackets.

* * * * *

Obligations And Restrictions Applicable To Specialists And Registered Options Traders

Rule 1014.

(a)–(f) No change.

(g) Equity Option and Index Option Priority and Parity

(i)(A) Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting System, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[4] The Exchange has filed for permanent approval of the proposed rules. *See* SR–Phlx-2003–40 and Amendment No. 1 thereto. The Exchange acknowledges that SR–Phlx-2003–40 and Amendment No. 1 thereto will be subject to publication of a Notice in the **Federal Register** and subject to public comment, which may result in amendments to the proposed rules.

orders when competing at the same price, as described below.

For the purpose of paragraph (g) of this Rule, ''Initiating Order'' means an incoming contra-side order. ''Remainder of the Order'' means the portion of an Initiating Order that remains following the allocation of contracts to customers that are on parity, in accordance with this Rule 1014(g)(i). The remainder of the Order shall be allocated pursuant to this Rule 1014. An account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts.

Orders of controlled accounts must yield priority to customer orders. Orders of controlled accounts are not required to yield priority to other controlled account orders.

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be (1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and (2) recorded as for a controlled account by appropriately circling the ''yield'' field on the floor ticket of any such order (except market maker tickets) *or, in the case of trades involving a Floor Broker, by making the appropriate notation the Options Floor Broker Management System.*

(ii)–(v) No change.

(vi) In order to facilitate timely tape reporting of executed trades, it is the duty of the persons identified below to allocate, match and time stamp manually executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution:

(i)–(iv) No change.

The person responsible for trade allocation (the ''Allocating Participant'') shall, for each trade allocated by such Allocating Participant, circle his or her badge identification number on the trade tickets, identifying himself or herself as the Allocating Participant in the particular trade. If the Allocating Participant is not a participant in the trade to be allocated, he/she shall identify himself/herself by initiating the trade tickets. *In the case of a trade in which a Floor Broker is the Allocating Participant, such Floor Broker shall allocate the trade using the Options Floor Broker Management System.*

Execution Guarantees

Rule 1015. (a) (i)—(v) No change.

(vi) Floor Brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible Floor Broker must advise the crowd of that fact prior to bidding/offering on behalf of the order or executing the order. The [responsible floor agent] *Floor Broker or his employees* must [legibly mark the floor ticket as ''B/D''] *make the appropriate notation on the Options Floor Broker Management System* when it has been determined that the order is for an account of a broker/dealer.

(vii) No change.

(b) No change.

General Comparison and Clearance Rule

Rule 1051. (a) A member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds of the execution to the tape, except that, when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape. Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

(b) No change.

Responsibilities of Floor Brokers

Rule 1063. (a)–(d) No change.

(e) Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) The order type (i.e., customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position. Upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade. Floor Brokers or their employees shall enter clearing information onto the Options Floor Broker Management System no later than five minutes after the execution of a trade. In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order.

Crossing, Facilitation and Solicited Orders

Rule 1064. (a) No change.

(b) Facilitation Orders. A Floor Broker holding an options order for a public customer and a contra side order may cross such orders in accordance with paragraph (a) above or may execute such orders as a facilitation cross in the following manner:

(i) [A legible ''F'' must be recorded on the floor ticket.] *The Floor Broker or his employees must enter the appropriate notation onto the Options Floor Broker Management System* for the public customer's order, together with all of the terms of the order, including any contingency involving other options or the underlying or related securities.

(ii)–(iii)

(c)(i)–(ii) No change.

(iii) [''Solicited'' shall be written clearly and legibly on the order ticket of the solicited order] *The Floor Broker or his employees must note on the Options Floor Broker Management System that the trade involves a solicited order.*

(d) No change.

Commentary:

No change.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(j) No change.

Commentary:

.01–.05 No change.

.06 Options Floor Broker Management System. The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to

establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. The Exchange will begin deployment of the Options Floor Broker Management System on July 31, 2003, with floor-wide deployment to be completed not later than August 29, 2003.

Proposed Amendments to Option Floor Procedure Advices:

A–11 Responsibility to Fill Customer Orders

(a)(i)–(v) No change.

(vi) Floor Brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible Floor Broker must advise the crowd of that fact prior to bidding/offering on behalf of the order or executing the order. The [responsible floor agent] *Floor Broker or his employees* must [legibly mark the floor ticket as ''B/D''] *make the appropriate notation on the Options Floor Broker Management System* when it has been determined that the order is for an account of a broker/dealer.

(vii) No change.

(b) No change.

FINE SCHEDULE No change.

B–6 Priority of Options Orders for Equity Options and Index Options by Account Type (EQUITY OPTION AND INDEX OPTION ONLY)

(No change to first two introductory paragraphs.)

Section A

No change.

Section B

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be (1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and (2) recorded as for a controlled account by appropriately circling the ''yield'' field on the floor ticket of any such order (except market maker tickets) *or, in the case of trades involving a Floor Broker, by making the appropriate notation on the Options Floor Broker Management System.*

In any instance where an order is misrepresented in this fashion due to factors which give rise to the concern that it was the result of anything other than an inadvertent error, the Exchange may determine to bypass the fine schedule below and refer the incident to the Business Conduct Committee for possible disciplinary proceedings in accordance with those procedures set forth under the Exchange's Disciplinary Rule 960.

Section C–E No change

FINE SCHEDULE No change.

B–8 Use of Floor Brokers by an ROT While on the Floor

(a) When an ROT who is on the floor gives an order to a Floor Broker for execution, the ROT must initial and time stamp the order ticket. *The Floor Broker or his employees must* [and] indicate on [it] *the Options Floor Broker Management System* whether such order is opening or closing.

(b) If such order opens or increases a position in the account of an ROT, the ROT must be aware of the terms of the trade, initial and time stamp the order and retain a copy of the ticket.

FINE SCHEDULE No change.

B–11 Crossing, Facilitation and Solicited Orders

(a) No change.

(b) Facilitation Orders—A Floor Broker holding an options order for a public customer and a contra-side order may cross such orders in accordance with paragraph (a) above or may execute such orders as a facilitation cross in the following manner:

(i) [A legible ''F'' must be recorded on the floor ticket]. *The Floor Broker or his employees must enter the appropriate notation onto the Options Floor Broker Management System* for the public customer's order, together with all of the terms of the order, including any contingency involving other options or the underlying or related securities.

(ii)–(iii)

(c) (i)–(ii) No change.

(iii) [''Solicited'' shall be written clearly and legibly on the order ticket of the solicited order.] *The Floor Broker or his employees must note on the Options Floor Broker Management System that the trade involves a solicited order.*

(d) No change.

FINE SCHEDULE No change.

C–2 [Clocking Tickets for Time of Entry on the Floor

A Floor Broker shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. It is the responsibility of the introducing Floor Brokerage unit to time stamp an order when it is received.]

Options Floor Broker Management System

Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) The order type (i.e., customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position. Upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade. Floor Brokers or their employees shall enter clearing information onto the Options Floor Broker Management System no later than five minutes after the execution of a trade. In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order.

FINE SCHEDULE No change.

C–3 Handling Orders of Phlx ROTs and Other Registered Options Market Makers

(a) No change

(b) Upon receipt of an options order on the Phlx for any account of a person registered as an options market maker on another national securities exchange, the Floor Broker *or his employees* must [legibly mark the letter ''N'' on the order ticket] *so indicate on the Options Floor Broker Management System* and must ensure that the order is represented in the trading crowd as a ''BD'' order for the purposes of the Exchange's [public customer order guarantee rule (*i.e.*, the Ten-Up Rule)] *yielding requirements.* A

Floor Broker must make reasonable efforts to inquire which orders placed with him for execution on the Phlx qualify as [''N''] *such* orders.

(c) Before executing an opening transaction on behalf of a Phlx ROT, the Floor Broker *or his employees* must ascertain that the ROT is aware of the terms of the trade and assure that the floor ticket has been initialed and time-stamped by the ROT *and that the order is appropriately entered on the Options Floor Broker Management System*. The Floor Broker must [mark a ''P'' on the floor ticket of] *note on the Options Floor Broker Management System* any opening off-floor order to be cleared into a Phlx market maker account, as indicated by a Phlx ROT seeking market maker margin treatment for such order pursuant to Rule 1014, Commentary .01 and Advice B–4, and comply with the requirements of Advice B–12 respecting multiply traded options.

(d) No change.

FINE SCHEDULE No change.

F–1 Use of Identification Letters and Numbers

All Specialists, ROTs, and Floor Brokers must use the complete alpha/numeric identification assigned by the Exchange. All Floor Brokers *or their employees* must [put] *indicate* their complete alpha/numeric identifiers on [every ticket which they broker] *the Options Floor Broker Management System for each order they receive and represent in the trading crowd.*

FINE SCHEDULE No change.

F–2 Allocation, Time Stamping, Matching and Access to Matched Trades

(a) No change.

The person responsible for trade allocation (the ''Allocating Participant'') shall, for each trade allocated by such Allocating Participant, circle his or her badge identification number on the trade tickets, identifying himself or herself as the Allocating Participant in the particular trade. If the Allocating Participant is not a participant in the trade to be allocated, he/she shall identify himself/herself/ by initialing the trade tickets. *In the case of a trade in which a Floor Broker is the Allocating Participant, such Floor Broker shall allocate the trade using the Options Floor Broker Management System.*

(b) A member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds of the execution to the tape*, except that, when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape.* Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

(c) Execution times must be recorded on the reverse side of one or more of the tickets to a matched trade.

(d) Once a trade has been matched and submitted for reporting at the post, the respective Specialist Unit must preserve the matched tickets for a period of not less than three years.

(e) Member access to tickets comprising a matched trade is available to any participant of that trade, as well as the respective Specialist and any Floor Official acting in his capacity as a Floor Official. Requests to review trade matches must be made with the Specialist Unit.

FINE SCHEDULE No change.

F–4 Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements

(a) Sp, St, Comb, Syn—Members executing spread, straddle or combination orders in reliance upon the ''spread priority rule,'' Rule 1033(d), or synthetic option (buy-write, synthetic put and synthetic call) orders, must mark the tickets as ''sp'' for spreads, ''st'' for straddles, ''comb'' for combinations and ''syn'' for synthetics. *In the case of trades involving a Floor Broker, such Floor Broker or his employees must make the appropriate notation on the Options Floor Broker Management System.*

(b) Additional Marking Requirements—The following is a list of requirements to mark order tickets *or, in the case of trades involving a Floor Broker, for such Floor Broker or his employees to make the appropriate notations on the Options Floor Broker Management System,* including a description and reference to the Rule or Advice requiring such mark or *notation*:

Circling ''yield''	yielding/11(a)(1)	Advice B–6
Acronym	identification letter/#s	Advice F–1
ROT initial/ time stamp	on-floor brokered orders	Advice B–8, C–3
SS	sold sale	Advice F–3
F	facilitation	Advice B–11
BD	non-member BD	Advice A–11
B/X	bid-exempt	Rule 1072
N	non-Phlx ROTs	Advice C–3
P	off-floor/market maker margin	Rule 1014, Comm. 01
P/A	principal acting as agent	Rule 1015

FINE SCHEDULE No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to deploy the System incrementally, beginning not later than July 31, 2003, and ending at the time of floor-wide deployment, which would occur not later than August 29, 2003 (the ''Rollout'').

The Options Floor Broker Management System

Proposed Phlx Rule 1080, Commentary .06 would provide a general description of the System as a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from option orders received on the Exchange. Floor Brokers or their employees would access the System through an electronic Exchange-provided handheld device on which they would have the ability to enter the required information as set forth in proposed Phlx Rule 1063(e), either from their respective posts on the options trading floor or in the trading crowd. The System will replace the Exchange's current Floor Broker Order Entry System (''FBOE''),[5] as part of a roll-out of the new System floor-wide. The proposed rule would also include a rollout schedule for the System, setting forth that the Exchange will begin deployment of the Options Floor Broker Management System on July 31, 2003, with floor-wide deployment to be completed not later than August 29, 2003.

Proposed Phlx Rule 1063(e) would include a description of the purpose of the System, which, as stated above, is to create an electronic audit trail for option orders represented by Floor Brokers on the Exchange Options Floor. The proposed rule also sets forth the requirement that a Floor Broker or such Floor Broker's employees must, contemporaneously upon receipt of an order and prior to the representation of such an order in the crowd, record the required information regarding all option orders represented by such Floor Broker onto the System.[6] The Exchange believes that the requirement that Floor Brokers or their employees enter order information onto the System contemporaneously upon receipt preserves the integrity of the electronic audit trail.[7]

Additionally, the proposed rule would provide that upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade.[8]

Proposed Phlx Rule 1063(e) would require Floor Brokers or their employees to record the following specific information onto the System upon receipt of an order: (i) The order type (*i.e.*, customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (*i.e.*, spread, straddle), or contingency order as described in Phlx Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; and (vii) whether the transaction is to open or close a position. These enumerated elements of an order are currently written on trade tickets; the proposed new rule would simply require them to be entered onto the System.

Upon entry of the order into the System, the System would automatically record the time of entry, and would assign an identification code that is particular to that order for purposes of the electronic audit trail.

Clearing Information

Proposed Phlx Rule 1063(e) would also require Floor Brokers or their employees to enter clearing information onto the System no later than five minutes after the execution of a trade. Such clearing information would include the account number(s) of each contra-side participant to the Floor Broker's trade in the crowd and the number of contracts bought or sold, which would be immediately reported via AUTOM to the clearing firm of each crowd participant involved in the trade. Once the clearing information is reported, crowd participants involved in the trade would receive a position update, enabling them to know their respective positions on a real-time basis and to make appropriate, informed and timely hedging and transactional decisions. The purpose of this provision is to assist both Floor Brokers and crowd participants involved in a trade to better manage their risk by knowing their account status on a real-time basis. Thus, the Exchange believes that the five-minute reporting requirement for clearing information to be entered onto the System should enable crowd participants to better manage their risk.

System Malfunctions

Proposed Phlx Rule 1063 would provide that, in the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order. This reflects the current practice of recording information concerning orders represented and executed by Options Floor Brokers onto trade tickets, and using time stamps to record the time of receipt of an order, and the time of execution.

Trade Reporting

Currently, Exchange members or member organizations that initiate an options transaction are required to report the execution of such trades within 90 seconds of the execution.[9] Trades are currently reported by Exchange personnel known as Data Entry Terminal (''DET'') Operators. DET Operators are situated at various locations on the Exchange floor, at the specialist's post. Once a trade is executed, the person who initiated the trade is required to submit the trade ticket(s) to the DET Operator, who reports the transaction by typing and entering the trade information into the DET, which in turn reports the trade to

[5] See Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR-Phlx-99–11). The FBOE, a component of AUTOM, currently provides a means for (but does not require) Floor Brokers to route eligible orders to the specialist's post, consistent with the order delivery criteria of the AUTOM System set forth in Phlx Rule 1080(b). The new System (which Floor Brokers would be required to use under the instant proposal) would include the same functionality as the FBOE, in addition to providing an electronic audit trail for non-electronic orders received by Floor Brokers by way of the entry of the required information in proposed Phlx Rule 1063(e).

[6] The Exchange recognizes the need for effective and proactive surveillance for activities such as trading ahead and front-running. It currently conducts automated surveillance for such activities and will incorporate a review of order entry into the System as part of such surveillance. The Exchange also intends to implement supplementary surveillance and examination programs related to the requirement to enter order information into the System promptly after this requirement is instituted, which are designed to address, among other things, trading ahead and front-running.

[7] Currently, OFPA C–2 requires Floor Brokers to time stamp an order ticket when it is received, and provides that a Floor Broker shall not represent an order for execution in the crowd that is not time stamped with the time of entry on the trading floor. While this current OFPA is intended to capture the time of receipt of the order on the trade ticket, it does not currently create an electronic audit trail for non-electronic options orders represented and executed by Floor Brokers on the Exchange as required by the Order. The Exchange is proposing herein to amend OFPA C–2 to convert the time stamping requirement to the requirement to enter order information onto the System concurrently upon receipt by the Floor Broker, which immediately captures the information, including the time of entry, into the electronic audit trail. Once an order is entered into the System, AUTOM is able to track the life of such an order through its execution or partial execution, cancellation or partial cancellation, and report to the consolidated tape, as well as any changes made concerning the size of the order or its limit price, if applicable.

[8] Once the Floor Broker executes an order using the System, the time of execution would be automatically recorded into the electronic audit trail.

[9] Phlx Rule 1051 and OFPA F–2 currently provide that a member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds of the execution to the tape. Transactions not reported within 90 seconds after execution shall be designated as late.

the Options Price Reporting Authority (''OPRA'').

The System includes a feature that would report transactions executed in the trading crowd by the Floor Broker automatically upon execution. Once a trade involving a Floor Broker is executed in the trading crowd, such a Floor Broker would simply indicate on the System that the order was executed, which would automatically generate an electronic report. The Exchange believes that this feature should enhance the ability of Floor Brokers to comply with the 90-second trade reporting requirement. Further, such reporting activity would be captured in the electronic audit trail, thus facilitating electronic surveillance for compliance with the reporting requirement.

The Exchange is proposing amendments to Phlx Rule 1051 and OFPA F–2 in order to address the situation in which a Floor Broker who initiates a transaction executes all or a portion of the transaction against a contra-side limit order on the specialist's limit order book.[10] Currently, in such a situation, the specialist manually executes the booked limit order on the AUTOM System against the order represented by the Floor Broker. Upon such manual execution, the transaction is reported automatically by AUTOM.

The proposed amendment would provide that, when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape. The purpose of this provision is to address the situation in which an order represented by a Floor Broker executes a booked limit order is executed by the specialist, in which case AUTOM automatically reports the execution of the booked limit order. Thus, the Floor Broker in this situation would not be required to report that portion of the transaction on the System, despite the fact that the Floor Broker involved may have in fact ''initiated'' the transaction. If the booked limit order represents the entire contra-side to the order represented by the Floor Broker, the specialist would be required to report the entire transaction. If the booked limit order represents a portion of the transaction, the specialist would be required to report that portion of the transaction, while the Floor Broker initiating the transaction would be responsible for reporting the remaining portion of the transaction he or she initiated.

Ticket Marking Requirements and the System

Currently, various Exchange rules require Floor Brokers to mark trade tickets with certain notations, depending on the type of trade and the crowd participants involved. The Exchange is proposing to amend the rules concerning the ticket marking requirements so that Floor Brokers would be required to enter similar notations onto the System.

Specifically, the Exchange proposes the following amendments to the current Phlx rules and OFPAs concerning ticket marking requirements in order to make such rules and OFPAs applicable to the System:

- Phlx Rule 1015, Execution Guarantees, and corresponding OFPA A–11, Responsibility to Fill Customer Orders, would be amended to require a Floor Broker or his employees to make the appropriate notation on the System when it has been determined that the order is for an account of a broker/dealer.
- Phlx Rule 1064 and corresponding OFPA B–11, Crossing, Facilitation and Solicited Orders, would be amended to require that Floor Brokers who wish to execute orders as a facilitation cross (or their employees) to enter the appropriate indication onto the System for the public customer's order, together with all of the terms of the order, including any contingency involving other options or the underlying or related securities. The sections of the Rule and OFPA concerning solicited orders would require a Floor Broker or his employees to indicate on the System that the trade involves a solicited order.
- Phlx Rule 1014(g)(i)(A) and corresponding OFPA B–6, Priority of Options Orders for Equity Options and Index Options by Account Type, would be amended to require Floor Brokers representing controlled accounts[11] to indicate on the System that such accounts must yield to customer orders in parity situations.
- Phlx OFPA B–8, Use of Floor Brokers by an ROT While on the Floor, would be amended to require a Floor Broker or his employees to indicate on the System whether an order for an ROT that is represented by the Floor Broker is opening or closing, in order to remain consistent with the requirements of proposed Phlx Rule 1063(e) and proposed OFPA C–2.
- Phlx OFPA C–2, Clocking Tickets for Time of Entry on the Floor, which currently requires an introducing Floor Brokerage unit to time stamp an order when it is received, would be re-titled and amended to include the requirements concerning the System included in proposed Phlx Rule 1063(e).
- Phlx OFPA C–3, Handling Orders of Phlx ROTs and Other Registered Options Market Makers, would be amended to require, in the situation in which a Floor Broker represents an order for a market maker on another national securities exchange, such Floor Broker or his employees must so indicate on the Options Floor Broker Management System and must ensure that the order is represented in the trading crowd as a ''BD'' order for the purposes of the Exchange's yielding requirements.
- Phlx OFPA F–1, Use of Identification Letters and Numbers, would be amended to require all Floor Brokers or their employees to indicate their complete alpha/numeric identifiers on the System for each order they receive and represent in the crowd.
- Phlx OFPA F–4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements, would be amended to require that, in the case of trades involving a Floor Broker, such Floor Broker or his employees must make the appropriate notation concerning such order types on the Options Floor Broker Management System.

The Rollout will be conducted on a firm-by-firm basis, beginning with the installation of a device at the respective Floor Broker firm's booth on the options floor (''Booth Device''), on which such Floor Broker (or his/her employee) may enter the required information concerning the orders they represent.[12] In addition, the Exchange would issue a handheld device to each individual Floor Broker in such a firm who represents an order in the crowd (''Handheld Device''), on which he/she would have the ability to enter the required information. As stated above, the Rollout would be complete on a

[10] The electronic ''limit order book'' is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* Phlx Rule 1080, Commentary .02.

[11] Phlx Rule 1014(g)(i)(A) defines a ''controlled account'' as any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts.

[12] Such information would include: (i) The order type (*i.e.*, customer, firm, broker-dealer); the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (*i.e.*, spread, straddle), or contingency order as described in Phlx Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position.

floor-wide basis on or before August 29, 2003.

Market Surveillance

During the approximately month-long Rollout, Floor Brokers for whom the Booth Device and the respective Handheld Devices have been installed will use the System to record information concerning orders they represent on the Exchange floor, while those Floor Brokers awaiting installation will continue to use the current System, which includes, without limitation, the requirement that order information is to be written on trade tickets and time-stamped upon receipt of the order [13] and the requirement to time-stamp tickets upon execution.[14]

The Exchange represents that, during the Rollout, it will continue to surveil for, and enforce compliance with, existing rules regarding orders represented by Floor Brokers. For those Floor Brokers for whom the System has been deployed, an order entered through the System must include the information required in the rules set forth in the instant proposal. For those Floor Brokers for whom the System has not been deployed, the Exchange will continue to surveil for, and enforce compliance with, rules concerning current practices regarding orders represented by Floor Brokers using written tickets and time-stamps to record information necessary to reflect the handling of such orders.

The Exchange believes that the System will enable Floor Brokers to handle orders they represent more efficiently, and will further enable the Exchange to comply with the audit trail requirement for non-electronic orders required under the Order.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [15] in general, and furthers the objectives of section 6(b)(5) of the Act [16] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market System, and to protect investors and the public interest, by requiring Floor Brokers to enter certain information onto the System regarding orders they represent, thus providing an electronic audit trail for orders they represent on the Exchange.

[13] *See* Exchange Option Floor Procedure Advice (''OFPA'') C–2.

[14] *See* OFPA F–2.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. 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 Phlx. All submissions should refer to File No. SR–Phlx–2003–56 and should be submitted by August 28, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval

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.[17] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities System, and protect investors and the public interest.[18]

[17] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

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**. The Commission believes that granting accelerated approval to the proposed rule change on a pilot basis will allow the Exchange to have enforceable rules governing use of the Exchange's new System in effect during the Rollout, and will help ensure that members are properly trained and familiar with the rules prior to full deployment of the System.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Phlx–2003–56) is approved on an accelerated basis and is effective on a pilot basis until August 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20127 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

[19] 15 U.S.C. 78f(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48265; File No. SR–Phlx–2003–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Options Floor Broker Management System

July 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On July 28, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supercedes the original filing in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1063, Responsibilities of Floor Brokers, and Phlx Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)[4] by adopting new Phlx Rules 1063(e) and 1080, Commentary .06 relating to the Exchange's Options Floor Broker Management System (the ''System'') for equity options and index options. The Exchange further proposes to amend various Exchange Rules and Options Floor Procedure Advices (''OFPAs'') that currently include order ticket marking requirements to require Floor Brokers to make similar notations in the System. Finally, the Exchange proposes to amend Phlx Rule 1051, General Comparison and Clearance Rule, and corresponding OFPA F–2, to provide that when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape.

The text of the proposed rule change is set forth below. New text is in italics; deletions are in brackets.

* * * * *

Obligations And Restrictions Applicable To Specialists And Registered Options Traders

Rule 1014.

(a)–(f) No change.

(g) Equity Option and Index Option Priority and Parity

(i)(A) Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customer orders when competing at the same price, as described below.

For the purpose of paragraph (g) of this Rule, ''Initiating Order'' means an incoming contra-side order. ''Remainder of the Order'' means the portion of an Initiating Order that remains following the allocation of contracts to customers that are on parity, in accordance with this Rule 1014(g)(i). The remainder of the Order shall be allocated pursuant to this Rule 1014. An account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts.

Orders of controlled accounts must yield priority to customer orders. Orders of controlled accounts are not required to yield priority to other controlled account orders.

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be: (1) Verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and (2) recorded as for a controlled account by appropriately circling the ''yield'' field on the floor ticket of any such order (except market maker tickets) *or, in the case of trades involving a Floor Broker, by making the appropriate notation the Options Floor Broker Management System.*

(ii)–(v) No change.

(vi) In order to facilitate timely tape reporting of executed trades, it is the duty of the persons identified below to allocate, match and time stamp manually executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution:

(i)–(iv) No change.

The person responsible for trade allocation (the ''Allocating Participant'') shall, for each trade allocated by such Allocating Participant, circle his or her badge identification number on the trade tickets, identifying himself or herself as the Allocating Participant in the particular trade. If the Allocating Participant is not a participant in the trade to be allocated, he/she shall identify himself/herself by initiating the trade tickets. *In the case of a trade in which a Floor Broker is the Allocating Participant, such Floor Broker shall allocate the trade using the Options Floor Broker Management System.*

Execution Guarantees

Rule 1015. (a)(i)–(v) No change.

(vi) Floor Brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible Floor Broker must advise the crowd of that fact prior to bidding/offering on behalf of the order or executing the order. The [responsible floor agent] *Floor Broker or his employees* must [legibly mark the floor ticket as ''B/D''] *make the appropriate notation on the Options Floor Broker Management System* when it has been determined that the order is for an account of a broker/dealer.

(vii) No change.

(b) No change.

General Comparison And Clearance Rule

Rule 1051. (a) A member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds of the execution to the tape, *except that, when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape.* Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

(b) No change.

Responsibilities of Floor Brokers

Rule 1063. (a)–(d) No change.

(e) Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) The order type (i.e., customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position. Upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade. Floor Brokers or their employees shall enter clearing information onto the Options Floor Broker Management

[4] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

System no later than five minutes after the execution of a trade. In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order.

Crossing, Facilitation and Solicited Orders

Rule 1064. (a) No change.

(b) Facilitation Orders. A Floor Broker holding an options order for a public customer and a contra side order may cross such orders in accordance with paragraph (a) above or may execute such orders as a facilitation cross in the following manner:

(i) [A legible ''F'' must be recorded on the floor ticket.] *The Floor Broker or his employees must enter the appropriate notation onto the Options Floor Broker Management System* for the public customer's order, together with all of the terms of the order, including any contingency involving other options or the underlying or related securities.

(ii)–(iii)

(c) (i)–(ii) No change.

(iii) [''Solicited'' shall be written clearly and legibly on the order ticket of the solicited order] *The Floor Broker or his employees must note on the Options Floor Broker Management System that the trade involves a solicited order.*

(d) No change.

Commentary:

No change.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(j) No change.

Commentary:

.01–.05 No change.

.06 Options Floor Broker Management System. The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. The Exchange will begin deployment of the Options Floor Broker Management System on July 31, 2003, with floor-wide deployment to be completed not later than August 29, 2003.

Proposed Amendments to Option Floor Procedure Advices:

A–11 Responsibility to Fill Customer Orders

(a) (i)–(v) No change.

(vi) Floor Brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible Floor Broker must advise the crowd of that fact prior to bidding/offering on behalf of the order or executing the order. The [responsible floor agent] *Floor Broker or his employees* must [legibly mark the floor ticket as ''B/D''] *make the appropriate notation on the Options Floor Broker Management System* when it has been determined that the order is for an account of a broker/dealer.

(vii) No change.

(b) No change.

Fine Schedule: No change.

B–6 Priority of Options Orders for Equity Options and Index Options by Account Type

(Equity Option and Index Option Only)

(No change to first two introductory paragraphs.)

Section A

No change.

Section B

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be (1) Verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and (2) recorded as for a controlled account by appropriately circling the ''yield'' field on the floor ticket of any such order (except market maker tickets) *or, in the case of trades involving a Floor Broker, by making the appropriate notation on the Options Floor Broker Management System.*

In any instance where an order is misrepresented in this fashion due to factors which give rise to the concern that it was the result of anything other than an inadvertent error, the Exchange may determine to bypass the fine schedule below and refer the incident to the Business Conduct Committee for possible disciplinary proceedings in accordance with those procedures set forth under the Exchange's Disciplinary Rule 960.

Section C–E No change.

Fine Schedule: No change.

B–8 Use of Floor Brokers by an ROT While on the Floor

(a) When an ROT who is on the floor gives an order to a Floor Broker for execution, the ROT must initial and time stamp the order ticket. *The Floor Broker or his employees must* [and] indicate on [it] *the Options Floor Broker Management System* whether such order is opening or closing.

(b) If such order opens or increases a position in the account of an ROT, the ROT must be aware of the terms of the trade, initial and time stamp the order and retain a copy of the ticket.

Fine Schedule: No change.

B–11 Crossing, Facilitation and Solicited Orders

(a) No change.

(b) Facilitation Orders—A Floor Broker holding an options order for a public customer and a contra-side order may cross such orders in accordance with paragraph (a) above or may execute such orders as a facilitation cross in the following manner:

(i) [A legible ''F'' must be recorded on the floor ticket]. *The Floor Broker or his employees must enter the appropriate notation onto the Options Floor Broker Management System* for the public customer's order, together with all of the terms of the order, including any contingency involving other options or the underlying or related securities.

(ii)–(iii)

(c) (i)–(ii) No change.

(iii) [''Solicited'' shall be written clearly and legibly on the order ticket of the solicited order.] *The Floor Broker or his employees must note on the Options Floor Broker Management System that the trade involves a solicited order.*

(d) No change.

Fine Schedule: No change.

C–2 Clocking Tickets for Time of Entry on the Floor

A Floor Broker shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. It is the responsibility of the introducing Floor Brokerage unit to time stamp an order when it is received.

Options Floor Broker Management System

Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker

Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) The order type (i.e., customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position. Upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade. Floor Brokers or their employees shall enter clearing information onto the Options Floor Broker Management System no later than five minutes after the execution of a trade. In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order.

Fine Schedule: No change.

C–3 Handling Orders of Phlx ROTs and Other Registered Options Market Makers

(a) No change.

(b) Upon receipt of an options order on the Phlx for any account of a person registered as an options market maker on another national securities exchange, the Floor Broker *or his employees* must [legibly mark the letter ''N'' on the order ticket] *so indicate on the Options Floor Broker Management System* and must ensure that the order is represented in the trading crowd as a ''BD'' order for the purposes of the Exchange's [public customer order guarantee rule (i.e., the Ten-Up Rule)] *yielding requirements.* A Floor Broker must make reasonable efforts to inquire which orders placed with him for execution on the Phlx qualify as [''N''] *such* orders.

(c) Before executing an opening transaction on behalf of a Phlx ROT, the Floor Broker *or his employees* must ascertain that the ROT is aware of the terms of the trade and assure that the floor ticket has been initialed and time-stamped by the ROT *and that the order is appropriately entered on the Options Floor Broker Management System.* The Floor Broker must [mark a ''P'' on the floor ticket of] *note on the Options Floor Broker Management System* any opening off-floor order to be cleared into a Phlx market maker account, as indicated by a Phlx ROT seeking market maker margin treatment for such order pursuant to Rule 1014, Commentary .01 and Advice B–4, and comply with the requirements of Advice B–12 respecting multiply traded options.

(d) No change.

Fine Schedule: No change.

F–1 Use of Identification Letters and Numbers

All Specialists, ROTs, and Floor Brokers must use the complete alpha/numeric identification assigned by the Exchange. All Floor Brokers *or their employees* must [put] *indicate* their complete alpha/numeric identifiers on [every ticket which they broker] *the Options Floor Broker Management System for each order they receive and represent in the trading crowd.*

Fine Schedule: No change.

F–2 Allocation, Time Stamping, Matching and Access to Matched Trades

(a) No change.

The person responsible for trade allocation (the ''Allocating Participant'') shall, for each trade allocated by such Allocating Participant, circle his or her badge identification number on the trade tickets, identifying himself or herself as the Allocating Participant in the particular trade. If the Allocating Participant is not a participant in the trade to be allocated, he/she shall identify himself/herself/ by initialing the trade tickets. *In the case of a trade in which a Floor Broker is the Allocating Participant, such Floor Broker shall allocate the trade using the Options Floor Broker Management System.*

(b) A member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds of the execution to the tape, *except that, when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape.* Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

(c) Execution times must be recorded on the reverse side of one or more of the tickets to a matched trade.

(d) Once a trade has been matched and submitted for reporting at the post, the respective Specialist Unit must preserve the matched tickets for a period of not less than three years.

(e) Member access to tickets comprising a matched trade is available to any participant of that trade, as well as the respective Specialist and any Floor Official acting in his capacity as a Floor Official. Requests to review trade matches must be made with the Specialist Unit.

Fine Schedule: No change.

F–4 Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements

(a) Sp, St, Comb, Syn—Members executing spread, straddle or combination orders in reliance upon the ''spread priority rule,'' Rule 1033(d), or synthetic option (buy-write, synthetic put and synthetic call) orders, must mark the tickets as ''sp'' for spreads, ''st'' for straddles, ''comb'' for combinations and ''syn'' for synthetics. *In the case of trades involving a Floor Broker, such Floor Broker or his employees must make the appropriate notation on the Options Floor Broker Management System.*

(b) Additional Marking Requirements—The following is a list of requirements to mark order tickets *or, in the case of trades involving a Floor Broker, for such Floor Broker or his employees to make the appropriate notations on the Options Floor Broker Management System,* including a description and reference to the Rule or Advice requiring such mark *or notation:*

Circling ''yield''	yielding/11(a)(1)	Advice B–6
Acronym	identification letter/#s	Advice F–1
ROT initial/time stamp	on-floor brokered orders	Advice B–8, C–3
SS	sold sale	Advice F–3
F	facilitation	Advice B–11
BD	non-member BD	Advice A–11
B/X	bid-exempt	Rule 1072
N	non-Phlx ROTs	Advice C–3
P	off-floor/market maker margin	Rule 1014, Comm. 01
P/A	principal acting as agent	Rule 1015

Fine Schedule: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish rules that require Floor Brokers that receive non-electronic (non-AUTOM) equity option and index option orders for representation in the trading crowd to record certain information (described more fully below) into the System to create an electronic options order audit trail for such non-electronic orders.[5]

The various proposed changes also reflect the new requirements that Floor Brokers make the appropriate notations on the System respecting orders they represent, as described below.

The Options Floor Broker Management System

Proposed Phlx Rule 1080, Commentary .06 would provide a general description of the System as a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from option orders received on the Exchange. Floor Brokers or their employees would access the System through an electronic Exchange-provided handheld device on which they would have the ability to enter the required information as set forth in proposed Phlx Rule 1063(e), either from their respective posts on the options trading floor or in the trading crowd. The System will replace the Exchange's current Floor Broker Order Entry System (''FBOE''),[6] as part of a roll-out of the new System floor-wide. The proposed rule would also include a rollout schedule for the System, setting forth that the Exchange will begin deployment of the Options Floor Broker Management System on July 31, 2003, with floor-wide deployment to be completed not later than August 29, 2003.

Proposed Phlx Rule 1063(e) would include a description of the purpose of the System, which, as stated above, is to create an electronic audit trail for option orders represented by Floor Brokers on the Exchange Options Floor. The proposed rule also sets forth the requirement that a Floor Broker or such Floor Broker's employees must, contemporaneously upon receipt of an order and prior to the representation of such an order in the crowd, record the required information regarding all option orders represented by such Floor Broker onto the System.[7] The Exchange believes that the requirement that Floor Brokers or their employees enter order information onto the System contemporaneously upon receipt preserves the integrity of the electronic audit trail.[8]

Additionally, the proposed rule would provide that upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade.[9]

Proposed Phlx Rule 1063(e) would require Floor Brokers or their employees to record the following specific information onto the System upon receipt of an order: (i) The order type (*i.e.*, customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (*i.e.*, spread, straddle), or contingency order as described in Phlx Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; and (vii) whether the transaction is to open or close a position. These enumerated elements of an order are currently written on trade tickets; the proposed new rule would simply require them to be entered onto the System.

Upon entry of the order into the system, the system would automatically record the time of entry, and would assign an identification code that is particular to that order for purposes of the electronic audit trail.

Clearing Information

Proposed Phlx Rule 1063(e) would also require Floor Brokers or their employees to enter clearing information onto the System no later than five minutes after the execution of a trade. Such clearing information would include the account number(s) of each contra-side participant to the Floor Broker's trade in the crowd and the number of contracts bought or sold, which would be immediately reported via AUTOM to the clearing firm of each crowd participant involved in the trade. Once the clearing information is reported, crowd participants involved in the trade would receive a position update, enabling them to know their respective positions on a real-time basis and to make appropriate, informed and timely hedging and transactional decisions. The purpose of this provision is to assist both Floor Brokers and crowd participants involved in a trade to better manage their risk by knowing

[5] In September, 2000, the Commission directed that the respondent options exchanges design and implement a consolidated options audit trail system (''COATS''), and to incorporate into the audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on such respondent exchange. *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3–10282 (the ''Order''). The instant proposal is intended to enable the Exchange to comply with the Commission's mandate under the Order.

[6] *See* Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR–Phlx–99–11). The FBOE, a component of AUTOM, currently provides a means for (but does not require) Floor Brokers to route eligible orders to the specialist's post, consistent with the order delivery criteria of the AUTOM System set forth in Phlx Rule 1080(b). The new System (which Floor Brokers would be required to use under the instant proposal) would include the same functionality as the FBOE, in addition to providing an electronic audit trail for non-electronic orders received by Floor Brokers by way of the entry of the required information in proposed Phlx Rule 1063(e).

[7] The Exchange recognizes the need for effective and proactive surveillance for activities such as trading ahead and front-running. It currently conducts automated surveillance for such activities and will incorporate a review of order entry into the System as part of such surveillance. The Exchange also intends to implement supplementary surveillance and examination programs related to the requirement to enter order information into the System promptly after this requirement is instituted, which are designed to address, among other things, trading ahead and front-running.

[8] Currently, OFPA C–2 requires Floor Brokers to time stamp an order ticket when it is received, and provides that a Floor Broker shall not represent an order for execution in the crowd that is not time stamped with the time of entry on the trading floor. While this current OFPA is intended to capture the time of receipt of the order on the trade ticket, it does not currently create an electronic audit trail for non-electronic options orders represented and executed by Floor Brokers on the Exchange as required by the Order. The Exchange is proposing herein to amend OFPA C–2 to convert the time stamping requirement to the requirement to enter order information onto the System concurrently upon receipt by the Floor Broker, which immediately captures the information, including the time of entry, into the electronic audit trail. Once an order is entered into the System, AUTOM is able to track the life of such an order through its execution or partial execution, cancellation or partial cancellation, and report to the consolidated tape, as well as any changes made concerning the size of the order or its limit price, if applicable.

[9] Once the Floor Broker executes an order using the System, the time of execution would be automatically recorded into the electronic audit trail.

their account status on a real-time basis. Thus, the Exchange believes that the five-minute reporting requirement for clearing information to be entered onto the System should enable crowd participants to better manage their risk.

System Malfunctions

Proposed Phlx Rule 1063 would provide that, in the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order. This reflects the current practice of recording information concerning orders represented and executed by Options Floor Brokers onto trade tickets, and using time stamps to record the time of receipt of an order, and the time of execution.

Trade Reporting

Currently, Exchange members or member organizations that initiate an options transaction are required to report the execution of such trades within 90 seconds of the execution.[10] Trades are currently reported by Exchange personnel known as Data Entry Terminal (''DET'') Operators. DET Operators are situated at various locations on the Exchange floor, at the specialist's post. Once a trade is executed, the person who initiated the trade is required to submit the trade ticket(s) to the DET Operator, who reports the transaction by typing and entering the trade information into the DET, which in turn reports the trade to the Options Price Reporting Authority (''OPRA'').

The System includes a feature that would report transactions executed in the trading crowd by the Floor Broker automatically upon execution. Once a trade involving a Floor Broker is executed in the trading crowd, such a Floor Broker would simply indicate on the system that the order was executed, which would automatically generate an electronic report. The Exchange believes that this feature should enhance the ability of Floor Brokers to comply with the 90-second trade reporting requirement. Further, such reporting activity would be captured in the electronic audit trail, thus facilitating electronic surveillance for compliance with the reporting requirement.

The Exchange is proposing amendments to Phlx Rule 1051 and OFPA F–2 in order to address the situation in which a Floor Broker who initiates a transaction executes all or a portion of the transaction against a contra-side limit order on the specialist's limit order book.[11] Currently, in such a situation, the specialist manually executes the booked limit order on the AUTOM System against the order represented by the Floor Broker. Upon such manual execution, the transaction is reported automatically by AUTOM .

The proposed amendment would provide that, when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape. The purpose of this provision is to address the situation in which an order represented by a Floor Broker executes a booked limit order is executed by the specialist, in which case AUTOM automatically reports the execution of the booked limit order. Thus, the Floor Broker in this situation would not be required to report that portion of the transaction on the System, despite the fact that the Floor Broker involved may have in fact ''initiated'' the transaction. If the booked limit order represents the entire contra-side to the order represented by the Floor Broker, the specialist would be required to report the entire transaction. If the booked limit order represents a portion of the transaction, the specialist would be required to report that portion of the transaction, while the Floor Broker initiating the transaction would be responsible for reporting the remaining portion of the transaction he or she initiated.

Ticket Marking Requirements and the System

Currently, various Exchange rules require Floor Brokers to mark trade tickets with certain notations, depending on the type of trade and the crowd participants involved. The Exchange is proposing to amend the rules concerning the ticket marking requirements so that Floor Brokers would be required to enter similar notations onto the System.

Specifically, the Exchange proposes the following amendments to the current Phlx rules and OFPAs concerning ticket marking requirements in order to make such rules and OFPAs applicable to the System:

- Phlx Rule 1015, Execution Guarantees, and corresponding OFPA A–11, Responsibility to Fill Customer Orders, would be amended to require a Floor Broker or his employees to make the appropriate notation on the System when it has been determined that the order is for an account of a broker/dealer.
- Phlx Rule 1064 and corresponding OFPA B–11, Crossing, Facilitation and Solicited Orders, would be amended to require that Floor Brokers who wish to execute orders as a facilitation cross (or their employees) to enter the appropriate indication onto the System for the public customer's order, together with all of the terms of the order, including any contingency involving other options or the underlying or related securities. The sections of the Rule and OFPA concerning solicited orders would require a Floor Broker or his employees to indicate on the System that the trade involves a solicited order.
- Phlx Rule 1014(g)(i)(A) and corresponding OFPA B–6, Priority of Options Orders for Equity Options and Index Options by Account Type, would be amended to require Floor Brokers representing controlled accounts [12] to indicate on the system that such accounts must yield to customer orders in parity situations.
- Phlx OFPA B–8, Use of Floor Brokers by an ROT While on the Floor, would be amended to require a Floor Broker or his employees to indicate on the System whether an order for an ROT that is represented by the Floor Broker is opening or closing, in order to remain consistent with the requirements of proposed Phlx Rule 1063(e) and proposed OFPA C–2.
- Phlx OFPA C–2, Clocking Tickets for Time of Entry on the Floor, which currently requires an introducing Floor Brokerage unit to time stamp an order when it is received, would be re-titled and amended to include the requirements concerning the System included in proposed Phlx Rule 1063(e).
- Phlx OFPA C–3, Handling Orders of Phlx ROTs and Other Registered Options Market Makers, would be amended to require, in the situation in

[10] Phlx Rule 1051 and OFPA F–2 currently provide that a member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds of the execution to the tape. Transactions not reported within 90 seconds after execution shall be designated as late.

[11] The electronic ''limit order book'' is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* Phlx Rule 1080, Commentary .02.

[12] Phlx Rule 1014(g)(i)(A) defines a ''controlled account'' as any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts.

which a Floor Broker represents an order for a market maker on another national securities exchange, such Floor Broker or his employees must so indicate on the Options Floor Broker Management System and must ensure that the order is represented in the trading crowd as a ''BD'' order for the purposes of the Exchange's yielding requirements.

• Phlx OFPA F–1, Use of Identification Letters and Numbers, would be amended to require all Floor Brokers or their employees to indicate their complete alpha/numeric identifiers on the System for each order they receive and represent in the crowd.

• Phlx OFPA F–4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements, would be amended to require that, in the case of trades involving a Floor Broker, such Floor Broker or his employees must make the appropriate notation concerning such order types on the Options Floor Broker Management System.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(5) of the Act [14] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by requiring Floor Brokers to enter certain information onto the System regarding orders they represent, thus providing an electronic audit trail for orders they represent on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–40 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20128 Filed 8–6–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Railroad Retirement Board (RRB) Match Number 1006)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the renewal of an existing computer matching program, which is scheduled to expire on September 29, 2003.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with the RRB.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner, Office of Income Security Programs, 245 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: July 29, 2003.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) with the Railroad Retirement Board (RRB)

A. Participating Agencies

SSA and RRB

B. Purpose of the Matching Program

The purpose of this agreement is to establish the conditions under which RRB agrees to disclose RRB annuity payment data to the Social Security Administration through a computer matching program. This disclosure will provide SSA with information necessary to verify Supplemental Security Income (SSI) program and Special Veterans Benefits (SVB) eligibility and benefit payment amounts. It also helps to ensure the correct recording on the Supplemental Security Income Record and Special Veterans Benefit (SSR) of railroad annuity amounts paid to SSI and SVB recipients by RRB.

C. Authority for Conducting the Matching Program

The legal authority for the SSI portion of this matching program is contained in sections 1631(e)(1)(A) and (B) and § 1631(f) of the Social Security Act (''Act''), (42 U.S.C. 1383 § (e) (1) (A) and (B) and 1383 (f)). The legal authority for the SVB portion of this matching program is contained in section 806(b) of the Act, (42 U.S.C. 1006 (b)).

D. Categories of Records and Individuals Covered by the Matching Program

On the basis of certain identifying information as provided by SSA to RRB, RRB will provide SSA with electronic files containing annuity payment data from RRB's system of records, RRB–22 Railroad Retirement, Survivor, and Pensioner Benefits System, entitled Checkwriting Integrated Computer Operation (CHICO) Benefit Payment Master. SSA will then match the RRB data with data maintained in the SSR, SSA/OSR, 60–0103 system of records. SVB data also resides on the SSR.

E. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after notice for the program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 03–20075 Filed 8–6–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4435]

Imposition of Chemical and Biological Weapons Proliferation Sanctions Against a Foreign Person, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that a foreign person has engaged in chemical/biological weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authority of which was most recently continued by Executive Order 13222 of August 17, 2001).

EFFECTIVE DATE: August 7, 2003.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Director, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142). On import ban issues: E.0. 12851 delegates implementation of the import ban to the Secretary of the Treasury. On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to section 81(a) of the Arms Export Control Act (22 U.S.C. 2798(a)) and section 11C(a) of the Export Administration Act of 1979 (50 U.S.C. app. 2410C(a)) as continued by Executive Order 13222 of August 17, 2001 (hereinafter referred to as the ''Export Administration Act''), Executive Order 12851 of June 11, 1993, and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the Under Secretary of State for Arms Control and International Security Affairs has determined that the following foreign person has engaged in chemical/biological weapons proliferation activities that require the imposition of measures as described in section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app 2410C(c)):

Mohammed al-Khatib (Jordan).

Accordingly, until further notice and pursuant to the provisions of section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and section 11C(c) of the Export Administration Act (50 U.S.C. app 2410c(c)), the following measures are imposed on this foreign person:

1. *Procurement Sanction:* The United States Government shall not procure, or enter into any contract for the procurement of, any supplies or services from the sanctioned person; and

2. *Import Sanction:* The importation into the United States of products produced by the sanctioned persons shall be prohibited.

These measures shall be implemented by the responsible departments and agencies of the United States Government as provided for in Executive Order 12851 of June 11, 1993. The sanctions will remain in place for at least one year and until further notice.

Dated: August 4, 2003.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–20289 Filed 8–5–03; 3:01 pm]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15843]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SO FAR SO GOOD.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application

is given in DOT docket 2003–15843 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD 2003–15843. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SO FAR SO GOOD is:

Intended Use: ''Charter and Day Cruises.''

Geographic Region: ''Florida to Maine.''

Dated: August 4, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–20159 Filed 8–6–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 31, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 8, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0644.

Form Number: IRS Form 6781.

Type of Review: Extension.

Title: Gains and Losses from Section 1256 Contracts and Straddles.

Description: Form 6781 is used by taxpayers in computing their gains and losses from Section 1256 contracts and straddles and their special tax treatment. The data is used to verify that the tax reported accurately reflects any such gains and losses.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	14 hr., 6 min.
Learning about the law or the form.	2 hr., 3 min.
Preparing the form	3 hr., 18 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,974,000 hours.

OMB Number: 1545–1326.

Form Number: IRS Form 2555–EZ.

Type of Review: Extension.

Title: Foreign Earned Income Exclusion.

Description: Form 2555–EZ is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion. This information is used by the Service to determine if a taxpayer qualifies for the exclusion. This form is a less burdensome form that is used where foreign earned income is $80,000 or less.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 43,478.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	26 min.
Learning about the law or the form.	17 min.
Preparing the form	42 min.
Copying, assembling, and sending the form to the IRS.	31 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 84,783 hours.

OMB Number: 1545–1818.

Revenue Procedure Number: Revenue Procedure 2003–38.

Type of Review: Extension.

Title: Commercial Revitalization Deduction.

Description: Pursuant to § 1400I of the Internal Revenue Code, this procedure provides the time and manner for states to make allocations of commercial revitalization expenditures to a new or substantially rehabilitated building that is placed in service in a renewal community.

Respondents: State, Local or Tribal Government, Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Burden Hours Per Respondent: 2 hours, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 200 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building,Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–20136 Filed 8–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 940 and 940–PR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 940–PR, Planilla Para La Declaracion Anual Del Patrono—La Contribucion Federal Para El Desempleo (FUTA).

DATES: Written comments should be received on or before October 6, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return (Form 940) and Planilla Para La Declaracion Anual Del Patrono—La Contribucion Federal Para El Desempleo (FUTA) (Form 940–PR).

OMB Number: 1545–0028.

Form Numbers: 940 and 940–PR.

Abstract: Internal Revenue Code section 3301 imposes a tax on employers based on the first $7,000 of taxable wages paid to each employee. The tax is computed and reported on Forms 940 and 940–PR (Puerto Rico employers only). IRS uses the information on Forms 940 and 940–PR to ensure that employers have reported and figured the correct FUTA wages and tax.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals, or households, and farms.

Estimated Number of Respondents: 1,367,000.

Estimated Time Per Respondent: 15 hr., 19 min.

Estimated Total Annual Burden Hours: 20,940,530.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–20185 Filed 8–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5227

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5227, Split-Interest Trust Information Return.

DATES: Written comments should be received on or before October 6, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Split-Interest Trust Information Return.

OMB Number: 1545–0196.

Form Number: 5227.

Abstract: Form 5227 is used to report the financial activities of a split-interest trust described in Internal Revenue Code section 4947(a)(2), and to determine whether the trust is treated as a private foundation and is subject to the excise taxes under Chapter 42 of the Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 88,640

Estimated Time Per Respondent: 84 hr., 24 min.

Estimated Total Annual Burden Hours: 7,480,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a

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

Approved: August 1, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–20186 Filed 8–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 990–PF and 4720

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, and Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

DATES: Written comments should be received on or before October 6, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, and Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

OMB Number: 1545–0052.

Form Numbers: 990–PF and 4720.

Abstract: Internal Revenue Code section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Form 990–PF is used for this purpose. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Form 4720 is used by foundations and/or related persons to report prohibited activities in detail and pay the tax on them.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Non-profit institutions.

Estimated Number of Respondents: 54,000.

Estimated Time Per Response: 204 hours, 46 minutes.

Estimated Total Annual Burden Hours: 11,057,373.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–20187 Filed 8–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8635, and 9383

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8635, Federal Income Tax Products Order Blank, and Form 9383, Fax Order Blank for BPOL Reorders.

DATES: Written comments should be received on or before October 6, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *carol.a.savage@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 8635, Federal Income Tax Products Order Blank, and Form 9383, Fax Order Blank for BPOL Reorders.

OMB Number: 1545–1222.

Form Number: Forms 8635, and 9383.

Abstract: Forms 8635, and 9383 allow banks, post offices and libraries to order tax forms and publications to distribute to taxpayers at convenient locations. Participation is on a voluntary basis and done as a public service for the Internal Revenue Service.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 36,688.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 3,669.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–20188 Filed 8–6–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Thursday, August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be held Thursday, August 28, 2003 from 3 p.m. EDT to 4:30 p.m. EDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: August 1, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–20189 Filed 8–6–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
August 7, 2003

Part II

Department of Defense

32 CFR Part 21, et al.

DoD Grant and Agreement Regulations; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 21, 22, 32, 34, and 37

RIN 0790–AG87

DoD Grant and Agreement Regulations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is adding a new part to the DoD Grant and Agreement Regulations (DoDGARs) to incorporate policies and procedures for the award and administration of technology investment agreements (TIAs). TIAs are a relatively new class of assistance instruments. DoD Components use TIAs to support or stimulate defense research projects involving for-profit firms, especially commercial firms that do business primarily in the commercial marketplace. The new part therefore gives DoD agreements officers greater flexibility to negotiate award provisions in areas that can present barriers to those commercial firms (*e.g.*, intellectual property, audits, and cost principles). The DoD also is revising several additional parts of the DoDGARs to conform them with the new part.

DATES: These final rules are effective on September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Herbst, (703) 696–0372.

SUPPLEMENTARY INFORMATION:

A. Background and Basis for the Rulemaking

The Congress and the DoD have a civil-military integration policy that envisions a national technology and industrial base capable of meeting national security objectives, including the performance of research and development to ensure that our armed forces have systems with superior technology. The policy calls for DoD reliance, to the maximum extent practicable, on the commercial sector of that technology and industrial base.

To help achieve civil-military integration, the Congress in 1989 enacted 10 U.S.C. 2371, ''Research projects: Transactions other than contracts and grants'' to authorize DoD use of cooperative agreements and other transactions. Using this authority, DoD Components through the mid-1990s developed types of cooperative agreements and other transactions to support research (called ''dual-use'' research) with good potential for both commercial and defense applications. The DoD in 1997 issued interim guidance that merged various cooperative agreements and other transactions that were similar to each other into a single class of assistance instruments called technology investment agreements (TIAs).

This rulemaking's primary purpose is to establish policies and procedures for the award and administration of TIAs, based on the DoD Components' experience with them. The specific actions that the DoD is taking in order to do so are to:

- Adopt the new part 37 of the DoDGARs (32 CFR part 37) to cover TIAs. The new part is in plain language format.
- Revise the existing part 21 of the DoDGARs (32 CFR part 21) that sets out DoD Components' general responsibilities for managing assistance functions. The revision makes part 21 apply to TIAs, as well as other assistance instruments, and recasts it in a plain language format.
- Make minor amendments to the existing parts 22, 32, and 34 of the DoDGARs (32 CFR parts 22, 32, and 34), to conform those parts with the new part 37 and the revised part 21.

B. Comments and Responses

DoD published a proposed rule in the **Federal Register** on April 30, 2002 (67 FR 21486) requesting comments on a proposal to make the changes described in the previous paragraph. We received comments from an industry association representing firms doing business in the commercial marketplace, one for-profit Government contractor, an association of academic institutions, and a number of DoD Components. We considered all comments in developing the final rule.

Commenters raised specific issues but supported the creation of TIAs as a new class of assistance instruments and responded favorably to the rules' plain language format and clarity. The following paragraphs summarize the more significant specific issues raised by the comments and the responses to them. The comments are grouped by the subpart of part 37 to which they apply and therefore by subject area. In addition to the changes noted in the following paragraphs, we made other changes to update references and increase readability.

Situations for Use of TIAs (Subpart B)

Comment: One commenter said it was unsure of the basis for encouraging awards to consortia, other than the reason given in § 37.210(c)(1) [which is that consortium members are more equal partners in research performance and more directly involved in planning the effort, reviewing progress, and overseeing financial aspects of the project than subawardees under a prime recipient usually are]. The commenter questioned the statement in the rule that there is less self-governance when a single firm is the recipient, rather than a consortium that may include multiple for-profit recipients that normally are competitors within an industry.

Response: No change. DoD agreements officers who have awarded and administered TIAs believe that interactions among a consortium's members can increase self-governance. One reason is that the members have more insight into each other's efforts than a subawardee has into the efforts of a prime awardee. Coupled with that insight, each member has an interest in ensuring that other members make their agreed-upon technical and financial contributions to the project. Importantly, the regulatory language in § 37.210 does not prohibit awards to single firms. It states that the agreements officer should consider whether an award to a single firm requires greater involvement of the Federal program official, but it gives the agreements officer the necessary authority to make the decision using his or her good business judgment.

Types of TIAs (Subpart C)

Comment: One commenter strongly recommended dropping fixed-support TIAs from the rule and said that this type of instrument appeared to be a fixed-price development contract by another name. The comment cited the proposed § 37.560, in which it is acknowledged that the contractor would be responsible for all further costs needed to complete the project, beyond the Federal Government's agreed-upon level of support.

Response: Fixed-support TIAs are not fixed-price development contracts by another name. Procurement contracts are used to acquire goods and services for the Government. TIAs are assistance instruments that DoD Components use to invest in dual-use research that is of mutual interest to recipients, due to the commercial potential of the research, and to the DoD, due to its defense potential. The recipient's interest is one reason that 50% cost sharing, to the extent practicable, is a statutory condition for any TIA under the authority of 10 U.S.C. 2371 and is a matter of policy for all other TIAs (*see* § 37.215 of the rule).

With substantial cost sharing, a fixed-support TIA is a viable alternative instrument that a DoD Component may offer to a prospective recipient accustomed to commercial practices, if it cannot accept all of the administrative

requirements associated with an expenditure-based instrument. The use of a fixed-support TIA properly is a matter of negotiation between the DoD agreements officer and the recipient. The agreements officer should agree to a fixed-support TIA only if he or she is sufficiently confident in estimated project costs to be sure that the recipient's cost sharing will be at least the minimum amount desired by the Federal Government, even if the actual costs are at the low end of the original estimates. There is no obligation for the recipient to accept this type of TIA and it should not do so unless it believes that the benefits justify any risk it perceives of an increased cost share, if actual costs are at the high end of the original estimates. The proposed rule did not intend for agreements officers to pressure potential recipients to accept fixed-support TIAs against their better judgment.

Nonetheless, on the basis of the concern expressed in the comment, we added a new paragraph (c) to § 37.560 to make it clear that the agreements officer may not use a shortage of Federal Government funding for the program as a reason to try to persuade a recipient to accept a fixed-support TIA, rather than an expenditure-based instrument, or to accept responsibility for a greater share of the total project costs than it otherwise is willing to offer.

Competition (Subpart D)

Comment: One commenter noted that the proposed part 37 strongly supports the use of competitive procedures but does not completely prohibit sole source awards. The commenter recommended that the rule explain what documentation is necessary if a sole source award of a TIA is contemplated.

Response: No change. In § 37.1020, which addresses what the agreements officer must document in the award file, paragraph (b) calls for documentation describing the award process and explaining how the agreements officer and program officials solicited and evaluated proposals and selected the one supported through the TIA. This includes documentation for a sole source award.

Comment: Two commenters said that the proposed § 37.215, which discusses the requirement for recipient cost sharing, also acknowledges that lesser contributions may be deemed ''practicable.'' Nevertheless, the commenters said, § 37.415 should call for agreements officers to include language in solicitations putting potential proposers on notice about the statutory requirement for them to provide, to the extent practicable, 50% cost share.

Response: Agree. We added a new paragraph (a) to § 37.415.

Comment: One commenter questioned whether five years should be the limit on the period for which the Government will protect proposals and other proprietary information submitted by proposers, as provided in the proposed §§ 37.420 and 37.900. The commenter said that the five-year period should be the basic level of protection provided to all proposers under the regulations. The commenter added that such information should be protected under the Freedom of Information Act (FOIA) for as long as it retains its value as confidential business information, the release of which could cause harm to a proposer.

Response: We revised § 37.420 to explain that certain information may be protected for longer periods if it meets any of the criteria for exemptions under the FOIA. For information that does not meet any of those criteria, § 37.420 cites a five-year period because that is the period for which 10 U.S.C. 2371 provides additional authority to protect information submitted by proposers. With that change, there is no need to revise § 37.900 because it already refers to § 37.420 for the substantive coverage on this subject.

Pre-Award Business Evaluation (Subpart E)

Comment: One commenter did not totally agree with the discussion of direct and indirect costs in the proposed § 37.570 and questioned whether a Cost Accounting Standards (CAS) noncompliance would necessarily be involved. The commenter noted that a for-profit firm generally recovers Independent Research and Development (IR&D) costs as part of the General and Administrative (G&A) cost pool, but said that those costs are not all indirect costs. The commenter said that the basic unit for IR&D is the project, in accordance with CAS § 9904.420 (''Accounting for Independent Research and Development and Bid and Proposal Costs,'' in chapter 99 of 48 CFR) and that all direct costs of the project are charged directly to the project. The commenter added that: (1) A contract and an IR&D project are set up similarly in most accounting systems, as far as job numbers and how the work is charged; (2) indirect charges are applied to the project's direct labor and material costs, but no G&A is applied because IR&D project costs are recovered in a G&A pool; and (3) a credit is applied to the pool if the Government pays part of a cost, reducing the amount in the pool to be recovered.

Response: We revised § 37.570 to remove the references to indirect cost. We also revised the section to require agreements officers to alert the participant to the potential for a CAS violation, as well as the Administrative Contracting Officer with cognizance over the participant's Federal procurement contracts, if the participant is subject to CAS and is proposing to account differently for its own and the Federal Government's share of project costs.

Comment: One commenter said that the proposed section 37.575 addressed agreements officers' responsibilities for determining milestone payment amounts but also should require a determination that the milestone amounts are fair and reasonable estimates for the efforts to be carried out. The commenter further recommended revising the section to recognize that future milestone amounts might be adjusted for reasons other than specified cost-share percentages (*e.g.*, if expenditures are significantly more than expected).

Response: We agree that this section needs clarification. Discussion with the commenter, a DoD Component, revealed that the use of the word ''budget'' in the first sentence of the section caused some confusion because it can be interpreted in different ways (*e.g.*, to mean the budget of the DoD program or the proposed budget for the research project). Rather than defining ''budget,'' we revised the first sentence of paragraph 37.575(a) to say that the agreements officer must assess the reasonableness of the estimated ''amount,'' rather than ''budget,'' for reaching each milestone. In response to this comment, we also revised paragraph 37.1010(e) to tell agreements officers that the payment provision for a TIA using the milestone payment method must tell the recipient that post-award administrators may adjust amounts of future milestone payments if a project's expenditures fall too far below the projections that were the basis for setting the amounts.

Award Terms Affecting Participants' Financial, Property, and Purchasing Systems (Subpart F)

Comment: One commenter recommended increasing the $300,000 threshold in the proposed § 37.645 for audits of for-profit firms to at least $500,000 to ensure consistency with other oversight thresholds in the Department of Defense.

Response: We based the proposed threshold of $300,000 on the government-wide threshold under the Single Audit Act (31 U.S.C. 7500 *et*

seq.), as implemented by OMB Circular A–133. That government-wide policy applies to audits of State and local governments and other nonprofit recipients of Federal assistance and cost-type procurement contracts. The OMB just increased that threshold to $500,000. We increased the threshold for for-profit recipients in this rule to $500,000 to parallel the OMB change, so that the requirement for for-profit participants is consistent with requirements for the other types of organizations that also may participate in the performance of research projects under TIAs.

Award Terms Related to Other Administrative Requirements (Subpart G)

Comment: One commenter noted that the proposed rule contained general guidance for agreements officers to consider on the scope of intellectual property (IP) rights, but recommended adding a paragraph 37.840(c). The new paragraph would say that agreements officers should consider the core principles in the DoD document entitled ''Intellectual Property: Navigating Through Commercial Waters'' when dealing with industry regarding IP and that any overall IP strategy the agreements officer develops for a TIA should be consistent with the core principles and guidance in that document. The commenter noted that the document focused on procurement contracts subject to the Federal Acquisition Regulation, but thought that it provided background on IP issues and stakeholder positions, as well as a consistent agency position.

Response: No change. As noted by the commenter, the document entitled ''Intellectual Property: Navigating Through Commercial Waters'' is written specifically for procurement contracts. Moreover, we prepared the guidance for agreements officers in §§ 37.840 through 37.875 to contain the substance of that document's five core principles, in language more appropriate for research projects carried out under TIAs.

Comment: One commenter disagreed with the language in the proposed paragraph 37.875(b)(2). This paragraph about foreign access to technology says that a TIA must provide that any transfer of the exclusive right to use or sell technology in the United States must, unless the Federal Government grants a waiver, require that products embodying the technology or produced through the use of the technology will be manufactured substantially in the United States. The commenter stated that the agreement should not impose conditions in this area beyond the requirement to comply with U.S. export laws, regulations and policies, as described in paragraph 37.875(b)(1).

Response: No change. The substance of paragraph (b)(2) parallels a national policy that is codified in what is known as the Bayh-Dole Act (35 U.S.C. chapter 18). That act governs patent rights in inventions made under Federally supported research or development performed by small businesses or nonprofit organizations under grants, cooperative agreements, or procurement contracts. One section of the act (35 U.S.C. 204) establishes the preference for substantial domestic manufacture in conjunction with any transfer of the exclusive right to use or sell an invention in the United States.

The same policy makes sense for access to technology generated under TIAs. As we seek to enhance national security by increasing DoD reliance on the commercial sectors of the U.S. technology and industrial bases, a legitimate concern is that we not preclude, through exclusive licensing, domestic sources that can provide ready and reliable access to defense technology. We do retain in paragraph (b)(2) the same flexibility as the Bayh-Dole Act to waive the requirement for substantial manufacture in individual cases where doing so is warranted.

Executing the Award (Subpart H)

Comment: One commenter recommended that the rule require the agreements officer to include documentation in the award file of any fixed-support TIA to describe the process and methods used to estimate expenditures, the recipient's minimum cost share, and the fixed level of Federal support. The purpose of this documentation would be to ensure that information is available to measure DoD Component's program implementation and use of funds.

Response: We revised paragraph 37.1020(d) to include the additional documentation requirement.

Executive Order 12866

This regulatory action is not a significant regulatory action, as defined by Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities. Under part 37, small entities are subject either to requirements that parallel government-wide requirements that OMB Circular A–110 establishes for other assistance awards, or to less burdensome requirements that enable firms from the commercial marketplace to participate in DoD research.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act. Participant reporting and recordkeeping requirements in part 37 either are parallel to, or less burdensome than, government-wide requirements already established in OMB Circular A–110.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

32 CFR Part 21

Grant programs, Grants administration.

32 CFR Part 22

Accounting, Grant programs, Grants administration, Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Colleges and universities, Grant programs, Grants administration, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 34

Accounting, Business and industry, Grant programs, Grants administration, Reporting and recordkeeping requirements.

32 CFR Part 37

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Dated: July 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

■ Accordingly, Title 32 of the Code of Federal Regulations, chapter I, subchapter C is amended as follows.

■ 1. Part 21 is revised to read as follows:

PART 21—DoD GRANTS AND AGREEMENTS—GENERAL MATTERS

Subpart A—Introduction

Sec.

21.100 What are the purposes of this part?

Subpart B—Defense Grant and Agreement Regulatory System

21.200 What is the Defense Grant and Agreement Regulatory System (DGARS)?
21.205 What types of instruments are covered by the DGARS?
21.210 What are the purposes of the DGARS?
21.215 Who is responsible for the DGARS?
21.220 What publications are in the DGARS?

Subpart C—The DoD Grant and Agreement Regulations

21.300 What instruments are subject to the DoD Grant and Agreement Regulations (DoDGARs)?
21.305 What is the purpose of the DoDGARs?
21.310 Who ensures DoD Component compliance with the DoDGARs?
21.315 May DoD Components issue supplemental policies and procedures to implement the DoDGARs?
21.320 Are there areas in which DoD Components must establish policies and procedures to implement the DoDGARs?
21.325 Do acquisition regulations also apply to DoD grants and agreements?
21.330 How are the DoDGARs published and maintained?
21.335 Who can authorize deviations from the DoDGARs?
21.340 What are the procedures for requesting and documenting deviations?

Subpart D—Authorities and Responsibilities for Making and Administering Assistance Awards

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21.405 What is the purpose of this subpart?
21.410 Must a DoD Component have statutory authority to make an assistance award?
21.415 Must the statutory authority specifically mention the use of grants or other assistance instruments?
21.420 Under what types of statutory authorities do DoD Components award assistance instruments?
21.425 How does a DoD Component's authority flow to awarding and administering activities?
21.430 What are the responsibilities of the head of the awarding or administering activity?
21.435 Must DoD Components formally select and appoint grants officers and agreements officers?
21.440 What are the standards for selecting and appointing grants officers and agreements officers?
21.445 What are the requirements for a grants officer's or agreements officer's statement of appointment?
21.450 What are the requirements for a termination of a grants officer's or agreements officer's appointment?
21.455 Who can sign, administer, or terminate assistance instruments?
21.460 What is the extent of grants officers' and agreements officers' authority?
21.465 What are grants officers' and agreements officers' responsibilities?

Subpart E—Information Reporting on Awards Subject to 31 U.S.C. Chapter 61

21.500 What is the purpose of this subpart?
21.505 What is the Catalog of Federal Domestic Assistance (CFDA)?
21.510 Why does the DoD report information to the CFDA?
21.515 Who reports the information for the CFDA?
21.520 What are the purposes of the Defense Assistance Awards Data System (DAADS)?
21.525 Who issues policy guidance for the DAADS?
21.530 Who operates the DAADS?
21.535 Do DoD Components have central points for collecting DAADS data?
21.540 What are the duties of the DoD Components' central points for the DAADS?
21.545 Must DoD Components report every obligation to the DAADS?
21.550 Must DoD Components relate reported actions to listings in the CFDA?
21.555 When and how must DoD Components report to the DAADS?
21.560 Must DoD Components assign numbers uniformly to awards?

Subpart F—Definitions

21.605 Acquisition.
21.610 Agreements officer.
21.615 Assistance.
21.620 Award.
21.625 Contract.
21.630 Contracting activity.
21.635 Contracting officer.
21.640 Cooperative agreement.
21.645 Deviation.
21.650 DoD Components.
21.655 Grant.
21.660 Grants officer.
21.665 Nonprocurement instrument.
21.670 Procurement contract.
21.675 Recipient.
21.680 Technology investment agreements.
Appendix A to Part 21—Instruments to Which DoDGARs Portions Apply

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—Introduction

§ 21.100 What are the purposes of this part?

This part of the DoD Grant and Agreement Regulations:

(a) Provides general information about the Defense Grant and Agreement Regulatory System (DGARS).

(b) Sets forth general policies and procedures related to DoD Components' overall management of functions related to assistance and certain other nonprocurement instruments subject to the DGARS (*see* § 21.205(b)).

Subpart B—Defense Grant and Agreement Regulatory System

§ 21.200 What is the Defense Grant and Agreement Regulatory System (DGARS)?

The Defense Grant and Agreement Regulatory System (DGARS) is the system of regulatory policies and procedures for the award and administration of DoD Components' assistance and other nonprocurement awards. DoD Directive 3210.6[1] established the DGARS.

§ 21.205 What types of instruments are covered by the DGARS?

The Defense Grant and Agreement Regulatory System (DGARS) applies to the following types of funding instruments awarded by DoD Components:

(a) All grants, cooperative agreements, and technology investment agreements.

(b) Other nonprocurement instruments, as needed to implement statutes, Executive orders, or other Federal Governmentwide rules that apply to those other nonprocurement instruments, as well as to grants and cooperative agreements.

§ 21.210 What are the purposes of the DGARS?

The purposes of the DGARS are to provide uniform policies and procedures for DoD Components' awards, in order to meet DoD needs for:

(a) Efficient program execution, effective program oversight, and proper stewardship of Federal funds.

(b) Compliance with relevant statutes; Executive orders; and applicable guidance, such as Office of Management and Budget (OMB) circulars.

(c) Collection from DoD Components, retention, and dissemination of management and fiscal data related to awards.

§ 21.215 Who is responsible for the DGARS?

The Director of Defense Research and Engineering, or his or her designee, develops and implements DGARS

[1] Electronic copies may be obtained at the Washington Headquarters Services Internet site *http://www.dtic.mil/whs/directives.* Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

policies and procedures. He or she does so by issuing and maintaining the DoD publications that comprise the DGARS.

§ 21.220 What publications are in the DGARS?

A DoD publication (DoD 3210.6–R [2]) entitled ''The DoD Grant and Agreement Regulations'' is the principal element of the DGARS. The Director of Defense Research and Engineering also may publish DGARS policies and procedures in DoD instructions and other DoD publications, as appropriate.

Subpart C—The DoD Grant and Agreement Regulations

§ 21.300 What instruments are subject to the DoD Grant and Agreement Regulations (DoDGARs)?

(a) The types of instruments that are subject to the DoDGARs vary from one portion of the DoDGARs to another. The types of instruments include grants, cooperative agreements, and technology investment agreements. Some portions of the DoDGARs apply to other types of assistance or nonprocurement instruments. The term ''awards,'' as defined in subpart D of this part, is used in this part to refer collectively to all of the types of instruments that are subject to one or more portions of the DoDGARs.

(b) Note that each portion of the DoDGARs identifies the types of instruments to which it applies. However, grants officers and agreements officers must exercise caution when determining the applicability of some Governmentwide rules that are included within the DoDGARs, because a term may be defined differently in a Governmentwide rule than it is defined elsewhere in the DoDGARs. One example is part 33 of the DoDGARs (32 CFR part 33), which contains administrative requirements for awards to State and local governments. That DoDGARs part is the DoD's codification of the Governmentwide rule implementing OMB Circular A–102.[3] Part 33 states that it applies to grants, but defines the term ''grant'' to include cooperative agreements and other forms of financial assistance.

(c) For convenience, the table in Appendix A to this part provides an overview of the applicability of the various portions of the DoDGARs.

§ 21.305 What is the purpose of the DoDGARs?

The DoD Grant and Agreement Regulations provide uniform policies and procedures for the award and administration of DoD Components' awards. The DoDGARs are the primary DoD regulations for achieving the DGARS purposes described in § 21.210.

§ 21.310 Who ensures DoD Component compliance with the DoDGARs?

The Head of each DoD Component that makes or administers awards, or his or her designee, is responsible for ensuring compliance with the DoDGARs within that DoD Component.

§ 21.315 May DoD Components issue supplemental policies and procedures to implement the DoDGARs?

Yes, Heads of DoD Components or their designees may issue regulations, procedures, or instructions to implement the DGARS or supplement the DoDGARs to satisfy needs that are specific to the DoD Component, as long as the regulations, procedures, or instructions do not impose additional costs or administrative burdens on recipients or potential recipients.

§ 21.320 Are there areas in which DoD Components must establish policies and procedures to implement the DoDGARs?

Yes, Heads of DoD Components or their designees must establish policies and procedures in areas where uniform policies and procedures throughout the DoD Component are required, such as for:

(a) Requesting class deviations from the DoDGARs (*see* §§ 21.335(b) and 21.340(a)) or exemptions from the provisions of 31 U.S.C. 6301 through 6308, that govern the appropriate use of contracts, grants, and cooperative agreements (*see* 32 CFR 22.220).

(b) Designating one or more Grant Appeal Authorities to resolve claims, disputes, and appeals (*see* 32 CFR 22.815).

(c) Reporting data on assistance awards and programs, as required by 31 U.S.C. chapter 61 (*see* subpart E of this part).

(d) Prescribing requirements for use and disposition of real property acquired under awards, if the DoD Component makes any awards to institutions of higher education or to other nonprofit organizations under which real property is acquired in whole or in part with Federal funds (*see* 32 CFR 32.32).

§ 21.325 Do acquisition regulations also apply to DoD grants and agreements?

Unless the DoDGARs specify that they apply, policies and procedures in the following acquisition regulations that apply to procurement contracts do not apply to grants, cooperative agreements, technology investment agreements, or to other assistance or nonprocurement awards:

(a) The Federal Acquisition Regulation (FAR)(48 CFR parts 1–53).

(b) The Defense Federal Acquisition Regulation Supplement (DFARS)(48 CFR parts 201–270).

(c) DoD Component supplements to the FAR and DFARS.

§ 21.330 How are the DoDGARs published and maintained?

(a) The DoD publishes the DoDGARs in chapter I, subchapter C, Title 32 of the Code of Federal Regulations (CFR) and in a separate internal DoD document (DoD 3210.6–R). The DoD document is divided into parts, subparts, and sections, to parallel the CFR publication. Cross-references within the DoDGARs are stated as CFR citations (*e.g.*, a reference to § 21.215 in part 21 would be to 32 CFR 21.215).

(b) The DoD publishes updates to the DoDGARs in the **Federal Register**. When finalized, the DoD also posts the updates to the internal DoD document on the World Wide Web at *http://www.dtic.mil/whs/directives.*

(c) A standing working group recommends revisions to the DoDGARs to the Director of Defense Research and Engineering (DDR&E). The DDR&E, Director of Defense Procurement, and each Military Department must be represented on the working group. Other DoD Components that make or administer awards may also nominate representatives. The working group meets when necessary.

§ 21.335 Who can authorize deviations from the DoDGARs?

(a) The Head of the DoD Component or his or her designee may authorize individual deviations from the DoDGARs, which are deviations that affect only one award, if the deviations are not prohibited by statute, executive order or regulation.

(b) The Director of Defense Research and Engineering (DDR&E) or his or her designee must approve in advance any class deviation that affects more than one award. Note that OMB concurrence also is required for class deviations from two parts of the DoDGARs, 32 CFR parts 32 and 33, in accordance with 32 CFR 32.4 and 33.6, respectively.

§ 21.340 What are the procedures for requesting and documenting deviations?

(a) DoD Components must submit copies of justifications and agency approvals for individual deviations and written requests for class deviations to:

[2] *See* footnote 1 to § 21.200.

[3] Electronic copies may be obtained at the Internet site *http://www.whitehouse.gov/OMB.* For paper copies, contact the Office of Management and Budget, EOP Publications, 725 17th St., NW., New Executive Office Building, Washington, DC 20503.

Deputy Director of Defense Research and Engineering, ATTN: Basic Research, 3080 Defense Pentagon, Washington, DC 20301–3080.

(b) Grants officers and agreements officers must maintain copies of requests and approvals for individual and class deviations in award files.

Subpart D—Authorities and Responsibilities for Making and Administering Assistance Awards

§ 21.400 To what instruments does this subpart apply?

This subpart applies to grants, cooperative agreements, and technology investment agreements, which are legal instruments used to reflect assistance relationships between the United States Government and recipients.

§ 21.405 What is the purpose of this subpart?

This subpart describes the sources and flow of authority to make or administer assistance awards, and assigns the broad responsibilities associated with DoD Components' use of those instruments.

§ 21.410 Must a DoD Component have statutory authority to make an assistance award?

Yes, the use of an assistance instrument to carry out a program requires authorizing legislation. That is unlike the use of a procurement contract, for which Federal agencies have inherent, Constitutional authority.

§ 21.415 Must the statutory authority specifically mention the use of grants or other assistance instruments?

No, the statutory authority described in § 21.410 need not specifically say that the purpose of the program is assistance or mention the use of any type of assistance instrument. However, the intent of the statute must support a judgment that the use of an assistance instrument is appropriate. For example, a DoD Component may judge that the principal purpose of a program for which it has authorizing legislation is assistance, rather than acquisition. The DoD Component would properly use an assistance instrument to carry out that program, in accordance with 31 U.S.C. chapter 63.

§ 21.420 Under what types of statutory authorities do DoD Components award assistance instruments?

DoD Components may use assistance instruments under a number of statutory authorities that fall into three categories:

(a) *Authorities that statutes provide to the Secretary of Defense.* These authorities generally are delegated by the Secretary of Defense to Heads of DoD Components, usually through DoD directives, instructions, or policy memoranda that are not part of the Defense Grant and Agreement Regulatory System. Examples of statutory authorities in this category are:

(1) Authority under 10 U.S.C. 2391 to award grants or cooperative agreements to help State and local governments alleviate serious economic impacts of defense program changes (*e.g.*, base openings and closings, contract changes, and personnel reductions and increases).

(2) Authority under 10 U.S.C. 2413 to enter into cooperative agreements with entities that furnish procurement technical assistance to businesses.

(b) *Authorities that statutes may provide directly to Heads of DoD Components.* When a statute authorizes the Head of a DoD Component to use a funding instrument to carry out a program with a principal purpose of assistance, use of that authority requires no delegation by the Secretary of Defense. For example, 10 U.S.C. 2358 authorizes the Secretaries of the Military Departments, in addition to the Secretary of Defense, to perform research and development projects through grants and cooperative agreements. Similarly, 10 U.S.C. 2371 provides authority for the Secretaries of the Military Departments and Secretary of Defense to carry out basic, applied, or advanced research projects using assistance instruments other than grants and cooperative agreements. A Military Department's use of the authority of 10 U.S.C. 2358 or 10 U.S.C. 2371 therefore requires no delegation by the Secretary of Defense.

(c) *Authorities that arise indirectly as the result of statute.* For example, authority to use an assistance instrument may result from:

(1) A federal statute authorizing a program that is consistent with an assistance relationship (*i.e.*, the support or stimulation of a public purpose, rather than the acquisition of a good or service for the direct benefit of the Department of Defense). In accordance with 31 U.S.C. chapter 63, such a program would appropriately be carried out through the use of grants or cooperative agreements. Depending upon the nature of the program (*e.g.*, research) and whether the program statute includes authority for any specific types of instruments, there also may be authority to use other assistance instruments.

(2) Exemptions requested by the Department of Defense and granted by the Office of Management and Budget under 31 U.S.C. 6307, as described in 32 CFR 22.220.

§ 21.425 How does a DoD Component's authority flow to awarding and administering activities?

The Head of a DoD Component, or his or her designee, may delegate to the heads of contracting activities (HCAs) within the Component, that Component's authority to make and administer awards, to appoint grants officers and agreements officers (*see* §§ 21.435 through 21.450), and to broadly manage the DoD Component's functions related to assistance instruments. The HCA is the same official (or officials) designated as the head of the contracting activity for procurement contracts, as defined at 48 CFR 2.101. The intent is that overall management responsibilities for a DoD Component's functions related to nonprocurement instruments be assigned only to officials that have similar responsibilities for procurement contracts.

§ 21.430 What are the responsibilities of the head of the awarding or administering activity?

When designated by the Head of the DoD Component or his or her designee (see 32 CFR 21.425), the head of the awarding or administering activity (*i.e.*, the HCA) is responsible for the awards made by or assigned to that activity. He or she must supervise and establish internal policies and procedures for that activity's awards.

§ 21.435 Must DoD Components formally select and appoint grants officers and agreements officers?

Yes, each DoD Component that awards grants or enters into cooperative agreements must have a formal process (see § 21.425) for selecting and appointing grants officers and for terminating their appointments. Similarly, each DoD Component that awards or administers technology investment agreements must have a process for selecting and appointing agreements officers and for terminating their appointments.

§ 21.440 What are the standards for selecting and appointing grants officers and agreements officers?

In selecting grants officers and agreements officers, DoD Components must use the following minimum standards:

(a) In selecting a grants officer, the appointing official must judge whether the candidate has the necessary experience, training, education, business acumen, judgment, and knowledge of assistance instruments and contracts to function effectively as a grants officer. The appointing official also must take those attributes of the

candidate into account when deciding the complexity and dollar value of the grants and cooperative agreements to be assigned.

(b) In selecting an agreements officer, the appointing official must consider all of the same factors as in paragraph (a) of this section. In addition, the appointing official must consider the candidate's ability to function in the less structured environment of technology investment agreements, where the rules provide more latitude and the individual must have a greater capacity for exercising judgment. Agreements officers therefore should be individuals who have demonstrated expertise in executing complex assistance and acquisition instruments.

§ 21.445 What are the requirements for a grants officer's or agreements officer's statement of appointment?

A statement of a grants officer's or agreements officer's appointment:

(a) Must be in writing.

(b) Must clearly state the limits of the individual's authority, other than limits contained in applicable laws or regulations. Information on those limits of a grants officer's or agreements officer's authority must be readily available to the public and agency personnel.

(c) May, if the individual is a contracting officer, be incorporated into his or her statement of appointment as a contracting officer (*i.e.*, there does not need to be a separate written statement of appointment for assistance instruments).

§ 21.450 What are the requirements for a termination of a grants officer's or agreements officer's appointment?

A termination of a grants officer's or agreements officer's authority:

(a) Must be in writing, unless the written statement of appointment provides for automatic termination.

(b) May not be retroactive.

(c) May be integrated into a written termination of the individual's appointment as a contracting officer, as appropriate.

§ 21.455 Who can sign, administer, or terminate assistance instruments?

Only grants officers are authorized to sign, administer, or terminate grants or cooperative agreements (other than technology investment agreements) on behalf of the Department of Defense. Similarly, only agreements officers may sign, administer, or terminate technology investment agreements.

§ 21.460 What is the extent of grants officers' and agreements officers' authority?

Grants officers and agreements officers may bind the Government only to the extent of the authority delegated to them in their written statements of appointment (*see* § 21.445).

§ 21.465 What are grants officers' and agreements officers' responsibilities?

Grants officers and agreements officers should be allowed wide latitude to exercise judgment in performing their responsibilities, which are to ensure that:

(a) Individual awards are used effectively in the execution of DoD programs, and are made and administered in accordance with applicable laws, Executive orders, regulations, and DoD policies.

(b) Sufficient funds are available for obligation.

(c) Recipients of awards receive impartial, fair, and equitable treatment.

Subpart E—Information Reporting on Awards Subject to 31 U.S.C. Chapter 61

§ 21.500 What is the purpose of this subpart?

This subpart prescribes policies and procedures for compiling and reporting data related to DoD awards and programs that are subject to information reporting requirements of 31 U.S.C. chapter 61. That chapter of the U.S. Code requires the Office of Management and Budget to maintain a Governmentwide information system to collect data on Federal agencies' domestic assistance awards and programs.

§ 21.505 What is the Catalog of Federal Domestic Assistance (CFDA)?

The Catalog of Federal Domestic Assistance (CFDA) is a Governmentwide compilation of information about domestic assistance programs. It covers all domestic assistance programs and activities, regardless of the number of awards made under the program, the total dollar value of assistance provided, or the duration. In addition to programs using grants and agreements, covered programs include those providing assistance in other forms, such as payments in lieu of taxes or indirect assistance resulting from Federal operations.

§ 21.510 Why does the DoD report information to the CFDA?

The Federal Program Information Act (31 U.S.C. 6101 through 6106), as implemented through OMB Circular A–89,[4] requires the Department of Defense and other Federal agencies to provide certain information about their domestic assistance programs to the OMB and the General Services Administration (GSA). The GSA makes this information available to the public by publishing it in the Catalog of Federal Domestic Assistance (CFDA) and maintaining the Federal Assistance Programs Retrieval System, a computerized data base of the information.

§ 21.515 Who reports the information for the CFDA?

(a) Each DoD Component that provides domestic financial assistance must:

(1) Report to the Director of Information, Operations and Reports, Washington Headquarters Services (DIOR, WHS) all new programs and changes as they occur or as the DoD Component submits its annual updates to existing CFDA information.

(2) Identify to the DIOR, WHS a point-of-contact who will be responsible for reporting the program information and for responding to inquiries related to it.

(b) The DIOR, WHS is the Department of Defense's single office for collecting, compiling and reporting such program information to the OMB and GSA.

§ 21.520 What are the purposes of the Defense Assistance Awards Data System (DAADS)?

Data from the Defense Assistance Awards Data System (DAADS) are used to provide:

(a) DoD inputs to meet statutory requirements for Federal Governmentwide reporting of data related to obligations of funds by assistance instrument.

(b) A basis for meeting Governmentwide requirements to report to the Federal Assistance Awards Data System (FAADS) maintained by the Department of Commerce and for preparing other recurring and special reports to the President, the Congress, the General Accounting Office, and the public.

(c) Information to support policy formulation and implementation and to meet management oversight requirements related to the use of awards.

§ 21.525 Who issues policy guidance for the DAADS?

The Deputy Director, Defense Research and Engineering (DDDR&E), or his or her designee, issues necessary policy guidance for the Defense Assistance Awards Data System.

[4] See footnote 3 to § 21.300(b).

§ 21.530 Who operates the DAADS?

The Director of Information Operations and Reports, Washington Headquarters Services (DIOR, WHS), consistent with guidance issued by the DDDR&E:

(a) Processes DAADS information on a quarterly basis and prepares recurring and special reports using such information.

(b) Prepares, updates, and disseminates instructions for reporting information to the DAADS. The instructions are to specify procedures, formats, and editing processes to be used by DoD Components, including record layout, submission deadlines, media, methods of submission, and error correction schedules.

§ 21.535 Do DoD Components have central points for collecting DAADS data?

Each DoD Component must have a central point for collecting DAADS information from contracting activities within that DoD Component. The central points are as follows:

(a) For the Army: As directed by the U.S. Army Contracting Support Agency.

(b) For the Navy: As directed by the Office of Naval Research.

(c) For the Air Force: As directed by the Office of the Secretary of the Air Force, Acquisition Contracting Policy and Implementation Division (SAF/AQCP).

(d) For the Office of the Secretary of Defense, Defense Agencies, and DoD Field Activities: Each Defense Agency must identify a central point for collecting and reporting DAADS information to the DIOR, WHS, at the address given in § 21.555(a). DIOR, WHS serves as the central point for offices and activities within the Office of the Secretary of Defense and for DoD Field Activities.

§ 21.540 What are the duties of the DoD Components' central points for the DAADS?

The office that serves, in accordance with § 21.535, as the central point for collecting DAADS information from contracting activities within each DoD Component must:

(a) Establish internal procedures to ensure reporting by contracting activities that make awards subject to 31 U.S.C. chapter 61.

(b) Collect information required by DD Form 2566,[5] ''DoD Assistance Award Action Report,'' from those contracting activities, and report it to DIOR, WHS, in accordance with §§ 21.545 through 21.555.

(c) Submit to the DIOR, WHS, any recommended changes to the DAADS.

§ 21.545 Must DoD Components report every obligation to the DAADS?

Yes, DoD Components' central points must collect and report the data required by the DD Form 2566 for each individual action that involves the obligation or deobligation of Federal funds for an award that is subject to 31 U.S.C. chapter 61.

§ 21.550 Must DoD Components relate reported actions to listings in the CFDA?

Yes, DoD Components' central points must report each action as an obligation or deobligation under a specific programmatic listing in the Catalog of Federal Domestic Assistance (CFDA, see § 21.505). The programmatic listing to be shown is the one that provided the funds being obligated or deobligated. For example, if a grants officer or agreements officer in one DoD Component obligates appropriations of a second DoD Component's programmatic listing, the grants officer or agreements officer must show the CFDA programmatic listing of the second DoD Component on the DD Form 2566.

§ 21.555 When and how must DoD Components report to the DAADS?

DoD Components' central points must report:

(a) On a quarterly basis to DIOR, WHS. For the first three quarters of the Federal fiscal year, the data are due by close-of-business (COB) on the 15th day after the end of the quarter (*i.e.*, first-quarter data are due by COB on January 15th, second-quarter data by COB April 15th, and third-quarter data by COB July 15th). Fourth-quarter data are due by COB October 25th, the 25th day after the end of the quarter. If any due date falls on a weekend or holiday, the data are due on the next regular workday. The mailing address for DIOR, WHS is 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

(b) On a floppy diskette or by other means permitted either by the instructions described in § 21.530(b) or by agreement with the DIOR, WHS. The data must be reported in the format specified in the instructions.

§ 21.560 Must DoD Components assign numbers uniformly to awards?

Yes, DoD Components must assign identifying numbers to all awards subject to this subpart, including grants, cooperative agreements, and technology investment agreements. The uniform numbering system parallels the procurement instrument identification (PII) numbering system specified in 48 CFR 204.70 (in the ''Defense Federal Acquisition Regulation Supplement''), as follows:

(a) The first six alphanumeric characters of the assigned number must be identical to those specified by 48 CFR 204.7003(a)(1) to identify the DoD Component and contracting activity.

(b) The seventh and eighth positions must be the last two digits of the fiscal year in which the number is assigned to the grant, cooperative agreement, or other nonprocurement instrument.

(c) The 9th position must be a number:

(1) ''1'' for grants.

(2) ''2'' for cooperative agreements, including technology investment agreements that are cooperative agreements (see Appendix B to 32 CFR part 37).

(3) ''3'' for other nonprocurement instruments, including technology investment agreements that are not cooperative agreements.

(d) The 10th through 13th positions must be the serial number of the instrument. DoD Components and contracting activities need not follow any specific pattern in assigning these numbers and may create multiple series of letters and numbers to meet internal needs for distinguishing between various sets of awards.

Subpart F—Definitions

§ 21.605 Acquisition.

The acquiring (by purchase, lease, or barter) of property or services for the direct benefit or use of the United States Government (see more detailed definition at 48 CFR 2.101). In accordance with 31 U.S.C. 6303, procurement contracts are the appropriate legal instruments for acquiring such property or services.

§ 21.610 Agreements officer.

An official with the authority to enter into, administer, and/or terminate technology investment agreements.

§ 21.615 Assistance.

The transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (*see* 31 U.S.C. 6101(3)). Grants, cooperative agreements, and technology investment agreements are examples of legal instruments used to provide assistance.

§ 21.620 Award.

A grant, cooperative agreement, technology investment agreement, or other nonprocurement instrument subject to one or more parts of the DoD

[5] Department of Defense forms are available at Internet site *http://www.dior.whs.mil/ICDHOME/FORMTAB.HTM.*

Grant and Agreement Regulations (*see* appendix A to this part).

§ 21.625 Contract.

See the definition for procurement contract in this subpart.

§ 21.630 Contracting activity.

An activity to which the Head of a DoD Component has delegated broad authority regarding acquisition functions, pursuant to 48 CFR 1.601.

§ 21.635 Contracting officer.

A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. A more detailed definition of the term appears at 48 CFR 2.101.

§ 21.640 Cooperative agreement.

A legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition ''grant''), except that substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include ''cooperative research and development agreements'' as defined in 15 U.S.C. 3710a.

§ 21.645 Deviation.

The issuance or use of a policy or procedure that is inconsistent with the DoDGARs.

§ 21.650 DoD Components.

The Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and DoD Field Activities.

§ 21.655 Grant.

A legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) Of which the principal purpose is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Department of Defense's direct benefit or use.

(b) In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

§ 21.660 Grants officer.

An official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

§ 21.665 Nonprocurement instrument.

A legal instrument other than a procurement contract. Examples include instruments of financial assistance, such as grants or cooperative agreements, and those of technical assistance, which provide services in lieu of money.

§ 21.670 Procurement contract.

A legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. See the more detailed definition for contract at 48 CFR 2.101.

§ 21.675 Recipient.

An organization or other entity receiving an award from a DoD Component.

§ 21.680 Technology investment agreements.

A special class of assistance instruments used to increase involvement of commercial firms in defense research programs and for other purposes related to integrating the commercial and defense sectors of the nation's technology and industrial base. Technology investment agreements include one kind of cooperative agreement with provisions tailored for involving commercial firms, as well as one kind of other assistance transaction. Technology investment agreements are described more fully in 32 CFR part 37.

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APPENDIX A TO PART 21 – INSTRUMENTS TO WHICH DoDGARs PORTIONS APPLY

DoDGARs . . .	which addresses . . .	applies to . . .
Part 21 (32 CFR part 21), all but Subparts D and E	The Defense Grant and Agreement Regulatory System and the DoD Grant and Agreement Regulations	"awards," which are grants, cooperative agreements, technology investment agreements (TIAs), and other nonprocurement instruments subject to one or more parts of the DoDGARs.
Part 21 (32 CFR part 21), Subpart D	Authorities and responsiblities for assistance award and administration	grants, cooperative agreements, and TIAs.
Part 21 (32 CFR part 21), Subpart E	DoD Components' information reporting requirements	grants, cooperative agreements, TIAs, and other nonprocurement instruments subject to reporting requirements in 31 U.S.C. chapter 61.
Part 22 (32 CFR part 22)	DoD grants officers' responsibilities for award and administration of grants and cooperative agreements	grants and cooperative agreements other than TIAs.
Part 25 (32 CFR part 25), Suparts A through E	Governmentwide debarment and suspension requirements	Nonprocurement generally, which is grants, cooperative agreements, TIAs, and other instruments included in the definition of "primary covered transaction" at 32 CFR 25.110(a)(1)(i), with the exceptions identified at 32 CFR 25.110(a)(2).
Part 25 (32 CFR part 25), Subpart F	Governmentwide drug-free workplace requirements	financial assistance generally, including cooperative agreements and TIAs, as included in the definition of "grant" at 32 CFR 25.605(b)(7).
Part 28 (32 CFR part 28)	Governmentwide restrictions on lobbying	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definitions of "Federal grant" and "Federal cooperative agreement" at 32 CFR 28.105.
Part 32 (32 CFR part 32)	Administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations	grants, cooperative agreements other than TIAs, and other assistance included in "award," as defined in 32 CFR 32.2. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 33 (32 CFR part 33)	Administrative requirements for grants and agreements with State and local governments	grants, cooperative agreements other than TIAs, and other assistance included in "grant," as defined in 32 CFR 33.3. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 34 (32 CFR part 34)	Administrative requirements for grants and agreements with for-profit organizations	grants and cooperative agreements other than TIAs ("awards," as defined in 32 CFR 34.2). Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 37 (32 CFR part 37)	Agreements officers' responsibilities for award and administration of TIAs	TIAs. Note that this part refers to portions of DoDGARs parts 32, 33, and 34 that apply to TIAs.

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PART 22—[AMENDED]

■ 2. The authority citation for part 22 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 22.105 [Amended]

■ 3. Section 22.105 is amended by removing ''32 CFR 21.130'' in the first sentence and adding ''32 CFR part 21, subpart F'' in its place.

§ 22.210 [Amended]

■ 4. Section 22.210 is amended by removing ''32 CFR 21.205(b)'' in paragraph (a)(1) and adding ''32 CFR 21.410 through 21.420'' in its place.

§ 22.220 [Amended]

■ 5. Section 22.220 is amended by removing ''32 CFR 21.115(b)(1)'' in paragraph (a)(1) and adding ''32 CFR 21.320(a)'' in its place.

§ 22.605 [Amended]

■ 6. Section 22.605 is amended by removing ''32 CFR part 21, subpart C'' in paragraph (b) and adding ''32 CFR part 21, subpart E'' in its place.

PART 32—[AMENDED]

■ 7. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 32.4 [Amended]

■ 8. Section 32.4 is amended by:
■ a. Removing ''32 CFR 21.125(a) and (c)'' in paragraph (a) and adding ''32 CFR 21.335(a) and 21.340'' in its place; and
■ b. Removing ''32 CFR 21.125(b) and (c)'' in paragraph (c)(2) and adding ''32 CFR 21.335(b) and 21.340'' in its place.

§ 32.11 [Amended]

■ 9. Section 32.11 is amended by removing ''32 CFR 21.205(a) and'' in paragraph (a)(2).

PART 34—[AMENDED]

■ 10. The authority citation for part 34 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

■ 11. The definition of ''award'' in § 34.2 is revised to read as follows:

§ 34.2 Definitions.

* * * * *

Award. A grant or a cooperative agreement other than a technology investment agreement (TIA). TIAs are covered by part 37 of the DoDGARs (32 CFR part 37). Portions of this part may apply to a TIA, but only to the extent that 32 CFR part 37 makes them apply.

* * * * *

§ 34.3 [Amended]

■ 12. Section 34.3 is amended by:
■ a. Removing ''32 CFR 21.125(a)'' in paragraph (a) and adding ''32 CFR 21.335(a) and 21.340'' in its place; and
■ b. Removing ''32 CFR 21.125(b) and (c)'' in paragraph (c) and adding ''32 CFR 21.335(b) and 21.340'' in its place.

■ 13. Part 37 is added to subchapter C to read as follows:

PART 37—TECHNOLOGY INVESTMENT AGREEMENTS

Subpart A—General

Sec.

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37.560 Must I be able to estimate project expenditures precisely in order to justify use of a fixed-support TIA?
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37.570 What must I do if a CAS-covered participant accounts differently for its own and the Federal Government shares of project costs?
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37.880 What requirements must I include for periodic reports on program and business status?
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37.910 How long must I require participants to keep records related to the TIA?
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37.925 What requirements do I include for termination and enforcement?

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37.1000 What are my responsibilities at the time of award?

The Award Document

37.1005 What are my general responsibilities concerning the award document?
37.1010 What substantive issues should my award document address?
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37.1020 What must I document in my award file?
37.1025 Must I report information to the Defense Assistance Awards Data System?
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§ 37.1040 When and how do I report information required by § 37.1035?

Distributing Copies of the Award Document

37.1045 To whom must I send copies of the award document?

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37.1100 What are my responsibilities generally as an administrative agreements officer for a TIA?
37.1105 What additional duties do I have as the administrator of a TIA with advance payments or payable milestones?
37.1110 What other responsibilities related to payments do I have?
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37.1120 When and how may I request an award-specific audit?

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37.1210 Advanced research.
37.1215 Agreements officer.
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37.1235 Award-specific audit.
37.1240 Basic research.
37.1245 Cash contributions.
37.1250 Commercial firm.
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37.1275 DoD Component.
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37.1360 Research.
37.1365 Supplies.
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37.1375 Technology investment agreements.
Appendix A to Part 37—What is the Civil-Military Integration Policy that is the Basis for Technology Investment Agreements?
Appendix B to Part 37—What Type of Instrument is a TIA and What Statutory Authorities Does it Use?
Appendix C to Part 37—What is the Desired Coverage for Periodic Audits of For-Profit Participants to be Audited by IPAs?
Appendix D to Part 37—What Common National Policy Requirements May Apply and Need to Be Included in TIAs?

Appendix E to Part 37—What Provisions May a Participant Need to Include when Purchasing Goods or Services Under a TIA?

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—General

§ 37.100 What does this part do?

This part establishes uniform policies and procedures for the DoD Components' award and administration of technology investment agreements (TIAs).

§ 37.105 Does this part cover all types of instruments that 10 U.S.C. 2371 authorizes?

No, this part covers only TIAs, some of which use the authority of 10 U.S.C. 2371 (*see* appendix B to this part). This part does not cover assistance instruments other than TIAs that use the authority of 10 U.S.C. 2371. It also does not cover acquisition agreements for prototype projects that use 10 U.S.C. 2371 authority augmented by the authority in section 845 of Public Law 103–160, as amended.

§ 37.110 What type of instruments are technology investment agreements (TIAs)?

TIAs are assistance instruments used to stimulate or support research. As discussed in appendix B to this part, a TIA may be either a kind of cooperative agreement or a type of assistance transaction other than a grant or cooperative agreement.

§ 37.115 For what purposes are TIAs used?

The ultimate goal for using TIAs, like other assistance instruments used in defense research programs, is to foster the best technologies for future defense needs. TIAs differ from and complement other assistance instruments available to agreements officers, in that TIAs address the goal by fostering civil-military integration (*see* appendix A to this part). TIAs therefore are designed to:

(a) Reduce barriers to commercial firms' participation in defense research, to give the Department of Defense (DoD) access to the broadest possible technology and industrial base.

(b) Promote new relationships among performers in both the defense and commercial sectors of that technology and industrial base.

(c) Stimulate performers to develop, use, and disseminate improved practices.

§ 37.120 Can my organization award or administer TIAs?

Your office may award or administer TIAs if it has a delegation of the authorities in 10 U.S.C. 2371, as well as 10 U.S.C. 2358. If your office is in a Military Department, it must have a delegation of the authority of the Secretary of that Military Department under those statutes. If your office is in a Defense Agency, it must have a delegation of the authority of the Secretary of Defense under 10 U.S.C. 2358 and 2371. Your office needs those authorities to be able to:

(a) Enter into cooperative agreements to stimulate or support research, using the authority of 10 U.S.C. 2358, as well as assistance transactions other than grants or cooperative agreements, using the authority of 10 U.S.C. 2371. The reason that both authorities are needed is that a TIA, depending upon its patent rights provision (*see* appendix B to this part), may be either a cooperative agreement or a type of assistance transaction other than a grant or cooperative agreement.

(b) Recover funds from a recipient and reuse the funds for program purposes, as authorized by 10 U.S.C. 2371 and described in § 37.580.

(c) Exempt certain information received from proposers from disclosure under the Freedom of Information Act, as authorized by 10 U.S.C. 2371 and described in § 37.420.

§ 37.125 May I award or administer TIAs if I am authorized to award or administer other assistance instruments?

(a) You must have specific authorization to award or administer TIAs. Being authorized to award or administer grants and cooperative agreements is not sufficient; a grants officer is an agreements officer only if the statement of appointment also authorizes the award or administration of TIAs.

(b) You receive that authorization in the same way that you receive authority to award other assistance instruments, as described in 32 CFR 21.425 and 21.435 through 21.445.

§ 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

(a) TIAs are explicitly covered in this part and part 21 of the DoD Grant and Agreement Regulations (DoDGARs). Part 21 (32 CFR part 21) addresses deviation procedures and other general matters that relate to the DoDGARs, to DoD Components' authorities and responsibilities for assistance instruments, and to requirements for reporting information about assistance awards.

(b) Two additional parts of the DoDGARs apply to TIAs, although they do not mention TIAs explicitly. They are:

(1) Part 25 (32 CFR part 25), on debarment, suspension, and drug-free workplace requirements, which applies because it covers nonprocurement instruments in general; and

(2) Part 28 (32 CFR part 28), on lobbying restrictions, which applies by law (31 U.S.C. 1352) to TIAs that are cooperative agreements and as a matter of DoD policy to all other TIAs.

(c) Portions of four other DoDGARs parts apply to TIAs only as cited by reference in this part. Those parts of the DoDGARs are parts 22, 32, 33, and 34 (32 CFR parts 22, 32, 33, and 34).

Subpart B—Appropriate Use of Technology Investment Agreements

§ 37.200 What are my responsibilities as an agreements officer for ensuring the appropriate use of TIAs?

You must ensure that you use TIAs only in appropriate situations. To do so, you must conclude that the use of a TIA is justified based on:

(a) The nature of the project, as discussed in § 37.205;

(b) The type of recipient, addressed in § 37.210;

(c) The recipient's commitment and cost sharing, as described in § 37.215;

(d) The degree of involvement of the Government program official, as discussed in § 37.220; and

(e) Your judgment that the use of a TIA could benefit defense research objectives in ways that likely would not happen if another type of assistance instrument were used. Your answers to the four questions in § 37.225 should be the basis for your judgment.

§ 37.205 What judgments must I make about the nature of the project?

You must:

(a) Conclude that the principal purpose of the project is stimulation or support of research (*i.e.*, assistance), rather than acquiring goods or services for the benefit of the Government (*i.e.*, acquisition);

(b) Decide that the basic, applied, or advanced research project is relevant to the policy objective of civil-military integration (*see* appendix A of this part); and

(c) Ensure that, to the maximum extent practicable, any TIA that uses the authority of 10 U.S.C. 2371 (*see* appendix B of this part) does not support research that duplicates other research being conducted under existing programs carried out by the Department of Defense. This is a statutory requirement of 10 U.S.C. 2371.

(d) When your TIA is a type of assistance transaction other than a grant or cooperative agreement, satisfy the condition in 10 U.S.C. 2371 to judge that the use of a standard grant or cooperative agreement for the research

project is not feasible or appropriate. As discussed in appendix B to this part:

(1) This situation arises if your TIA includes a patent provision that is less restrictive than is possible under the Bayh-Dole statute (because the patent provision is what distinguishes a TIA that is a cooperative agreement from a TIA that is an assistance transaction other than a grant or cooperative agreement).

(2) You satisfy the requirement to judge that a standard cooperative agreement is not feasible or appropriate when you judge that execution of the research project warrants a less restrictive patent provision than is possible under Bayh-Dole.

§ 37.210 To what types of recipients may I award a TIA?

(a) As a matter of DoD policy, you may award a TIA only when one or more for-profit firms are to be involved either in the:

(1) Performance of the research project; or

(2) The commercial application of the research results. In that case, you must determine that the nonprofit performer has at least a tentative agreement with specific for-profit partners who plan on being involved when there are results to transition. You should review the agreement between the nonprofit and for-profit partners, because the for-profit partners' involvement is the basis for using a TIA rather than another type of assistance instrument.

(b) Consistent with the goals of civil-military integration, TIAs are most appropriate when one or more commercial firms (as defined at § 37.1250) are to be involved in the project.

(c) You are encouraged to make awards to consortia (a consortium may include one or more for-profit firms, as well as State or local government agencies, institutions of higher education, or other nonprofit organizations). The reasons are that:

(1) When multiple performers are participating as a consortium, they are more equal partners in the research performance than usually is the case with a prime recipient and subawards. All of them therefore are more likely to be directly involved in developing and revising plans for the research effort, reviewing technical progress, and overseeing financial and other business matters. That feature makes consortia well suited to building new relationships among performers in the defense and commercial sectors of the technology and industrial base, a principal objective for the use of TIAs.

(2) In addition, interactions among the participants within a consortium potentially provide a self-governance mechanism. The potential for additional self-governance is particularly good when a consortium includes multiple for-profit participants that normally are competitors within an industry.

(d) TIAs also may be used for carrying out research performed by single firms or multiple performers in prime award-subaward relationships. In awarding TIAs in those cases, however, you should consider providing for greater involvement of the program official or a way to increase self-governance (*e.g.*, a prime award with multiple subawards arranged so as to give the subrecipients more insight into and authority and responsibility for programmatic and business aspects of the overall project than they usually have).

§ 37.215 What must I conclude about the recipient's commitment and cost sharing?

(a) You should judge that the recipient has a strong commitment to and self-interest in the success of the project. You should find evidence of that commitment and interest in the proposal, in the recipient's management plan, or through other means. A recipient's self-interest might be driven, for example, by a research project's potential for fostering technology to be incorporated into products and processes for the commercial marketplace.

(b) You must seek cost sharing. The purpose of cost share is to ensure that the recipient incurs real risk that gives it a vested interest in the project's success; the willingness to commit to meaningful cost sharing therefore is one good indicator of a recipient's self-interest. The requirements are that:

(1) To the maximum extent practicable, the non-Federal parties carrying out a research project under a TIA are to provide at least half of the costs of the project. Obtaining this cost sharing, to the maximum extent practicable, is a statutory condition for any TIA under the authority of 10 U.S.C. 2371, and is a matter of DoD policy for all other TIAs.

(2) The parties must provide the cost sharing from non-Federal resources that are available to them unless there is specific authority to use other Federal resources for that purpose (*see* § 37.530(f)).

(c) You may consider whether cost sharing is impracticable in a given case, unless there is a non-waivable, statutory requirement for cost sharing that applies to the particular program under which the award is to be made. Before deciding that cost sharing is impracticable, you should carefully consider whether there are other factors that demonstrate the recipient's self-interest in the success of the current project.

§ 37.220 How involved should the Government program official be in the project?

(a) TIAs are used to carry out cooperative relationships between the Federal Government and the recipient, which requires a greater level of involvement of the Government program official in the execution of the research than the usual oversight of a research grant or procurement contract. For example, program officials will participate in recipients' periodic reviews of research progress and will be substantially involved with the recipients in the resulting revisions of plans for future effort. That increased programmatic involvement before and during program execution with a TIA can reduce the need for some Federal financial requirements that are problematic for commercial firms.

(b) Some aspects of their involvement require program officials to have greater knowledge about and participation in business matters that traditionally would be your exclusive responsibility as the agreements officer. TIAs therefore also require closer cooperation between program officials and you, as the one who decides business matters.

§ 37.225 What judgment must I make about the benefits of using a TIA?

Before deciding that a TIA is appropriate, you also must judge that using a TIA could benefit defense research objectives in ways that likely would not happen if another type of assistance instrument were used (*e.g.*, a cooperative agreement subject to all of the requirements of 32 CFR part 34). You, in conjunction with Government program officials, must consider the questions in paragraphs (a) through (d) of this section, to help identify the benefits that may justify using a TIA and reducing some of the usual requirements. In accordance with § 37.1030, you will report your answers to these questions to help the DoD measure the Department-wide benefits of using TIAs and meet requirements to report to the Congress. Note that you must give full concise answers only to questions that relate to the benefits that you perceive for using the TIA, rather than another type of funding instrument, for the particular research project. A simple ''no'' or ''not applicable'' is a sufficient response for other questions. The questions are:

(a) Will the use of a TIA permit the involvement in the research of any

commercial firms or business units of firms that would not otherwise participate in the project? If so:

(1) What are the expected benefits of those firms' or divisions' participation (*e.g.*, is there a specific technology that could be better, more readily available, or less expensive)?

(2) Why would they not participate if an instrument other than a TIA were used? You should identify specific provisions of the TIA or features of the TIA award process that enable their participation.

(b) Will the use of a TIA allow the creation of new relationships among participants at the prime or subtier levels, among business units of the same firm, or between non-Federal participants and the Federal Government that will help the DoD get better technology in the future? If so:

(1) Why do these new relationships have the potential for helping the DoD get technology in the future that is better, more affordable, or more readily available?

(2) Are there provisions of the TIA or features of the TIA award process that enable these relationships to form? If so, you should be able to identify specifically what they are. If not, you should be able to explain specifically why you think that the relationships could not be created if an assistance instrument other than a TIA were used.

(c) Will the use of a TIA allow firms or business units of firms that traditionally accept Government awards to use new business practices in the execution of the research that will help us get better technology, help us get new technology more quickly or less expensively, or facilitate partnering with commercial firms? If so:

(1) What specific benefits will the DoD potentially get from the use of these new practices? You should be able to explain specifically why you foresee a potential for those benefits.

(2) Are there provisions of the TIA or features of the TIA award process that enable the use of the new practices? If so, you should be able to identify those provisions or features and explain why you think that the practices could not be used if the award were made using an assistance instrument other than a TIA.

(d) Are there any other benefits of the use of a TIA that could help the Department of Defense better meet its objectives in carrying out the research project? If so, you should be able to identify specifically what they are, how they can help meet defense objectives, what features of the TIA or award process enable the DoD to realize them, and why the benefits likely would not be realized if an assistance instrument other than a TIA were used.

§ 37.230 May I use a TIA if a participant is to receive fee or profit?

In accordance with 32 CFR 22.205(b), you may not use a TIA if any participant is to receive fee or profit. Note that this policy extends to all performers of the research project carried out under the TIA, including any subawards for substantive program performance, but it does not preclude participants' or subrecipients' payment of reasonable fee or profit when making purchases from suppliers of goods (*e.g.*, supplies and equipment) or services needed to carry out the research.

Subpart C—Expenditure-Based and Fixed-Support Technology Investment Agreements

§ 37.300 What is the difference between an expenditure-based and fixed-support TIA?

The fundamental difference between an expenditure-based and fixed-support TIA is that:

(a) For an expenditure-based TIA, the amounts of interim payments or the total amount ultimately paid to the recipient are based on the amounts the recipient expends on project costs. If a recipient completes the project specified at the time of award before it expends all of the agreed-upon Federal funding and recipient cost sharing, the Federal Government may recover its share of the unexpended balance of funds or, by mutual agreement with the recipient, amend the agreement to expand the scope of the research project. An expenditure-based TIA therefore is analogous to a cost-type procurement contract or grant.

(b) For a fixed-support TIA, the amount of assistance established at the time of award is not meant to be adjusted later if the research project is carried out to completion. In that sense, a fixed-support TIA is somewhat analogous to a fixed-price procurement contract (although ''price,'' a concept appropriate to a procurement contract for buying a good or service, is not appropriate for a TIA or other assistance instrument for stimulation or support of a project).

§ 37.305 When may I use a fixed-support TIA?

You may use a fixed-support TIA if:

(a) The agreement is to support or stimulate research with outcomes that are well defined, observable, and verifiable;

(b) You can reasonably estimate the resources required to achieve those outcomes well enough to ensure the desired level of cost sharing (*see* example in § 37.560(b)); and

(c) Your TIA does not require a specific amount or percentage of recipient cost sharing. In cases where the agreement does require a specific amount or percentage of cost sharing, a fixed-support TIA is not practicable because the agreement has to specify cost principles or standards for costs that may be charged to the project; require the recipient to track the costs of the project; and provide access for audit to allow verification of the recipient's compliance with the mandatory cost sharing. You therefore must use an expenditure-based TIA if you:

(1) Have a non-waivable requirement (*e.g.*, in statute) for a specific amount or percentage of recipient cost sharing; or

(2) Have otherwise elected to include in the TIA a requirement for a specific amount or percentage of cost sharing.

§ 37.310 When would I use an expenditure-based TIA?

In general, you must use an expenditure-based TIA under conditions other than those described in § 37.305. Reasons for any exceptions to this general rule must be documented in the award file and must be consistent with the policy in § 37.230 that precludes payment of fee or profit to participants.

§ 37.315 What are the advantages of using a fixed-support TIA?

In situations where the use of fixed-support TIAs is permissible (see §§ 37.305 and 37.310), their use may encourage some commercial firms' participation in the research. With a fixed-support TIA, you can eliminate or reduce some post-award requirements that sometimes are cited as disincentives for those firms to participate. For example, a fixed-support TIA need not:

(a) Specify minimum standards for the recipient's financial management system.

(b) Specify cost principles or standards stating the types of costs the recipient may charge to the project.

(c) Provide for financial audits by Federal auditors or independent public accountants of the recipient's books and records.

(d) Set minimum standards for the recipient's purchasing system.

(e) Require the recipient to prepare financial reports for submission to the Federal Government.

Subpart D—Competition Phase

§ 37.400 Must I use competitive procedures to award TIAs?

DoD policy is to award TIAs using merit-based, competitive procedures, as described in 32 CFR 22.315:

(a) In every case where required by statute; and

(b) To the maximum extent practicable in all other cases.

§ 37.405 What must my announcement or solicitation include?

Your announcement, to be considered as part of a competitive procedure, must include the basic information described in 32 CFR 22.315(a). Additional elements for you to consider in the case of a program that may use TIAs are described in §§ 37.410 through 37.420.

§ 37.410 Should my announcement or solicitation state that TIAs may be awarded?

Yes, once you consider the factors described in subpart B of this part and decide that TIAs are among the types of instruments that you may award pursuant to a solicitation, it is important for you to state that fact in the solicitation. You also should state that TIAs are more flexible than traditional Government funding instruments and that provisions are negotiable in areas such as audits and intellectual property rights that may cause concern for commercial firms. Doing so should increase the likelihood that commercial firms will be willing to submit proposals.

§ 37.415 Should I address cost sharing in the announcement or solicitation?

To help ensure a competitive process that is fair and equitable to all potential proposers, you should state clearly in the solicitation:

(a) That, to the maximum extent practicable, the non-Federal parties carrying out a research project under a TIA are to provide at least half of the costs of the project (see § 37.215(b)).

(b) The types of cost sharing that are acceptable;

(c) How any in-kind contributions will be valued, in accordance with §§ 37.530 through 37.555; and

(d) Whether you will give any consideration to alternative approaches a proposer may offer to demonstrate its strong commitment to and self-interest in the project's success, in accordance with § 37.215.

§ 37.420 Should I tell proposers that we will not disclose information that they submit?

Your solicitation should tell potential proposers that:

(a) For all TIAs, information described in paragraph (b) of this section is exempt from disclosure requirements of the Freedom of Information Act (FOIA)(codified at 5 U.S.C. 552) for a period of five years after the date on which the DoD Component receives the information from them.

(b) As provided in 10 U.S.C. 2371, disclosure is not required, and may not be compelled, under FOIA during that period if:

(1) A proposer submits the information in a competitive or noncompetitive process that could result in their receiving a cooperative agreement for basic, applied, or advanced research under the authority of 10 U.S.C. 2358 or any other type of transaction authorized by 10 U.S.C. 2371 (as explained in appendix B to this part, that includes all TIAs); and

(2) The type of information is among the following types that are exempt:

(i) Proposals, proposal abstracts, and supporting documents; and

(ii) Business plans and technical information submitted on a confidential basis.

(c) If proposers desire to protect business plans and technical information for five years from FOIA disclosure requirements, they must mark them with a legend identifying them as documents submitted on a confidential basis. After the five-year period, information may be protected for longer periods if it meets any of the criteria in 5 U.S.C. 552(b) (as implemented by the DoD in subpart C of 32 CFR part 286) for exemption from FOIA disclosure requirements.

Subpart E—Pre-Award Business Evaluation

§ 37.500 What must my pre-award business evaluation address?

(a) You must determine the qualification of the recipient, as described in §§ 37.510 and 37.515.

(b) As the business expert working with the program official, you also must address the financial aspects of the proposed agreement. You must:

(1) Determine that the total amount of funding for the proposed effort is reasonable, as addressed in § 37.520.

(2) Assess the value and determine the reasonableness of the recipient's proposed cost sharing contribution, as discussed in §§ 37.525 through 37.555.

(3) If you are contemplating the use of a fixed-support rather than expenditure-based TIA, ensure that its use is justified, as explained in §§ 37.560 and 37.565.

(4) Address issues of inconsistent cost accounting by traditional Government contractors, should they arise, as noted in § 37.570.

(5) Determine amounts for milestone payments, if you use them, as discussed in § 37.575.

§ 37.505 What resources are available to assist me during the pre-award business evaluation?

Administrative agreements officers of the Defense Contract Management Agency and the Office of Naval Research can share lessons learned from administering other TIAs. Program officials can be a source of information when you are determining the reasonableness of proposed funding (*e.g.*, on labor rates, as discussed in § 37.520) or establishing observable and verifiable technical milestones for payments (*see* § 37.575). Auditors at the Defense Contract Audit Agency can act in an advisory capacity to help you determine the reasonableness of proposed amounts, including values of in-kind contributions toward cost sharing.

Recipient Qualification

§ 37.510 What are my responsibilities for determining that a recipient is qualified?

Prior to award of a TIA, your responsibilities for determining that the recipient is qualified are the same as those of a grants officer who is awarding a grant or cooperative agreement. Those responsibilities are described in subpart D of 32 CFR part 22. When the recipient is a consortium that is not formally incorporated, you have the additional responsibility described in § 37.515.

§ 37.515 Must I do anything additional to determine the qualification of a consortium?

(a) When the prospective recipient of a TIA is a consortium that is not formally incorporated, your determination that the recipient meets the standard at 32 CFR 22.415(a) requires that you, in consultation with legal counsel, review the management plan in the consortium's collaboration agreement. The purpose of your review is to ensure that the management plan is sound and that it adequately addresses the elements necessary for an effective working relationship among the consortium members. An effective working relationship is essential to increase the research project's chances of success.

(b) The collaboration agreement, commonly referred to as the articles of collaboration, is the document that sets out the rights and responsibilities of each consortium member. It binds the individual consortium members together, whereas the TIA binds the

Government and the consortium as a group (or the Government and a consortium member on behalf of the consortium, as explained in § 37.1015). The document should discuss, among other things, the consortium's:

(1) Management structure.

(2) Method of making payments to consortium members.

(3) Means of ensuring and overseeing members' efforts on the project.

(4) Provisions for members' cost sharing contributions.

(5) Provisions for ownership and rights in intellectual property developed previously or under the agreement.

Total Funding

§ 37.520 What is my responsibility for determining that the total project funding is reasonable?

In cooperation with the program official, you must assess the reasonableness of the total estimated budget to perform the research that will be supported by the agreement. Additional guidance follows for:

(a) *Labor.* Much of the budget likely will involve direct labor and associated indirect costs, which may be represented together as a ''loaded'' labor rate. The program official is an essential advisor on reasonableness of the overall level of effort and its composition by labor category. You also may rely on your experience with other awards as the basis for determining reasonableness. If you have any unresolved questions, two of the ways that you might find helpful in establishing reasonableness are to:

(1) Consult the administrative agreements officers or auditors identified in § 37.505.

(2) Compare loaded labor rates of for-profit firms that do not have expenditure-based Federal procurement contracts or assistance awards with a standard or average for the particular industry. Note that the program official may have knowledge about customary levels of direct labor charges in the particular industry that is involved. You may be able to compare associated indirect charges with Government-approved indirect cost rates that exist for many nonprofit and for-profit organizations that have Federal procurement contracts or assistance awards (note the requirement in § 37.630 for a for-profit participant to use Federally approved provisional indirect cost rates, if it has them).

(b) *Real property and equipment.* In almost all cases, the project costs may include only depreciation or use charges for real property and equipment of for-profit participants, in accordance with § 37.685. Remember that the budget for an expenditure-based TIA may not include depreciation of a participant's property as a direct cost of the project if that participant's practice is to charge the depreciation of that type of property as an indirect cost, as many organizations do.

Cost Sharing

§ 37.525 What is my responsibility for determining the value and reasonableness of the recipient's cost sharing contribution?

You must:

(a) Determine that the recipient's cost sharing contributions meet the criteria for cost sharing and determine values for them, in accordance with §§ 37.530 through 37.555. In doing so, you must:

(1) Ensure that there are affirmative statements from any third parties identified as sources of cash contributions.

(2) Include in the award file an evaluation that documents how you determined the values of the recipient's contributions to the funding of the project.

(b) Judge that the recipient's cost sharing contribution, as a percentage of the total budget, is reasonable. To the maximum extent practicable, the recipient must provide at least half of the costs of the project, in accordance with § 37.215.

§ 37.530 What criteria do I use in deciding whether to accept a recipient's cost sharing?

You may accept any cash or in-kind contributions that meet all of the following criteria:

(a) In your judgment, they represent meaningful cost sharing that demonstrates the recipient's commitment to the success of the research project. Cash contributions clearly demonstrate commitment and they are strongly preferred over in-kind contributions.

(b) They are necessary and reasonable for accomplishment of the research project's objectives.

(c) They are costs that may be charged to the project under § 37.625 and § 37.635, as applicable to the participant making the contribution.

(d) They are verifiable from the recipient's records.

(e) They are not included as cost sharing contributions for any other Federal award.

(f) They are not paid by the Federal Government under another award, except:

(1) Costs that are authorized by Federal statute to be used for cost sharing; or

(2) Independent research and development (IR&D) costs, as described at 32 CFR 34.13(a)(5)(ii), that meet all of the criteria in paragraphs (a) through (e) of this section. IR&D is acceptable as cost sharing, even though it may be reimbursed by the Government through other awards. It is standard business practice for all for-profit firms, including commercial firms, to recover their research and development (R&D) costs (which for Federal procurement contracts is recovered as IR&D) through prices charged to their customers. Thus, the cost principles at 48 CFR part 31 allow a for-profit firm that has expenditure-based, Federal procurement contracts to recover through those procurement contracts the allocable portion of its R&D costs associated with a technology investment agreement.

§ 37.535 How do I value cost sharing related to real property or equipment?

You rarely should accept values for cost sharing contributions of real property or equipment that are in excess of depreciation or reasonable use charges, as discussed in § 37.685 for for-profit participants. You may accept the full value of a donated capital asset if the real property or equipment is to be dedicated to the project and you expect that it will have a fair market value that is less than $5,000 at the project's end. In those cases, you should value the donation at the lesser of:

(a) The value of the property as shown in the recipient's accounting records (*i.e.*, purchase price less accumulated depreciation); or

(b) The current fair market value. You may accept the use of any reasonable basis for determining the fair market value of the property. If there is a justification to do so, you may accept the current fair market value even if it exceeds the value in the recipient's records.

§ 37.540 May I accept fully depreciated real property or equipment as cost sharing?

You should limit the value of any contribution of a fully depreciated asset to a reasonable use charge. In determining what is reasonable, you must consider:

(a) The original cost of the asset;

(b) Its estimated remaining useful life at the time of your negotiations;

(c) The effect of any increased maintenance charges or decreased performance due to age; and

(d) The amount of depreciation that the participant previously charged to Federal awards.

§ 37.545 May I accept costs of prior research as cost sharing?

No, you may not count any participant's costs of prior research as a cost sharing contribution. Only the

additional resources that the recipient will provide to carry out the current project (which may include pre-award costs for the current project, as described in § 37.830) are to be counted.

§ 37.550 May I accept intellectual property as cost sharing?

(a) In most instances, you should not count costs of patents and other intellectual property (*e.g.*, copyrighted material, including software) as cost sharing, because:

(1) It is difficult to assign values to these intangible contributions;

(2) Their value usually is a manifestation of prior research costs, which are not allowed as cost share under § 37.545; and

(3) Contributions of intellectual property rights generally do not represent the same cost of lost opportunity to a recipient as contributions of cash or tangible assets. The purpose of cost share is to ensure that the recipient incurs real risk that gives it a vested interest in the project's success.

(b) You may include costs associated with intellectual property if the costs are based on sound estimates of market value of the contribution. For example, a for-profit firm may offer the use of commercially available software for which there is an established license fee for use of the product. The costs of the development of the software would not be a reasonable basis for valuing its use.

§ 37.555 How do I value a recipient's other contributions?

For types of participant contributions other than those addressed in §§ 37.535 through 37.550, the general rule is that you are to value each contribution consistently with the cost principles or standards in § 37.625 and § 37.635 that apply to the participant making the contribution. When valuing services and property donated by parties other than the participants, you may use as guidance the provisions of 32 CFR 34.13(b)(2) through (5).

Fixed-Support or Expenditure-Based Approach

§ 37.560 Must I be able to estimate project expenditures precisely in order to justify use of a fixed-support TIA?

(a) To use a fixed-support TIA, rather than an expenditure-based TIA, you must have confidence in your estimate of the expenditures required to achieve well-defined outcomes. Therefore, you must work carefully with program officials to select outcomes that, when the recipient achieves them, are reliable indicators of the amount of effort the recipient expended. However, your estimate of the required expenditures need not be a precise dollar amount, as illustrated by the example in paragraph (b) of this section, if:

(1) The recipient is contributing a substantial share of the costs of achieving the outcomes, which must meet the criteria in § 37.305(a); and

(2) You are confident that the costs of achieving the outcomes will be at least a minimum amount that you can specify and the recipient is willing to accept the possibility that its cost sharing percentage ultimately will be higher if the costs exceed that minimum amount.

(b) To illustrate the approach, consider a project for which you are confident that the recipient will have to expend at least $800,000 to achieve the specified outcomes. You must determine, in conjunction with program officials, the minimum level of recipient cost sharing that you want to negotiate, based on the circumstances, to demonstrate the recipient's commitment to the success of the project. For purposes of this illustration, let that minimum recipient cost sharing be 40% of the total project costs. In that case, the Federal share should be no more than 60% and you could set a fixed level of Federal support at $480,000 (60% of $800,000). With that fixed level of Federal support, the recipient would be responsible for the balance of the costs needed to complete the project.

(c) Note, however, that the level of recipient cost sharing you negotiate is to be based solely on the level needed to demonstrate the recipient's commitment. You may not use a shortage of Federal Government funding for the program as a reason to try to persuade a recipient to accept a fixed-support TIA, rather than an expenditure-based instrument, or to accept responsibility for a greater share of the total project costs than it otherwise is willing to offer. If you lack sufficient funding to provide an appropriate Federal Government share for the entire project, you instead should rescope the effort covered by the agreement to match the available funding.

§ 37.565 May I use a hybrid instrument that provides fixed support for only a portion of a project?

Yes, for a research project that is to be carried out by a number of participants, you may award a TIA that provides for some participants to perform under fixed-support arrangements and others to perform under expenditure-based arrangements. This approach may be useful, for example, if a commercial firm that is a participant will not accept an agreement with all of the post-award requirements of an expenditure-based award. Before using a fixed-support arrangement for that firm's portion of the project, you must judge that it meets the criteria in § 37.305.

Accounting, Payments, and Recovery of Funds

§ 37.570 What must I do if a CAS-covered participant accounts differently for its own and the Federal Government shares of project costs?

(a) If a participant has Federal procurement contracts that are subject to the Cost Accounting Standards (CAS) in part 30 of the Federal Acquisition Regulation (FAR) and the associated FAR Appendix (48 CFR part 30 and 48 CFR 9903.201–1, respectively), you must alert the participant during the pre-award negotiations to the potential for a CAS violation, as well as the cognizant administrative contracting officer (ACO) for the participant's procurement contracts, if you learn that the participant plans to account differently for its own share and the Federal Government's share of project costs under the TIA. This may arise, for example, if a for-profit firm or other organization subject to the FAR cost principles in 48 CFR parts 31 and 231 proposes to charge:

(1) Its share of project costs as independent research and development (IR&D) costs to enable recovery of the costs through Federal Government procurement contracts, as allowed under the FAR cost principles; and

(2) The Federal Government's share to the project, rather than as IR&D costs.

(b) The reason for alerting the participant and the ACO is that the inconsistent charging of the two shares could cause a noncompliance with Cost Accounting Standard (CAS) 402. Noncompliance with CAS 402 is a potential issue only for a participant that has CAS-covered Federal procurement contracts (note that CAS requirements do not apply to a for-profit participant's TIAs).

(c) For for-profit participants with CAS-covered procurement contracts, the cognizant ACO in most cases will be an individual within the Defense Contract Management Agency (DCMA). You can identify a cognizant ACO at the DCMA by querying the contract administration team locator that matches contractors with their ACOs (currently on the World Wide Web at *http://alerts.dcmdw.dcma.mil/support,* a site that also can be accessed through the DCMA home page at *http://www.dcma.mil).*

§ 37.575 What are my responsibilities for determining milestone payment amounts?

(a) If you select the milestone payment method (*see* § 37.805), you must assess the reasonableness of the estimated amount for reaching each milestone. This assessment enables you to set the amount of each milestone payment to approximate the Federal share of the anticipated resource needs for carrying out that phase of the research effort.

(b) The Federal share at each milestone need not be the same as the Federal share of the total project. For example, you might deliberately set payment amounts with a larger Federal share for early milestones if a project involves a start-up company with limited resources.

(c) For an expenditure-based TIA, if you have minimum percentages that you want the recipient's cost sharing to be at the milestones, you should indicate those percentages in the agreement or in separate instructions to the post-award administrative agreements officer. That will help the administrative agreements officer decide when a project's expenditures have fallen too far below the original projections, requiring adjustments of future milestone payment amounts (*see* § 37.1105(c)).

(d) For fixed-support TIAs, the milestone payments should be associated with the well-defined, observable and verifiable technical outcomes (*e.g.*, demonstrations, tests, or data analysis) that you establish for the project in accordance with §§ 37.305(a) and 37.560(a).

§ 37.580 What is recovery of funds and when should I consider including it in my TIA?

(a) Recovery of funds refers to the use of the authority in 10 U.S.C. 2371 to include a provision in certain types of agreements, including TIAs, that require a recipient to make payments to the Department of Defense or another Federal agency as a condition of the agreement. Recovery of funds is a good tool in the right circumstances, at the discretion of the agreements officer and the awarding organization, but its purpose is not to augment program budgets. It may be used to recover funds provided to a recipient through a TIA or another Federal procurement or assistance instrument, and the recovery should not exceed the amounts provided. Recovery of funds is distinct from program income, as described in § 37.835.

(b) In accordance with 10 U.S.C. 2371, as implemented by policy guidance from the Office of the Under Secretary of Defense (Comptroller), the payment amounts may be credited to an existing account of the Department of Defense and used for the same program purposes as other funds in that account.

(c) Before you use the authority to include a provision for recovery of funds, note that 10 U.S.C. 2371 requires you to judge that it would not be feasible or appropriate to use for the research project a standard grant or cooperative agreement (in this instance, a ''standard cooperative agreement'' means a cooperative agreement without a provision for recovery of funds). You satisfy that 10 U.S.C. 2371 requirement when you judge that execution of the research project warrants inclusion of a provision for recovery of funds.

Subpart F—Award Terms Affecting Participants' Financial, Property, and Purchasing Systems

§ 37.600 Which administrative matters are covered in this subpart?

This subpart addresses ''systemic'' administrative matters that place requirements on the operation of a participant's financial management, property management, or purchasing system. Each participant's systems are organization-wide and do not vary with each agreement. Therefore, all TIAs should address systemic requirements in a uniform way for each type of participant organization.

§ 37.605 What is the general policy on participants' financial, property, and purchasing systems?

The general policy for expenditure-based TIAs is to avoid requirements that would force participants to use different financial management, property management, and purchasing systems than they currently use for:

(a) Expenditure-based Federal procurement contracts and assistance awards in general, if they receive them; or

(b) Commercial business, if they have no expenditure-based Federal procurement contracts and assistance awards.

§ 37.610 Must I tell participants what requirements they are to flow down for subrecipients' systems?

If it is an expenditure-based award, your TIA must require participants to flow down the same financial management, property management, and purchasing systems requirements to a subrecipient that would apply if the subrecipient were a participant. For example, a for-profit participant would flow down to a university subrecipient the requirements that apply to a university participant. Note that this policy applies to subawards for substantive performance of portions of the research project supported by the TIA, and not to participants' purchases of goods or services needed to carry out the research.

Financial Matters

§ 37.615 What standards do I include for financial systems of for-profit firms?

(a) To avoid causing needless changes in participants' financial management systems, your expenditure-based TIAs will make for-profit participants that currently perform under other expenditure-based Federal procurement contracts or assistance awards subject to the same standards for financial management systems that apply to those other awards. Therefore, if a for-profit participant has expenditure-based DoD assistance awards other than TIAs, your TIAs are to apply the standards in 32 CFR 34.11. You may grant an exception and allow a for-profit participant that has other expenditure-based Federal Government awards to use an alternative set of standards that meets the minimum criteria in paragraph (b) of this section, if there is a compelling programmatic or business reason to do so. For each case in which you grant an exception, you must document the reason in the award file.

(b) For an expenditure-based TIA, you are to allow and encourage each for-profit participant that does not currently perform under expenditure-based Federal procurement contracts or assistance awards (other than TIAs) to use its existing financial management system as long as the system, as a minimum:

(1) Complies with Generally Accepted Accounting Principles.

(2) Effectively controls all project funds, including Federal funds and any required cost share. The system must have complete, accurate, and current records that document the sources of funds and the purposes for which they are disbursed. It also must have procedures for ensuring that project funds are used only for purposes permitted by the agreement (*see* § 37.625).

(3) Includes, if advance payments are authorized under § 37.805, procedures to minimize the time elapsing between the payment of funds by the Government and the firm's disbursement of the funds for program purposes.

§ 37.620 What financial management standards do I include for nonprofit participants?

So as not to force system changes for any State, local government, institution

of higher education, or other nonprofit organization, your expenditure-based TIA's requirements for the financial management system of any nonprofit participant are the same as those that apply to the participant's other Federal assistance awards. Specifically, the requirements are those in:

(a) 32 CFR 33.20 for State and local governments; and

(b) 32 CFR 32.21(b) for other nonprofit organizations, with the exception of Government-owned, contractor-operated (GOCO) facilities and Federally Funded Research and Development Centers (FFRDCs) that are excepted from the definition of ''recipient'' in 32 CFR part 32. Although it should occur infrequently, if a nonprofit GOCO or FFRDC is a participant, you must specify appropriate standards that conform as much as practicable with requirements in that participant's other Federal awards.

§ 37.625 What cost principles or standards do I require for for-profit participants?

(a) So as not to require any firm to needlessly change its cost-accounting system, your expenditure-based TIAs are to apply the Government cost principles in 48 CFR parts 31 and 231 to for-profit participants that currently perform under expenditure-based Federal procurement contracts or assistance awards (other than TIAs) and therefore have existing systems for identifying allowable costs under those principles. If there are programmatic or business reasons to do otherwise, you may grant an exception from this requirement and use alternative standards as long as the alternative satisfies the conditions described in paragraph (b) of this section; if you do so, you must document the reasons in your award file.

(b) For other for-profit participants, you may establish alternative standards in the agreement as long as that alternative provides, as a minimum, that Federal funds and funds counted as recipients' cost sharing will be used only for costs that:

(1) A reasonable and prudent person would incur in carrying out the research project contemplated by the agreement. Generally, elements of cost that appropriately are charged are those identified with research and development activities under the Generally Accepted Accounting Principles (see Statement of Financial Accounting Standards Number 2, ''Accounting for Research and Development Costs,'' October 1974 [1]). Moreover, costs must be allocated to DoD and other projects in accordance with the relative benefits the projects receive. Costs charged to DoD projects must be given consistent treatment with costs allocated to the participants' other research and development activities (*e.g.*, activities supported by the participants themselves or by non-Federal sponsors).

(2) Are consistent with the purposes stated in the governing Congressional authorizations and appropriations. You are responsible for ensuring that provisions in the award document address any requirements that result from authorizations and appropriations.

§ 37.630 Must I require a for-profit firm to use Federally approved indirect cost rates?

In accordance with the general policy in § 37.605, you must require a for-profit participant that has Federally approved indirect cost rates for its Federal procurement contracts to use those rates to accumulate and report costs under an expenditure-based TIA. This includes both provisional and final rates that are approved up until the time that the TIA is closed out. You may grant an exception from this requirement if there are programmatic or business reasons to do otherwise (*e.g.*, the participant offers you a lower rate). If you grant an exception, the participant must accumulate and report the costs using an accounting system and practices that it uses for other customers (*e.g.*, its commercial customers). Also, you must document the reason for the exception in your award file.

§ 37.635 What cost principles do I require a nonprofit participant to use?

So as not to force financial system changes for any nonprofit participant, your expenditure-based TIA will provide that costs to be charged to the research project by any nonprofit participant must be determined to be allowable in accordance with:

(a) OMB Circular A–87,[2] if the participant is a State or local governmental organization.

(b) OMB Circular A–21,[3] if the participant is an institution of higher education.

(c) 45 CFR part 74, appendix E, if the participant is a hospital.

(d) OMB Circular A–122, if the participant is any other type of nonprofit organization (the cost principles in 48 CFR parts 31 and 231 are to be used by any nonprofit organization that is identified in Circular A–122 as being subject to those cost principles).

§ 37.640 Must I include a provision for audits of for-profit participants?

If your TIA is an expenditure-based award, you must include in it an audit provision that addresses, for each for-profit participant:

(a) Whether the for-profit participant must have periodic audits, in addition to any award-specific audits, as described in § 37.645. Note that the DCAA or the Office of the Inspector General, DoD (OIG, DoD), can provide advice on the types and scope of audits that may be needed in various circumstances.

(b) Whether the DCAA or an independent public accountant (IPA) will perform required audits, as discussed in § 37.650.

(c) How frequently any periodic audits are to be performed, addressed in § 37.655.

(d) Other matters described in § 37.660, such as audit coverage, allowability of audit costs, auditing standards, and remedies for noncompliance.

§ 37.645 Must I require periodic audits, as well as award-specific audits, of for-profit participants?

You need to consider requirements for both periodic audits and award-specific audits (as defined in § 37.1325 and § 37.1235, respectively). The way that your expenditure-based TIA addresses the two types of audits will vary, depending upon the type of for-profit participant.

(a) For for-profit participants that are audited by the DCAA or other Federal auditors, as described in §§ 37.650(b) and 37.655, you need not add specific requirements for periodic audits because the Federal audits should be sufficient to address whatever may be needed. Your inclusion in the TIA of the standard access-to-records provision for those for-profit participants, as discussed in § 37.915(a), gives the necessary access in the event that you or administrative agreements officers later need to request audits to address award-specific issues that arise.

(b) For each other for-profit participant, you:

(1) Should require that the participant have an independent auditor (*i.e.*, the DCAA or an independent public accountant) conduct periodic audits of

[1] Copies may be obtained from the Financial Accounting Standards Board (FASB), 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856–5116. Information about ordering also may be found at the Internet site *http://www.fasb.org* or by telephoning the FASB at (800) 748–0659.

[2] Electronic copies may be obtained at Internet site *http://www.whitehouse.gov/OMB.* For paper copies, contact the Office of Management and Budget, EOP Publications, 725 17th St. NW., New Executive Office Building, Washington, DC 20503.

[3] *See* footnote 2 to § 37.635(a).

its systems if it expends $500,000 or more per year in TIAs and other Federal assistance awards. A prime reason for including this requirement is that the Federal Government, for an expenditure-based award, necessarily relies on amounts reported by the participant's systems when it sets payment amounts or adjusts performance outcomes. The periodic audit provides some assurance that the reported amounts are reliable.

(2) Must ensure that the award provides an independent auditor the access needed for award-specific audits, to be performed at the request of the cognizant administrative agreements officer if issues arise that require audit support. However, consistent with the government-wide policies on single audits that apply to nonprofit participants (see § 37.665), you should rely on periodic audits to the maximum extent possible to resolve any award-specific issues.

§ 37.650 Who must I identify as the auditor for a for-profit participant?

The auditor that you will identify in the expenditure-based TIA to perform periodic and award-specific audits of a for-profit participant depends on the circumstances, as follows:

(a) You may provide that an IPA will be the auditor for a for-profit participant that does not meet the criteria in paragraph (b) of this section, but only if the participant will not agree to give the DCAA access to the necessary books and records for audit purposes. Note that the allocable portion of the costs of the IPA's audit may be reimbursable under the TIA, as described in § 37.660(b). The IPA should be the one that the participant uses to perform other audits (*e.g.*, of its financial statement), to minimize added burdens and costs. You must document in the award file the participant's unwillingness to give the DCAA access. The DCAA is to be the auditor if the participant grants the necessary access.

(b) Except as provided in paragraph (c) of this section, you must identify the DCAA as the auditor for any for-profit participant that is subject to DCAA audits because it is currently performing under a Federal award that is subject to the:

(1) Cost principles in 48 CFR part 31 of the Federal Acquisition Regulation (FAR) and 48 CFR part 231 of the Defense FAR Supplement; or

(2) Cost Accounting Standards in 48 CFR chapter 99.

(c) If there are programmatic or business reasons that justify the use of an auditor other than the DCAA for a for-profit participant that meets the criteria in paragraph (b) of this section, you may provide that an IPA will be the auditor for that participant if you obtain prior approval from the Office of the Inspector General, DoD. You must submit requests for prior approval to the Assistant Inspector General (Auditing), 400 Army-Navy Drive, Arlington, VA 22202. Your request must include the name and address of the business unit(s) for which IPAs will be used. It also must explain why you judge that the participant will not give the DCAA the necessary access to records for audit purposes (*e.g.*, you may submit a statement to that effect from the participant). The OIG, DoD, will respond within five working days of receiving the request for prior approval, either by notifying you of the decision (approval or disapproval) or giving you a date by which they will notify you of the decision.

§ 37.655 Must I specify the frequency of IPAs' periodic audits of for-profit participants?

If your expenditure-based TIA provides for periodic audits of a for-profit participant by an IPA, you must specify the frequency for those audits. You should consider having an audit performed during the first year of the award, when the participant has its IPA do its next financial statement audit, unless the participant already had a systems audit due to other Federal awards within the past two years. The frequency thereafter may vary depending upon the dollars the participant is expending annually under the award, but it is not unreasonable to require an updated audit every two to three years to reverify that the participant's systems are reliable (the audit then would cover the two or three-year period between audits). The DCAA is a source of advice on audit frequencies if your TIA provides for audits by IPAs.

§ 37.660 What else must I specify concerning audits of for-profit participants by IPAs?

If your expenditure-based TIA provides for audits of a for-profit participant by an IPA, you also must specify:

(a) What periodic audits are to cover. It is important that you specify audit coverage that is only as broad as needed to provide reasonable assurance of the participant's compliance with award terms that have a direct and material effect on the research project. Appendix C to this part provides guidance to for-profit participants and their IPAs that you may use for this purpose. The DCAA and the OIG, DoD, also can provide advice to help you set appropriate limits on audit objectives and scope.

(b) Who will pay for periodic and award-specific audits. The allocable portion of the costs of any audits by IPAs may be reimbursable under the TIA. The costs may be direct charges or allocated indirect costs, consistent with the participant's accounting system and practices.

(c) The auditing standards that the IPA will use. Unless you receive prior approval from the OIG, DoD, to do otherwise, you must provide that the IPA will perform the audits in accordance with the Generally Accepted Government Auditing Standards.[4]

(d) The available remedies for noncompliance. The agreement must provide that the participant may not charge costs to the award for any audit that the agreements officer, with the advice of the OIG, DoD, determines was not performed in accordance with the Generally Accepted Government Auditing Standards or other terms of the agreement. It also must provide that the Government has the right to require the participant to have the IPA take corrective action and, if corrective action is not taken, that the agreements officer has recourse to any of the remedies for noncompliance identified in 32 CFR 34.52(a).

(e) The remedy if it later is found that the participant, at the time it entered into the TIA, was performing on a procurement contract or other Federal award subject to the Cost Accounting Standards at 48 CFR part 30 and the cost principles at 48 CFR part 31. Unless the OIG, DoD, approves an exception (see § 37.650(c)), the TIA's terms must provide that the DCAA will perform the audits for the agreement if it later is found that the participant, at the time the TIA was awarded, was performing under awards described in § 37.650(b) that gave the DCAA audit access to the participant's books and records.

(f) Where the IPA is to send audit reports. The agreement must provide that the IPA is to submit audit reports to the administrative agreements officer and the OIG, DoD. It also must require that the IPA report instances of fraud directly to the OIG, DoD.

(g) The retention period for the IPA's working papers. You must specify that the IPA is to retain working papers for a period of at least three years after the final payment, unless the working papers relate to an audit whose findings

[4] The electronic document may be accessed at www.gao.gov. Printed copies may be purchased from the U.S. Government Printing Office; for ordering information, call (202) 512–1800 or access the Internet site at *www.gpo.gov*.

are not fully resolved within that period or to an unresolved claim or dispute (in which case, the IPA must keep the working papers until the matter is resolved and final action taken).

(h) Who will have access to the IPA's working papers. The agreement must provide for Government access to working papers.

§ 37.665 Must I require nonprofit participants to have periodic audits?

Yes, expenditure-based TIAs are assistance instruments subject to the Single Audit Act (31 U.S.C. 7501–7507), so nonprofit participants are subject to their usual requirements under that Act and OMB Circular A–133.[5] Specifically, the requirements are those in:

(a) 32 CFR 33.26 for State and local governments; and

(b) 32 CFR 32.26 for other nonprofit organizations. Note that those requirements also are appropriate for Government-owned, contractor-operated (GOCO) facilities and Federally Funded Research and Development Centers (FFRDCs) that are excluded from the definition of ''recipient'' in 32 CFR part 32, because nonprofit GOCOs and FFRDCs are subject to the Single Audit Act.

§ 37.670 Must I require participants to flow down audit requirements to subrecipients?

(a) Yes, in accordance with § 37.610, your expenditure-based TIA must require participants to flow down the same audit requirements to a subrecipient that would apply if the subrecipient were a participant.

(b) For example, a for-profit participant that is audited by the DCAA:

(1) Would flow down to a university subrecipient the Single Audit Act requirements that apply to a university participant.

(2) Could enter into a subaward allowing a for-profit participant, under the circumstances described in § 37.650(a), to use an IPA to do its audits.

(c) This policy applies to subawards for substantive performance of portions of the research project supported by the TIA, and not to participants' purchases of goods or services needed to carry out the research.

§ 37.675 Must I report when I enter into a TIA allowing a for-profit firm to use an IPA?

Yes, you must include that information with the data you provide for your DoD Component's annual submission to the Defense Technical Information Center (DTIC), as provided in § 37.1030(c).

[5] *See* footnote 2 to § 37.635(a).

§ 37.680 Must I require a participant to report when it enters into a subaward allowing a for-profit firm to use an IPA?

Yes, your expenditure-based TIA must require participants to report to you when they enter into any subaward allowing a for-profit subawardee to use an IPA, as described in § 37.670(b)(2). You must provide that information about the new subaward under the TIA for your DoD Component's annual submission to the DTIC, even though the TIA may have been reported in a prior year and does not itself have to be reported again.

Property

§ 37.685 May I allow for-profit firms to purchase real property and equipment with project funds?

(a) With the two exceptions described in paragraph (b) of this section, you must require a for-profit firm to purchase real property or equipment with its own funds that are separate from the research project. You should allow the firm to charge to an expenditure-based TIA only depreciation or use charges for real property or equipment (and your cost estimate for a fixed-support TIA only would include those costs). Note that the firm must charge depreciation consistently with its usual accounting practice. Many firms treat depreciation as an indirect cost. Any firm that usually charges depreciation indirectly for a particular type of property must not charge depreciation for that property as a direct cost to the TIA.

(b) In two situations, you may grant an exception and allow a for-profit firm to use project funds, which includes both the Federal Government and recipient shares, to purchase real property or equipment (*i.e.*, to charge to the project the full acquisition cost of the property). The two circumstances, which should be infrequent for equipment and extremely rare for real property, are those in which you either:

(1) Judge that the real property or equipment will be dedicated to the project and have a current fair market value that is less than $5,000 by the time the project ends; or

(2) Give prior approval for the firm to include the full acquisition cost of the real property or equipment as part of the cost of the project (see § 37.535).

(c) If you grant an exception in either of the circumstances described in paragraphs (b)(1) and (2) of this section, you must make the real property or equipment subject to the property management standards in 32 CFR 34.21(b) through (d). As provided in those standards, the title to the real property or equipment will vest conditionally in the for-profit firm upon acquisition. Your TIA, whether it is a fixed-support or expenditure-based award, must specify that any item of equipment that has a fair market value of $5,000 or more at the conclusion of the project also will be subject to the disposition process in 32 CFR 34.21(e), whereby the Federal Government will recover its interest in the property at that time.

§ 37.690 How are nonprofit participants to manage real property and equipment?

For nonprofit participants, your TIA's requirements for vesting of title, use, management, and disposition of real property or equipment acquired under the award are the same as those that apply to the participant's other Federal assistance awards. Specifically, the requirements are those in:

(a) 32 CFR 33.31 and 33.32, for participants that are States and local governmental organizations.

(b) 32 CFR 32.32 and 32.33, for other nonprofit participants, with the exception of nonprofit GOCOs and FFRDCs that are exempted from the definition of ''recipient'' in 32 CFR part 32. Although it should occur infrequently, if a nonprofit GOCO or FFRDC is a participant, you must specify appropriate standards that conform as much as practicable with requirements in that participant's other Federal awards. Note also that:

(1) If the TIA is a cooperative agreement (see appendix B to this part), 31 U.S.C. 6306 provides authority to vest title to tangible personal property in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research, without further obligation to the Federal Government; and

(2) Your TIA therefore must specify any conditions on the vesting of title to real property or equipment acquired by any such nonprofit participant, or the title will vest in the participant without further obligation to the Federal Government, as specified in 32 CFR 32.33(b)(3).

§ 37.695 What are the requirements for Federally owned property?

If you provide Federally owned property to any participant for the performance of research under a TIA, you must require that participant to account for, use, and dispose of the property in accordance with:

(a) 32 CFR 34.22, if the participant is a for-profit firm.

(b) 32 CFR 33.32(f), if the participant is a State or local governmental organization. Note that 32 CFR 33.32(f)

requires you to provide additional information to the participant on the procedures for managing the property.

(c) 32 CFR 32.33(a) and 32.34(f), if the participant is a nonprofit organization other than a GOCO or FFRDC (requirements for nonprofit GOCOs and FFRDCs should conform with the property standards that apply to their Federal procurement contracts).

§ 37.700 What are the requirements for supplies?

Your expenditure-based TIA's provisions should permit participants to use their existing procedures to account for and manage supplies. A fixed-support TIA should not include requirements to account for or manage supplies.

Purchasing

§ 37.705 What standards do I include for purchasing systems of for-profit firms?

(a) If your TIA is an expenditure-based award, it should require for-profit participants that currently perform under DoD assistance instruments subject to the purchasing standards in 32 CFR 34.31 to use the same requirements for TIAs, unless there are programmatic or business reasons to do otherwise (in which case you must document the reasons in the award file).

(b) You should allow other for-profit participants under expenditure-based TIAs to use their existing purchasing systems, as long as they flow down the applicable requirements in Federal statutes, Executive orders or Governmentwide regulations (see appendix E to this part for a list of those requirements).

(c) If your TIA is a fixed-support award, you need only require for-profit participants to flow down the requirements listed in appendix F to this part.

§ 37.710 What standards do I include for purchasing systems of nonprofit organizations?

(a) So as not to force system changes for any nonprofit participant, your expenditure-based TIA will provide that each nonprofit participant's purchasing system comply with:

(1) 32 CFR 33.36, if the participant is a State or local governmental organization.

(2) 32 CFR 32.40 through 32.49 if the participant is a nonprofit organization other than a GOCO or FFRDC that is excepted from the definition of ''recipient'' in 32 CFR part 32. Although it should occur infrequently, if a nonprofit GOCO or FFRDC is a participant, you must specify appropriate standards that conform as much as practicable with requirements in that participant's other Federal awards.

(b) If your TIA is a fixed-support award, you need only require nonprofit participants to flow down the requirements listed in appendix E to this part.

Subpart G—Award Terms Related to Other Administrative Matters

§ 37.800 Which administrative matters are covered in this subpart?

This subpart addresses ''non-systemic'' administrative matters that do not impose organization-wide requirements on a participant's financial management, property management, or purchasing system. Because an organization does not have to redesign its systems to accommodate award-to-award variations in these requirements, a TIA that you award may differ from other TIAs in the non-systemic requirements that it specifies for a given participant, based on the circumstances of the particular research project. To eliminate needless administrative complexity, you should handle some non-systemic requirements, such as the payment method, in a uniform way for the agreement as a whole.

Payments

§ 37.805 If I am awarding a TIA, what payment methods may I specify?

Your TIA may provide for:

(a) *Reimbursement,* as described in 32 CFR 34.12(a)(1), if it is an expenditure-based award.

(b) *Advance payments,* as described in 32 CFR 34.12(a)(2), subject to the conditions in 32 CFR 34.12(b)(2)(i) through (iii).

(c) *Payments based on payable milestones.* These are payments made according to a schedule that is based on predetermined measures of technical progress or other payable milestones. This approach relies upon the fact that, as research progresses throughout the term of the agreement, observable activity will be taking place. The recipient is paid upon the accomplishment of the predetermined measure of progress. Fixed-support TIAs must use this payment method and each measure of progress appropriately would be one of the well-defined outcomes that you identify in the agreement (this does not preclude use of an initial advance payment, if there is no alternative to meeting immediate cash needs). There are cash management considerations when this payment method is used as a means of financing for an expenditure-based TIA (*see* § 37.575 and § 37.1105).

§ 37.810 What should my TIA's provisions specify for the method and frequency of recipients' payment requests?

The procedure and frequency for payment requests depend upon the payment method, as follows:

(a) For either reimbursements or advance payments, your TIA must allow recipients to submit requests for payment at least monthly. You may authorize the recipients to use the forms or formats described in 32 CFR 34.12(d).

(b) If the payments are based on payable milestones, the recipient will submit a report or other evidence of accomplishment to the program official at the completion of each predetermined activity. The agreement administrator may approve payment to the recipient after receiving validation from the program manager that the milestone was successfully reached.

§ 37.815 May the Government withhold payments?

Your TIA must provide that the administrative agreements officer may withhold payments in the circumstances described in 32 CFR 34.12(g), but not otherwise.

§ 37.820 Must I require a recipient to return interest on advance payments?

If your expenditure-based TIA provides for either advance payments or payable milestones, the agreement must require the recipient to:

(a) Maintain in an interest-bearing account any advance payments or milestone payment amounts received in advance of needs to disburse the funds for program purposes unless:

(1) The recipient receives less than $120,000 in Federal grants, cooperative agreements, and TIAs per year;

(2) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $1,000 per year on the advance or milestone payments; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources for the project.

(b) Remit annually the interest earned to the administrative agreements officer.

Revision of Budget and Program Plans

§ 37.825 Must I require the recipient to obtain prior approval from the Government for changes in plans?

If it is an expenditure-based award, your agreement must require the recipient to obtain the agreement administrator's prior approval if there is to be a change in plans that results in a need for additional Federal funding (this is unnecessary for a fixed-support

TIA because the recipient is responsible for additional costs of achieving the outcomes). Other than that, the program official's substantial involvement in the project should ensure that the Government has advance notice of changes in plans.

§ 37.830 May I let a recipient charge pre-award costs to the agreement?

Pre-award costs, as long as they are otherwise allowable costs of the project, may be charged to an expenditure-based TIA only with the specific approval of the agreements officer. All pre-award costs are incurred at the recipient's risk (*i.e.*, no DoD Component is obligated to reimburse the costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover the costs).

Program Income

§ 37.835 What requirements do I include for program income?

Your TIA should apply the standards of 32 CFR 34.14 for program income that may be generated. Note the need to specify whether the recipient is to have any obligation to the Federal Government with respect to program income generated after the end of the project period (the period, as established in the award document, during which Federal support is provided). Doing so is especially important if the TIA includes a provision for the recipient to return any amounts to the Federal Government (see § 37.580).

Intellectual Property

§ 37.840 What general approach should I take in negotiating data and patent rights?

(a) You should confer with program officials and legal counsel to develop an overall strategy for intellectual property that takes into account inventions and data that may result from the project and future needs the Government may have for rights in them. The strategy should take into account any intellectual property the Government is furnishing and any pre-existing proprietary information that the recipient is furnishing, as well as data and inventions that may be generated under the award (recognizing that new data and inventions may be less valuable without pre-existing information). All pre-existing intellectual property, both the Government's and the recipient's, should be marked to give notice of its status.

(b) Because TIAs entail substantial cost sharing by recipients, you must use discretion in negotiating Government rights to data and patentable inventions resulting from research under the agreements. The considerations in §§ 37.845 through 37.875 are intended to serve as guidelines, within which you necessarily have considerable latitude to negotiate provisions appropriate to a wide variety of circumstances that may arise. Your goal should be a good balance between DoD interests in:

(1) Gaining access to the best technologies for defense needs, including technologies available in the commercial marketplace, and promoting commercialization of technologies resulting from the research. Either of these interests may be impeded if you negotiate excessive rights for the Government. One objective of TIAs is to help incorporate defense requirements into the development of what ultimately will be commercially available technologies, an objective that is best served by reducing barriers to commercial firms' participation in the research. In that way, the commercial technology and industrial base can be a source of readily available, reliable, and affordable components, subsystems, computer software, and other technological products and manufacturing processes for military systems.

(2) Providing adequate protection of the Government's investment, which may be weakened if the Government's rights are inadequate. You should consider whether the Government may require access to data or inventions for Governmental purposes, such as a need to develop defense-unique products or processes that the commercial marketplace likely will not address.

§ 37.845 What data rights should I obtain?

(a) You should seek to obtain what you, with the advice of legal counsel, judge is needed to ensure future Government use of technology that emerges from the research, as long as doing so is consistent with the balance between DoD interests described in § 37.840(b). You should consider data in which you wish to obtain license rights and data that you may wish to be delivered; since TIAs are assistance instruments rather than acquisition instruments, however, it is not expected that data would be delivered in most cases. What generally is needed is an irrevocable, world-wide license for the Government to use, modify, reproduce, release, or disclose for Governmental purposes the data that are generated under TIAs (including any data, such as computer software, in which a recipient may obtain a copyright). A Governmental purpose is any activity in which the United States Government participates, but a license for Governmental purposes does not include the right to use, or have or permit others to use, modify, reproduce, release, or disclose data for commercial purposes.

(b) You may negotiate licenses of different scope than described in paragraph (a) of this section when necessary to accomplish program objectives or to protect the Government's interests. Consult with legal counsel before negotiating a license of different scope.

(c) In negotiating data rights, you should consider the rights in background data that are necessary to fully utilize technology that is expected to result from the TIA, in the event the recipient does not commercialize the technology or chooses to protect any invention as a trade secret rather than by a patent. If a recipient intends to protect any invention as a trade secret, you should consult with your intellectual property counsel before deciding what information related to the invention the award should require the recipient to report.

§ 37.850 Should I require recipients to mark data?

To protect the recipient's interests in data, your TIA should require the recipient to mark any particular data that it wishes to protect from disclosure with a legend identifying the data as licensed data subject to use, release, or disclosure restrictions.

§ 37.855 How should I handle protected data?

Prior to releasing or disclosing data marked with a restrictive legend (as described in § 37.850) to third parties, you should require those parties to agree in writing that they will:

(a) Use the data only for governmental purposes; and

(b) Not release or disclose the data without the permission of the licensor (*i.e.*, the recipient).

§ 37.860 What rights should I obtain for inventions?

(a) You should negotiate rights in inventions that represent a good balance between the Government's interests (*see* § 37.840(b)) and the recipient's interests. As explained in appendix B to this part:

(1) You have the flexibility to negotiate patent rights provisions that vary from what the Bayh-Dole statute (Chapter 18 of Title 35, U.S.C.) requires in many situations. You have that flexibility because TIAs include not only cooperative agreements, but also assistance transactions other than grants or cooperative agreements.

(2) Your TIA becomes an assistance instrument other than a grant or

cooperative agreement if its patent rights provision varies from what Bayh-Dole requires in your situation. However, you need not consider that difference in the type of transaction until the agreement is finalized, and it should not affect the provision you negotiate.

(b) As long as it is consistent with the balance between DoD interests described in § 37.840(b) and the recipient's interests, you should seek to obtain for the Government, when an invention is conceived or first actually reduced to practice under a TIA, a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention, or to have it practiced, for or on behalf of the United States throughout the world. The license is for Governmental purposes, and does not include the right to practice the invention for commercial purposes.

(c) To provide for the license described in paragraph (b) of this section, your TIA generally would include the patent-rights clause that 37 CFR 401.14 specifies to implement the Bayh-Dole statute's requirements. Note that:

(1) The clause is designed specifically for grants, contracts, and cooperative agreements awarded to small businesses and nonprofit organizations, the types of funding instruments and recipients to which the entire Bayh-Dole statute applies. As explained in appendix B to this part, only two Bayh-Dole requirements (in 35 U.S.C. sections 202(c)(4) and 203) apply to cooperative agreements with other performers, by virtue of an amendment to Bayh-Dole at 35 U.S.C. 210(c).

(2) You may use the same clause, suitably modified, in cooperative agreements with performers other than small businesses and nonprofit organizations. Doing so is consistent with a 1983 Presidential memorandum that calls for giving other performers rights in inventions from Federally supported research that are at least as great as the rights that Bayh-Dole gives to small businesses and nonprofit organizations (*see* appendix B to this part for details). That Presidential memorandum is incorporated by reference in Executive Order 12591 (52 FR 13414, 3 CFR, 1987 Comp., p. 220), as amended by Executive Order 12618 (52 FR 48661, 3 CFR, 1987 Comp., p. 262).

(3) The clause provides for flow-down of Bayh-Dole patent-rights provisions to subawards with small businesses and nonprofit organizations.

(4) There are provisions in 37 CFR part 401 stating when you must include the clause (37 CFR 401.3) and, in cases when it is required, how you may modify and tailor it (37 CFR 401.5).

(d) You may negotiate Government rights of a different scope than the standard patent-rights provision described in paragraph (c) of this section when necessary to accomplish program objectives and foster the Government's interests. If you do so:

(1) With the help of the program manager and legal counsel, you must decide what best represents a reasonable arrangement considering the circumstances, including past investments, contributions under the current TIA, and potential commercial markets. Taking past investments as an example, you should consider whether the Government or the recipient has contributed more substantially to the prior research and development that provides the foundation for the planned effort. If the predominant past contributor to the particular technology has been:

(i) The Government, then the TIA's patent-rights provision should be at or close to the standard Bayh-Dole provision.

(ii) The recipient, then a less restrictive patent provision may be appropriate, to allow the recipient to benefit more directly from its investments.

(2) You should keep in mind that obtaining a nonexclusive license at the time of award, as described in paragraph (b) of this section, is valuable if the Government later requires access to inventions to enable development of defense-unique products or processes that the commercial marketplace is not addressing. If you do not obtain a license at the time of award, you should consider alternative approaches to ensure access, such as negotiating a priced option for obtaining nonexclusive licenses in the future to inventions that are conceived or reduced to practice under the TIA.

(3) You also may consider whether you want to provide additional flexibility by giving the recipient more time than the standard patent-rights provision does to:

(i) Notify the Government of an invention, from the time the inventor discloses it within the for-profit firm.

(ii) Inform the Government whether it intends to take title to the invention.

(iii) Commercialize the invention, before the Government license rights in the invention become effective.

§ 37.865 Should my patent provision include march-in rights?

Your TIA's patent rights provision should include the Bayh-Dole march-in rights clause at paragraph (j)(1) of 37 CFR 401.14, or an equivalent clause, concerning actions that the Government may take to obtain the right to use subject inventions, if the recipient fails to take effective steps to achieve practical application of the subject inventions within a reasonable time. The march-in provision may be modified to best meet the needs of the program. However, only infrequently should the march-in provision be entirely removed (*e.g.*, you may wish to do so if a recipient is providing most of the funding for a research project, with the Government providing a much smaller share).

§ 37.870 Should I require recipients to mark documents related to inventions?

To protect the recipient's interest in inventions, your TIA should require the recipient to mark documents disclosing inventions it desires to protect by obtaining a patent. The recipient should mark the documents with a legend identifying them as intellectual property subject to public release or public disclosure restrictions, as provided in 35 U.S.C. 205.

§ 37.875 Should my TIA include a provision concerning foreign access to technology?

(a) Consistent with the objective of enhancing the national security by increasing DoD reliance on the U.S. commercial technology and industrial bases, you must include a provision in the TIA that addresses foreign access to technology developed under the TIA.

(b) The provision must provide, as a minimum, that any transfer of the:

(1) Technology must be consistent with the U.S. export laws, regulations and policies (*e.g.*, the International Traffic in Arms Regulation at chapter I, subchapter M, title 22 of the CFR (22 CFR parts 120 through 130), the DoD Industrial Security Regulation in DoD 5220.22–R,[6] and the Department of Commerce Export Regulation at chapter VII, subchapter C, title 15 of the CFR (15 CFR parts 730 through 774), as applicable.

(2) Exclusive right to use or sell the technology in the United States must, unless the Government grants a waiver, require that products embodying the technology or produced through the use of the technology will be manufactured substantially in the United States. The provision may further provide that:

(i) In individual cases, the Government may waive the requirement

[6] Electronic copies may be obtained at the Washington Headquarters Services Internet site *http://www.dtic.mil/whs/directives*. Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

of substantial manufacture in the United States upon a showing by the recipient that reasonable but unsuccessful efforts have been made to transfer the technology under similar terms to those likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(ii) In those cases, the DoD Component may require a refund to the Government of some or all the funds paid under the TIA for the development of the transferred technology.

(c) You may, but are not required to, seek to negotiate a domestic manufacture condition for transfers of nonexclusive rights to use or sell the technology in the United States, to parallel the one described for exclusive licenses in paragraph (b)(2) of this section, if you judge that nonexclusive licenses for foreign manufacture could effectively preclude the establishment of domestic sources of the technology for defense purposes.

Financial and Programmatic Reporting

§ 37.880 What requirements must I include for periodic reports on program and business status?

Your TIA must include either:

(a) The requirements in 32 CFR 32.51 and 32.52 for status reports on programmatic performance and, if it is an expenditure-based award, on financial performance; or

(b) Alternative requirements that, as a minimum, include periodic reports addressing program and, if it is an expenditure-based award, business status. You must require submission of the reports at least annually, and you may require submission as frequently as quarterly (this does not preclude a recipient from electing to submit more frequently than quarterly the financial information that is required to process payment requests if the award is an expenditure-based TIA that uses reimbursement or advance payments under § 37.810(a)). The requirements for the content of the reports are as follows:

(1) The program portions of the reports must address progress toward achieving program performance goals, including current issues, problems, or developments.

(2) The business portions of the reports, applicable only to expenditure-based awards, must provide summarized details on the status of resources (federal funds and non-federal cost sharing), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations. You may require a recipient to separately identify in these reports the expenditures for each participant in a consortium and for each programmatic milestone or task, if you, after consulting with the program official, judge that those additional details are needed for good stewardship.

§ 37.885 May I require updated program plans?

In addition to reports on progress to date, your TIA may include a provision requiring the recipient to annually prepare updated technical plans for the future conduct of the research effort. If your TIA does include a requirement for annual program plans, you also must require the recipient to submit the annual program plans to the agreements officer responsible for administering the TIA.

§ 37.890 Must I require a final performance report?

You need not require a final performance report that addresses all major accomplishments under the TIA. If you do not do so, however, there must be an alternative that satisfies the requirement in DoD Instruction 3200.14[7] to document all DoD Science and Technology efforts and disseminate the results through the Defense Technical Information Center (DTIC). An example of an alternative would be periodic reports throughout the performance of the research that collectively cover the entire project.

§ 37.895 How is the final performance report to be sent to the Defense Technical Information Center?

(a) Whether your TIA requires a final performance report or uses an alternative means under § 37.890,[8] you may include an award term or condition or otherwise instruct the recipient to submit the documentation, electronically if available, either:

(1) Directly to the DTIC; or

(2) To the office that is administering the award (for subsequent transmission to the DTIC).

(b) If you specify that the recipient is to submit the report directly to the DTIC, you also:

(1) Must instruct the recipient to include a fully completed Standard Form 298, ''Report Documentation Page,'' with each document, so that the DTIC can recognize the document as being related to the particular award and properly record its receipt; and

(2) Should advise the recipient to provide a copy of the completed Standard Form 298 to the agreements officer responsible for administering the TIA.

§ 37.900 May I tell a participant that information in financial and programmatic reports will not be publicly disclosed?

You may tell a participant that:

(a) We may exempt from disclosure under the Freedom of Information Act (FOIA) a trade secret or commercial and financial information that a participant provides after the award, if the information is privileged or confidential information. The DoD Component that receives the FOIA request will review the information in accordance with DoD procedures at 32 CFR 286.23(h) (and any DoD Component supplementary procedures) to determine whether it is privileged or confidential information under the FOIA exemption at 5 U.S.C. 552(b)(4), as implemented by the DoD at 32 CFR 286.12(d).

(b) If the participant also provides information in the course of a competition prior to award, there is a statutory exemption for five years from FOIA disclosure requirements for certain types of information submitted at that time (see § 37.420).

§ 37.905 Must I make receipt of the final performance report a condition for final payment?

If a final report is required, your TIA should make receipt of the report a condition for final payment. If the payments are based on payable milestones, the submission and acceptance of the final report by the Government representative will be incorporated as an event that is a prerequisite for one of the payable milestones.

Records Retention and Access Requirements

§ 37.910 How long must I require participants to keep records related to the TIA?

Your TIA must require participants to keep records related to the TIA (for which the agreement provides Government access under § 37.915) for a period of three years after submission of the final financial status report for an expenditure-based TIA or final programmatic status report for a fixed-support TIA, with the following exceptions:

(a) The participant must keep records longer than three years after submission of the final financial status report if the

[7] *See* footnote 6 to § 37.875(b)(1).

[8] Additional information on electronic submission to the DTIC can be found online, currently at *http://www.dtic.mil/dtic/submitting/elec_subm.html.*

records relate to an audit, claim, or dispute that begins but does not reach its conclusion within the 3-year period. In that case, the participant must keep the records until the matter is resolved and final action taken.

(b) Records for any real property or equipment acquired with project funds under the TIA must be kept for three years after final disposition.

§ 37.915 What requirement for access to a for-profit participant's records do I include in a TIA?

(a) If a for-profit participant currently grants access to its records to the DCAA or other Federal Government auditors, your TIA must include for that participant the standard access-to-records requirements at 32 CFR 34.42(e). If the agreement is a fixed-support TIA, the language in 32 CFR 34.42(e) may be modified to provide access to records concerning the recipient's technical performance, without requiring access to the recipient's financial or other records. Note that any need to address access to technical records in this way is in addition to, not in lieu of, the need to address rights in data (*see* § 37.845).

(b) For other for-profit participants that do not currently give the Federal Government direct access to their records and are not willing to grant full access to records pertinent to the award, there is no set requirement to include a provision in your TIA for Government access to records. If the audit provision of an expenditure-based TIA gives an IPA access to the recipient's financial records for audit purposes, the Federal Government must have access to the IPA's reports and working papers and you need not include a provision requiring direct Government access to the recipient's financial records. For both fixed-support and expenditure-based TIAs, you may wish to negotiate Government access to recipient records concerning technical performance. Should you negotiate a provision giving access only to specific Government officials (*e.g.*, the agreements officer), rather than a provision giving Government access generally, it is important to let participants know that the OIG, DoD, has a statutory right of access to records and other materials to which other DoD Component officials have access.

§ 37.920 What requirement for access to a nonprofit participant's records do I include in a TIA?

Your TIA must include for any nonprofit participant the standard access-to-records requirement at:

(a) 32 CFR 33.42(e), for a participant that is a State or local governmental organization.

(b) 32 CFR 32.53(e), for a participant that is a nonprofit organization. The same requirement applies to any nonprofit GOCO or FFRDC, even though nonprofit GOCOs and FFRDCs are exempted from the definition of ''recipient'' in 32 CFR part 32.

Termination and Enforcement

§ 37.925 What requirements do I include for termination and enforcement?

Your TIA must apply the standards of 32 CFR 34.51 for termination, 32 CFR 34.52 for enforcement, and your organization's procedures implementing 32 CFR 22.815 for disputes and appeals.

Subpart H—Executing the Award

§ 37.1000 What are my responsibilities at the time of award?

At the time of the award, you must:

(a) Ensure that the award document contains the appropriate terms and conditions and is signed by the appropriate parties, in accordance with §§ 37.1005 through 37.1015.

(b) Document your analysis of the agreement in the award file, as discussed in § 37.1020.

(c) Provide information about the award to offices responsible for reporting, as described in §§ 37.1025 through 37.1035.

(d) Distribute copies of the award document, as required by § 37.1045.

The Award Document

§ 37.1005 What are my general responsibilities concerning the award document?

You are responsible for ensuring that the award document is complete and accurate. Your objective is to create a document that:

(a) Addresses all issues;

(b) States requirements directly. It is not helpful to readers to incorporate statutes or rules by reference, without sufficient explanation of the requirements. You generally should not incorporate clauses from the Federal Acquisition Regulation (48 CFR parts 1–53) or Defense Federal Acquisition Regulation Supplement (48 CFR parts 201–253), because those provisions are designed for procurement contracts that are used to acquire goods and services, rather than for TIAs or other assistance instruments.

(c) Is written in clear and concise language, to minimize potential ambiguity.

§ 37.1010 What substantive issues should my award document address?

You necessarily will design and negotiate a TIA individually to meet the specific requirements of the particular project, so the complete list of substantive issues that you will address in the award document may vary. Every award document must address:

(a) *Project scope.* The scope is an overall vision statement for the project, including a discussion of the project's purpose, objectives, and detailed military and commercial goals. It is a critical provision because it provides a context for resolving issues that may arise during post-award administration. In a fixed-support TIA, you also must clearly specify the well-defined outcomes that reliably indicate the amount of effort expended and serve as the basis for the level of the fixed support (*see* §§ 37.305 and 37.560(a)).

(b) *Project management.* You should describe the nature of the relationship between the Federal Government and the recipient; the relationship among the participants, if the recipient is an unincorporated consortium; and the overall technical and administrative management of the project. TIAs are used to carry out collaborative relationships between the Federal Government and the recipient. Consequently, there must be substantial involvement of the DoD program official (*see* § 37.220) and usually the administrative agreements officer. The program official provides technical insight, which differs from the usual technical oversight of a project. The management provision also should discuss how you and the recipient will make any modifications to the TIA.

(c) *Termination, enforcement, and disputes.* Your TIA must provide for termination, enforcement remedies, and disputes and appeals procedures, in accordance with § 37.925.

(d) *Funding.* You must:

(1) Show the total amount of the agreement and the total period of performance.

(2) If the TIA is an expenditure-based award, state the Government's and recipient's agreed-upon cost shares. The award document should identify values for any in-kind contributions, determined in accordance with §§ 37.530 through 37.555, to preclude later disagreements about them.

(3) Specify the amount of Federal funds obligated and the performance period for those obligated funds.

(4) State, if the agreement is to be incrementally funded, that the Government's obligation for additional funding is contingent upon the availability of funds and that no legal obligation on the part of the Government exists until additional funds are made available and the agreement is amended. You also must include a prior approval requirement for

changes in plans requiring additional Government funding, in accordance with § 37.825.

(e) *Payment.* You must choose the payment method and tell the recipient how, when, and where to submit payment requests, as discussed in §§ 37.805 through 37.815. Your payment method must take into account sound cash management practices by avoiding unwarranted cash advances. For an expenditure-based TIA, your payment provision must require the return of interest should excess cash balances occur, in accordance with § 37.820. For any TIA using the milestone payment method described in § 37.805(c), you must include language notifying the recipient that post-award administrators may adjust amounts of future milestone payments if a project's expenditures fall too far below the projections that were the basis for setting the amounts (*see* § 37.575(c) and § 37.1105(c)).

(f) *Records retention and access to records.* You must include the records retention requirement at § 37.910. You also must provide for access to for-profit and nonprofit participants' records, in accordance with § 37.915 and § 37.920.

(g) *Patents and data rights.* In designing the patents and data rights provision, you must set forth the minimum required Federal Government rights in intellectual property generated under the award and address related matters, as provided in §§ 37.840 through 37.875. It is important to define all essential terms in the patent rights provision.

(h) *Foreign access to technology.* You must include a provision, in accordance with § 37.875, concerning foreign access and domestic manufacture of products using technology generated under the award.

(i) *Title to, management of, and disposition of tangible property.* Your property provisions for for-profit and nonprofit participants must be in accordance with §§ 37.685 through 37.700.

(j) *Financial management systems.* For an expenditure-based award, you must specify the minimum standards for financial management systems of both for-profit and nonprofit participants, in accordance with §§ 37.615 and 37.620.

(k) *Allowable costs.* If the TIA is an expenditure-based award, you must specify the standards that both for-profit and nonprofit participants are to use to determine which costs may be charged to the project, in accordance with §§ 37.625 through 37.635, as well as § 37.830.

(l) *Audits.* If your TIA is an expenditure-based award, you must include an audit provision for both for-profit and nonprofit participants and subrecipients, in accordance with §§ 37.640 through 37.670 and § 37.680.

(m) *Purchasing system standards.* You should include a provision specifying the standards in §§ 37.705 and 37.710 for purchasing systems of for-profit and nonprofit participants, respectively.

(n) *Program income.* You should specify requirements for program income, in accordance with § 37.835.

(o) *Financial and programmatic reporting.* You must specify the reports that the recipient is required to submit and tell the recipient when and where to submit them, in accordance with §§ 37.880 through 37.905.

(p) *Assurances for applicable national policy requirements.* You must incorporate assurances of compliance with applicable requirements in Federal statutes, Executive orders, or regulations (except for national policies that require certifications). Appendix D to this part contains a list of commonly applicable requirements that you need to augment with any specific requirements that apply in your particular circumstances (*e.g.*, general provisions in the appropriations act for the specific funds that you are obligating).

(q) *Other routine matters.* The agreement should address any other issues that need clarification, including who in the Government will be responsible for post-award administration and the statutory authority or authorities for entering into the TIA (*see* appendix B to this part for a discussion of statutory authorities). In addition, the agreement must specify that it takes precedence over any inconsistent terms and conditions in collateral documents such as attachments to the TIA or the recipient's articles of collaboration.

§ 37.1015 How do I decide who must sign the TIA if the recipient is an unincorporated consortium?

(a) If the recipient is a consortium that is not formally incorporated and the consortium members prefer to have the agreement signed by all of them individually, you may execute the agreement in that manner.

(b) If they wish to designate one consortium member to sign the agreement on behalf of the consortium as a whole, you should not decide whether to execute the agreement in that way until you review the consortium's articles of collaboration with legal counsel.

(1) The purposes of the review are to:

(i) Determine whether the articles properly authorize one participant to sign on behalf of the other participants and are binding on all consortium members with respect to the research project; and

(ii) Assess the risk that otherwise could exist when entering into an agreement signed by a single member on behalf of a consortium that is not a legal entity. For example, you should assess whether the articles of collaboration adequately address consortium members' future liabilities related to the research project (*i.e.*, whether they will have joint and severable liability).

(2) After the review, in consultation with legal counsel, you should determine whether it is better to have all of the consortium members sign the agreement individually or to allow them to designate one member to sign on all members' behalf.

Reporting Information About the Award

§ 37.1020 What must I document in my award file?

You should include in your award file an agreements analysis in which you:

(a) Briefly describe the program and detail the specific military and commercial benefits that should result from the project supported by the TIA. If the recipient is a consortium that is not formally incorporated, you should attach a copy of the signed articles of collaboration.

(b) Describe the process that led to the award of the TIA, including how you and program officials solicited and evaluated proposals and selected the one supported through the TIA.

(c) Explain how you decided that a TIA was the most appropriate instrument, in accordance with the factors in Subpart B of this part. Your explanation must include your answers to the relevant questions in § 37.225(a) through (d).

(d) Explain how you valued the recipient's cost sharing contributions, in accordance with §§ 37.530 through 37.555. For a fixed-support TIA, you must document the analysis you did (*see* § 37.560) to set the fixed level of Federal support; the documentation must explain how you determined the recipient's minimum cost share and show how you estimated the expenditures required to achieve the project outcomes.

(e) Document the results of your negotiation, addressing all significant issues in the TIA's provisions. For example, this includes specific explanations if you:

(1) Specify requirements for a participant's systems that vary from the standard requirements in §§ 37.615(a), 37.625(a), 37.630, or 37.705(a) in cases where those sections provide flexibility for you to do so.

(2) Provide that any audits are to be performed by an IPA, rather than the DCAA, where permitted under § 37.650. Your documentation must include:

(i) The names and addresses of business units for which IPAs will be the auditors;

(ii) Estimated amounts of Federal funds expected under the award for those business units; and

(iii) The basis (*e.g.*, a written statement from the recipient) for your judging that the business units do not currently perform under types of awards described in § 37.650(b)(1) and (2) and are not willing to grant the DCAA audit access.

(3) Include an intellectual property provision that varies from Bayh-Dole requirements.

(4) Determine that cost sharing is impracticable.

§ 37.1025 Must I report information to the Defense Assistance Awards Data System?

Yes, you must give the necessary information about the award to the office in your organization that is responsible for preparing DD Form 2566, ''DoD Assistance Award Action Report,'' reports for the Defense Assistance Award Data System, to ensure timely and accurate reporting of data required by 31 U.S.C. 6101–6106 (*see* 32 CFR part 21, subpart E).

§ 37.1030 What information must I report to the Defense Technical Information Center?

(a) For any TIA, you must give your answers to the questions in § 37.225(a) through (d) to the office in your DoD Component that is responsible for providing data on TIAs to the DTIC. Contact DTIC staff either by electronic mail at *aq@dtic.mil*, by telephone at 1–800–225–3842, or at DTIC–OCA, 8725 John J. Kingman Rd., Suite 0944, Fort Belvoir, VA 22060–6218, if you are unsure about the responsible office in your DoD Component. The DTIC compiles the information to help the Department of Defense measure the Department-wide benefits of using TIAs and assess the instruments' value in helping to meet the policy objectives described in § 37.205(b) and appendix A to this part.

(b) If the TIA uses the authority of 10 U.S.C. 2371, as described in § 37.1035, your information submission for the DTIC under paragraph (a) of this section must include the additional data required for the DoD's annual report to Congress.

(c) If, as permitted under § 37.650, the TIA includes a provision allowing a for-profit participant to have audits performed by an IPA, rather than the DCAA, you must report that fact with the other information you submit about the TIA. Note that you also must include information about any use of IPAs permitted by subawards that participants make to for-profit firms, as provided in § 37.670. Information about a subaward under the TIA must be reported even if you receive the information in a subsequent year, when information about the TIA itself does not need to be reported.

(d) The requirements in this section to report information to the DTIC should not be confused with the post-award requirement to forward copies of technical reports to the DTIC, as described at §§ 37.890 and 37.895. The reporting requirements in this section are assigned the Report Control Symbol DD–AT&L(A) 1936.

§ 37.1035 How do I know if my TIA uses the 10 U.S.C. 2371 authority and I must report additional data under § 37.1030(b)?

As explained in appendix B to this part, a TIA uses the authority of 10 U.S.C. 2371 and therefore must be included in the DoD's annual report to Congress on the use of 10 U.S.C. 2371 authorities if it:

(a) Is an assistance transaction other than a grant or cooperative agreement, by virtue of its patent rights provision; or

(b) Includes a provision to recover funds from a recipient, as described at § 37.580.

§ 37.1040 When and how do I report information required by § 37.1035?

Information that you report, in accordance with § 37.1030, to the office that your DoD Component designates as the central point for reporting to the DTIC must be:

(a) Submitted by the dates that your central point establishes (which is consistent with the schedule DTIC specifies to DoD Components).

(b) In the format that your central point provides (which is consistent with the format that the DTIC specifies to DoD Components).

Distributing Copies of the Award Document

§ 37.1045 To whom must I send copies of the award document?

You must send a copy of the award document to the:

(a) Recipient. You must include on the first page of the recipient's copy a prominent notice about the current DoD requirements for payment by electronic funds transfer (EFT).

(b) Office you designate to administer the TIA. You are strongly encouraged to delegate post-award administration to the regional office of the Defense Contract Management Agency or Office of Naval Research that administers awards to the recipient. When delegating, you should clearly indicate on the cover sheet or first page of the award document that the award is a TIA, to help the post-award administrator distinguish it from other types of assistance instruments.

(c) Finance and accounting office designated to make the payments to the recipient.

Subpart I—Post-Award Administration

§ 37.1100 What are my responsibilities generally as an administrative agreements officer for a TIA?

As the administrative agreements officer for a TIA, you have the responsibilities that your office agreed to accept in the delegation from the office that made the award. Generally, you will have the same responsibilities as a post-award administrator of a grant or cooperative agreement, as described in 32 CFR 22.715. Responsibilities for TIAs include:

(a) Advising agreements officers before they award TIAs on how to establish award terms and conditions that better meet research programmatic needs, facilitate effective post-award administration, and ensure good stewardship of Federal funds.

(b) Participating as the business partner to the DoD program official to ensure the Government's substantial involvement in the research project. This may involve attendance with program officials at kickoff meetings or post-award conferences with recipients. It also may involve attendance at the consortium management's periodic meetings to review technical progress, financial status, and future program plans.

(c) Tracking and processing of reports required by the award terms and conditions, including periodic business status reports, programmatic progress reports, and patent reports.

(d) Handling payment requests and related matters. For a TIA using advance payments, that includes reviews of progress to verify that there is continued justification for advancing funds, as discussed in § 37.1105(b). For a TIA using milestone payments, it includes making any needed adjustments in future milestone payment amounts, as discussed in § 37.1105(c).

(e) Coordinating audit requests and reviewing audit reports for both single audits of participants' systems and any award-specific audits that may be needed, as discussed in §§ 37.1115 and 37.1120.

(f) Responding, after coordination with program officials, to recipient requests for permission to sell or exclusively license intellectual property to entities that do not agree to manufacture substantially in the United States, as described in § 37.875(b). Before you grant approval for any technology, you must secure assurance that the Government will be able to use the technology (*e.g.*, a reasonable license for Government use, if the recipient is selling the technology) or seek reimbursement of the Government's investments.

(g) Notifying the agreements officer who made the award if a participant informs you about a subaward allowing a for-profit subrecipient to have audits performed by an IPA, rather than the DCAA. You should alert the awarding official that he or she must report the information, as required by § 37.1030(c).

§ 37.1105 What additional duties do I have as the administrator of a TIA with advance payments or payable milestones?

Your additional post-award responsibilities as an administrative agreements officer for an expenditure-based TIA with advance payments or payable milestones are to ensure good cash management. To do so, you must:

(a) For any expenditure-based TIA with advance payments or payable milestones, forward to the responsible payment office any interest that the recipient remits in accordance with § 37.820(b). The payment office will return the amounts to the Department of the Treasury's miscellaneous receipts account.

(b) For any expenditure-based TIA with advance payments, consult with the program official and consider whether program progress reported in periodic reports, in relation to reported expenditures, is sufficient to justify your continued authorization of advance payments under § 37.805(b).

(c) For any expenditure-based TIA using milestone payments, work with the program official at the completion of each payable milestone or upon receipt of the next business status report to:

(1) Compare the total amount of project expenditures, as recorded in the payable milestone report or business status report, with the projected budget for completing the milestone; and

(2) Adjust future payable milestones, as needed, if expenditures lag substantially behind what was originally projected and you judge that the recipient is receiving Federal funds sooner than necessary for program purposes. Before making adjustments, you should consider how large a deviation is acceptable at the time of the milestone. For example, suppose that the first milestone payment for a TIA you are administering is $50,000, and that the awarding official set the amount based on a projection that the recipient would have to expend $100,000 to reach the milestone (*i.e.*, the original plan was for the recipient's share at that milestone to be 50% of project expenditures). If the milestone payment report shows $90,000 in expenditures, the recipient's share at this point is 44% ($40,000 out of the total $90,000 expended, with the balance provided by the $50,000 milestone payment of Federal funds). For this example, you should adjust future milestones if you judge that a 6% difference in the recipient's share at the first milestone is too large, but not otherwise. Remember that milestone payment amounts are not meant to track expenditures precisely at each milestone and that a recipient's share will increase as it continues to perform research and expend funds, until it completes another milestone to trigger the next Federal payment.

§ 37.1110 What other responsibilities related to payments do I have?

If you are the administrative agreements officer, you have the responsibilities described in 32 CFR 22.810(c), regardless of the payment method. You also must ensure that you do not withhold payments, except in one of the circumstances described in 32 CFR 34.12(g).

§ 37.1115 What are my responsibilities related to participants' single audits?

For audits of for-profit participant's systems, under §§ 37.640 through 37.660, you are the focal point within the Department of Defense for ensuring that participants submit audit reports and for resolving any findings in those reports. Nonprofit participants send their single audit reports to a Governmentwide clearinghouse. For those participants, the Office of the Assistant Inspector General (Auditing) should receive any DoD-specific findings from the clearinghouse and refer them to you for resolution, if you are the appropriate official to do so.

§ 37.1120 When and how may I request an award-specific audit?

Guidance on when and how you should request additional audits for expenditure-based TIAs is identical to the guidance for grants officers in 32 CFR 34.16(d). If you require an award-specific examination or audit of a for-profit participant's records related to a TIA, you must use the auditor specified in the award terms and conditions, which should be the same auditor who performs periodic audits of the participant. The DCAA and the OIG, DoD, are possible sources of advice on audit-related issues, such as appropriate audit objectives and scope.

Subpart J—Definitions of Terms Used in This Part

§ 37.1205 Advance.

A payment made to a recipient before the recipient disburses the funds for program purposes. Advance payments may be based upon recipients' requests or predetermined payment schedules.

§ 37.1210 Advanced research.

Research that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way. Advanced research is most closely analogous to precompetitive technology development in the commercial sector (*i.e.*, early phases of research and development on which commercial competitors are willing to collaborate, because the work is not so coupled to specific products and processes that the results of the work must be proprietary). It does not include development of military systems and hardware where specific requirements have been defined. It is typically funded in Research, Development, Test and Evaluation programs within Budget Activity 3, Advanced Technology Development.

§ 37.1215 Agreements officer.

An official with the authority to enter into, administer, and/or terminate TIAs (*see* § 37.125).

§ 37.1220 Applied research.

Efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology such as new materials, devices, methods and processes. It typically is funded in Research, Development, Test and Evaluation programs within Budget Activity 2, Applied Research (also known informally as research category 6.2) programs. Applied research normally follows basic research but may not be fully distinguishable from the related basic research. The term does not include efforts whose principal aim is the design, development, or testing of specific products, systems or processes to be considered for sale or acquisition; these efforts are within the definition of ''development.''

§ 37.1225 Articles of collaboration.

An agreement among the participants in a consortium that is not formally incorporated as a legal entity, by which they establish their relative rights and responsibilities (*see* § 37.515).

§ 37.1230 Assistance.

The transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (*see* 31 U.S.C. 6101(3)). Grants, cooperative agreements, and technology investment agreements are examples of legal instruments used to provide assistance.

§ 37.1235 Award-specific audit.

An audit of a single TIA, usually done at the cognizant agreements officer's request, to help resolve issues that arise during or after the performance of the research project. An award-specific audit of an individual award differs from a periodic audit of a participant (as defined in § 37.1325).

§ 37.1240 Basic research.

Efforts directed toward increasing knowledge and understanding in science and engineering, rather than the practical application of that knowledge and understanding. It typically is funded within Research, Development, Test and Evaluation programs in Budget Activity 1, Basic Research (also known informally as research category 6.1).

§ 37.1245 Cash contributions.

A recipient's cash expenditures made as contributions toward cost sharing, including expenditures of money that third parties contributed to the recipient.

§ 37.1250 Commercial firm.

A for-profit firm or segment of a for-profit firm (*e.g.,* a division or other business unit) that does a substantial portion of its business in the commercial marketplace.

§ 37.1255 Consortium.

A group of research-performing organizations that either is formally incorporated or that otherwise agrees to jointly carry out a research project (see definition of ''articles of collaboration,'' in § 37.1225).

§ 37.1260 Cooperative agreement.

A legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of ''grant,'' in § 37.1295), except that substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include ''cooperative research and development agreements'' as defined in 15 U.S.C. 3710a.

§ 37.1265 Cost sharing.

A portion of project costs that are borne by the recipient or non-Federal third parties on behalf of the recipient, rather than by the Federal Government.

§ 37.1270 Data.

Recorded information, regardless of form or method of recording. The term includes technical data, which are data of a scientific or technical nature, and computer software. It does not include financial, cost, or other administrative information related to the administration of a TIA.

§ 37.1275 DoD Component.

The Office of the Secretary of Defense, a Military Department, a Defense Agency, or a DoD Field Activity.

§ 37.1280 Equipment.

Tangible property, other than real property, that has a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

§ 37.1285 Expenditure-based award.

A Federal Government contract or assistance award for which the amounts of interim payments or the total amount ultimately paid (*i.e.*, the sum of interim payments and final payment) are subject to redetermination or adjustment, based on the amounts expended by the recipient in carrying out the purposes for which the award was made. Most Federal Government grants and cooperative agreements are expenditure-based awards.

§ 37.1290 Expenditures or outlays.

Charges made to the project or program. They may be reported either on a cash or accrual basis, as shown in the following table:

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If reports are prepared on a . . .	Expenditures are the sum of . . .
(a) Cash basis	(1) Cash disbursements for direct charges for goods and services; (2) The amount of indirect expense charged; (3) The value of third party in-kind contributions applied; and (4) The amount of cash advances and payments made to any other organizations for the performance of a part of the research effort.
(b) Accrual basis	(1) Cash disbursements for direct charges for goods and services; (2) The amount of indirect expense incurred; (3) The value of in-kind contributions applied; and (4) The net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, and other payees and other amounts becoming owed under programs for which no current services or performance are required.

BILLING CODE 5001–08–C

§ 37.1295 Grant.

A legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Department of Defense's direct benefit or use.

(b) In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

§ 37.1300 In-kind contributions.

The value of non-cash contributions made by a recipient or non-Federal third parties toward cost sharing.

§ 37.1305 Institution of higher education.

An educational institution that:

(a) Meets the criteria in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001); and

(b) Is subject to the provisions of OMB Circular A–110, ''Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' as implemented by the Department of Defense at 32 CFR part 32.

§ 37.1310 Intellectual property.

Inventions, data, works of authorship, and other intangible products of intellectual effort that can be owned by a person, whether or not they are patentable or may be copyrighted. The term also includes mask works, such as those used in microfabrication, whether or not they are tangible.

§ 37.1315 Nonprofit organization.

(a) Any corporation, trust, association, cooperative or other organization that:

(1) Is operated primarily for scientific, educational, service, or similar purposes in the public interest.

(2) Is not organized primarily for profit; and

(3) Uses its net proceeds to maintain, improve, or expand the operations of the organization.

(b) The term includes any nonprofit institution of higher education or nonprofit hospital.

§ 37.1320 Participant.

A consortium member or, in the case of an agreement with a single for-profit entity, the recipient. Note that a for-profit participant may be a firm or a segment of a firm (*e.g.,* a division or other business unit).

§ 37.1325 Periodic audit.

An audit of a participant, performed at an agreed-upon time (usually a regular time interval), to determine whether the participant as a whole is managing its Federal awards in compliance with the terms of those awards. Appendix C to this part describes what such an audit may cover. A periodic audit of a participant differs from an award-specific audit of an individual award (as defined in § 37.1235).

§ 37.1330 Procurement contract.

A Federal Government procurement contract. It is a legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal

Government. See the more detailed definition of the term ''contract'' at 48 CFR 2.101.

§ 37.1335 Program income.

Gross income earned by the recipient or a participant that is generated by a supported activity or earned as a direct result of a TIA. Program income includes but is not limited to: income from fees for performing services; the use or rental of real property, equipment, or supplies acquired under a TIA; the sale of commodities or items fabricated under a TIA; and license fees and royalties on patents and copyrights. Interest earned on advances of Federal funds is not program income.

§ 37.1340 Program official.

A Federal Government program manager, scientific officer, or other individual who is responsible for managing the technical program being carried out through the use of a TIA.

§ 37.1345 Property.

Real property, equipment, supplies, and intellectual property, unless stated otherwise.

§ 37.1350 Real property.

Land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

§ 37.1355 Recipient.

An organization or other entity that receives a TIA from a DoD Component. Note that a for-profit recipient may be a firm or a segment of a firm (*e.g.,* a division or other business unit).

§ 37.1360 Research.

Basic, applied, and advanced research, as defined in this subpart.

§ 37.1365 Supplies.

Tangible property other than real property and equipment. Supplies have a useful life of less than one year or an acquisition cost of less than $5,000 per unit.

§ 37.1370 Termination.

The cancellation of a TIA, in whole or in part, at any time prior to either:

(a) The date on which all work under the TIA is completed; or

(b) The date on which Federal sponsorship ends, as given in the award document or any supplement or amendment thereto.

§ 37.1375 Technology investment agreements.

A special class of assistance instruments used to increase involvement of commercial firms in defense research programs and for other purposes (described in appendix A to this part) related to integrating the commercial and defense sectors of the nation's technology and industrial base. A technology investment agreement may be a cooperative agreement with provisions tailored for involving commercial firms (as distinct from a cooperative agreement subject to all of the requirements in 32 CFR part 34), or another kind of assistance transaction (*see* appendix B to this part).

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Appendix A to Part 37-What is the Civil-Military Integration Policy that is the Basis for Technology Investment Agreements?

A. TIAs complement other funding instruments that are available to agreements officers in that they are designed to foster civil-military integration in DoD Science and Technology (S&T) programs. Civil-military integration creates a single, national technology and industrial base upon which the DoD can draw to meet its needs. Achieving civil-military integration is a national policy objective, as stated in 10 U.S.C. 2501.

B. Civil-military integration includes:

1. Removing barriers to participation in DoD programs by commercial firms, firms that deal primarily in the commercial marketplace. In recent years, some commercial firms judged that it would be overly burdensome and costly for them to comply with Government-unique requirements. That belief caused some firms to decline to do cost-type business with the Federal Government. It caused other firms to create divisions for Government business that are separate and isolated from their divisions for commercial business. TIAs give agreements officers flexibility to tailor Government requirements and lower or remove barriers to firms' participation, where the tailoring of requirements can be done consistently with good stewardship of Federal Government funds.

2. Creating new business relationships among the performers in the technology and industrial base. Collaborations among commercial firms, firms that regularly perform defense programs, and nonprofit organizations can create wholes that are greater than the sums of the parts. The collaborations can enhance overall quality and productivity.

3. Promoting the development and use of new business practices and disseminating current best practices throughout the technology and industrial base.

C. The use of TIAs to promote civil-military integration will help defense S&T programs achieve their primary mission. That mission is to develop superior technology and help transition the technology to applications that enable affordable, decisive military capability. The use of TIAs to increase access to

commercial firms, to create new relationships, and to promote better business practices will help:

1. Increase technological sophistication. The DoD and firms that currently perform defense programs will benefit from technology in the commercial marketplace that often is more advanced than what is available in the defense-specific sector.

2. Reduce DoD's life-cycle costs for buying, operating, and maintaining weapon and support systems. The intent is that the DoD and firms that currently perform defense programs will be able to take advantage of the economies of scale of the commercial marketplace, which has a much larger volume of business for many high-technology products and processes than the Federal Government's share alone.

Appendix B to Part 37-What Type of Instrument is a TIA and What Statutory Authorities Does it Use?

A. A TIA may be either a type of cooperative agreement or a type of "assistance transaction other than a grant or cooperative agreement," depending on its patent-rights provision. It is awarded under the statutory authority of 10 U.S.C. 2358, 10 U.S.C. 2371, or both, as explained in the paragraphs B through E of this Appendix and illustrated in the table below.

	The TIA's patent provision complies with Bayh-Dole	The TIA's patent provision varies from what is possible under Bayh-Dole
1. The TIA does not include recovery of funds provision	The TIA is a type of cooperative agreement, under 10 U.S.C. 2358(b)(1).	The TIA is a type of assistance transaction other than a grant or cooperative agreement, under 10 U.S.C. 2371.
2. The TIA includes recovery of funds provision	The TIA is a type of cooperative agreement, under 10 U.S.C. 2358(b)(1). It uses recovery of funds authority of 10 U.S.C. 2371.	The TIA is a type of assistance transaction other than a grant or cooperative agreement, under 10 U.S.C. 2371. It also uses the recovery of funds authority of 10 U.S.C. 2371.

B. A TIA is a type of cooperative agreement whenever its patent-rights provision complies with the Bayh-Dole statute (Chapter 18 of Title 35, U.S.C.), as shown in the preceding table. The authority to award the TIA is 10 U.S.C. 2358, in addition to any program-specific statute that may provide authority to award cooperative agreements. The TIA also may use the authority of 10 U.S.C. 2371 to include a recovery of funds provision that requires the recipient, as a condition for receiving support under the agreement, to make payments to the Department of Defense or other Federal agency.

C. A TIA becomes a type of assistance transaction other than a grant or cooperative agreement when its patent-rights provision is less restrictive than is possible under Bayh-Dole. The authority to award the instrument is 10 U.S.C. 2371, as well as any program-specific authority to provide assistance. Note that the agreements officer's judgment that the execution of the research project warrants a less restrictive patent provision than is possible under Bayh-Dole is sufficient to satisfy the statutory condition in 10 U.S.C. 2371 for use of an assistance transaction other than a cooperative agreement or grant (i.e., that it is not feasible or appropriate to use a standard grant or cooperative agreement to carry out the project). The TIA also may include a recovery of funds provision, as authorized by 10 U.S.C. 2371.

D. From a practical point of view, an agreements officer need not decide while he or she is negotiating the terms and conditions with the recipient whether a TIA is a cooperative agreement or an assistance transaction other than a grant or cooperative agreement. The agreements officer must make that decision when the agreement is finalized, based upon a comparison of the patent provision with what is required by Bayh-Dole.

E. In making that comparison, the agreements officer should consult with legal counsel and remember that most Bayh-Dole requirements apply only to small business firms and nonprofit organizations (note that a consortium that is not formally incorporated is neither a small business firm nor a nonprofit organization). There are only two requirements of Bayh-Dole, in 35 U.S.C. 202(c)(4) and 203 that directly apply to cooperative agreements with other than small business firms and nonprofit organizations. A 1984 amendment to Bayh-Dole, at 35 U.S.C. 210(c), makes those two portions apply. The 1984 amendment otherwise states that Bayh-Dole does not preclude agencies from complying with a 1983 Presidential Statement of Government Patent Policy (incorporated by reference in Executive Order 12591). The President in that statement authorized Federal agencies to tailor cooperative agreements with for-profit firms other than small businesses, in ways that would waive rights of the Government or obligations of the performer under Bayh-Dole, if they determined that:

1. "The interests of the United States and the general public will be better served thereby as, for example, where this is necessary to obtain a uniquely or highly qualified performer; or"

2. "The award involves co-sponsored, cost sharing, or joint venture research and development, and the performer, co-sponsor or joint venturer is making substantial contribution of funds, facilities or equipment to the work performed under the award."

Appendix C to Part 37-What is the Desired Coverage for Periodic Audits of For-Profit Participants to be Audited by IPAs?

You may provide the following guidance to a for-profit participant and its IPA on the desired coverage of periodic audits.

COVERAGE OF INDEPENDENT AUDITS OF FOR-PROFIT FIRMS

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Is an audit of program income usually required?

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PART 1. GENERAL INFORMATION

What is the purpose of this document?

This document provides guidance for an independent public accountant (IPA) who is asked by a for-profit firm to conduct an audit of its systems, due to the firm's having received a technology investment agreement from the Department of Defense (DoD).

Why does the Federal Government need an audit?

Federal officials are accountable to the public for the resources provided to carry out Government programs. Financial auditing contributes to accountability by providing an independent assessment to assure that recipients are handling Government funds properly.

Can the audit be integrated with the regular audit of a firm's financial statements?

Yes, the intent is to cause the minimum possible disruption to the firm's activities, so the IPA is encouraged to do the needed transaction sampling for DoD awards as part of the regularly scheduled audit of the firm's financial statements. In some cases, it may be even more efficient and economical to separately audit the individual DoD awards, and the firm may elect to have the IPA do so.

What are the objectives of the audit?

The auditor is to determine and report on whether:

- The firm has an internal control structure that provides reasonable assurance that it is managing DoD awards in compliance with the award terms and conditions, including applicable Federal laws and regulations.

- Based on a sampling of DoD award expenditures, the firm has complied with award terms and conditions, including applicable Federal laws and regulations, that may have a direct and material effect on DoD awards.

What is the source of the requirement for the audit?

The source of the requirement stated in the award document stems from sections 37.640 through 37.660 of 32 CFR part 37, which is part 37 of the DoD Grant and Agreement Regulations (DoDGARs).

What should the IPA do if he or she finds that the Defense Contract Audit Agency is performing audits of the firm?

The IPA should consult with officials of the firm to ensure that:

- DoD agreements officers were aware of the DCAA audit presence at the time they made awards; and

- The DoD agreements authorize the IPA to perform the audit, rather than requiring that the DCAA do so. If the IPA is authorized to perform the audit, he or she must consider the nature, timing, and extent of his or her own auditing procedures, to avoid unnecessary duplication of the DCAA effort.

PART 2. AUDIT OBJECTIVES AND COMPLIANCE REQUIREMENTS

A. ALLOWABLE COSTS

What is the objective of this portion of the audit?

The objective is to determine, by testing a sample of transactions, whether the firm complied with the requirements concerning allowability of costs charged to DoD awards.

What standards or cost principles determine the costs that are allowable as charges to the award?

Each technology investment agreement should specify the standards or cost principles that the for-profit firm is to use to determine the costs that it is allowed to charge to that award. While the TIA may specify use of the for-profit cost principles in the Federal Acquisition Regulation (FAR, at 48 CFR part 31) and Defense FAR Supplement (DFARS, at 48 CFR part 231), it more likely will specify an alternative standard. The minimum standard in the latter case is that Federal funds and the firm's cost sharing contributions will be used only for costs that a reasonable and prudent person would incur in carrying out the research project contemplated by the agreement.

What compliance requirements for allowability of costs should the audit address?

For a firm that is subject to the cost principles in the FAR and DFARS, the IPA should determine and report on whether costs charged to DoD awards are in compliance with those cost principles and indirect cost rates are applied in accordance with approved rate agreements.

For a firm that is subject to alternative standards that may be used for a TIA, the IPA should determine and report on whether costs charged to the DoD awards are:

- Necessary and reasonable for the performance of the research projects supported by the awards, or for related administration. Generally, elements of cost that appropriately are charged are those identified with research and development activities under the Generally Accepted Accounting Principles (see Statement of Financial Accounting Standards Number 2, "Accounting for Research and Development Costs," October 1974).

- Allocable to the research projects (i.e., costs are charged to DoD projects in a manner that is in accordance with the benefits the projects received).

- Given consistent treatment with costs allocated to the firm's other research and development activities (e.g., activities supported by the firm itself or by non-Federal sponsors).

- In conformance with any limitations in the award documents or regulations that they cite (e.g., any restrictions on types or amounts of costs, or requirements for prior approval of DoD agreements officers).

- Supported by appropriate documentation in the firm's records. The documentation may be in electronic form.

B. COST SHARING

What is the objective of this portion of the audit?

The objective is to determine, by testing a sample of cost sharing contributions, whether the firm made the contributions that the agreements required.

What are the compliance requirements for cost sharing?

The provisions of the award documents will specify requirements for the firm's cost sharing, which may be contributions of a specified amount or a percentage of total project costs. The cost sharing may be in the form of allowable costs incurred or in-kind contributions (including third-party in-kind contributions).

The values of the firm's contributions are determined in accordance with sections 37.530 through 37.555 of 32 CFR part 37, which is part 37 of the DoDGARs.

C. FINANCIAL REPORTING

What are the objectives of this portion of the audit?

The primary objective is to determine whether the firm's financial reports for DoD awards:

- Fairly and completely represent the expenditures and status of resources for projects supported by those awards; and

- Are supported by applicable accounting records and the accounting basis used (e.g., cash or accrual).

What are the compliance requirements for financial reporting?

The agreements will specify the frequency and content of the financial reports. They may specify the use of standard forms (e.g., the Standard Form 269 or 269A, "Financial Status Report," or Standard Form 272, "Report of Federal Cash Transactions). Alternatively, the agreements may specify an equivalent approach of periodic reports, and the reports may include information on both programmatic and business status. The requirements are in section 37.880 of 32 CFR part 37, which is part 37 of the DoDGARs.

Each financial report (and the business portion of any report that also has programmatic information) will contain at least summarized details on the status of resources (Federal funds and any non-Federal cost sharing that the agreements require), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from these schedules; and discuss actions that will be taken to address the deviations.

D. EQUIPMENT AND REAL PROPERTY MANAGEMENT

Is a review of a firm's property management system usually required?

No, the IPA needs to review the property management system only if:

- There is Federally owned property associated with the award; or

- The firm charged the full purchase price of any equipment or real property as project costs (i.e., to Federal funds or the firm's funds that are counted toward required cost sharing); and

- The award under which the property was purchased provides for a continuing Federal interest in the property.

Note that the IPA generally will not need to review the property management system because most DoD awards will not have Federally owned property associated with them and will allow the firm to charge to the project only depreciation or use charges for real property or equipment.

What are the objectives of the review?

The objectives are to determine whether the firm:

- Obtained the necessary prior approval for the equipment or real property purchase from the grants officer or agreements officer.

- Keeps proper records for equipment and adequately safeguards and maintains equipment.

- Handles disposition or encumbrance of equipment or real property acquired under DoD awards in accordance with the applicable requirements.

What are the compliance requirements for Federally owned property and for equipment or real property purchased under DoD awards?

To protect the Federal interest in property, the DoD Grant and Agreement Regulations include standards for the firm's property management, use, and disposition, as shown in this table:

If the property is . . .	Then the property management standards for the for-profit firm are in . . .
Real property or equipment purchased under a TIA,	Section 37.685 of 32 CFR part 37.
Federally owned property,	Section 37.695 of 32 CFR part 37.

Note that a for-profit firm may include the full acquisition cost of real property or equipment as a charge to the project only with the prior approval of the grants officer or the agreements officer. The title to the real property or equipment vests conditionally in the for-profit firm upon acquisition, and there is a continuing Federal interest in the property unless an awarding office has statutory authority to do otherwise and elects to use that authority for a particular award. The Federal Government recovers its interest in the property through the disposition process at the project's end.

E. PROGRAM INCOME

Is an audit of program income usually required?

No, most awards will not involve any program income.

What is program income?

Program income is gross income earned by the recipient that is generated by a supported activity or earned as a result of the award. For example, if the purpose of an award is to support the firm's delivery of services and the firm collects fees for doing so, those fees are program income. As another example, if samples of materials or biological specimens are generated as a result of a supported research effort, and the firm sells samples to other research organizations, the proceeds of those sales would be program income. If authorized by the terms and conditions of the award costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

What is the objective of this portion of the audit?

The objective is to determine whether program income is correctly recorded and used in accordance with the award terms and applicable standards.

What are the applicable standards for program income?

The standards for program income are in section 37.835 of 32 CFR part 37, which is part 37 of the DoDGARs.

Appendix D to Part 37-What Common National Policy Requirements May Apply and Need to Be Included in TIAs?

Whether your TIA is a cooperative agreement or another type of assistance transaction, as discussed in Appendix B to this part, the terms and conditions of the agreement must provide for recipients' compliance with applicable Federal statutes and regulations. This appendix lists some of the more common requirements to aid you in identifying ones that apply to your TIA. The list is not intended to be all-inclusive, however, and you may need to consult legal counsel to verify whether there are others that apply in your situation (e.g., due to a provision in the appropriations act for the specific funds that you are using or due to a statute or rule that applies to a particular program or type of activity).

A. Certifications

Three requirements that apply to all TIAs currently require you to obtain a certification at the time of proposal. They are:

1. Requirements concerning debarment and suspension in a Governmentwide common rule that the DoD has codified at subparts A through E of 32 CFR part 25. They apply to all nonprocurement transactions.

2. Requirements concerning drug-free workplace in a Governmentwide common rule that the DoD has codified at subpart F of 32 CFR part 25. They apply to all financial assistance.

3. Prohibitions concerning lobbying in a Governmentwide common rule that the DoD has codified at 32 CFR part 28. They apply to all financial assistance.

Appendix A to 32 CFR part 22 includes sample provisions that you may use, to have proposers incorporate the certifications by reference into their proposals. That appendix also has information on the sources of the requirements.

B. Assurances that Apply to all TIAs

DoD policy is to use certifications, as described in the preceding paragraphs, only for national policy requirements that specifically require them. The usual approach to communicating other national policy requirements to recipients is to incorporate them as award terms or conditions, or assurances.

Appendix B to 32 CFR part 22 lists national policy requirements that commonly apply to grants and cooperative agreements. It also has suggested language for assurances to incorporate the requirements in award documents. Of those requirements, the following four apply to all TIAs:

1. Prohibitions on discrimination on the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.). These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients performing a part of the substantive research program (as opposed to suppliers from whom recipients purchase goods or services). For further information, see item a. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

2. Prohibitions on discrimination on the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.). They apply to all financial assistance and require flow down to subrecipients. For further information, see item d. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

3. Prohibitions on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). They apply to all financial assistance and require flow down to subrecipients. For further information, see item e.1. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

4. Preferences for use of U.S.-flag air carriers in the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), which apply to uses of U.S. Government funds.

C. Other Assurances

Additional requirements listed in Appendix B to 32 CFR part 22 may apply in certain circumstances, as follows:

1. If construction work is to be done under a TIA or its subawards, it is subject to the prohibitions in Executive Order 11246 on discrimination on the basis

of race, color, religion, sex, or national origin. For further information, see item b. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

2. If the research involves human subjects or animals, it is subject to the requirements in item a. or b., respectively, under the heading "Live organisms" in Appendix B to 32 CFR part 22.

3. If the research involves actions that may affect the environment, it is subject to the National Environmental Policy Act, which is item b.1. under the heading "Environmental Standards" in Appendix B to 32 CFR part 22. It also may be subject to one or more of the other requirements in items b.2 through b.6. under that heading, which concern flood-prone areas, coastal zones, coastal barriers, wild and scenic rivers, and underground sources of drinking water.

4. If the project may impact a historic property, it is subject to the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as described under the heading "National Historic Preservation" in Appendix B to 32 CFR part 22.

Appendix E to Part 37-What Provisions May a Participant Need to Include when Purchasing Goods or Services Under a TIA?

A. As discussed in §37.705, you must inform recipients of any national policy requirements that flow down to their purchases of goods or services (e.g., supplies or equipment) under their TIAs. Note that purchases of goods or services differ from subawards, which are for substantive research program performance.

B. Appendix A to 32 CFR part 34 lists seven national policy requirements that commonly apply to firms' purchases under grants or cooperative agreements. Of those seven, two that apply to all recipients' purchases under TIAs are:

1. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). A contractor submitting a bid to the recipient for a contract award of $100,000 or more must file a certification with the recipient that it has not and will not use Federal appropriations for certain lobbying purposes. The contractor also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. For further details, see 32 CFR part 28, the DoD's codification of the Governmentwide common rule implementing this amendment.

2. Debarment and suspension. Recipients may not make contract awards that exceed the simplified acquisition threshold (currently $100,000) and certain other contract awards may not be made to parties listed on the General Services Administration (GSA) "List of Parties Excluded from Federal Procurement and Nonprocurement Programs. The GSA list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235). For further details, see subparts A through E of 32 CFR part 25, which is the DoD's codification of the Governmentwide common rule implementing Executive Orders 12549 and 12689.

C. One other requirement applies only in cases where construction work is to be performed under the TIA with Federal funds or recipient funds counted toward required cost sharing:

1. Equal Employment Opportunity. Although construction work should happen rarely under a TIA, the agreements officer in that case should inform the recipient that Department of Labor regulations at 41 CFR 60-1.4(b) prescribe a clause that must be incorporated into construction awards and subawards. Further details are provided in Appendix B to Part 22 of the DoDGARs (32 CFR part 22), in section b. under the heading "Nondiscrimination."

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