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Federal Register
Vol. 68, No. 165
Tuesday, August 26, 2003

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–04–AD; Amendment 39–13264; AD 2003–16–11]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc., Model 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified MD Helicopters, Inc. (MDHI) model helicopters that requires reducing the life limit of the main rotor drive shaft (drive shaft) and changing the life limit on the component history card or equivalent record. This amendment is prompted by the review of final fatigue test data, which indicates that the life limit of the drive shaft should be reduced by 2000 hours time-in-service (TIS). The actions specified by this AD are intended to prevent failure of the drive shaft, loss of drive of the main rotor system, and subsequent loss of control of the helicopter.

DATES: Effective September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5264, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on May 19, 2003 (68 FR 27006). That action proposed reducing the life limit of the drive shaft from 16,000 hours TIS to 14,000 hours TIS and revising the component history card or an equivalent record to reflect the reduced life limit.

MDHI has issued Service Bulletin SB600N–033, dated December 13, 2001, which specifies reducing the life limit of the drive shaft at the next scheduled maintenance or within 1 year, whichever occurs first.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

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

The FAA estimates that this AD will affect 46 helicopters of U.S. registry, and it will take approximately .5 work hour per helicopter to update the records at an average labor rate of $65 per work hour. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $1,495.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–16–11 MD Helicopters, Inc.: Amendment 39–13264. Docket No. 2003–SW–04–AD.

Applicability: Model 600N, with main rotor drive shaft assembly (drive shaft), part number (P/N) 600N5510–1, installed, certificated in any category.

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

Compliance: Required within 100 hours time-in-service (TIS), unless accomplished previously.

To prevent failure of the drive shaft, loss of drive to the main rotor hub, and subsequent loss of control of the helicopter, accomplish the following:

(a) Revise the component history card or equivalent record for drive shaft, P/N 600N5510–1, by changing the life limit from 16,000 to 14,000 hours TIS. Before further flight, replace any drive shaft that has 14,000 or more hours TIS with an airworthy drive shaft.

(b) This AD revises the Limitations section of the maintenance manual by reducing the life limit of the drive shaft, P/N 600N5510–1, to 14,000 hours TIS.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on September 30, 2003.

Issued in Fort Worth, Texas, on August 5, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–21521 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–10–AD; Amendment 39–13286; AD 2003–17–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Dart 528, 529, 529D, 531, 532, 535, 542, and 552 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc) Dart 528–7E, 529–7H, –7E, –8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542–4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines. This AD requires removal of any Sermetel coating (Omat 7/46) from certain high pressure (HP) turbine discs and intermediate pressure (IP) turbine discs, and inspection of discs after coating removal. This AD is prompted by reports of Sermetel coating (Omat 7/46) applied to certain turbine discs which, if allowed to remain on the discs would react adversely with the disc dry film lubricant, and could result in uncontained HP or IP turbine disc failure, resulting in possible damage to the airplane. We are issuing this AD to prevent uncontained HP or IP turbine disc failure, which could result in damage to the airplane.

DATES: This AD becomes effective September 30, 2003.

ADDRESSES: You may get the service information identified in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; Tel: 49–33–7086–1768; Fax: 49–33–7086–3356.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed AD. The proposed AD applies to RRD (formerly Rolls-Royce plc) Dart 528–7E, 529–7H, –7E, –8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542 –4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines. We published the proposed AD in the **Federal Register** on May 5, 2003 (68 FR 23620). That action proposed to require removal of any Sermetel coating (Omat 7/46) from certain HP turbine discs and IP turbine discs, and inspection of discs after coating removal.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

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

Changes to 14 CFR Part 39—Effect on the AD

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–10–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2003–17–11 Rolls-Royce Deutschland Ltd & Co KG: Amendment 39–13286. Docket No. 2003–NE–10–AD.

Effective Date

(a) This AD becomes effective September 30, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc) Dart 528–7E, 529–7H, –7E,

–8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542–4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines with a high pressure (HP) turbine disc or intermediate pressure (IP) turbine disc that has a serial number (SN) listed in Table 1 of this AD installed. These engines are installed on, but not limited to, BAE Systems (Operations) Limited, Model HS 748 Series 2A and 2B airplanes, Fokker Aircraft B.V., F.27 Friendship Mark 200, 400, 500, and 600 airplanes, Gulfstream Aerospace Corporation Model G–159 ''Gulfstream I'' airplanes, Maryland Air Industries, Inc. F–7F, F–27A, F–27G, F–27J, F–27M, FH–227B, FH–227C, FH–227D, and FH–227E airplanes, and Mitsubishi Heavy Industries, Ltd Model YS–11, YS–11A–200, YS–11A–300, YS–11A–500, and YS–11A–600 airplanes. Table 1 follows:

TABLE 1.—AFFECTED TURBINE DISCS

Turbine disc serial number	Turbine disc stage	Date when coating was applied	Turbine disc cycles-since-new when coating was applied
DETN128	HP	31. Mar 01	4356
DETN155	HP	22. Jun 99	0
DETN3541	HP	17. Apr 01	2850
DETN3542	HP	16. Jan 01	6053
LA759	HP	27. Oct 00	5858
LP219	HP	23. Nov 99	6688
LW376	HP	21. Jul 99	3302
LX484	HP	22. Feb 00	4632
LZ299	HP	23. Dec 99	5839
LZ404	HP	13. Jul 01	630
LZ555	HP	30. Aug 00	2158
LZ564	HP	15. Mar 01	4204
SG612	HP	20. Apr 00	5735
SH195	HP	16. Dec 99	5349
DETN25	IP	30. Aug 00	2158
DETN238	IP	31. Mar 01	4356
DETN240	IP	18. Apr 01	0
DETN944	IP	04. Mar 00	2200
DETN2666	IP	17. Apr 01	2850
DETN5538	IP	16. Jul 01	630
DETN6400	IP	14. Apr 99	0
LA407	IP	22. Jun 00	5736
LA858	IP	27. Oct 00	5858
LB99	IP	13. Aug 99	9093
LE284	IP	24. Dec 99	5679
LN87	IP	10. May 99	5829
LP519	IP	23. Nov 99	6688
LW517	IP	22. Dec 99	5865
LX214	IP	09. Dec 00	6498
LX379	IP	22. Feb 00	4632
LZ248	IP	23. Dec 99	5839
LZ385	IP	17. Oct 01	9072
LZ603	IP	22. Jun 99	0
SG554	IP	20. Apr 00	5735
SH863	IP	16. Dec 99	5349

Unsafe Condition

(d) This AD is prompted by reports of Sermetel coating (Omat 7/46) applied to certain turbine discs which, if allowed to remain on the discs would react adversely with the disc dry film lubricant, causing uncontained HP or IP turbine disc failure, which could result in damage to the airplane. We are issuing this AD to prevent HP or IP turbine disc failure, which could result in damage to the airplane.

Compliance

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

Determining if Action Is Required

(f) Within 60 days after the effective date of this AD, determine the SN of the HP turbine disc and the IP turbine disc. If none of the HP and IP turbine discs with SNs listed in Table 1 are installed in the engine, no further action is required.

(g) If one or more of the discs with SNs listed in Table 1 of this AD are installed in the engine, do the following:

(1) If the engine has had a full overhaul of the turbine after the shop visit at which the Sermetel coating (Omat 7/46) was applied, no further action is required.

(2) If only the HP turbine disc is listed in Table 1, and the engine has RRD Service Bulletin No. Da72–533, Revision 3, dated October 2001, incorporated, no further action is required.

Removal of Sermetel Coating and Disc Inspection

(3) Before accumulating 10,000 flight cycles since the coating was applied, completely remove Sermetel coating (Omat 7/46) from HP turbine discs and LP turbine discs. Information on coating removal can be found in RRD Overhaul Processes Manual, Overhaul Process 114.

(4) Visually inspect HP turbine discs and LP turbine discs, and return to service discs that pass inspection. Information on disc pass or fail inspection criteria can be found in the RRD Engine Overhaul Manual, Chapter 72–6–1.

Alternative Methods of Compliance

(h) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, FAA.

Material Incorporated by Reference

(i) None.

Related Information

(j) The subject of this AD is addressed in LBA airworthiness directive LTA 2003–015, dated February 6, 2003.

Issued in Burlington, Massachusetts, on August 19, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–21741 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Part 206

RIN: 3220–AB56

Account Benefits Ratio

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to add a new part to explain how it will compute the account benefits ratio. The Railroad Retirement and Survivors' Improvement Act of 2001 amended the Railroad Retirement Act to require that on an annual basis the Board compute an account benefits ratio for the most recent 10 preceding fiscal years and a projection of the account benefits ratio for the next 5 succeeding fiscal years. In determining the account benefits ratio, the Board has interpreted several terms utilized in that computation. Since the account benefits ratio will be used to determine the tier II tax rate for calendar years after 2003, the Board is issuing this regulation to clarify how we will compute the account benefits ratio.

DATES: This final rule is effective August 26, 2003.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Effective for calendar years after 2003, the tier II tax rate will be determined in accord with a formula that relies on the average account benefits ratio. *See* section 3241 of the Internal Revenue Code as amended by section 204 of Public Law 107–90. The Board has decided to set forth how it will compute the account benefits ratio so that all parties, rail labor, rail management and the public, will be aware of how we intend to compute the account benefits ratio. Part 206 of the Board's regulations deals with the manner by which the account benefits ratio will be computed. Section 206.1 contains definitions of the terms that are used to compute the account benefits ratio. In making these calculations, the Board based its definitions on the language of the statute and the purpose of computing the account benefits ratio.

The term ''total benefits and administrative expenses paid'' is computed on a cash basis, since the use of the word ''paid'' demonstrates that the computation should be made on a cash basis. In addition, ''total benefits paid'' is computed on the basis of net benefits paid, *i.e.*, the gross benefits paid in a particular fiscal year minus any benefit overpayments actually recovered in that fiscal year. The purpose of computing the account benefits ratio is to ensure that there are adequate funds to pay benefits due under the Railroad Retirement Act. Using net benefits paid more accurately reflects the amount of benefits paid in a given year.

The term ''assets'' is defined in the regulation as the total of the market value of all cash and investments held in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefit Account). Excluded from ''assets'' is the amount of accounts receivable. While a receivable may be viewed as an asset under certain circumstances, the language of the Railroad Retirement and Survivors' Improvement Act of 2001 leads the Board to conclude that Congress did not contemplate inclusion of accounts receivable in the computation of the account benefits ratio. By providing that the computation is to be made based on the fair market value of the assets in the Investment Trust and the accounts, Congress signaled that the computation should be made based on the amount of cash and the value of investments in the Investment Trust and the accounts. Moreover, disregarding accounts receivable in computing the account benefits ratio is consistent with the cash basis being used to determine total benefits and administrative expenses paid in a given fiscal year.

The term ''administrative expenses paid'' is also defined in the regulation. All Railroad Retirement Board administrative expenses are currently paid from a single administrative account. The only amounts recorded in the Railroad Retirement Account are ''cash transfers'' to that administrative account. The amount used for calculating the administrative expenses paid will be the amount of those cash transfers from the Railroad Retirement Account in each fiscal year. Also included in total administrative expenses will be those amounts transferred from the Railroad Retirement Account to the Limitation on the Office of Inspector General. The expenses of the Inspector General are appropriate railroad retirement program expenses that must be considered in determining total administrative expenses. Finally, the administrative expenses of the National Railroad Retirement Investment Trust will also be included in this term.

Collection of Information Requirements

This rule does not impose additional information collection and record keeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Regulatory Impact Statement

Prior to publication of the proposed rule, the Board submitted this rule to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. The proposed rule was not a major rule in terms of the aggregate costs involved. The costs associated with the addition of a new part to the Board's regulations are administrative in nature, and include the costs associated with drafting and publishing the regulation as a proposed and then a final rule. We have determined that this final rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

OBM determined that the final rule did not need to be reviewed again under Executive Order 12866. Part 206 explains how the Railroad Retirement Board will compute the account benefits ratio in accordance with sections 108 and 204 of the Railroad Retirement and Survivors' Improvement Act of 2001. The purpose of the regulation is to provide a written explanation so that all parties, rail labor, rail management, and the public, will be aware of how the Board intends to compute the account benefits ratio. Thus, the final rule will benefit the agency's constituents, who will be aware of how the account benefits ratio is computed.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define ''agency'' by referencing the

definition of ''agency'' contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term ''agency'' an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

This rule was published as a proposed rule on December 18, 2002 (67 FR 77447). The proposed rule invited the public and interested parties to comment on the proposed rule. No comments were received.

List of Subjects in 20 CFR Part 206

Railroad retirement.

■ For the reasons set out in the preamble, the Railroad Retirement Board adds a new Part 206 to Title 20, chapter II of the Code of Federal Regulations to read as follows:

PART 206—ACCOUNT BENEFITS RATIO

Sec.
206.1 Definitions.
206.2 Computations.

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231u(a).

§ 206.1 Definitions.

Except as otherwise expressly noted, as used in this part—

Account benefits ratio means the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years prior to 2002, the Social Security Equivalent Benefit Account) as of the close of each fiscal year by the total benefits and administrative expenses paid from those accounts during the fiscal year.

Administrative expenses paid means the amount of the cash transfers from the Railroad Retirement Account to the agency's single administrative fund. Also included in this term is the amount of the cash transfers from the Railroad Retirement Account to the Limitation on the Office of Inspector General and the administrative expenses paid by the National Railroad Retirement Investment Trust.

Assets means the market value of cash and investments in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefit Account).

Average account benefits ratio means for any calendar year, the average of the account benefits ratio for the 10 most recent fiscal years ending before such calendar year. If the amount computed is not a multiple of 0.1, such amount shall be increased to the next highest 0.1.

Total benefits paid means the total amount of benefits paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust in a fiscal year minus any benefit overpayments actually recovered during that fiscal year.

§ 206.2 Computation.

(a) On or before November 1, 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratios for each of the most recent 10 preceding fiscal years; and

(2) Certify the account benefits ratio for each such fiscal year to the Secretary of the Treasury.

(b) On or before November 1 of each year after 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratio for the fiscal year ending in such year; and

(2) Certify the account benefits ratio for such fiscal year to the Secretary of the Treasury.

(c) No later than May 1 of each year, beginning 2003, the Board shall compute its projection of the account benefits ratio and the average account benefits ratios for each of the next succeeding 5 fiscal years.

Dated: August 19, 2003.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–21738 Filed 8–25–03; 8:45 am]

BILLING CODE 7905–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AF37

Clarification of Rules Involving Residual Functional Capacity Assessments; Clarification of Use of Vocational Experts and Other Sources at Step 4 of the Sequential Evaluation Process; Incorporation of ''Special Profile'' Into Regulations

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: For purposes of this document, ''we,'' ''our,'' and ''SSA'' refer to the Social Security Administration and State agencies that make disability determinations for the Social Security Administration. ''You'' and ''your'' refer to individuals who claim benefits from the Social Security Administration based on ''disability.''

In this final rule we clarify our rules about the responsibility that you have to provide evidence and the responsibility that we have to develop evidence in connection with your claim of disability. This includes our rules about when we assess your residual functional capacity (RFC) and how we use this RFC assessment when we decide whether you can do your past relevant work or other work. These clarifications address issues of responsibility raised by some courts in recent cases; clarify that we may use vocational experts (VEs), vocational specialists (VSs), or other resources to obtain evidence we need to help us determine whether your impairment(s) prevents you from doing your past relevant work; add a special provision to our rules stating that, if you are at least 55 years old, and specific other circumstances are present, we will find that you are disabled; and make a number of minor editorial changes to clarify and update the language of our rules, and to use simpler language in keeping with our goal of using plain language in our regulations.

DATES: These rules will be effective September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–1767 or TTY 800–966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 800–772–1213 or TTY 800–325–0778, or visit our Internet Web site,

Social Security Online, at *http://www.socialsecurity.gov.*

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office at: *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site Social Security Online, *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

What Programs Do These Regulations Affect?

These regulations affect disability determinations and decisions we make for you under title II and title XVI of the Social Security Act (the Act). In addition, to the extent that Medicare and Medicaid eligibility are based on entitlement to benefits under title II and eligibility for benefits under title XVI, these regulations also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you have limited income and resources.

How Do We Define ''Disability''?

Under both the title II and title XVI programs, disability means the inability to ''* * * engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.'' (Sections 223(d)(1)(A) and 1614(a)(3)(A) of the Act.) This definition applies if you file a claim under title II or if you file a claim as an adult under title XVI. (There is a different definition of disability for children filing under title XVI. See section 1614(a)(3)(C) of the Act.)

In addition, we only consider you to be disabled if your physical or mental impairment(s) is so severe that you are not only unable to do your previous work, but you cannot, considering your age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy. This is true regardless of whether this kind of work exists in the immediate area in which you live, or whether a specific job vacancy exists for you, or whether you would be hired if you applied for work. (See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act.)

We will not consider you under a disability unless you furnish medical and other evidence that we need to show that you are disabled. (See section 223(d)(5)(A) and, by reference to section 223(d)(5), section 1614(a)(3)(H) of the Act.) However, when we decide whether you are disabled (or whether you continue to be disabled), we will develop a complete medical history of at least the preceding twelve months for any case in which we decide that you are not disabled. (See sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act.)

Who Makes the Rules, Regulations, and Procedures for Providing Evidence of Disability?

Section 205(a) of the Act and, by reference to section 205(a), section 1631(d)(1) provide that:

> The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

How Do We Decide Whether You Are Disabled?

To decide whether you are disabled under this statutory definition, we use a five-step sequential evaluation process, which we describe in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we find that you are not disabled regardless of your medical condition or your age, education, and work experience. If you are not, we go on to step 2 of the sequence.

2. Do you have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities? If you do not, we find that you are not disabled. If you do, we go on to step 3 of the sequence.

3. Do you have an impairment(s) that meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of our regulations? If you do, and the impairment(s) meets the duration requirement, we find you disabled. If you do not, we go on to step 4 of the sequence.

4. Considering your RFC and the physical and mental demands of the work you have done in the past, does your impairment(s) prevent you from doing your past relevant work? If not, we find that you are not disabled. If so, we go on to step 5 of the sequence.

5. Considering your RFC and your age, education, and past work experience, does your impairment(s) prevent you from doing any other work? If it does, and your impairment(s) meets the duration requirement, we find that you are disabled. If it does not, we find that you are not disabled.

We use different sequential evaluation processes if we are deciding whether your disability continues. (See §§ 404.1594 and 416.994 of our regulations.) However, these different processes also include steps that consider your RFC and past relevant work, and your ability to adjust to other work considering your RFC, age, education, and work experience.

What Revisions Are We Making, and Why?

We are changing several sections in subpart P of part 404 and subpart I of part 416 to clarify our longstanding rules about how we make determinations and decisions for initial applications at steps 4 and 5 of the sequential evaluation process. The changes will also apply to steps 7 and 8 of the sequential evaluation processes for determining continuing disability in § 404.1594(f), and steps 6 and 7 in § 416.994(b)(5). However, for clarity we will refer in this preamble only to the steps of the sequential evaluation process for initial applications.

Several of the revisions clarify our longstanding interpretation of our rules that we assess your RFC once, after we have found that you have a severe impairment(s) that does not meet or equal a listing; *i.e.*, after step 3 but before we consider step 4. We use this RFC assessment first to determine, at step 4, whether you are able to do any of your past relevant work. If we determine that you cannot perform your past relevant work, or you have no past relevant work, we use the same RFC assessment at step 5 to determine whether you are able to make an adjustment to other work, given your RFC, age, education, and work experience.

Under the Act and §§ 404.1512 and 416.912 of our regulations, you

generally have the burden of proving your disability. You must furnish medical and other evidence we can use to reach conclusions about your impairment(s) and its effect on your ability to work on a sustained basis. Our responsibility is to make every reasonable effort to develop your complete medical history. That includes arranging for consultative examinations, if necessary, and making every reasonable effort to get medical reports from your own medical sources. We are responsible for helping you produce evidence that shows whether you are disabled.

Our administrative process was designed to be nonadversarial. (*See* §§ 404.900(b) and 416.1400(b) of our regulations; *Richardson* v. *Perales,* 402 U.S. 389, 403 (1971); *Sims* v. *Apfel,* 120 S. Ct. 2080, 2083–85, 2086 (2000).) In addressing burdens of proof, it is critical to keep in mind that we are using a term in our nonadversarial administrative process that describes a process normally used in adversarial litigation. ''Burdens of proof'' operate differently in the disability determination process than in a traditional lawsuit.

In the administrative process, the burden of proof generally encompasses both a burden of production of evidence and a burden of persuasion about what the evidence shows. (*Director, OWCP* v. *Greenwich Collieries,* 512 U.S. 267, 273 (1994) (citing *Powers* v. *Russell,* 30 Mass. 69, 76 (1833).) You shoulder the dual burdens of production and persuasion through step 4 of the sequential evaluation process. (*See Bowen* v. *Yuckert,* 482 U.S. 137, 146 n.5 (1987).)

Although you generally bear the burden of proving disability throughout the sequential evaluation process, there is a limited shift in the burden of proof to us ''only if the sequential evaluation process proceeds to the fifth step * * *.'' *Bowen* v. *Yuckert, id.* When the process proceeds to the fifth step, this means that you have demonstrated the existence of a severe impairment(s) resulting in an RFC that prevents the performance of past relevant work. When we decide that you are not disabled at step 5, this means that we have determined that there is other work you can do. To make this finding, we must provide evidence that demonstrates that jobs exist in significant numbers in the national economy that you can do, given your RFC, age, education, and work experience. In legal terms, this is a burden of production of evidence.

This burden shifts to us because, once you establish that you are unable to do any past relevant work, it would be unreasonable to require you to produce vocational evidence showing that there are no jobs in the national economy that you can perform, given your RFC. However, as stated by the Supreme Court, ''It is not unreasonable to require the claimant, who is in a better position to provide information about his own medical condition, to do so.'' *Bowen* v. *Yuckert, id.* Thus, the only burden shift that occurs at step 5 is that we are required to prove that there is other work that you can do, given your RFC, age, education, and work experience. That shift does not place on us the burden of proving RFC.

When the burden of production of evidence shifts to us at step 5, our role is to obtain evidence to assist in impartially determining whether there is a significant number of jobs in the national economy you can do. Thus, we have a burden of proof even though our primary interest in the outcome of the claim is that it be decided correctly. As required by the Act, the ultimate burden of persuasion to prove disability, however, remains with you.

What Specific Changes Are We Making?

Sections 404.1501 and 416.901—Scope of Subpart

The second sentence of §§ 404.1501(g) and 416.901(j) is very long, and it includes a number of clauses. We are clarifying this sentence by numbering and listing the clauses and by revising some language. This includes clarifying, in new paragraphs (g)(2) and (j)(2), that assessment of RFC is our responsibility (''our residual functional capacity assessment'') and that we use this assessment at steps 4 and 5 of the sequential evaluation process.

Sections 404.1505—Basic Definition of Disability, and 416.905—Basic Definition of Disability for Adults

We are revising the second sentence, deleting the third sentence in §§ 404.1505(a) and 416.905(a), redesignating the fourth sentence as the last sentence in § 404.1505(a) and adding four new sentences after the second sentence. The revisions in the second sentence clarify our longstanding policy that, when we consider your ''previous work,'' we consider only work that was ''past relevant work.'' Past relevant work is work that you performed within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. (See Social Security Ruling (SSR) 82–62, ''Titles II and XVI: A Disability Claimant's Capacity To Do Past Relevant Work, In General,'' Social Security Rulings, Cumulative Edition, 1982, p. 158.)

The previous third sentence explained that we consider your RFC, age, education, and work experience when we determine whether you can do other work; *i.e.,* at step 5 of the sequential evaluation process. We are replacing this sentence (and the fourth sentence in § 404.1505(a)) with four new sentences that provide more detail about this policy, including cross-references to our rules on the sequential evaluation process and RFC. They also clarify that we assess RFC once, and that we use this assessment at both step 4 and step 5 of the sequential evaluation process.

Sections 404.1512 and 416.912—Evidence of Your Impairment

We are making several revisions in these sections to clarify both your responsibility and our responsibility. We are changing the heading of these sections from ''Evidence of your impairment'' to ''Evidence'' because, as we discuss below, we are adding a provision that is not about evidence of your impairment; *i.e.,* a provision that is about our responsibility, at step 5 of the sequential evaluation process, to provide evidence of the existence of jobs.

We are making two changes in paragraph (c) to make it clearer. These are not substantive changes. First, we are adding a new second sentence to paragraph (c) to clarify, consistent with the remainder of the paragraph, that we may ask for non-medical information about functioning or about other non-medical issues in addition to medical information. Second, we are making a slight modification to the previous second sentence (now the third sentence) to make it clearer.

We also are adding a new paragraph (g), ''Other work'' explaining our burden at step 5. It explains that, in order to determine that you can make an adjustment to other work, we must provide evidence of the existence of work in the national economy that you can do, given your RFC and vocational factors. The new paragraph includes cross-references to regulations that explain how we evaluate your ability to do other work (§§ 404.1560 through 404.1569a and 416.960 through 416.969a, as appropriate).

The new paragraph also clarifies, by including the phrase ''make an adjustment to other work,'' our longstanding interpretation of the statutory requirement that we consider your age, education, and work experience as well as your impairment(s) when we determine the ability to do other work at step 5.

Our use of the phrase ''make an adjustment to other work'' is not new. We used the phrase when we originally published proposed rules on the medical/vocational guidelines in appendix 2, subpart P of regulations part 404 (the grid rules) in 1978:

> If an individual cannot perform his or her past relevant work, but the individual's physical and mental capacities are consistent with his or her meeting the demands of a significant number of jobs in the national economy, and the individual has the vocational capabilities (considering his or her age, education, and past work experience) to make an adjustment to work different from that which the individual has performed, it will be determined that such an individual is not under a disability. However, if such an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering his or her age, education, and work experience) are not consistent with making an adjustment to work differing from that which the individual has performed in the past, it will be determined that such an individual is under a disability.

(See 43 FR 9284, 9288 (March 7, 1978).) We used the same language in the preamble when we published the final rules for the medical/vocational guidelines (see 43 FR 55349, 55352 (November 28, 1978)) and have used similar language in our Policy Interpretation Rulings (see, *e.g.,* SSR 83–11, ''Titles II and XVI: Capability To Do Other Work—The Exertionally Based Medical-Vocational Rules Met,'' Social Security Rulings, Cumulative Edition, 1983, p. 184). More recently, we have used the same or similar language in publications that we use to help the public better understand whether they may qualify for disability benefits under the Act and our regulations. Therefore, we are now using this language in our regulations.

Sections 404.1520—Evaluation of Disability in General, and 416.920—Evaluation of Disability of Adults, in General

We are revising the language in paragraph (a) of these sections to make it clearer. We are dividing it into five separate paragraphs ((a)(1) through (a)(5)) with headings. We also are modifying the previous language to explain more clearly what the five steps of the sequential evaluation process are, and to reflect the provisions of new paragraph (e), which we discuss below.

We are adding a new paragraph (e) to this section to explain that, after we decide that you are not working and have a severe impairment(s) that does not meet or equal any listing, we will assess your RFC. We then use this RFC assessment at step 4 to determine whether you are able to do any past relevant work and, if we make a determination at step 5, we use the same RFC assessment in determining whether you can do any other work.

Because we are adding a new paragraph (e), we are redesignating previous paragraphs (e) and (f) as paragraphs (f) and (g). We are also revising these paragraphs to make changes consistent with the changes we are making to other rules already described. For example, they now refer to ''our residual functional capacity assessment,'' to ''past relevant work'' (instead of ''work you have done in the past'' or ''past work experience''), and to making ''an adjustment to other work.'' Likewise, new paragraph (g) (previous paragraph (f)) clarifies that, at step 5, we consider ''the same residual functional capacity assessment'' we used at step 4. In new paragraph (f) (previous paragraph (e)), we are changing the phrase, ''[i]f we cannot make a decision based on your current work activity or on medical facts alone,'' to ''[i]f we cannot make a determination or decision at the first three steps of the sequential evaluation process,'' in order to make it clear that this language has always referred to determinations or decisions at steps 1, 2 and 3 of the sequential evaluation process. We are also making a comparable conforming change to §§ 404.1560(a) and 416.960(a). In the final rules we are adding new cross-references that were not in the proposed rules. These references are in §§ 404.1520(a)(4)(iv) and 416.920(a)(4)(iv) (referencing new §§ 404.1560(b) and 416.960(b)), and in §§ 404.1520(a)(4)(v) and 416.920(a)(4)(v) and §§ 404.1520(g) and 416.920(g) (referencing new §§ 404.1560(c) and 416.960(c)).

We are also revising the language that was in previous paragraph (f)(2) (new paragraph (g)(2)) to reflect that we are adding a second special medical-vocational profile under which we may find you disabled without referring to our grid rules. When we discuss changes we are making to §§ 404.1562 and 416.962 later in this document, we explain the second profile and our reasons for including it in the regulations. We are also modifying the language that was in previous paragraph (f)(2) (new paragraph (g)(2)) to delete the partial description of the first special medical-vocational profile because it was duplicative of information already contained in §§ 404.1562 and 416.962.

Finally, we are making a number of minor editorial changes to language that was in previous paragraphs (e) and (f) (new paragraphs (f) and (g)).

Sections 404.1545 and 416.945—Your Residual Functional Capacity

To make paragraph (a) easier to understand, we are revising the paragraph by breaking it into five numbered paragraphs ((a)(1) through (a)(5)) with headings. We also are reorganizing and clarifying some of the text.

In new paragraph (a)(3), ''Evidence we use to assess your residual functional capacity,'' we are including a reference to §§ 404.1512(c) or 416.912(c) (as appropriate), which explains your burden to provide evidence of the existence and severity of your impairment(s) and how it affects your functioning, and our responsibility to develop a complete medical history and to arrange for a consultative examination(s) if necessary.

In new paragraph (a)(5), ''How we will use our residual functional capacity assessment,'' we are explaining that we first use our RFC assessment to decide if you can do past relevant work and to explain that, if you cannot do past relevant work, or do not have any past relevant work, we use the same assessment to decide, at step 5, if you can make an adjustment to other work.

In addition, we are making other changes in paragraph (a) to clarify our rules. In new paragraph (a)(1), ''Residual functional capacity assessment,'' we are adding a sentence to explain that RFC is the most you can do despite your limitations. This incorporates into our regulations a clarification that we currently provide in SSR 96–8p, ''Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims,'' 61 FR 34474 (July 2, 1996). We are also making a minor change to the language that appeared in proposed paragraph (a)(2) to incorporate another clarification provided in that SSR. The new paragraph explains that, when we assess RFC, we will consider all medically determinable impairments of which we are aware, including impairments that are not ''severe.''

New paragraph (a)(3) clarifies the fifth, sixth, and seventh sentences of previous paragraph (a), which discusses the evidence we consider when assessing RFC. Our intent is to clarify three points about how we consider evidence of pain and other symptoms in our RFC assessments. First, we make clear that the phrase ''observations by your treating and examining physicians or psychologists'', that had appeared in previous paragraph (a), includes ''statements about what you can still do,'' as discussed in §§ 404.1513 and 416.913. Second, we clarify that we consider descriptions and observations

of your impairment-related limitations from both medical and non-medical sources. Third, by removing the phrase ''that are important in the diagnosis and treatment of your medical condition'' from the fifth sentence of previous paragraph (a), we make clear that we consider all limitations that result from your medically determinable impairments, not just those that are important in the diagnosis and treatment of a medical condition. We also are deleting the entire eighth sentence of previous paragraph (a), which could have been misinterpreted to mean that we may or may not consider evidence that we already have. Because that is not our intent, and because these final rules make clear that we consider all relevant medical and nonmedical evidence in the case record, we believe this sentence is unnecessary.

We are revising the last sentence of previous paragraph (a) (now the last sentence of new (a)(5)(ii)) to remove the language that discusses our rules on RFC assessment in deciding whether your disability continues or ends. Those rules are already discussed in §§ 404.1594 and 416.994, and the new language simply directs you to those sections.

We made a minor editorial change to proposed §§ 404.1545(a)(5)(ii) and 416.945(a)(5)(ii) to clarify that we consider if you can make an adjustment to ''any'' other work. This change retains language from §§ 404.1561 and 416.961, being deleted by these rules. In § 416.945(a)(5)(ii), we also made a minor change to the next to the last sentence of the proposed rule by adding the word ''assessment'' to conform it to the language in proposed (and new) § 404.1545(a)(5)(ii).

We are making a number of other editorial changes to the previous rule. These changes are intended only to clarify the previous language and to reorganize the provisions into a more logical order.

Sections 404.1546 and 416.946—Responsibility for Assessing and Determining Your Residual Functional Capacity

We are revising the heading of these sections, which were previously titled ''Responsibility for assessing and determining residual functional capacity.'' to ''Responsibility for assessing your residual functional capacity.'' The two words ''and determining'' are superfluous. Our assessment is our determination about RFC.

Because of agency reorganizations, we are changing the title in the existing regulations in paragraph (b) of these sections, ''Director of the Office of Disability Hearings'' and in the proposed regulations in paragraph (b) of these section, ''Associate Commissioner for Disability'' to ''Associate Commissioner for Disability Determinations'' because this individual or his or her delegate is now responsible for assessing residual functional capacity in the disability hearing process.

The other changes we are making in this section are editorial. To make the section easier to understand, we are breaking up the previous single paragraph into three separate paragraphs that address the responsibilities of:

- State agency medical and psychological consultants (new paragraph (a)),
- State agency disability hearing officers (new paragraph (b)), and
- Administrative law judges and Appeals Council administrative appeals judges (new paragraph (c)).

We are making minor editorial changes to the wording in proposed paragraph (c) to make it clearer.

Sections 404.1560 and 416.960—When Your Vocational Background Will Be Considered

We are changing the previous heading, putting it into active voice, to make the meaning clearer.

We are also making changes in paragraphs (a) ''General,'' (b) ''Past relevant work,'' and (c) ''Other work,'' consistent with the changes we are making in other sections, already noted above.

For clarity, we are revising paragraph (b) by dividing it into three paragraphs with headings, designated (b)(1) through (b)(3). We are adding a new sentence in new paragraph (b)(1), ''Definition of past relevant work,'' defining ''past relevant work'' as work you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. This definition is based on our longstanding interpretation in SSR 82–62, already noted above. We also are adding a cross-reference to § 404.1565(a) or 416.965(a), as appropriate, because these paragraphs explain how we determine the 15-year period.

In paragraph (b)(2), ''Determining whether you can do your past relevant work,'' we are adding new language to explain how we obtain information that we need to determine, at step 4 of the sequential evaluation process, whether your impairment(s) prevents you from doing your past relevant work. The new language indicates that we ask you for information about work you have done in the past, and that we may ask other people who know about your past work. This is consistent with the provisions in §§ 404.1565(b) and 416.965(b), and we are including a cross-reference to each of those sections, as appropriate, in new paragraph(b)(2).

We also are explaining in new paragraph(b)(2) that we may use the services of VEs or VSs, or other resources such as the ''Dictionary of Occupational Titles,'' to obtain evidence that we need to help us determine whether you can do your past relevant work. This is a longstanding policy interpretation set out in SSR 82–61, ''Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation As Generally Performed,'' Social Security Rulings, Cumulative Edition, 1982, p. 185.

In response to a public comment, we are making changes to the language that appeared in proposed paragraph (b)(2) to clarify the role of a VE at step 4 and to clarify that, if we obtain additional evidence at step 4, that evidence is used to help our adjudicators decide if an individual can do his or her past relevant work.

We are editing the second sentence of previous paragraph (b), making it into two sentences for clarity, and redesignating it as new paragraph (b)(3), ''If you can do your past relevant work.'' Based on a public comment we received in response to the notice of proposed rulemaking, we are also revising proposed paragraph (b)(3) to clarify that, in determining whether you have the RFC to do your past relevant work, we do not consider whether the past relevant work exists in significant numbers in the national economy. In response to this comment, we are also making related clarifying changes to proposed paragraphs (b)(3) and (c) and to §§ 404.1569a and 416.969a.

We are modifying previous paragraph (c) to make clear that, if we decide at step 5 that you are not disabled, we are responsible for providing evidence of other work you can do (consistent with new §§ 404.1512(g) and 416.912(g)). The modified paragraph also makes clear that we are not responsible for providing additional evidence of RFC or for making another RFC assessment at step 5. This is because we use the same RFC assessment at step 5 that we made before we considered whether you have the RFC to do past relevant work at step 4, a point in our process at which you have the burdens of production and persuasion.

We are also making minor changes to the language that appeared in proposed paragraph (c) to conform it with the new language in §§ 404.1520 and 416.920

which explains that at step 5 we consider whether you are able to ''adjust to'' any other work.

Sections 404.1561 and 416.961—Your Ability To Do Work Depends Upon Your Residual Functional Capacity

We are removing these sections because their provisions are incorporated into other new and existing rules. We are making additional revisions to the language that appeared in proposed rules in §§ 404.1520(g) and 416.920(g), 404.1545(a)(5)(ii) and 416.945(a)(5)(ii), and 404.1560(c)(1) and 416.960(c)(1) to better reflect the provisions of deleted §§ 404.1561 and 416.961.

Sections 404.1562 and 416.962—If You Have Done Only Arduous Unskilled Physical Labor

We are revising and updating the headings of these sections in order to reflect changes we are making to their content.

First Medical-Vocational Profile

Previously, §§ 404.1562 and 416.962 described one special medical-vocational profile. Under that profile, if you have only a marginal education and work experience of 35 years or more during which you did arduous unskilled labor, and you are not working and are no longer able to do this kind of work because of a severe impairment, we will find that you are disabled. We consider this special medical-vocational profile at step 5 of the sequential evaluation process, before we consider the grid rules. We do this because we have decided that, if you match this profile, you do not have the ability to adjust to other work (*i.e.,* you are disabled)—regardless of your age. If you meet this profile, and are age 60 or over, we would usually find you disabled using our grid rules. However, if you are under age 60, you might not qualify without this special rule.

Although we have changed the language somewhat over the years, this medical-vocational profile has been in our regulations since 1960 (when it was at § 404.1502(c)). However, the language in previous §§ 404.1562 and 416.962 needed to be updated to be consistent with our current rules and policies. For example, the last sentence of the paragraph before the example spoke about the ability to do other work ''on a full-time or reasonably regular part-time basis.'' However, in SSR 96–8p, we explain that at step 5 we consider only full-time work when we consider other work you are able to do. (See 61 FR 34474, 34475 (July 2, 1996).) Other provisions in the medical-vocational profile have been made obsolete or been superseded by more recent regulations, such as our rules on doing substantial gainful activity at step 1 of the sequential evaluation process, and our rules on transferability of skills in §§ 404.1568(d)(4) and 416.968(d)(4).

We therefore are deleting the second and third sentences of the previous sections and revising the example. These changes only make the rule more consistent with our current policies and will not affect anyone whom we would have found disabled under the previous rule. We are also changing the occupation title that appeared in the proposed example to paragraph (a) from ''miner'' to ''miner's helper'' because there are some highly skilled mining occupations that would not meet the qualifications for this medical-vocational profile.

We are designating all the language discussing this first medical-vocational profile as paragraph (a) of revised §§ 404.1562 and 416.962 in order to distinguish it from the second medical-vocational profile in new paragraph (b), discussed below. We also are making a conforming change to the third sentence of section 203.00(b) in appendix 2 to subpart P of part 404, to reflect these changes.

Second Medical-Vocational Profile

We are adding to §§ 404.1562 and 416.962 a second special medical-vocational profile that we have been using since 1975, but that has not been in our regulations. We are designating the language discussing the second medical-vocational profile as paragraph (b). Under this profile, we will find you disabled if you:

- Are of ''advanced age'' (*i.e.,* are at least 55 years old);
- Have a ''limited'' education or less (*i.e.,* generally, an 11th grade education or less—see §§ 404.1564(b)(3) and 916.964(b)(3));
- Have no past relevant work (*i.e.,* either no work experience or no work experience that satisfies our definition of ''past relevant work''); and
- Have a ''severe,'' medically determinable impairment(s).

If you have these characteristics, we would usually find you disabled using our grid rules. However, if you have solely ''nonexertional'' limitations (see § 200.00(e) of appendix 2 to subpart p of part 404), you might not qualify without this special profile.

The original instruction for this profile dates back to a policy decision of July 7, 1975. In 1982, we incorporated this profile into SSR 82–63, ''Titles II and XVI: Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work'' (see Social Security Rulings, Cumulative Edition, 1982, page 205). Therefore, the new rule incorporates our longstanding policy interpretation into our regulations.

We also are clarifying in paragraph (b) and other related rules that, if you meet the second medical-vocational profile, we do not have to assess RFC. This is because, once we have determined that you have a ''severe'' impairment(s) and that you meet the other criteria in the profile, we will find you disabled, and we will not need an RFC assessment. We recognize that, in most cases, our normal sequential evaluation process would require us to do an RFC assessment before we determine that you have no past relevant work. However, because you must only have a ''severe'' impairment(s) under this profile, and your advanced age, limited education, and lack of past relevant work should be readily apparent from the case record, an RFC assessment is unnecessary.

Sections 404.1563 and 416.963—Your Age as a Vocational Factor.

We are making only editorial changes to the second sentence of paragraph (a).

Sections 404.1569a and 416.969a—Exertional and Nonexertional Limitations

We are deleting the seventh sentence of paragraph (a), ''General,'' and adding three new sentences in its place. These changes are consistent with other changes discussed above.

We are making a minor change to proposed §§ 404.1569a and 416.969a at the end of the third new sentence to refer to, ''any other work which exists in the national economy.'' We believe that this revision, which retains more of the language from these sections prior to these amendments, helps clarify that ''other work'', as distinguished from a claimant's previous work, must exist in significant numbers in the national economy.

Sections 404.1594—How We Will Determine Whether Your Disability Continues or Ends, and 416.994—How We Will Determine Whether Your Disability Continues or Ends, Disabled Adults

We are revising the first sentence of § 404.1594(f)(7) and § 416.994(b)(5)(vi), which contain essentially the same language, in order to update the cross-references. This is necessary due to the changes we are making to §§ 404.1560 and 416.960 and the removal of §§ 404.1561 and 416.961.

Section 203.00, Appendix 2 to Subpart P of Part 404

As already noted, we are revising the third sentence of section 203.00(b) to conform to the changes in new §§ 404.1562(a) and 416.962(a).

Public Comments: We published these regulatory provisions in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on June 11, 2002 (67 FR 39904). We provided the public a 60-day comment period. The comment period closed on August 12, 2002. We heard from eight commenters in response to this notice. The commenters included attorneys, an organization whose members include attorneys and others who represent the interest of disabled persons, a State agency that makes disability determinations on our behalf, and individuals who did not identify a particular affiliation. A summary of the comments we received and our responses to the comments are set out below.

Because some of the comments were detailed and lengthy, we have condensed, summarized, or paraphrased them. We have, however, tried to summarize the commenters'' views accurately and to respond to all of the significant issues raised by the commenters that are within the scope of these rules.

Comment: One commenter expressed concerns about whether the proposed revisions would apply to all cases or if they would only apply to cases filed after the effective date of the revisions. This commenter stated that it would be preferable to apply the new rules only to cases filed after the effective date of the revisions.

Response: These new rules, as stated in **DATES**, above, will be effective 30 days after the date published in the **Federal Register**. As is our usual practice when we amend our regulations, the new rules will apply to all administrative determinations and decisions made on or after that effective date, regardless of the date on which an application was filed.

Comment: This same commenter stated that although the burden is on the claimant to produce evidence to show disability, the 5th Circuit Court of Appeals has ruled that the Commissioner has the burden of ensuring that evidentiary gaps are filled and the record is complete. The commenter stated that, if an administrative law judge (ALJ) is not satisfied with the development of the record, he or she should ''reset the case'' to complete the record if possible, rather than issue an unfavorable decision.

Response: We believe that our existing regulations (§§ 404.1512(d) and 416.912(d)) and the new rules at §§ 404.1545(a)(3) and 416.945(a)(3) address the commenter's concerns, and clearly explain our responsibility to develop the record and to assist claimants in obtaining evidence. Before making a determination that an individual is not disabled, our adjudicators, including ALJs, will develop the individual's complete medical history.

Comment: One commenter stated that the proposed rules should clarify at § 404.1560 that past relevant work must exist in the national economy in order to be considered as past relevant work for the purpose of denying benefits under the sequential evaluation process. He stated that finding an individual can perform past work that no longer exists is not in conformity with the Social Security Act's requirement that, to be considered gainful employment, work must exist in the national economy.

Response: We do not agree with the commenter's interpretation of the Social Security Act. Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act provide that:

> An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence * * *, ''work which exists in the national economy'' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

In this excerpt, the phrase ''which exists in the national economy'' relates to ''any other kind of substantial gainful activity'' (*i.e.*, work other than an individual's previous work). It does not relate to ''previous work.'' Thus, the Act does not require that an individual's previous work exist in significant numbers in the national economy. (*See* SSR 82–40, ''Titles II and XVI: The Vocational Relevance of the Past Work Performed in a Foreign Country.'') Consequently, we do not consider job prevalence at step 4 of sequential evaluation. Neither do we consider an individual's age, education, and work experience. The issue at step 4 is whether or not an individual's impairment(s) prevents him or her from being able to perform the job duties of his or her past relevant work. If he or she has the residual functional capacity to still do his or her past relevant work, we will make a finding of not disabled at step 4 and deny the claim whether or not that previous work exists in significant numbers in the national economy. In response to this comment, we are making additional changes in §§ 404.1560 and 416.960 to ensure that other members of the public do not misunderstand this.

Comment: One commenter stated that the proposed rules would not be a clarification of our rules, but a change. He stated that the proposed rules would force claimants to prove at step 4 that they cannot do other work (their past job, as performed in the national economy) against testimony from a trained VE. He stated that it is not fair that the claimant would have the burden of proof at step 4, yet have no ability to rebut testimony from a trained expert, and that VE testimony and all opinion evidence regarding other work should be limited to step 5 where the Commissioner has the burden of proof.

Response: We do not agree that these new rules represent a change in policy. Our longstanding policy is that evaluation of ability to do past relevant work at step 4 involves two aspects. We will find that a claimant is not disabled at this step if he or she retains the physical and mental capacity to perform either the functional demands and job duties of a particular past relevant job (*i.e.*, the job as the individual actually performed it) or the functional demands and job duties of the occupation as generally required by employers throughout the national economy. (*See* SSR 82–61: ''Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation as Generally Performed.'') Thus, evaluation of capacity to do past relevant work as generally performed in the national economy is not, as the commenter suggests, an assessment of ability to do ''other work'' (*i.e.*, step 5 of sequential evaluation). In addition, allowing for expert testimony on the issue of how work is generally performed in the national economy is not unfair. VE testimony can be examined and rebutted at any step of sequential evaluation.

Comment: One commenter, who generally supported the proposed rules, recommended that the new rules clarify that adjudicators may obtain VE testimony about past relevant work, but that such testimony is not required. The commenter also suggested that we clarify that the VE's role at step 4 should be limited to explaining how the claimant's past relevant work is normally performed in the national economy. The commenter stated that the VE should not determine whether

the claimant's description of past relevant work is credible or whether the claimant can perform past relevant work, either as it is normally performed in the national economy or as he or she actually previously performed it. According to the commenter, it is the administrative law judge's, not the VE's, duty to determine whether a claimant can continue to perform past work. The commenter also suggested that we include a cross-reference to §§ 404.1560(c) and 416.960(c) in several sections of the regulations that address the concept of ''other work.''

Response: We agree with the suggestion about adding cross-references and have added them to new § 404.1520(a)(4)(iv) and (v) and § 416.920(a)(4)(iv) and (v). We also agree that VE testimony is not a requirement at step 4, but that VE testimony may be obtained at step 4 to provide evidence to help us determine whether or not an individual can do his or her past relevant work. We do not agree that the VE is or should be limited to testifying about how an individual's past relevant work is normally performed in the national economy. Although we agree that the ultimate responsibility for making the necessary findings at step 4 rests with our adjudicators, we believe that it is appropriate for our adjudicators to consider evidence from a VE, VS, or other vocational resource (along with the other evidence in the case record) on a broad range of step 4 issues to help them decide if an individual can do his or her past relevant work. A VE or VS may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, as he or she actually performed it or as it is generally performed. Such testimony may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a VE or VS may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations (as determined by our adjudicator) imposed by the claimant's medical impairments can meet the demands of the claimant's previous work, either as the claimant actually performed it in the past or as that work is generally performed. In response to this comment about the role of the VE at step 4, we are making additional revisions to §§ 404.1560(b)(2) and 416.960(b)(2) to clarify our policy in this regard.

Comment: One commenter stated that a VE should not play any role at all in the disability process.

Response: The commenter did not explain why she stated that VEs should play no role in the disability claims adjudication process. We do not agree, and we made no changes in our longstanding policy based on this comment.

Several of the comments we received were outside the scope of the proposed rules. Two commenters asked us to provide additional clarification about aspects of step 5 of sequential evaluation that are not within the scope of these rules. Another commenter asked about claimants being able to record hearings before an ALJ. One commenter provided observations relating to her own claim for benefits. Because these comments were outside the scope of these rules, we are not addressing them.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain amended reporting requirements at §§ 404.1560 and 416.960 of the final regulation. The public reporting burden is accounted for in the Information Collection Request for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the form.

SSA solicited public comment in the notice of proposed rulemaking and subsequently received and incorporated suggestions from the public that have resulted in revision to these two sections of the regulation. As a result, SSA is soliciting comments in the final rule on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. While these rules will be effective September 25, 2003, these burdens will not be effective until cleared by OMB.

An Information Collection Request has been submitted to OMB for clearance. Comments may be mailed or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/fax numbers:

Office of Management and Budget, Attn: OMB Desk Officer for SSA, Rm. 10235, New Executive Office Building, 725 17th St., NW., Washington, DC 20503, Fax No. 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax No. 410–965–6400.

Comments can be received up to 30 days after publication of this notice. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: May 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–——)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 2. Amend § 404.1501 by revising paragraph (g) to read as follows:

§ 404.1501 Scope of subpart.

* * * * *

(g) Our rules on vocational considerations are in §§ 404.1560 through 404.1569a. We explain in these rules—

(1) When we must consider vocational factors along with the medical evidence;

(2) How we use our residual functional capacity assessment to determine if you can still do your past relevant work or other work;

(3) How we consider the vocational factors of age, education, and work experience;

(4) What we mean by ''work which exists in the national economy'';

(5) How we consider the exertional, nonexertional, and skill requirements of work, and when we will consider the limitations or restrictions that result from your impairment(s) and related symptoms to be exertional, nonexertional, or a combination of both; and

(6) How we use the Medical-Vocational Guidelines in appendix 2 of this subpart.

* * * * *

■ 3. Amend § 404.1505(a), by revising the second sentence, removing the third sentence, redesignating the fourth sentence as the last sentence, and adding four new sentences after the second sentence to read as follows:

§ 404.1505 Basic definition of disability.

(a) * * * To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (*see* § 404.1560(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1, we will assess your residual functional capacity as provided in §§ 404.1520(e) and 404.1545. (*See* §§ 404.1520(g)(2) and 404.1562 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work. * * *

* * * * *

■ 4. Amend § 404.1512 by revising the section heading, revising paragraph (c), and adding a new paragraph (g) to read as follows:

§ 404.1512 Evidence.

* * * * *

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case. If we ask you, you must provide evidence about:

(1) Your age;

(2) Your education and training;

(3) Your work experience;

(4) Your daily activities both before and after the date you say that you became disabled;

(5) Your efforts to work; and

(6) Any other factors showing how your impairment(s) affects your ability to work. In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors.

* * * * *

(g) *Other work.* In order to determine under § 404.1520(g) that you are able to make an adjustment to other work, we must provide evidence about the existence of work in the national economy that you can do (*see* §§ 404.1560 through 404.1569a), given your residual functional capacity (which we have already assessed, as described in § 404.1520(e)), age, education, and work experience.

■ 5. Amend § 404.1520 as follows:

■ a. By revising paragraph (a),

■ b. By redesignating paragraphs (e) and (f) as paragraphs (f) and (g),

■ c. By adding a new paragraph (e) and

■ d. By revising newly redesignated paragraphs (f) and (g).

The revisions and additions read as follows:

§ 404.1520 Evaluation of disability in general.

(a) *General*—(1) *Purpose of this section.* This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 404.1505.

(2) *Applicability of these rules.* These rules apply to you if you file an application for a period of disability or disability insurance benefits (or both) or for child's insurance benefits based on disability. They also apply if you file an application for widow's or widower's benefits based on disability for months after December 1990. (*See* § 404.1505(a).)

(3) *Evidence considered.* We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five ''steps'' that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (*See* paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (*See* paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. (*See* paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration requirement, we will find that you are disabled. (*See* paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (*See* paragraph (f) of this section and § 404.1560(b).)

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to

other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (*See* paragraph (g) of this section and § 404.1560(c).)

(5) *When you are already receiving disability benefits.* If you are already receiving disability benefits, we will use a different sequential evaluation process to decide whether you continue to be disabled. We explain this process in § 404.1594(f).

* * * * *

(e) *When your impairment(s) does not meet or equal a listed impairment.* If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 404.1545. (See paragraph (g)(2) of this section and § 404.1562 for an exception to this rule.) We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work (paragraph (f) of this section) and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work (paragraph (g) of this section).

(f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work. (See § 404.1560(b).) If you can still do this kind of work, we will find that you are not disabled.

(g) *Your impairment(s) must prevent you from making an adjustment to any other work.* (1) If we find that you cannot do your past relevant work because you have a severe impairment(s) (or you do not have any past relevant work), we will consider the same residual functional capacity assessment we made under paragraph (e) of this section, together with your vocational factors (your age, education, and work experience) to determine if you can make an adjustment to other work. (See § 404.1560(c).) If you can make an adjustment to other work, we will find you not disabled. If you cannot, we will find you disabled.

(2) We use different rules if you meet one of the two special medical-vocational profiles described in § 404.1562. If you meet one of those profiles, we will find that you cannot make an adjustment to other work, and that you are disabled.

■ 6. Amend § 404.1545 by revising paragraph (a) to read as follows:

§ 404.1545 Your residual functional capacity.

(a) *General*—(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. (See § 404.1546.)

(2) *If you have more than one impairment.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not ''severe,'' as explained in §§ 404.1520(c), 404.1521, and 404.1523, when we assess your residual functional capacity. (See paragraph (e) of this section.)

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. (*See* § 404.1512(c).) However, before we make a determination that you are not disabled, we are responsible for developing your complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help you get medical reports from your own medical sources. (*See* §§ 404.1512(d) through (f).) We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. (*See* § 404.1513.) We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends, or other persons. (*See* paragraph (e) of this section and § 404.1529.)

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.*

(i) We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. (*See* §§ 404.1520(f) and 404.1560(b).)

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to any other work that exists in the national economy. (*See* §§ 404.1520(g) and 404.1566.) At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 404.1560 through 404.1569a, and consider our residual functional capacity assessment together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, *see* § 404.1594.

* * * * *

■ 7. Revise § 404.1546 to read as follows:

§ 404.1546 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency makes the disability determination, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 404.914, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 404.918, the Associate Commissioner for the Office of Disability Determinations or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level under § 404.929 or at the Appeals Council review level under § 404.967, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible

for assessing your residual functional capacity.

■ 8. Revise § 404.1560 to read as follows:

§ 404.1560 When we will consider your vocational background.

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability which began before age 22, or widow's or widower's benefits based on disability for months after December 1990, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (*see* § 404.1520), we will consider your residual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. (*See* § 404.1565(a).)

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. (*See* § 404.1565(b).) We may use the services of vocational experts or vocational specialists, or other resources, such as the ''Dictionary of Occupational Titles'' and its companion volumes and supplements, published by the Department of Labor, to obtain evidence we need to help us determine whether you can do your past relevant work, given your residual functional capacity. A vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy. Such evidence may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a vocational expert or specialist may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations imposed by the claimant's medical impairment(s) can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you can still do your past work and are not disabled. We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy.

(c) *Other work.* (1) If we find that your residual functional capacity is not enough to enable you to do any of your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

§ 404.1561 [Removed]

■ 9. Remove § 404.1561.

■ 10. Revise § 404.1562 to read as follows:

§ 404.1562 Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (*see* § 404.1564) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (*see* §§ 404.1520(c), 404.1521, and 404.1523), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner's helper with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a ''severe'' combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (*see* §§ 404.1520(c), 404.1521, and 404.1523), are of advanced age (age 55 or older, *see* § 404.1563), have a limited education or less (*see* § 404.1564), and have no past relevant work experience (*see* § 404.1565), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to this subpart.

■ 11. Amend § 404.1563 by revising the second sentence of paragraph (a) and adding a new sentence after the revised second sentence to read as follows:

§ 404.1563 Your age as a vocational factor.

(a) *General.* * * * When we decide whether you are disabled under § 404.1520(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. * * *

■ 12. Amend § 404.1569a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding three new sentences after the sixth sentence to read as follows:

§ 404.1569a Exertional and nonexertional limitations.

(a) *General.* * * * When we decide whether you can do your past relevant work (*see* §§ 404.1520(f) and 404.1594(f)(7)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to any other work which exists in the national economy. (*See* §§ 404.1520(g) and 404.1594(f)(8).)

* * *

* * * * *

■ 13. Amend § 404.1594 by revising the first sentence of paragraph (f)(7) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(f) * * *

(7) If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 404.1560. * * *

* * * * *

■ 14. Amend § 203.00 in appendix 2 to subpart P of part 404 by revising the section heading, revising the third sentence of paragraph (b), and adding a new fourth sentence to read as follows:

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines

* * * * *

§ 203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).

* * * * *

(b) * * * However, we will find that an individual who (1) has a marginal education, (2) has work experience of 35 years or more during which he or she did only arduous unskilled physical labor, (3) is not working, and (4) is no longer able to do this kind of work because of a severe impairment(s) is disabled, even though the individual is able to do medium work. (*See* § 404.1562(a) in this subpart and § 416.962(a) in subpart I of part 416.)

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 15. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

■ 16. Amend § 416.901 by revising paragraph (j) to read as follows:

§ 416.901 Scope of subpart.

* * * * *

(j) Our rules on vocational considerations are in §§ 416.960 through 416.969a. We explain in these rules—

(1) When we must consider vocational factors along with the medical evidence;

(2) How we use our residual functional capacity assessment to determine if you can still do your past relevant work or other work;

(3) How we consider the vocational factors of age, education, and work experience;

(4) What we mean by ''work which exists in the national economy'';

(5) How we consider the exertional, nonexertional, and skill requirements of work, and when we will consider the limitations or restrictions that result from your impairment(s) and related symptoms to be exertional, nonexertional, or a combination of both; and

(6) How we use the Medical-Vocational Guidelines in appendix 2 of subpart P of part 404 of this chapter.

* * * * *

■ 17. Amend § 416.905(a), by revising the second sentence, removing the third sentence, and adding four new sentences after the second sentence to read as follows:

§ 416.905 Basic definition of disability for adults.

(a) * * * To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 416.960(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1 to subpart P of part 404 of this chapter, we will assess your residual functional capacity as provided in §§ 416.920(e) and 416.945. (*See* § 416.920(g)(2) and 416.962 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work.

* * * * *

■ 18. Amend § 416.912 by revising the section heading, revising paragraph (c), and adding a new paragraph (g) to read as follows:

§ 416.912 Evidence.

* * * * *

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case. If we ask you, you must provide evidence about:

(1) Your age;

(2) Your education and training;

(3) Your work experience;

(4) Your daily activities both before and after the date you say that you became disabled;

(5) Your efforts to work; and

(6) Any other factors showing how your impairment(s) affects your ability to work, or, if you are a child, your functioning. In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors.

* * * * *

(g) *Other work.* In order to determine under § 416.920(g) that you are able to make an adjustment to other work, we must provide evidence about the existence of work in the national economy that you can do (*see* §§ 416.960 through 416.969a), given your residual functional capacity (which we have already assessed, as described in § 416.920(e)), age, education, and work experience.

■ 19. Amend § 416.920 as follows:

■ a. By revising paragraph (a),

■ b. By redesignating paragraphs (e) and (f) as paragraphs (f) and (g),

■ c. By adding a new paragraph (e) and

■ d. By revising newly redesignated paragraphs (f) and (g).

The revisions and addition read as follows:

§ 416.920 Evaluation of disability of adults, in general.

(a) *General*—(1) *Purpose of this section.* This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 416.905.

(2) *Applicability of these rules.* These rules apply to you if you are age 18 or older and you file an application for Supplemental Security Income disability benefits.

(3) *Evidence considered.* We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five ''steps'' that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (*See* paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and at step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (*See* paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a

severe medically determinable physical or mental impairment that meets the duration requirement in § 416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. (*See* paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. (*See* paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (See paragraph (f) of this section and § 416.960(b).)

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (See paragraph (g) of this section and § 416.960(c).)

(5) *When you are already receiving disability benefits.* If you are already receiving disability benefits, we will use a different sequential evaluation process to decide whether you continue to be disabled. We explain this process in § 416.994(b)(5).

* * * * *

(e) *When your impairment(s) does not meet or equal a listed impairment.* If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 416.945. (See paragraph (g)(2) of this section and § 416.962 for an exception to this rule.) We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work (paragraph (f) of this section) and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work (paragraph (g) of this section).

(f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work. (*See* § 416.960(b).) If you can still do this kind of work, we will find that you are not disabled.

(g) *Your impairment(s) must prevent you from making an adjustment to any other work.* (1) If we find that you cannot do your past relevant work because you have a severe impairment(s) (or you do not have any past relevant work), we will consider the same residual functional capacity assessment we made under paragraph (e) of this section, together with your vocational factors (your age, education, and work experience) to determine if you can make an adjustment to other work. (*See* § 416.960(c).) If you can make an adjustment to other work, we will find you not disabled. If you cannot, we will find you disabled.

(2) We use different rules if you meet one of the two special medical-vocational profiles described in § 416.962. If you meet one of those profiles, we will find that you cannot make an adjustment to other work, and that you are disabled.

■ 20. Amend § 416.945 by revising paragraph (a) to read as follows:

§ 416.945 Your residual functional capacity.

(a) *General*—(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. (*See* § 416.946.)

(2) *If you have more than one impairment.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not ''severe,'' as explained in §§ 416.920(c), 416.921, and 416.923, when we assess your residual functional capacity. (*See* paragraph (e) of this section.)

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. (*See* § 416.912(c).) However, before we make a determination that you are not disabled, we are responsible for developing your complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help you get medical reports from your own medical sources. (*See* §§ 416.912(d) through (f).) We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. (*See* § 416.913.) We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends, or other persons. (*See* paragraph (e) of this section and § 416.929.)

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.* (i) We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. (*See* §§ 416.920(f) and 416.960(b).)

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to any other work that exists in the national economy. (*See* §§ 416.920(g) and 416.966.) At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 416.960 through 416.969a, and consider our residual functional capacity assessment together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, *see* § 416.994.

* * * * *

■ 21. Revise § 416.946 to read as follows:

§ 416.946 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency makes the disability determination, a State agency medical or psychological consultant(s)

is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 416.1414, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 416.1418, the Associate Commissioner for the Office of Disability Determinations or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level under § 416.1429 or at the Appeals Council review level under § 416.1467, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

■ 22. Revise § 416.960 to read as follows:

§ 416.960 When we will consider your vocational background.

(a) *General.* If you are age 18 or older and applying for supplemental security income benefits based on disability, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (*see* § 416.920), we will consider your residual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. (*See* § 416.965(a).)

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. (*See* § 416.965(b).) We may use the services of vocational experts or vocational specialists, or other resources, such as the ''Dictionary of Occupational Titles'' and its companion volumes and supplements, published by the Department of Labor, to obtain evidence we need to help us determine whether you can do your past relevant work, given your residual functional capacity. A vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy. Such evidence may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a vocational expert or specialist may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations imposed by the claimant's medical impairment(s) can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you can still do your past work and are not disabled. We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy.

(c) *Other work.* (1) If we find that your residual functional capacity is not enough to enable you to do any of your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

§ 416.961 [Removed]

■ 23. Remove § 416.961.

■ 24. Revise § 416.962 to read as follows:

§ 416.962 Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (*see* § 416.964) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (*see* §§ 416.920(c), 416.921, and 416.923), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner's helper with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a ''severe'' combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (*see* §§ 416.920(c), 416.921, and 416.923), are of advanced age (age 55 or older, *see* § 416.963), have a limited education or less (*see* § 416.964), and have no past relevant work experience (*see* § 416.965), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to subpart P of part 404 of this chapter.

■ 25. Amend § 416.963 by revising the second sentence of paragraph (a) and adding a new sentence after the newly revised second sentence to read as follows:

§ 416.963 Your age as a vocational factor.

(a) General. * * * When we decide whether you are disabled under § 416.920(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. * * *

* * * * *

■ 26. Amend § 416.969a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding three new sentences after the sixth sentence to read as follows:

§ 416.969a Exertional and nonexertional limitations.

(a) *General.* * * * When we decide whether you can do your past relevant work (*see* §§ 416.920(f) and 416.994(b)(5)(vi)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to any other work which exists in the national economy. (*See* §§ 416.920(g) and 416.994(b)(5)(vii).)

* * *

* * * * *

■ 27. Amend § 416.994 by revising the first sentence of paragraph (b)(5)(vi) to read as follows:

§ 416.994 How we will determine whether your disability continues or ends, disabled adults.

* * * * *

(b) * * *

(5) * * *

(vi) *Step 6.* your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 416.960. * * *

* * * * *

[FR Doc. 03–21610 Filed 8–25–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 1980N–0050]

RIN 0910–AA01

Anorectal Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) drug product containing a combination of hydrocortisone and pramoxine hydrochloride (HCl) for anorectal use is not generally recognized as safe and effective and is misbranded. This combination product is not currently marketed OTC. This final rule discusses data on the combination of hydrocortisone and pramoxine HCl that were still under review when an earlier final rule on OTC anorectal drug products was issued. This rule is part of FDA's ongoing review of OTC drug products.

DATES: This rule is effective September 25, 2003.

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

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 27, 1980 (45 FR 35576), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC anorectal drug products together with the recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products (the Hemorrhoidal Panel), which was the advisory review panel responsible for evaluating the data on the active ingredients in this class of drugs. The agency's tentative final monograph (TFM) on OTC anorectal drug products was published in the **Federal Register** of August 15, 1988 (53 FR 30756). Hydrocortisone as a single ingredient or in combination with pramoxine HCl was not discussed in the TFM. In response to the TFM, the agency received a submission, containing data, information, analyses, views, legal arguments, and a hearing request, to support monograph status for a combination OTC drug product containing hydrocortisone and pramoxine HCl for use as an anti-inflammatory, antipruritic, anesthetic agent (Ref. 1). The requester asked that: (1) The definition section of the proposed anorectal monograph (§ 346.3 (21 CFR 346.3)) be amended to provide for a drug that has anti-inflammatory properties, such as hydrocortisone, (2) hydrocortisone be allowed to be combined with other appropriate ingredients at OTC strengths, including a topical anesthetic such as pramoxine HCl and, (3) a combination of hydrocortisone 0.5 percent and 1 percent pramoxine HCl be generally recognized as safe and effective.

When the OTC anorectal drug products final monograph was published on August 3, 1990 (55 FR 31776 at 31779), the hearing request relating to hydrocortisone individually and in combination had not been evaluated and, therefore, was not addressed in that document. After publication of the final rule, the agency responded to the submission (Ref. 1) and stated that: (1) It does not provide sufficient evidence to demonstrate that each of the active ingredients in the combination product contributes to the claimed effects and (2) it has not been shown that the combination is generally recognized as safe and effective, whether under the TFM for OTC external analgesic drug products (48 FR 5852, February 8, 1983), the TFM or FM for OTC anorectal drug products, current regulations, or the agency's OTC combination drug product guidelines. The agency's detailed comments are on file in the Division of Dockets Management (Ref. 2).

Subsequently, the requester submitted additional information (Ref. 3). In this final rule, the agency responds to the additional information and includes the combination of hydrocortisone with pramoxine HCl as a nonmonograph (not generally recognized as safe and effective) anorectal drug product in new § 310.545(a)(26)(xi) (21 CFR 310.545(a)(26)(xi)). Any such product marketed OTC would be subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule.

II. The Agency's Final Conclusions on Hydrocortisone Individually and in Combination With Pramoxine HCl for Anorectal Use

The requester contended (Ref. 3) that the proposed combination meets, both from a scientific and legal perspective, the agency's OTC combination drug product policy in that a combination of hydrocortisone (0.25 to 1 percent) and pramoxine HCl 1 percent, is generally recognized as safe and effective for use in OTC drug products to relieve symptoms associated with idiopathic pruritus ani, such as anorectal swelling, pain, itching, and burning. The requester asked the agency to amend the OTC external analgesic drug products TFM and the anorectal drug products FM to include an external analgesic-anorectal OTC drug product containing the active ingredients hydrocortisone and pramoxine HCl. In the alternative, the requester asked for an oral hearing.

The requester's arguments and the agency's responses follow:

(Comment 1) Hydrocortisone is a proposed Category I ingredient and; therefore, FDA considers it safe and effective for OTC use. The ingredient is included in the OTC external analgesic drug products TFM (55 FR 6932 at 6951, February 27, 1990). FDA considers hydrocortisone safe and effective to relieve swelling and itching associated with various skin conditions, including anal itching (55 FR 6932 at 6933).

(Agency response) The agency agrees that hydrocortisone as a single ingredient is safe and effective for OTC use for the claims proposed in

§ 348.50(b) (21 CFR 348.50(b)) (55 FR 6932 at 6951). However, data are lacking to support any combination drug products containing hydrocortisone with other OTC drug active ingredients. Further, the 1990 TFM cited by the requester did not include the term ''swelling'' as an acceptable claim.

(Comment 2) Pramoxine HCl is a Category I ingredient, and thus FDA considers it safe and effective for OTC use. The ingredient is included in § 346.10(g) (21 CFR 346.10(g)) of the OTC anorectal drug products FM for the treatment of various anorectal conditions, including pain, burning, itching, discomfort, and/or irritation. The requester contended that OTC anorectal drug products containing pramoxine HCl in the established dosages of 0.5 to 1 percent that are indicated to relieve pruritus ani may be lawfully marketed in accordance with the OTC anorectal drug products FM.

(Agency response) Pramoxine HCl 0.5 to 1 percent is a proposed Category I ingredient as a local anesthetic in the TFM for OTC external analgesic drug products (48 FR 5852 at 5867). The requester mentioned that this concentration range could be used in OTC anorectal drug products. However, only a 1 percent concentration is included in § 346.10(g) of the OTC anorectal drug products monograph as this was the only concentration evaluated in that rulemaking. The agency lacks data to support a lower concentration for external anorectal use.

(Comment 3) The agency has the authority to switch the status of a product from prescription to OTC when the active ingredient or the combination of active ingredients is determined to be safe and effective for OTC use. The requester cited the **Federal Register** of August 4, 1976 (41 FR 32580) and May 11, 1972 (37 FR 9464 at 9470) as sources for that authority.

(Agency response) The agency has made the determination that the combination of hydrocortisone and pramoxine HCl is not safe and effective for OTC use. Therefore, switching the status of the product from prescription to OTC is not an option. Although the agency is not bound by the recommendations of its advisory panels, the panels that reviewed these ingredients did not recognize any combination of ''amine'' and ''caine'' type local anesthetics with hydrocortisone preparations as safe and effective. The requester has also failed to provide adequate information to support a determination that the combination is safe and effective. The agency lacks sufficient data from available sources to propose a combination of hydrocortisone and pramoxine HCl for OTC use in the applicable OTC drug rulemakings.

(Comment 4) Combination products containing hydrocortisone and pramoxine HCl should have been reconsidered by the agency when it extended the concentration range for hydrocortisone up to 1 percent. Specifically, the agency has the obligation to reconsider combination products when it determines that all of the active ingredients contained in the combination are Category I, and an interested person has requested the combination be considered under a particular OTC drug rulemaking proceeding (21 CFR § 330.10(a)(7) and (a)(12)) (21 CFR 330.10(a)(7) and (a)(12)).

(Agency response) The agency disagrees. The agency's proposal to increase the maximum concentration of hydrocortisone from 0.5 to 1 percent occurred in the rulemaking for OTC external analgesic drug products based on data on the single ingredient and not on combination products. There were no proposed hydrocortisone combinations in that rulemaking. The data on the combination of hydrocortisone 1 percent and pramoxine HCl were submitted to the rulemaking on OTC anorectal drug products and had not been reviewed by the agency at the time it published the amendment to the OTC external analgesic TFM on February 27, 1990 (55 FR 6932) extending the strength of hydrocortisone up to 1 percent. The agency published the FM on OTC anorectal drug products on August 3, 1990 (55 FR 31776 at 31777), in which it stated that hydrocortisone combinations were under review and the agency's evaluation would be reported separately in the future. Simultaneous publication of the agency's evaluation of the single ingredient hydrocortisone in the rulemaking for OTC external analgesic drug products and hydrocortisone-pramoxine HCl combinations in the rulemaking for OTC anorectal drug products would have delayed publication of the anorectal FM for several years.

(Comment 5) Prior to completing the FM for OTC external analgesic drug products, the agency should conduct a retrospective analysis of previously reviewed (or ''should have been reviewed'') hydrocortisone combinations marketed before 1979.

(Agency response) The agency previously reviewed combination drug products containing hydrocortisone and pramoxine HCl submitted during the 1970s and 1980s. In a notice of proposal to withdraw approval of abbreviated new drug applications for fixed combination drug products containing hydrocortisone acetate and pramoxine HCl, the agency found no evidence that pramoxine HCl contributed an effect to the combination drug product (53 FR 25013, July 1, 1988).

(Comment 6) The agency has consistently applied its combination policy, except with respect to a hydrocortisone and pramoxine HCl combination. The agency did not require additional data in support of the effectiveness of combinations in the monographs for OTC antacid (simethicone and an antacid), cough-cold (ingredients from different pharmacological groups), laxative (bulk and stimulant laxatives), and anorectal drug products (not requiring final formulation testing of combination products and accepting the combinations as formulated).

(Agency response) The agency has consistently focused on the safety and effectiveness of each active ingredient, the rationale for concurrent therapy, the contribution each ingredient makes to the combination, and the marketing history to support Category I classification of combinations. Marketing history for the products cited by the requester provided more extensive data than were available for a combination of hydrocortisone and pramoxine HCl for anorectal use. There was an extensive marketing history for combinations of an antacid and simethicone, an antiflatulent, ingredients with different indications. The agency required additional data for a number of cough-cold combinations in the TFM for those products (53 FR 30522, August 12, 1988). The combinations in the laxative TFM (50 FR 2124 at 2152 and 2153, January 15, 1985) and anorectal FM involve ingredients with the same indication. The Advisory Review Panel for OTC Laxative Drug Products (Laxative Panel) looked at laxative combinations and determined that each active ingredient had to make a contribution toward laxation. The Laxative Panel recommended monograph status only for combinations it determined had sufficient data. FDA agreed with the Panel's recommendation, and the agency has requested additional data to support other laxative combinations. The Hemorrhoidal Panel evaluated and recommended combinations of anorectal ingredients (45 FR 35576 at 35673), but did not evaluate hydrocortisone because information on that ingredient was not submitted for its review. The Advisory Review Panel on OTC Topical Analgesic, Antirheumatic,

Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) discussed combinations of external analgesic ingredients, including hydrocortisone and pramoxine HCl, but did not recommend this combination for monograph status (44 FR 69768 at 69790, December 4, 1979).

The agency has not always accepted a panel's recommendation that specific combinations should be allowed, without having adequate supporting data. For example, the Advisory Review Panel on OTC Antimicrobial (II) Drug Products recommended monograph status for combinations of up to three antifungal ingredients and hydrocortisone or hydrocortisone acetate 0.5 to 1 percent (47 FR 12480, March 23, 1982). The agency disagreed with that panel's recommendations because the agency found that these combinations lacked adequate evidence of effectiveness (47 FR 12480 at 12481). The rulemaking for antifungal drug products has been completed and, because adequate data were not provided to support this combination, it remains nonmonograph. No combination containing hydrocortisone has been found to be generally recognized as safe and effective for OTC use. Thus, the agency is consistent in requiring additional data to support this hydrocortisone-pramoxine HCl combination.

(Comment 7) Currently marketed prescription products containing 1 percent or less hydrocortisone and 1 percent pramoxine HCl meet the combination policy implemented by the agency. The OTC drug combination policy standards are satisfied because the active ingredients are Category I, are present in the established dosage range, and each ingredient represents a different therapeutic category. The requester also mentioned a previously submitted clinical protocol (Ref. 3) that was not initiated because this protocol was suspended following a meeting with FDA (Ref. 4).

(Agency response) The agency's requirements for OTC drug combination products in § 330.10(a)(4)(iv) also include that each active ingredient makes a contribution to the product's claimed effect(s). The agency has no data showing that the combination of hydrocortisone and pramoxine HCl has been clinically tested against each individual active ingredient and a placebo. As the agency discussed in its January 13, 1994, letter to the requester (Ref. 2), the submitted data did not include these types of studies. Further, the studies from the literature did not involve a patient population where the product is intended for OTC use, nor were they for the proposed OTC anorectal indication. Therefore, based on the available data, the agency is unable to conclude that each active ingredient makes a contribution to the product's claimed effect(s) and that this combination is generally recognized as safe and effective. After the agency received a letter indicating that the requester's client had suspended an ongoing study of the combination (Ref. 4), the agency was under the impression that there was no longer interest in having the protocol reviewed. The requester should notify the agency if there is still interest in conducting the appropriate study and having the protocol reviewed.

(Comment 8) The combination of 1 percent or less hydrocortisone and 1 percent pramoxine HCl is warranted because hydrocortisone is a therapeutic equivalent of other active antipruritic ingredients that may be combined with a local anesthetic such as pramoxine HCl. In the past, the agency has permitted active ingredient substitutions with pharmacological classes. Further, while the method of action of hydrocortisone is different than other antipruritic agents, the requester suggests that it can be properly combined with local anesthetics, because it is therapeutically equivalent, if not superior, to other approved antipruritic agents.

(Agency response) The agency's response under section II, comment 6 of this document applies here also. The requester's belief that the combination of an antipruritic/analgesic with a local anesthetic is permitted by implication is incorrect. Section 346.22 (21 CFR 346.22) provides for the combination of an ''antipruritic/analgesic and a local anesthetic with an astringent.'' The ingredients under proposed § 348.10 (48 FR 5852 at 5868) are classified as ''analgesic/anesthetic/antipruritic.''

Listed combinations of external analgesic active ingredients under proposed § 348.50 include ingredients listed under § 348.10(a), (b), and (c) exclude hydrocortisone preparations which are listed under proposed § 348.10(d)(1) as hydrocortisone and under (d)(2) as hydrocortisone acetate. The Topical Analgesic Panel classified hydrocortisone preparations in a listing of ingredients that depress cutaneous sensory receptors (analgesics, anesthetics, and antipruritics) (44 FR 69768 at 69865, December 4, 1979). The agency subdivided the analgesic, anesthetic antipruritic ingredients into separate classes, i.e., ''caine'' type local anesthetics, alcohols and ketones, antihistamines, and hydrocortisone preparations (48 FR 5852 at 5867 and 5868, February 8, 1983). The Topical Analgesic Panel did not have adequate data to consider hydrocortisone and pramoxine HCl interchangeable, and the agency has no basis to recommend their interchangeability and inclusion in any OTC drug product monograph.

(Comment 9) If the agency is unable to conclude from the information presented that the proposed combination is Category I, the agency should grant a hearing in this matter.

(Agency response) The agency has evaluated all of the evidence in support of a combination of hydrocortisone and pramoxine HCl in the administrative record for the rulemaking for OTC anorectal drug products submitted on behalf of the requester's client. The agency has discussed this information in its letter of January 13, 1994 (Ref. 2) and in this document. The agency does not find an oral hearing warranted.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq*.). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts, and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The final rule that led to the development of this supplemental final rule was published in 1990, before the Unfunded Mandates Reform Act of 1995 was enacted. The agency explains in this final rule that the final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

The agency concludes that this final rule is consistent with the principles set out in the Executive order and in these two statutes. The final rule is not a

significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. Further, since this final rule makes no mandates on government entities and will result in expenditures less than $100 million in any one year, FDA need not prepare additional analyses under the Unfunded Mandates Reform Act.

The purpose of this final rule is to establish that OTC anorectal drug products containing a combination of hydrocortisone and pramoxine HCl are not generally recognized as safe and effective. Because no such products are currently marketed OTC, the final rule will not have an economic impact on any entity (no reformulations or relabeling are necessary) and will not require any new reporting or recordkeeping activities.

The agency has no alternative course of action as the data are inadequate to support monograph status for this combination product. Therefore, no additional professional skills are needed. The Commissioner of Food and Drugs certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

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

VI. Federalism

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

VII. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, in Docket No. 1980N–0050 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. HER1.
2. LET26.
3. Comment No. C25.
4. OTC vol. 12FR3.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

■ 2. Section 310.545 is amended by adding paragraph (a)(26)(xi), by revising paragraph (d) introductory text, by revising paragraph (d)(13), and by adding paragraph (d)(37) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(26) * * *

(xi) *Combination drug products.* Any combination drug product containing hydrocortisone and pramoxine hydrochloride.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(37) of this section.

* * * * *

(13) August 5, 1991, for products subject to paragraph (a)(26) of this section, except for those that contain live yeast cell derivative and a combination of hydrocortisone and pramoxine hydrochloride.

* * * * *

(37) September 25, 2003, for products subject to paragraph (a)(26)(xi) of this section.

Dated: August 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21749 Filed 8–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) that appeared in the **Federal Register** of June 19, 2003 (68 FR 36744). FDA is correcting the amount of monocalcium phosphate in the formula for a free-choice, loose mineral Type C medicated feed containing lasalocid that was entered inaccurately. This correction is being made so the lasalocid regulations accurately reflect the approved formula.

DATES: This rule is effective June 19, 2003.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567, e-mail: *ghaibel@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–15541, published on June 19, 2003 (68 FR 36744), the following correction is made:

§ 558.311 [Corrected]

■ On page 36745, in the first column, in the table in § 558.311 *Lasalocid* in paragraph (e)(4)(i), in the row for ''Monocalcium Phosphate'' the entry in the ''Percent'' column is corrected to read ''57.70''.

Dated: August 7, 2003.

David R. Newkirk,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–21750 Filed 8–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 120

[Public Notice 4440]

RIN AB–62

Bureau of Political-Military Affairs; Amendment to the International Traffic in Arms Regulations; Corrections

AGENCY: Department of State.

ACTION: Correcting amendments.

SUMMARY: This document makes corrections to the final regulations (Public Notice 4274), which were published in the **Federal Register** of Friday, February 14, 2003.

EFFECTIVE DATE: Effective on January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, Department of State, (202) 663–2700.

SUPPLEMENTARY INFORMATION:

Background

The Department of State published a final rule (Public Notice 4274) in the **Federal Register** of February 14, 2003, (68 FR 7417), amending § 120.1 General authorities and eligibility, of the International Traffic in Arms Regulations.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 22 CFR Part 120

Arms and munitions, Classified information, Exports.

■ Accordingly, 22 CFR part 120 is corrected by making the following correcting amendments:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

■ 2. Revise paragraphs (b)(2) and (b)(2)(ii) of § 120.1 to read as follows:

§ 120.1 General authorities and eligibility.

* * * * *

(b) * * *

(1) * * *

(2) In the Bureau of Political-Military Affairs, there will be a Deputy Assistant Secretary for Defense Trade Controls (DAS—Defense Trade Controls) and a Managing Director of Defense Trade Controls (MD—Defense Trade Controls). Initially, one individual will hold both the DAS—Defense Trade Controls and MD—Defense Trade Controls positions. The position of Director, Office of Defense Trade Controls will be abolished. The DAS—Defense Trade Controls/MD—Defense Trade Controls will assume all duties, responsibilities, and authorities held under the ITAR by that Director. The MD—Defense Trade Controls has responsibility for the Directorate of Defense Trade Controls, which will oversee the subordinate offices described in paragraph (b)(2)(i) of this section.

(i) * * *

(A) * * *

(B) * * *

(C) * * *

(D) * * *

(ii) Further amendments to the ITAR will be promulgated to reflect the specific changes as a result of this realignment.

* * * * *

Dated: August 21, 2003.

Timothy Egert,

Federal Register Liaison, Department of State.

[FR Doc. 03–21804 Filed 8–25–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9088]

RIN 1545–BA57

Compensatory Stock Options Under Section 482

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the application of the rules of section 482 governing qualified cost sharing arrangements. These regulations provide guidance regarding the treatment of stock-based compensation for purposes of the rules governing qualified cost sharing arrangements and for purposes of the comparability factors to be considered under the comparable profits method.

DATES: *Effective Date:* These regulations are effective August 26, 2003.

Applicability Dates: For dates of applicability of these regulations, *see* §§ 1.482–1(j)(5) and 1.482–7(k).

FOR FURTHER INFORMATION CONTACT: Douglas Giblen, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1794. Responses to these collections of information are required by the IRS to monitor compliance with the federal tax rules for determining stock-based compensation costs to be shared among controlled participants in qualified cost sharing arrangements.

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 control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent or recordkeeper varies from 2 hours to 7 hours, depending on individual circumstances, with an estimated average of 4 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224.

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.

Background

On July 29, 2002, Treasury and the IRS published in the **Federal Register** (67 FR 48997) proposed amendments to the regulations (REG–106359–02) under section 482 of the Internal Revenue Code (Code). These proposed regulations provide guidance regarding treatment of stock-based compensation for purposes of qualified cost sharing arrangements (QCSAs) and the comparable profits method and clarify the coordination of the rules regarding QCSAs with the arm's length standard. Written comments responding to these proposed regulations were received, and a public hearing was held on November

20, 2002. After consideration of all the comments, the proposed regulations under section 482 of the Code are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

These final regulations are the first in a series of regulatory guidance under section 482 through which Treasury and the IRS intend to update, clarify and improve current regulatory guidance in the transfer pricing area. A broader regulatory project on the treatment of QCSAs and a regulatory project on the transfer pricing of services are in progress, and Treasury and the IRS intend to issue proposed regulations with respect to each project in the near term.

These final regulations set forth explicit provisions clarifying that stock-based compensation is taken into account in determining the operating expenses treated as intangible development costs of a controlled participant in a QCSA under § 1.482–7. These final regulations provide rules for measuring the cost associated with stock-based compensation; clarify that the utilization and treatment of stock-based compensation is appropriately taken into account as a comparability factor for purposes of the comparable profits method under § 1.482–5; and provide rules that coordinate the rules of § 1.482–7 regarding QCSAs with the arm's length standard as set forth in § 1.482–1.

Treasury and the IRS received comments with respect to the proposed regulations. Most commentators objected to the proposed regulations in their entirety or suggested postponement of their finalization. Some commentators suggested modifications to be adopted in the event that the proposed regulations were finalized in some form.

After fully considering these comments, Treasury and the IRS continue to believe that the proposed regulations reflect a sound application of established principles under section 482. At the same time, Treasury and the IRS have concluded that certain suggested modifications to the administrative provisions of the proposed regulations are appropriate. These modifications are incorporated into the final regulations.

A. Stock-Based Compensation as a Cost To Be Shared and the Arm's Length Standard as Applied to QCSAs—§§ 1.482–7(d)(2)(i) and (a)(3), and 1.482–1(a)(1), (b)(2)(i) and (c)

A QCSA subject to the rules of § 1.482–7 is an arrangement to develop intangibles which meets certain administrative and other requirements and in which the participants to the arrangement share intangible development costs in proportion to their shares of reasonably anticipated benefits attributable to the intangibles developed under the arrangement. In the case of a QCSA, § 1.482–7(a)(2) limits the ability of the Commissioner to make allocations, except to the extent necessary to make each controlled participant's share of the costs equal its share of reasonably anticipated benefits. An arrangement in which significant intangible development costs are not shared in proportion to reasonably anticipated benefits (or are not shared at all) would not in substance constitute an arrangement to which the rules of § 1.482–7 are applicable.

The proposed regulations address the treatment of stock-based compensation under a QCSA, and the interaction between the rules applicable to QCSAs and the arm's length standard. The proposed regulations provide that stock-based compensation related to the covered intangible development area must be taken into account in determining the costs to be shared by participants in a QCSA. The proposed regulations further provide that a QCSA produces results consistent with an arm's length result if, and only if, all costs related to the intangible development, as determined in accordance with the specific guidance in § 1.482–7(d), are shared in proportion to reasonably anticipated benefits.

Commentators objected to this rule on the basis of interpretations of the arm's length standard and on other grounds.

1. Comments Relating to Arm's Length Standard

Commentators asserted that taking stock-based compensation into account in the QCSA context would be inconsistent with the arm's length standard unless there is evidence that parties at arm's length take stock-based compensation into account in similar circumstances. Commentators asserted that third-party evidence, such as the government's own procurement contracting practices and agreements between unrelated parties with some characteristics similar to QCSAs, would show that parties at arm's length do not take stock-based compensation into account in determining costs to be reimbursed.

Treasury and the IRS continue to believe that requiring stock-based compensation to be taken into account for purposes of QCSAs is consistent with the legislative intent underlying section 482 and with the arm's length standard (and therefore with the obligations of the United States under its income tax treaties and with the OECD transfer pricing guidelines). The legislative history of the Tax Reform Act of 1986 expressed Congress's intent to respect cost sharing arrangements as consistent with the commensurate with income standard, and therefore consistent with the arm's length standard, if and to the extent that the participants' shares of income ''reasonably reflect the actual economic activity undertaken by each.'' *See* H.R. Conf. Rep. No. 99–481, at II–638 (1986). The regulations relating to QCSAs implement that legislative intent by using costs incurred by each controlled participant with respect to the intangible development as a proxy for actual economic activity undertaken by each, and by requiring each controlled participant to share these costs in proportion to its anticipated economic benefit from intangibles developed pursuant to the arrangement. In order for the costs incurred by a participant to reasonably reflect its actual economic activity, the costs must be determined on a comprehensive basis. Therefore, in order for a QCSA to reach an arm's length result consistent with legislative intent, the QCSA must reflect all relevant costs, including such critical elements of cost as the cost of compensating employees for providing services related to the development of the intangibles pursuant to the QCSA. Treasury and the IRS do not believe that there is any basis for distinguishing between stock-based compensation and other forms of compensation in this context.

Treasury and the IRS do not agree with the comments that assert that taking stock-based compensation into account in the QCSA context would be inconsistent with the arm's length standard in the absence of evidence that parties at arm's length take stock-based compensation into account in similar circumstances. Section 1.482–1(b)(1) provides that a ''controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that *would have been realized* if uncontrolled taxpayers *had engaged* in the same transaction under the same circumstances.'' (Emphasis added). While the results actually realized in similar transactions under

similar circumstances ordinarily provide significant evidence in determining whether a controlled transaction meets the arm's length standard, in the case of QCSAs such data may not be available. As recognized in the legislative history of the Tax Reform Act of 1986, there is little, if any, public data regarding transactions involving high-profit intangibles. H.R. Rep. No. 99–426, at 423–25 (1985). The uncontrolled transactions cited by commentators do not share enough characteristics of QCSAs involving the development of high-profit intangibles to establish that parties at arm's length would not take stock options into account in the context of an arrangement similar to a QCSA. Government contractors that are entitled to reimbursement for services on a cost-plus basis under government procurement law assume substantially less entrepreneurial risk than that assumed by service providers that participate in QCSAs, and therefore the economic relationship between the parties to such an arrangement is very different from the economic relationship between participants in a QCSA. The other agreements highlighted by commentators establish arrangements that differ significantly from QCSAs in that they provide for the payment of markups on cost or of non-cost-based service fees to service providers within the arrangement or for the payment of royalties among participants in the arrangement. Such terms, which may have the effect of mitigating the impact of using a cost base to be shared or reimbursed that is less than comprehensive, would not be permitted by the QCSA regulations. Further, the QCSA regulations would not allow the Commissioner to impose such terms in the context of a QCSA.

The regulations relating to QCSAs have as their focus reaching results consistent with what parties at arm's length generally would do if they entered into cost sharing arrangements for the development of high-profit intangibles. These final regulations reflect that at arm's length the parties to an arrangement that is based on the sharing of costs to develop intangibles in order to obtain the benefit of an independent right to exploit such intangibles would ensure through bargaining that the arrangement reflected all relevant costs, including all costs of compensating employees for providing services related to the arrangement. Parties dealing at arm's length in such an arrangement based on the sharing of costs and benefits generally would not distinguish between stock-based compensation and other forms of compensation.

For example, assume that two parties are negotiating an arrangement similar to a QCSA in order to attempt to develop patentable pharmaceutical products, and that they anticipate that they will benefit equally from their exploitation of such patents in their respective geographic markets. Assume further that one party is considering the commitment of several employees to perform research with respect to the arrangement. That party would not agree to commit employees to an arrangement that is based on the sharing of costs in order to obtain the benefit of independent exploitation rights unless the other party agrees to reimburse its share of the compensation costs of the employees. Treasury and the IRS believe that if a significant element of that compensation consists of stock-based compensation, the party committing employees to the arrangement generally would not agree to do so on terms that ignore the stock-based compensation.

An arrangement between controlled taxpayers for the development of intangible assets in which one taxpayer's share of significant costs exceeds its share of reasonably anticipated benefits from the exploitation of the developed intangibles would not in substance be a QCSA and therefore would be subject to analysis under the other section 482 regulations. For example, as in the transactions cited by commentators, a controlled taxpayer might agree at the outset of an arrangement to bear a disproportionate share of costs in an arrangement in which it receives a service fee or a contingent royalty from the exploitation of the developed intangibles. More generally, controlled taxpayers might agree at the outset of an arrangement to determine the compensation of one party based on a subset of that taxpayer's costs or on a basis that does not take that taxpayer's costs into account at all (*e.g.*, based on an amount determined with reference to a comparable uncontrolled price or transaction). In either case, such an arrangement between controlled taxpayers would not in substance constitute an arrangement to which the rules of § 1.482–7 would apply. Indeed, the limitations contained in § 1.482–7(a)(2) could produce results inconsistent with an arm's length result if applied to such an arrangement because the Commissioner would be precluded from making allocations that could be necessary to ensure that each controlled taxpayer is compensated appropriately. Rather, such an arrangement should be analyzed under the other section 482 regulations (in particular, sections 1.482–1, 1.482–2(b), and 1.482–4) to determine whether it reaches results consistent with the arm's length standard, and any allocations by the Commissioner should be consistent with such other section 482 regulations.

2. Other Comments

Commentators offered various other reasons for not taking stock-based compensation into account in the context of QCSAs. Commentators expressed the view that stock-based compensation should not be taken into account because it does not constitute an economic cost or require a cash outlay, or, to the extent such compensation does constitute a cost, because the cost is borne by shareholders whose share value is diluted when additional shares are issued on exercise. Commentators also noted that the treatment of stock-based compensation for financial reporting purposes should not mandate that stock-based compensation be taken into account in the context of QCSAs.

In response to such views, and as discussed above, Treasury and the IRS continue to believe that requiring stock-based compensation to be taken into account for in the context of QCSAs is appropriate. The final regulations provide that stock-based compensation must be taken into account in the context of QCSAs because such a result is consistent with the arm's length standard. Treasury and the IRS agree that the disposition of financial reporting issues does not mandate a particular result under these regulations.

One commentator suggested that even if stock-based compensation generates a cost to a participant, there is precedent within the regulations relating to QCSAs for excluding certain costs, notably interest and taxes. Treasury and the IRS believe that the technical treatment under the regulations relating to QCSAs of interest, taxes and other expenses not related to the intangible development area does not warrant failing to take into account an element of employee compensation that is clearly related to the intangible development area. Treasury and the IRS believe that in order for the costs incurred by a participant to reasonably reflect its actual economic activity consistent with the legislative intent in this area, those costs must be determined on a comprehensive basis and so must take into account all relevant costs, in particular critical elements such as employee compensation. As noted above, Treasury and the IRS do not believe that there is a basis for

distinguishing between stock-based compensation and other forms of compensation in this context.

One commentator also claimed that the historical administrative practice of the IRS has been not to challenge the failure to take stock-based compensation into account in other transfer pricing contexts in which the determination of cost is relevant. Treasury and the IRS believe that such perceived practices of the IRS with respect to other section 482 contexts are not relevant to determining the appropriate regulatory rule applicable to QCSAs.

As an alternate approach, one commentator suggested that rather than requiring stock-based compensation to be taken into account in the QCSA context, Treasury and the IRS should promulgate a ''stock-based compensation safe harbor'' applicable to QCSAs. This suggested ''safe harbor'' has not been adopted in the final regulations. As noted above, Treasury and the IRS believe that in order for the costs incurred by a participant to reasonably reflect its actual economic activity, those costs must be determined on a comprehensive basis and so must take into account all relevant costs, in particular critical elements such as employee compensation. The final regulations therefore require employee compensation to be taken into account, rather than provide for a safe harbor under which such compensation could be ignored.

B. Grant-Date Identification Rule—§ 1.482–7(d)(2)(ii)

The proposed regulations identify the stock-based compensation to be included in the cost pool based on whether the compensation is related to the intangible development area on the date the option is granted.

One commentator noted that this identification rule is inconsistent with the IRS treatment of stock-based compensation in other tax areas such as sourcing, where IRS rulings trace the compensation to the entire period over which the employee performed the services compensated by the option.

The grant-date identification rule has been retained in the final regulations. As noted in the preamble of the proposed regulations, it is desirable in the QCSA context to select a single date for identification of covered stock-based compensation. The grant of compensation generally is the single economic event most closely associated with the services being compensated.

C. Provision of Specific Methods of Measurement and Timing

The proposed regulations prescribe two alternative methods for determining the operating expenses attributable to stock-based compensation. The default rule under § 1.482–7(d)(2)(iii)(A) provides that the costs attributable to stock-based compensation generally are included as intangible development costs upon the exercise of the option and measured by the spread between the option strike price and the price of the underlying stock. An elective rule under § 1.482–7(d)(2)(iii)(B) provides that the costs attributable to stock options are taken into account in certain cases in accordance with the ''fair value'' of the option, as reported for financial accounting purposes either as a charge against income or in footnoted disclosures.

Commentators claimed that parties at arm's length would not use either of the alternatives prescribed in the proposed regulations because they would produce results that are too speculative or not sufficiently related to the employee services that are compensated. One commentator suggested that the final regulations should not limit taxpayers to the two prescribed measurement methods but rather should codify the current IRS administrative practice of permitting any reasonable method. In the commentator's view, a standard based on any reasonable method should permit the intrinsic-value method, which measures the difference between strike price and underlying stock value at date of grant, exclusive of time value. However, the commentator suggested that if Treasury and the IRS consider an element of time value indispensable, an alternative would be to require the use of the ''minimum value'' method, which accounts for the time value of stock options by assuming the underlying stock will grow at the risk-free interest rate.

These suggestions were not adopted. Treasury and the IRS believe that it is appropriate for regulations to prescribe guidance in this context that is consistent with the arm's length standard and that also is objective and administrable. As long as the measurement method is determined at or before grant date, either of the prescribed measurement methods can be expected to result in an appropriate allocation of costs among QCSA participants and therefore would be consistent with the arm's length standard. The results under the default measurement rule are consistent with what would occur under an arm's length agreement at or before the grant date to take stock-based compensation into account at the date of exercise when more facts are known and therefore to share the risks associated with such compensation between the date of grant and the date of exercise. The results under the elective measurement rule are consistent with what would occur under an alternative arm's length agreement at or before the grant date to determine the value of the compensation up front and take such compensation into account at that time. With respect to the specific methods proposed by commentators, Treasury and the IRS believe that ''intrinsic value'' ignores significant elements of the economic value of stock-based compensation and ''minimum value'' ignores the important variable of volatility that enters into the economic pricing models used for financial reporting purposes.

The prescribed measurement methods are objective and administrable because they rely on valuations or measurements of stock-based compensation prepared for other purposes. The prescribed measurement methods do not require or permit valuations of stock-based compensation specifically for QCSA purposes. A standard under which the validity of the taxpayer's method would have to be analyzed on a case-by-case basis would be unduly difficult to administer and potentially could lead to significant disputes.

D. General Rule of Measurement—§ 1.482–7(d)(2)(iii)(A)

Under the default measurement rule, the amount taken into account for QCSA purposes generally is the amount allowable as a federal income tax deduction on exercise of the stock-based compensation. This amount generally is the ''spread'' between the option price and the fair market value of the underlying stock at the date of exercise.

One commentator suggested that this method would be improved if the amount taken into account for QCSA purposes were limited to the portion of the spread that accrued between date of grant and full vesting, as further prorated to reflect only the time during which the employee was engaged in cost-shared activities.

This suggestion has not been adopted in the final regulations. Treasury and the IRS believe that the grant-date identification rule already limits in an appropriate way the stock-based compensation taken into account. The purpose of the default measurement rule is to measure the amount attributable to stock-based compensation that must be taken into account under the grant-date identification rule. Accordingly, the default measurement rule does not

require further refinement through proration. Further, additional recordkeeping and analysis necessary to identify relevant time periods and employee activities involving the covered intangibles and to perform proration calculations are not warranted.

The proposed regulations set forth special rules for the application of the general rule of measurement in the event of modification of a stock option and expiration or termination of a QCSA. The final regulations retain these rules with technical modifications.

E. Treatment of Statutory Stock Options—§ 1.482–7(d)(2)(iii)(A)(1)

Under the default measurement rule in the proposed regulations, a special rule applies to statutory stock options (also referred to as incentive and employee stock purchase plan stock options). Under this special rule, the spread on statutory stock options generally is taken into account for QCSA purposes on exercise, even though section 421 denies a deduction with respect to statutory stock options unless and until there is a disqualifying disposition of the underlying stock by the employee.

One commentator suggested that the special rule for statutory stock options should be removed because it imposes an unnecessary administrative burden on taxpayers to apply different rules for different purposes. This suggestion was not adopted in the final regulations. Treasury and the IRS believe that the more important concern is consistent treatment of statutory and nonstatutory stock options for this purpose. This consistency is achieved only if the spread on both statutory and nonstatutory options is included in the cost pool on exercise.

F. Elective Method of Measurement—§ 1.482–7(d)(2)(iii)(B)

The proposed regulations permit an elective method of measurement and timing with respect to options on publicly traded stock of companies subject to financial reporting under U.S. generally accepted accounting principles (U.S. GAAP), provided that the stock is traded on a U.S. securities market. Under the election, the amount taken into account for QCSA purposes associated with compensatory stock options is their ''fair value,'' generally measured by reference to economic pricing models as of the date of grant, as reflected either as a charge against income or as a footnote disclosure in the company's audited financial statements, in compliance with current U.S. GAAP.

One commentator proposed that the elective measurement method be made available to all taxpayers. The commentator further suggested that controlled participants should be permitted to use any reasonable method to measure stock-based compensation in the form of options on stock of foreign corporations as long as that method is consistent with international accounting standards or with accounting principles that are prevalent in the home country of the controlled participant. In the commentator's view, the limitations in the proposed regulations are not justified by difficulty of valuation and may be vulnerable to challenges under anti-discrimination clauses in U.S. income tax treaties.

Treasury and the IRS agree that the elective method should be more broadly available and have modified these rules in the final regulations. Specifically, the final regulations extend the availability of the elective method to options on the stock of certain companies that prepare their financial statements in accordance with accounting principles other than U.S. GAAP, while continuing to limit the availability of the elective method to options on stock that is publicly traded on a U.S. securities market. Thus, the availability of the elective method is not extended to options on stock of privately held companies or companies whose stock is traded only on foreign securities markets.

Treasury and the IRS believe that objectivity and ease of administration are important features of any method of measuring costs attributable to stock-based compensation for purposes of QCSAs. The elective method should be available only for options on stock whose value is readily determinable and for companies that are required to determine the fair value of stock options for a non-tax purpose. Treasury and the IRS recognize that foreign-based companies whose stock is traded on a U.S. securities market (directly or through the use of American Depository Receipts) are required to determine the fair value of options on their stock even though they do not necessarily prepare financial statements in accordance with U.S. GAAP. Companies satisfy that requirement by preparing financial statements in accordance with a comprehensive body of generally accepted accounting principles (GAAP) that is consistent with the U.S. GAAP requirement of determining the fair value of stock options, or by preparing reconciliations of their financial statements with U.S. GAAP in a manner that reflects the fair value of stock options.

Accordingly, the final regulations provide that in determining eligibility for the elective method, financial statements prepared in accordance with GAAP other than U.S. GAAP are considered as prepared in accordance with U.S. GAAP in two circumstances. First, financial statements are considered as prepared in accordance with U.S. GAAP where the fair value of stock options is reflected in a legally required reconciliation between the applicable GAAP and U.S. GAAP. In such a case, the fair value of stock options for purposes of the elective method of measurement will be the fair value reflected in such reconciliation. Second, financial statements are considered as prepared in accordance with U.S. GAAP where, under the applicable GAAP, the fair value of stock options is reflected as a charge against income in audited financial statements or is disclosed in footnotes to such statements. In such a case, the fair value of stock options for purposes of the elective method of measurement will be the fair value reflected in such audited financial statements.

Treasury and the IRS continue to believe that the elective method should be available only for options on stock whose value is readily determinable and for companies that are required to determine the fair value of stock options for a non-tax purpose. Accordingly, the final regulations do not extend the availability of the elective method to options on stock of privately held companies or companies whose stock is traded only on foreign securities markets.

One commentator suggested that the election to use the elective method should be made on the taxpayer's return rather than evidenced in the written cost sharing agreement. In the view of the commentator, such a procedure would be more practical from an enforcement perspective.

This suggestion was not adopted. Treasury and the IRS continue to believe that the most effective way to ensure that all participants are bound by the election is to incorporate it within the written cost sharing agreement.

G. Modification of Comparable Profits Method—§ 1.482–5(c)(2)(iv)

The proposed regulations provide that in applying the comparable profits method, if there are material differences among the tested party and uncontrolled comparables with respect to the utilization or treatment of stock-based compensation, such material differences are an appropriate basis for comparability adjustments. One commentator expressed the view that

this provision contradicts the arm's length coordination rules for QCSAs because the treatment of stock-based compensation by unrelated parties is considered relevant for purposes of the comparable profits method but not relevant for purposes of QCSAs.

No revision was made in response to this comment. Treasury and the IRS believe that the rule provided in the proposed regulations with respect to the application of the comparable profits method is appropriate because the financial data with respect to similar business activities that generally is used as a reference point for that method is subject to adjustment to ensure comparability.

H. Effective Date and Transition Rules—§ 1.482–7(k) and (d)(2)(iii)(B)(2)

The provisions of the proposed regulations applicable to QCSAs would apply to stock-based compensation granted in taxable years beginning on or after publication of final regulations. Participants in a QCSA in existence on the effective date may, on a one-time basis, amend their agreement to elect the grant-date method of measurement without the Commissioner's consent. The election with respect to existing QCSAs must be made not later than the latest due date, without regard to extensions, for an income tax return of a controlled participant for the first taxable year beginning after the effective date of final regulations.

One commentator stated that the prospective effective date does not afford taxpayers a reasonable time to amend their cost sharing agreements or restructure complex international operations. A transition period of two years after the publication of final regulations was suggested.

This suggestion was not adopted. Treasury and the IRS consider the period stated in the proposed regulations adequate for the initial planning and recordkeeping that may be occasioned by the final regulations.

With respect to the special transition rule permitting taxpayers to elect the grant-date method of measurement by amendment of an existing written cost sharing agreement no later than the latest due date of an income tax return of a controlled participant, one commentator suggested that the due date should not disregard filing extensions. The commentator maintained that fairness dictates affording taxpayers this extra time for the analysis needed to make this significant decision.

In response to this comment, the final regulations provide that the due date for amendments to existing cost sharing agreements is determined with regard to filing extensions.

Some commentators urged Treasury and the IRS to postpone finalization of the proposed regulations until the OECD completes its ongoing consideration of the treatment of stock options for transfer pricing purposes and an international consensus begins to form so that the potential for international disputes and resulting negative effects on U.S. business can be minimized. Similarly, a commentator suggested that the effects of applying the principles of the proposed regulations to other areas of transfer pricing should be thoroughly studied and harmonized before finalizing the regulations to avoid creating traps for the unwary or other unforeseen consequences.

These suggestions were not implemented. Treasury and the IRS do not believe that international discussion of issues compels the suspension of the regulatory process. Also, Treasury and the IRS believe that it is important to provide timely guidance on issues such as those addressed by the proposed and final regulations.

Finally, the preamble to the proposed regulations states that the proposed regulations clarify that stock-based compensation must be taken into account in the QCSA context. Several commentators interpreted this language as in effect requiring the new rules to be applied retroactively. These commentators urged that the final regulations contain further assurances of prospective intent and explicitly recognize that these regulations represent a fundamental change to the traditional approach to section 482.

No revisions were made in light of these comments. As noted earlier, Treasury and the IRS believe that requiring stock-based compensation to be taken into account in the QCSA context is consistent with the arm's length standard and long-standing policies underlying section 482. The final regulations, like the proposed regulations, clearly specify that the specific rules provided therein are prospective in application. Moreover, as stated in the proposed regulations, while taxpayers may rely on the proposed regulations until the effective date of the final regulations, no inference is intended with respect to the treatment of stock-based compensation granted in taxable years beginning before the effective date of these final regulations.

I. Paperwork Reduction Act and Regulatory Flexibility Act

One commentator expressed the view that the compliance burden imposed by the proposed regulations on each taxpayer will significantly exceed the two to seven hours estimated under the Paperwork Reduction Act. The commentator also asserted that the estimated number of taxpayers affected by the rules was too low.

The burden estimates as stated in the final regulations reflect no change. Treasury and the IRS reviewed the estimates made in the proposed regulations and concluded that they are reasonable.

Similarly, with respect to the Regulatory Flexibility Act, the commentator challenged the statement in the preamble of the proposed regulations that the new regulatory requirements will not have a significant economic impact on a substantial number of small entities. Upon review of available information, Treasury and the IRS found no basis for a change in the statement or in the operative finding that the economic impact of the collections of information in the proposed regulations is not significant with respect to small entities.

J. Documentation Requirements and Other Provisions on Which No Comments Received

Section 1.482–7(j)(2)(i)(F) of the proposed regulations requires that controlled participants maintain specific documentation to establish the amount attributable to stock-based compensation that is taken into account in determining the costs to be shared, including the method of measurement and timing used with respect to that amount. No comments were received on this particular provision, and it is retained in the final regulations.

Treasury and the IRS intend that this provision will require controlled participants that use the elective method of measurement to maintain documentation establishing compliance with the requirements of § 1.482–7(d)(2)(iii)(B). For example, documentation should establish that applicable financial statements reflecting the value of stock options with respect to which the elective method is used, as well as applicable accounting principles under which such financial statements are prepared, are in conformity with the fair-value and reconciliation requirements adopted in the final regulations with respect to GAAP other than U.S. GAAP.

Several other provisions of the proposed regulations similarly were not commented upon and have been adopted without modification in the final regulations. These provisions include § 1.482–7(d)(2)(iii)(A)(*2*), relating to deductions of foreign

controlled participants; the last sentence of § 1.482–7(d)(2)(ii), relating to repricing and other modifications of stock options; and § 1.482–7(d)(2)(iii)(C), providing consistency rules for measurement and timing of stock-based compensation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few small entities are expected to enter into QCSAs involving stock-based compensation, and that for those who do, the burdens imposed under § 1.482–7(d)(2)(iii)(B) and (j)(2)(i)(F) will be minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Douglas Giblen of the Office of Associate Chief Counsel (International). However, other personnel from Treasury and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

■ Sections 1.482–1, 1.482–5 and 1.482–7 also issued under 26 U.S.C. 482. * * *

■ **Par. 2.** Section 1.482–0 is amended by:

■ 1. Redesignating the entry for § 1.482–7(a)(3) as the entry for § 1.482–7(a)(4).

■ 2. Adding a new entry for § 1.482–7(a)(3).

■ 3. Redesignating the entry for § 1.482–7(d)(2) as the entry for § 1.482–7(d)(3).

■ 4. Adding new entries for § 1.482–7(d)(2).

The additions and redesignation read as follows:

§ 1.482–0 Outline of regulations under section 482.

* * * * *

§ 1.482–7 Sharing of costs.

(a) In general.

* * * * *

(3) Coordination with § 1.482–1.

(4) Cross references.

* * * * *

(d) Costs.

* * * * *

(2) Stock-based compensation.

(i) In general.

(ii) Identification of stock-based compensation related to intangible development.

(iii) Measurement and timing of stock-based compensation expense.

(A) In general.

(*1*) Transfers to which section 421 applies.

(*2*) Deductions of foreign controlled participants.

(*3*) Modification of stock option.

(*4*) Expiration or termination of qualified cost sharing arrangement.

(B) Election with respect to options on publicly traded stock.

(*1*) In general.

(*2*) Publicly traded stock.

(*3*) Generally accepted accounting principles.

(*4*) Time and manner of making the election.

(C) Consistency.

(3) Examples.

* * * * *

■ **Par. 3.** Section 1.482–1 is amended by:

■ 1. Removing the sixth sentence of paragraph (a)(1) and adding two sentences in its place.

■ 2. Adding a sentence at the end of paragraph (b)(2)(i).

■ 3. Adding a sentence at the end of paragraph (c)(1).

■ 4. Adding paragraph (j)(5).

The additions read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

(a) * * *

(1) * * * Section 1.482–7T sets forth the cost sharing provisions applicable to taxable years beginning on or after October 6, 1994, and before January 1, 1996. Section 1.482–7 sets forth the cost sharing provisions applicable to taxable years beginning on or after January 1, 1996. * * *

* * * * *

(b) * * *

(2) * * *

(i) * * *Section 1.482–7 provides the specific method to be used to evaluate whether a qualified cost sharing arrangement produces results consistent with an arm's length result.

* * * * *

(c) * * *

(1) * * *See § 1.482–7 for the applicable method in the case of a qualified cost sharing arrangement.

* * * * *

(j) * * *

(5) The last sentences of paragraphs (b)(2)(i) and (c)(1) of this section and of paragraph (c)(2)(iv) of § 1.482–5 apply for taxable years beginning on or after August 26, 2003.

■ **Par. 4.** Section 1.482–5 is amended by adding a sentence at the end of paragraph (c)(2)(iv) to read as follows:

§ 1.482–5 Comparable profits method.

* * * * *

(c) * * *

(2) * * *

(iv) * * *As another example, it may be appropriate to adjust the operating profit of a party to account for material differences in the utilization of or accounting for stock-based compensation (as defined by § 1.482–7(d)(2)(i)) among the tested party and comparable parties.

* * * * *

■ **Par. 5.** Section 1.482–7 is amended by:

■ 1. Redesignating paragraph (a)(3) as paragraph (a)(4).

■ 2. Adding a new paragraph (a)(3).

■ 3. Redesignating paragraph (d)(2) as paragraph (d)(3).

■ 4. Adding a new paragraph (d)(2).

■ 5. Removing the word ''and'' at the end of paragraph (j)(2)(i)(D).

■ 6. Removing the period at the end of paragraph (j)(2)(i)(E) and adding ''; and'' in its place.

■ 7. Adding paragraph (j)(2)(i)(F).

■ 8. Revising paragraph (k).

The additions and revision read as follows:

§ 1.482–7 Sharing of costs.

(a) * * *

(3) *Coordination with § 1.482–1.* A qualified cost sharing arrangement produces results that are consistent with an arm's length result within the meaning of § 1.482–1(b)(1) if, and only if, each controlled participant's share of

the costs (as determined under paragraph (d) of this section) of intangible development under the qualified cost sharing arrangement equals its share of reasonably anticipated benefits attributable to such development (as required by paragraph (a)(2) of this section) and all other requirements of this section are satisfied.

* * * * *

(d) * * *

(2) *Stock-based compensation*—(i) *In general.* For purposes of this section, a controlled participant's operating expenses include all costs attributable to compensation, including stock-based compensation. As used in this section, the term *stock-based compensation* means any compensation provided by a controlled participant to an employee or independent contractor in the form of equity instruments, options to acquire stock (stock options), or rights with respect to (or determined by reference to) equity instruments or stock options, including but not limited to property to which section 83 applies and stock options to which section 421 applies, regardless of whether ultimately settled in the form of cash, stock, or other property.

(ii) *Identification of stock-based compensation related to intangible development.* The determination of whether stock-based compensation is related to the intangible development area within the meaning of paragraph (d)(1) of this section is made as of the date that the stock-based compensation is granted. Accordingly, all stock-based compensation that is granted during the term of the qualified cost sharing arrangement and is related at date of grant to the development of intangibles covered by the arrangement is included as an intangible development cost under paragraph (d)(1) of this section. In the case of a repricing or other modification of a stock option, the determination of whether the repricing or other modification constitutes the grant of a new stock option for purposes of this paragraph (d)(2)(ii) will be made in accordance with the rules of section 424(h) and related regulations.

(iii) *Measurement and timing of stock-based compensation expense*—(A) *In general.* Except as otherwise provided in this paragraph (d)(2)(iii), the operating expense attributable to stock-based compensation is equal to the amount allowable to the controlled participant as a deduction for Federal income tax purposes with respect to that stock-based compensation (for example, under section 83(h)) and is taken into account as an operating expense under this section for the taxable year for which the deduction is allowable.

(*1*) *Transfers to which section 421 applies.* Solely for purposes of this paragraph (d)(2)(iii)(A), section 421 does not apply to the transfer of stock pursuant to the exercise of an option that meets the requirements of section 422(a) or 423(a).

(*2*) *Deductions of foreign controlled participants.* Solely for purposes of this paragraph (d)(2)(iii)(A), an amount is treated as an allowable deduction of a controlled participant to the extent that a deduction would be allowable to a United States taxpayer.

(*3*) *Modification of stock option.* Solely for purposes of this paragraph (d)(2)(iii)(A), if the repricing or other modification of a stock option is determined, under paragraph (d)(2)(ii) of this section, to constitute the grant of a new stock option not related to the development of intangibles, the stock option that is repriced or otherwise modified will be treated as being exercised immediately before the modification, provided that the stock option is then exercisable and the fair market value of the underlying stock then exceeds the price at which the stock option is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(2)(iii)(A)) to the controlled participant upon exercise of the stock option immediately before the modification must be taken into account as an operating expense as of the date of the modification.

(*4*) *Expiration or termination of qualified cost sharing arrangement.* Solely for purposes of this paragraph (d)(2)(iii)(A), if an item of stock-based compensation related to the development of intangibles is not exercised during the term of a qualified cost sharing arrangement, that item of stock-based compensation will be treated as being exercised immediately before the expiration or termination of the qualified cost sharing arrangement, provided that the stock-based compensation is then exercisable and the fair market value of the underlying stock then exceeds the price at which the stock-based compensation is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(2)(iii)(A)) to the controlled participant upon exercise of the stock-based compensation must be taken into account as an operating expense as of the date of the expiration or termination of the qualified cost sharing arrangement.

(B) *Election with respect to options on publicly traded stock*—(1) *In general.* With respect to stock-based compensation in the form of options on publicly traded stock, the controlled participants in a qualified cost sharing arrangement may elect to take into account all operating expenses attributable to those stock options in the same amount, and as of the same time, as the fair value of the stock options reflected as a charge against income in audited financial statements or disclosed in footnotes to such financial statements, provided that such statements are prepared in accordance with United States generally accepted accounting principles by or on behalf of the company issuing the publicly traded stock.

(*2*) *Publicly traded stock.* As used in this paragraph (d)(2)(iii)(B), the term *publicly traded stock* means stock that is regularly traded on an established United States securities market and is issued by a company whose financial statements are prepared in accordance with United States generally accepted accounting principles for the taxable year.

(*3*) *Generally accepted accounting principles.* For purposes of this paragraph (d)(2)(iii)(B), a financial statement prepared in accordance with a comprehensive body of generally accepted accounting principles other than United States generally accepted accounting principles is considered to be prepared in accordance with United States generally accepted accounting principles provided that either—

(*i*) The fair value of the stock options under consideration is reflected in the reconciliation between such other accounting principles and United States generally accepted accounting principles required to be incorporated into the financial statement by the securities laws governing companies whose stock is regularly traded on United States securities markets; or

(*ii*) In the absence of a reconciliation between such other accounting principles and United States generally accepted accounting principles that reflects the fair value of the stock options under consideration, such other accounting principles require that the fair value of the stock options under consideration be reflected as a charge against income in audited financial statements or disclosed in footnotes to such statements.

(*4*) *Time and manner of making the election.* The election described in this paragraph (d)(2)(iii)(B) is made by an explicit reference to the election in the written cost sharing agreement required by paragraph (b)(4) of this section or in a written amendment to the cost sharing agreement entered into with the consent

of the Commissioner pursuant to paragraph (d)(2)(iii)(C) of this section. In the case of a qualified cost sharing arrangement in existence on August 26, 2003, the election must be made by written amendment to the cost sharing agreement not later than the latest due date (with regard to extensions) of a Federal income tax return of any controlled participant for the first taxable year beginning after August 26, 2003, and the consent of the Commissioner is not required.

(C) *Consistency.* Generally, all controlled participants in a qualified cost sharing arrangement taking options on publicly traded stock into account under paragraph (d)(2)(iii)(A) or (B) of this section must use that same method of measurement and timing for all options on publicly traded stock with respect to that qualified cost sharing arrangement. Controlled participants may change their method only with the consent of the Commissioner and only with respect to stock options granted during taxable years subsequent to the taxable year in which the Commissioner's consent is obtained. All controlled participants in the qualified cost sharing arrangement must join in requests for the Commissioner's consent under this paragraph. Thus, for example, if the controlled participants make the election described in paragraph (d)(2)(iii)(B) of this section upon the formation of the qualified cost sharing arrangement, the election may be revoked only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained. Similarly, if controlled participants already have granted stock options that have been or will be taken into account under the general rule of paragraph (d)(2)(iii)(A) of this section, then except in cases specified in the last sentence of paragraph (d)(2)(iii)(B)(*2*) of this section, the controlled participants may make the election described in paragraph (d)(2)(iii)(B) of this section only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained.

* * * * *

(j) * * *

(2) * * *

(i) * * *

(F) The amount taken into account as operating expenses attributable to stock-based compensation, including the method of measurement and timing used with respect to that amount as well as the data, as of date of grant, used to identify stock-based compensation related to the development of covered intangibles.

* * * * *

(k) *Effective date.* This section applies for taxable years beginning on or after January 1, 1996. However, paragraphs (a)(3), (d)(2) and (j)(2)(i)(F) of this section apply for stock-based compensation granted in taxable years beginning on or after August 26, 2003.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 9.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

■ **Par. 10.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.482–7	1545–1794
* * * * *	

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: August 11, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–21355 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD11–03–004]

RIN 1625–AA09

Drawbridge Operation Regulation; Islais Creek, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eleventh Coast Guard District is temporarily changing the regulation governing the Third Street Drawbridge, mile 0.4 Islais Creek, San Francisco, CA. The drawbridge need not open for vessel traffic and may remain in the closed-to-navigation position to allow seismic retrofit and rehabilitation of the bridge.

DATES: This temporary rule is effective from 12:01 a.m., September 3, 2003 until 12:01 a.m., September 2, 2004.

ADDRESSES: Documents referred to in this temporary rule are available for inspection and copying at Commander (oan), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM because drawspan openings at this bridge are infrequent, the proposal has been thoroughly coordinated with the waterway users and it would be impracticable, unnecessary and contrary to the public interest to delay the proposed project start date.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the event has been thoroughly coordinated with waterway users, no objections were received and there is no justification to deny the request or delay the proposed project.

Background and Purpose

The City of San Francisco requested a temporary change to the operation of the Third Street Bridge, mile 0.4 Islais Creek, in San Francisco, California. The bridge provides 4.4 feet minimum vertical clearance above mean high water in the closed-to-navigation position. Navigation on the waterway consists primarily of recreational watercraft. Presently, the draw is required to open on signal if at least one hour advance notice is given. The bridge was last opened for recreational waterway traffic on July 1, 2001. The City requested the drawbridge be allowed to remain closed to navigation from 12:01 a.m., September 3, 2003 until 12:01 a.m., September 2, 2004.

During this time the City would perform seismic upgrades and rehabilitation work on the bridge. This temporary drawbridge operation amendment has been coordinated with the waterway users. No objections to the proposed temporary rule were raised.

Regulatory Evaluation

This 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). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because drawspan openings at this bridge are infrequent and waterway traffic is not likely to be delayed.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as none were identified that will be affected by the temporary rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No small entities were identified that will be affected by the temporary rule.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded no factors in this case would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.163 [Suspended]

■ 2. From 12:01 a.m., September 3, 2003, until 12:01 a.m., September 2, 2004, § 117.163 is temporarily suspended.

■ 3. From 12:01 a.m., September 3, 2003, until 12:01 a.m., September 2, 2004, § 117.T164 is temporarily added to read as follows:

§ 117.T164 Islais Creek.

The Third Street Drawbridge, Islais Creek mile (0.4), at San Francisco, California need not open for vessels from 12:01 a.m., September 3, 2003 until 12:01 a.m., September 2, 2004.

Dated: August 15, 2003.

Kevin J. Eldridge,

Rear Admiral, Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 03–21764 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA267–0402a; FRL–7526–6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from general spray coating operations, surfactant manufacturing, and storage tanks at petroleum facilities. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 27, 2003, without further notice, unless EPA receives adverse comments by September 25, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and,

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted to EPA by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	481	Spray Coating Operations	01/11/02	05/21/02
SCAQMD	1141.2	Surfactant Manufacturing	01/11/02	05/21/02
SCAQMD	1178	Further Control of VOC Emissions from Storage Tanks at Petroleum Facilities	12/21/01	05/21/02

On August 6, 2002, EPA found these rule submittals met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review can begin.

B. Are There Other Versions of These Rules?

We approved versions of SCAQMD rules 481 and 1141.2 into the SIP on February 12, 2002 (*see* 67 FR 6410). Between these SIP incorporations and today, CARB has made no intervening submittals of these SCAQMD rules. SCAQMD rule 1178 has not been approved into the SIP.

C. What Is the Purpose of the Submitted Rules?

SCAQMD rule 481 is a rule specifying the conditions for using spray painting or spray coating equipment as well as exemptions from these conditions. These exemptions can be divided between volumetric cut-offs and specified coating operations that are too difficult or unwieldy to be performed within a spray booth enclosure. SCAQMD's January 11, 2002, amendments to rule 481 included these significant changes to the version within the SIP.

—New sections were added for applicability, definitions, and test methods.

—Thirteen new definitions were added.

—High volume, low pressure (HVLP) coating was added as an acceptable coating application method.

—The test method section was updated to include standardized language concerning alternative methods to determine transfer efficiency, violations under multiple test methods in the rule, and revised test methods.

—Rule 109—Recordkeeping is referenced so as to require a source to keep records supporting the use of two exemptions.

—Finally, an exemption was added for extreme high gloss topcoats used in the marine pleasure craft industry.

SCAQMD rule 1141.2 prohibits manufacturing of surface-active agents such as detergents, wetting agents and emulsifiers unless certain emission requirements and work practices are met. SCAQMD's January 11, 2002, amendments to rule 1141.2 included these significant changes to the November 17, 2000, version within the SIP.

—New sections were added for applicability, definitions, and test methods.

—Several new definitions were added.

—The test method section was updated to include methods for determining capture, control, and overall emission control equipment efficiency, an allowance for equivalent test methods with SCAQMD, CARB, and EPA approval, and a statement that a violation may exist under any one of the rule's test methods.
—Finally, rule 109—Recordkeeping is referenced as part of requiring a source to have records supporting a source size exemption.

SCAQMD rule 1178 applies additional controls to reduce VOC emissions at petroleum facilities. VOCs are emitted during the filling, storage, and emptying of large tanks at these petroleum facilities. Rule 1178 applies to facilities emitting more than 20 tons/year of VOCs that have storage tanks larger than 19,815 gallons storing organic liquids with a true vapor pressure greater than or equal to 0.1 psi. The rule establishes vapor pressure containment and control requirements for organic liquid storage tanks. Tanks and systems of tanks must have a vapor recovery system that recovers at least 95% of ROC vapors by weight or combusts excess vapors. Also, rule 1178 sets specific requirements for vapor loss control devices, external floating roofs, and internal floating roofs. Rule 1178 includes the following provisions:

—Purpose and applicability;
—Definitions of terms used within the rule;
—Emission reduction requirements;
—Identification, monitoring, and maintenance requirements;
—Test methods for determining compliance with the rule; and,
—Exemptions from the rule.

Rule 1178 augments SCAQMD Rule 463—Organic Liquid Storage. While some of rule 1178's requirements are duplicative, many requirements are additive and more stringent. For example, rule 1178 requires emission control systems for fixed roof tanks storing liquid with a TVP of 0.1 psia, domes for external floating roof tanks storing a liquid with a TVP greater than or equal to 3 psia, and increased gasketing and rim-seal requirements for external floating roof tanks storing a liquid with a TVP less than 3 psia. Also, monitoring requirements are more stringent for external floating roof and fixed roof tanks.

The TSD for the subject rule has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area (*see* 40 CFR part 81), so these rules must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks,'' EPA–450/2–78–047, USEPA, December 1978; and,
5. ''Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks,'' EPA–450/2–77–036, USEPA, December 1977.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule 481's requirements remain unchanged compared to the SIP version of the rule. The amendments to the rule strengthen and update test method and record keeping portions of the rule. The exemption for high gloss topcoats will result in an insignificant amount of particulate matter being released while remaining consistent with the VOC limits in SCAQMD rule 1106.1—Pleasure Craft Coating Operations. Rule 1141.2's emission limits and work practices remain unchanged compared to the SIP version of the rule. The test method and recordkeeping sections of the rule have been strengthened and made more specific. Finally, Rule 1178's requirements are enforceable and the rule contains adequate monitoring and maintenance provisions for monitoring compliance of regulated facilities.

The subject TSD for each rule has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

We have no recommendations for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 25, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 27, 2003. This action will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(310)(i)(B)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(310) * * *

(i) * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 1178 adopted on December 21, 2001; Rule 481 adopted on October 7, 1977 and amended on January 11, 2002; and, Rule 1141.2 adopted on July

6, 1984 and amended on January 11, 2002.

* * * * *

[FR Doc. 03–21590 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 279–0401a; FRL–7526–4]

Revisions to the California State Implementation Plan; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Sacramento Metropolitan Air Quality Management District's portion of the California State Implementation Plan. These revisions concern a local fee rule that applies to major sources of volatile organic compound and nitrogen oxide emissions within the Sacramento Metropolitan ozone nonattainment area. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990.

DATES: This rule is effective on October 27, 2003 without further notice, unless EPA receives adverse comments by September 25, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted State Implementation Plan revisions and EPA's technical support document at our Region IX office during normal business hours. You may also see copies of the submitted revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

The Sacramento Metropolitan Air Quality Management District (SMAQMD) adopted Rule 307, Clean Air Act Fees, on September 26, 2002. This rule was submitted by the California Air Resources Board (CARB) on December 12, 2002, for incorporation into the California State Implementation Plan (SIP). On February 7, 2003, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. There are no previous versions of Rule 307 in the SIP, and no previous versions of this rule have been submitted.

B. What Is the Purpose of the Submitted Rule?

SMAQMD Rule 307 requires major stationary sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) in the Sacramento Metropolitan ozone nonattainment area to pay a fee to the SMAQMD if the area fails to attain the one-hour national ambient air quality standard for ozone by its federally established attainment year. The fee must be paid beginning in the second year after the attainment year, and in each calendar year thereafter, until the area is redesignated to attainment of the 1-hour ozone standard. EPA's technical support document (TSD) has more information about this rule.

C. Why Was This Rule Submitted?

Under sections 182(d)(3), (e), and 185 of the Clean Air Act as amended in 1990 (CAA or the Act), States are required to adopt an excess emissions fee regulation for ozone nonattainment areas classified as severe or extreme. In California, the Sacramento Metropolitan nonattainment area is classified as severe. The fee regulation specified by the Act requires major stationary sources of VOCs in the nonattainment area to pay a fee to the State if the area fails to attain the standard by the attainment date set forth in the Act. Emissions of VOCs play a role in producing ground-level ozone and smog, which harm human health and the environment. Section 182(f) of the Act requires States to apply the same requirements to major stationary sources of NO_X as are applied to major stationary sources of VOCs. SMAQMD Rule 307 applies to major sources of both NO_X and VOCs.

II. What Action Is EPA Taking?

As authorized in section 110(k)(3) of the Act, EPA is fully approving SMAQMD Rule 307 because we believe it fulfills all relevant requirements. We believe the submitted rule is consistent with the requirements of the Act and relevant policy and guidance regarding SIP revisions. The TSD has more information on our evaluation.

We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by September 25, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 27, 2003. This will incorporate SMAQMD Rule 307 into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose

any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(308)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(308) * * *

(i) * * *

(C) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 307, adopted on September 26, 2002.

* * * * *

[FR Doc. 03–21588 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 245–0403a; FRL–7535–2]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from the transfer of organic compounds to mobile transport tanks. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 27, 2003 without further notice, unless EPA receives adverse comments by September 25, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, *steckel.andrew@epa.gov.*

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, U.S. Environmental Protection Agency, Region IX, (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was amended by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
SDCAPCD	61.2	Transfer of Organic Compounds into Mobile Transport Tanks.	7/26/00	12/11/00

On February 8, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 61.2 into the SIP on June 30, 1993 (58 FR 34906).

C. What Is the Purpose of the Submitted Rule Revisions?

The purpose is to make the following revisions:

- 61.2(b)(2): Decreased is the threshold of 5,000,000 gallons per year or less to 500,000 gallons per year or less for bulk plants existing before March 1, 1984 for exemption from the requirement to use a vapor recovery unit or vapor disposal unit. The exemption only applies to vapors emitted during transfer of organic liquids, not subject to this rule, into a mobile transport tank that previously transported volatile organic compounds (VOCs).
- 61.2(b)(6): Added is a threshold of 21,000 gallons per year or less for the exemption of U.S. military ships from the requirements for no fugitive liquid leaks, for vapor concentration not exceeding 500 parts per million by volume (ppmv) measured as propane or 1,375 ppmv measured as methane, and for the liquid to enter less than six inches from the bottom of a mobile transport truck.
- 61.2(d): Revised and specified in detail are test procedures on mobile transport tanks and vapor emission control systems. Added are tests for vapor fugitive emissions. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SDCAPCD regulates a severe ozone nonattainment area and must fulfill RACT. See 40 CFR part 81. Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* EPA (May 25, 1988) (the Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region 9 (August 21, 2001) (the Little Bluebook).

B. Does the Rule Meet the Evaluation Criteria?

The rule is improved, enforceable, on balance more stringent than the SIP Rule and does not relax the SIP. The requirements section of the rule fulfills RACT. The rule should be given full approval.

C. EPA Recommendation to Further Improve the Rule

The TSD describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 25, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 27, 2003. This will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: July 8, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(285)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(285) * * *

(i) * * *

(E) San Diego County Air Pollution Control District.

(*1*) Rule 61.2, amended on July 26, 2000.

* * * * *

[FR Doc. 03–21586 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 284–0399a; FRL–7536–2]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The BAAQMD revisions concern the emission of volatile organic compounds (VOCs) from the use of solvents and surface coatings. The SJVUAPCD revision concerns the emission of VOCs from a glycol dehydration system used on natural gas streams. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 27, 2003 without further notice, unless EPA receives adverse comments by September 25, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect a copy of the submitted rules and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rules and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, U.S. Environmental Protection Agency, Region IX, (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted or amended	Submitted
BAAQMD	8–4	General Solvent and Surface Coating Operations	Amended 10/16/02	04/01/03
BAAQMD	8–16	Solvent Cleaning Operations	Amended 10/16/02	04/01/03
SJVUAPCD	4408	Glycol Dehydration Systems	Adopted 12/19/02	04/01/03

On May 13, 2003, these submittals were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We gave a full approval to a version of BAAQMD Rule 8–4 on December 23, 1997 (62 FR 66998). We gave a limited approval/limited disapproval to a version of BAAQMD Rule 8–16 on April 16, 2003 (68 FR 18546). There is no version of SJVUAPCD Rule 4408 in the SIP.

C. What Are the Purposes of the Submitted Rules or Rule Revisions?

The purpose of the revisions to BAAQMD Rule 8–4 are to make the following changes:

- 8–4–110: Deleted is the exemption for water-base coatings and high-solids coatings that do not come in contact with a flame.
- 8–4–112: Deleted is the exemption for organic diluents that react in any operation such that no more than 20% volatilizes.
- 8–4–115: Added is an exemption for film cleaners using 1,1,1-trichloroethane exclusively.
- 8–4–116: Added are exemptions for specific operations that include (i) Surface preparation of electrical and electronic components, precision optics, or numismatic dies; (ii) stripping of cured inks, coatings, and adhesives or cleaning of resin, coating, ink, and adhesive mixing, molding, and application equipment; and (iii) surface preparation related to R&D operations, performance testing, and testing for quality control or quality assurance.
- 8–4–214: Added to the list of VOC not considered part of the coating are non-precursors methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, acetone, methyl acetate, parachlorobenzotrifluoride, and cyclic, completely-methylated siloxanes. Deleted from the list of VOC not considered part of the coating are various chlorinated and fluorinated hydrocarbons.
- 8–4–301: Deleted is the requirement that operations involving flame or heat to cure in the presence of oxygen do not emit more than 2.5 tons per year of VOC. This requirement would become 5 tons per year of VOC under section 8–4–302.1.
- 8–4–302.2: Added is the alternative requirement to sections 8–4–302.1 or 8–4–302.3 that emissions from surface coating or solvent use be controlled with an approved emission control system to an abatement efficiency of 85%.
- 8–4–302.3: Added is the alternative requirement to sections 8–4–302.1 or 8–4–302.2 that surface coatings contain no more than 420 grams per liter of VOC.
- 8–4–312: Added is the requirement with certain exceptions for cleanup of spray equipment that the solvent contain no more than 50 grams per liter of VOC.
- 8–4–313: Added is the requirement for surface preparation that the solvent contain no more than 50 grams per liter of VOC.

The purpose of the revisions to BAAQMD Rule 8–16 are to make the following changes and to correct deficiencies cited in the limited approval/limited disapproval action of April 16, 2003 (68 FR 18546):

- 8–16–121: Deleted is the limited exemption for one single cold cleaner per facility with less than 20 gallons per year solvent loss.
- 8–16–122: Deleted is the limited exemption for permitted cold cleaners.
- 8–16–123: Added are exemptions from section 8–16–303.5 for cleaning aerospace components; electrical and electronic components; precision optics; medical devices; resin, coating, ink, and adhesive application equipment; research and development equipment; performance testing equipment; and quality control equipment.
- 8–16–124: Added is an exemption from recordkeeping requirements for aqueous cleaning operations using solvent with less than 50 grams/liter VOC.
- 8–16–303.5: Added is a requirement for all repair and maintenance cleaning operations to use low VOC solvents with less than 50 grams/liter VOC, such as aqueous-based solvents or methyl siloxane-based solvents.
- 8–16–503: Added are recordkeeping requirements for approved emission control devices.
- 8–16–501: Revised to monthly from annually is the solvent use recordkeeping frequency (to correct a deficiency cited by EPA).
- 8–16–111, 8–16–602.2, and 8–16–602.3: Corrected are certain erroneous section references (to correct deficiencies cited by EPA).

The purpose of the new SJVUAPCD Rule 4408 is to reduce emissions of volatile organic compounds (VOCs) from a glycol dehydration system used on natural gas streams.

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). SIP rules must require Reasonably Available Control Technology (RACT) for major sources in ozone nonattainment areas (see section 182(a)(2)(A)).

The BAAQMD regulates a CAA subpart 1 ozone nonattainment area and the rules must fulfill the requirements of RACT. The SJVUAPCD regulates a severe ozone nonattainment area. See 40 CFR 81.305. The District identified the control of VOC emissions from natural gas dehydration systems in Rule 4408 as a Reasonably Available Control Measure (RACM) for implementation in 2003. See *2002 and 2005 Rate of Progress Plan,* SJVUAPCD. Therefore, Rule 4408 must fulfill RACM/RACT requirements.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* EPA (May 25, 1988) (the Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region IX (August 21, 2001) (the Little Bluebook).
- *Determination of RACT and BARCT for Organic Solvent Cleaning and Degreasing Operations,* California Air Resources Board (July 7, 1991).
- *Control of VOE from Solvent Metal Cleaning,* EPA–450–2–77–022 (November 1977).

B. Do the Rules Meet the Evaluation Criteria?

We believe all of the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACT. All of the deficiencies identified in our previous limited approval/limited disapproval action on BAAQMD Rule 8–16 have been adequately addressed as follows:

- 8–16–501: The solvent use recordkeeping frequency is increased to monthly from annually.
- 8–16–111, 8–16–602.2, and 8–16–602.3: Corrected are certain erroneous section references.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 25, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 27, 2003. This will incorporate these rules into the federally-enforceable SIP. It will also permanently terminate all sanctions and FIP implications associated with our final action on BAAQMD Rule 8–16 on April 16, 2003 (68 FR 18546).

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone, smog, and particulate matter which harm human health and the environment. EPA has established National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations in order to achieve and maintain the NAAQS. Table 2 lists some of the national milestones leading to the submittal of local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 27, 2003.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(315) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(315) New and amended regulations for the following APCDs were submitted on April 1, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Rule 8–4, amended on October 16, 2002 and Rule 8–16, adopted on March 7, 1979 and amended on October 16, 2002.

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4408, adopted on December 19, 2002.

* * * * *

[FR Doc. 03–21584 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[NC–112L–2003–1–FRL–7549–6]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), North Carolina Department of Environment and Natural Resources (NC DENR) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and the National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills. The Environmental Protection Agency (EPA) had reviewed this request and had found that it satisfies all of the requirements necessary to qualify for approval. Thus, the EPA is hereby granting NC DENR the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the state's alternative requirements.

DATES: This direct final rule is effective October 27, 2003 without further notice, unless EPA receives adverse comment by September 25, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written Comments must be submitted to Lee Page, Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier by following the detailed instructions described in (part (I)(B)(1)(i) through (iii)) of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Lee Page, Air Toxics Assessment and

Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9131. Mr. Page can also be reached via electronic mail at *page.lee@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. The Regional Office has established an official public rulemaking file for this action under NC–112L–2003–1 that is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal Holidays.

2. Copies of the State submittal and supporting documents are also available for public inspection during normal business hours, by appointment at the North Carolina Department of Environmental and Natural Resources, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699–1641.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking NC–112L–2003–1'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to *page.lee@epa.gov*. Please include the text ''Public comment on proposed rulemaking NC–112L–2003–1'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulation.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulation.gov. Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking NC–112L–2003–1'' in the subject line on the first page of your comment.

3. By Hand Delivery or Courier. Deliver your comments to: Lee Page; Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division 12th floor; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal Holidays.

C. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific

information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

On April 15, 1998, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (*see* 63 FR 18504) which was codified in 40 CFR part 63, subpart S, ''National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry'' (Pulp and Paper MACT I). Subsequently, on January 12, 2001, EPA promulgated the National Emission Standard for Hazardous Air Pollutants from the Pulp and Paper Industry (*see* 66 FR 3180) which has been codified in 40 CFR part 63, subpart MM, ''National Emission Standards for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills'' (Pulp and Paper MACT II). The International Paper Riegelwood Mill in Riegelwood, North Carolina, is one of five pulp and paper mills operating in the State and subject to subpart S and subpart MM.

On March 4, 2003, North Carolina Department of Environment and Natural Resources (NC DENR) requested delegation of subpart S and subpart MM under § 63.94 for the International Paper Riegelwood Mill. EPA received the request on March 11, 2003. NC DENR requested to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable requirements of subpart S and subpart MM under the process outlined in 40 CFR 63.94. As part of its request to implement and enforce alternative terms and conditions in place of the otherwise applicable Federal section 112 standards, NC DENR also requested approval of its demonstration that NC DENR has adequate authorities and resources to implement and enforce all Clean Air Act (CAA) section 112 programs and rules. The purpose of this demonstration is to streamline the approval process for future CAA section 112(l) applications.

III. Analysis of State's Submittal

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 65 FR 55810, dated September 14, 2000). Under these regulations, a state or local air pollution control agency has the option to request EPA's approval to substitute alternative requirements and authorities that take the form of permit terms and conditions instead of source category regulations. This option is referred to as the equivalency by permit (EBP) option. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (*see* 40 CFR 63.94(a) and (b)) is the ''up-front approval'' of the state EBP program. The second step (*see* 40 CFR 63.94(c) and (d)) is EPA review and approval of the state alternative section 112 requirements in the form of pre-draft permit terms and conditions. The third step (*see* 40 CFR 63.94(e)) is incorporation of the approved pre-draft permit terms and conditions into a specific title V permit and the title V permit issuance process itself. The final approval of the state alternative requirements that substitute for the Federal standard does not occur for purposes of the Act, section 112(l)(5), until the completion of step three.

The purpose of step one, the ''up-front approval'' of the EBP program, is three fold: (1) It ensures that NC DENR meets the § 63.91(b) criteria for up-front approval common to all approval options; (2) it provides a legal foundation for NC DENR to replace the otherwise applicable Federal section 112 requirements with alternative, federally enforceable requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and Federal emission standards for which NC DENR will be accepting delegation under the EBP option.

Under §§ 63.94(b) and 63.91, NC's request for approval is required to include the identification of the sources and the source categories for which the state is seeking authority to implement and enforce alternative requirements, as well as a one time demonstration that the State has an approved title V operating permit program that permits the affected sources.

IV. Final Action

After reviewing the request for approval of NC DENR's EBP program for Subpart S and Subpart MM, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.94. Accordingly, EPA approves NC DENR's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Riegelwood Mill for subpart S and subpart MM. This action is contingent upon NC DENR including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the sources and the ''applicable requirement'' for title V purposes remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the

proposal to approve the section 112(l) provisions should adverse comments be filed. This rule will be effective October 27, 2003 without further notice unless the Agency receives adverse comments by September 25, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 27, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Also, this action is not subject to Executive Order 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Executive Order 13175

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule

C. Executive Order 13132

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state program implementing a Federal program, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.94 do not create any new requirements but simply allows the state to implement and enforce permit terms in place of federal requirements that the EPA is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action allows North Carolina to implement equivalent alternative requirements to replace pre-existing requirements under Federal law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 63

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

Dated: August 13, 2003

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Title 40, chapter I, part 63 of the *Code of Federal Regulations* is amended as follows:

PART 63—[AMENDED]

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

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by adding paragraph (a)(33) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(33) *North Carolina.*

(i) [Reserved]

(ii) North Carolina Department of Environment and Natural Resources (NC DENR) may implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Riegelwood Mill, Riegelwood, North Carolina, for subpart S of this part—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and subpart MM of this part—National Emissions Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills. This action is contingent upon NC DENR including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the source remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

* * * * *

[FR Doc. 03–21779 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 02–277, and MM Docket Nos. 01–235, 01–317, and 00–244; DA 03–2671]

Broadcast Ownership Rules, Cross-Ownership of Broadcast Stations and Newspapers, Multiple Ownership of Radio Broadcast Stations in Local Markets, and Definition of Radio Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This decision grants a motion requesting permission to exceed the Commission's page limits for petitions for reconsideration, as well as oppositions and replies thereto, in this proceeding. This decision provides that such petitions and oppositions may be up to 50 pages each, and replies may be up to 20 pages.

FOR FURTHER INFORMATION CONTACT: Debra Sabourin, 202–418–2330.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in MB Docket No. 02–277, and MM Docket Nos. 01–235, 01–317, and 00–244, DA 03–2671, adopted August 15, 2003, and released August 15, 2003. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov*.

Synopsis of the Order

1. On July 2, 2003, the Commission released a *Report and Order and Notice of Proposed Rulemaking*, completing its third biennial review of its broadcast ownership rules. (*See* Report and Order at 68 FR 46286, August 5, 2003, and Notice of Proposed Rulemaking at 68 FR 46359, August 5, 2003.) On August 11, 2003, the Diversity and Competition Supporters (''Petitioners'') filed a motion requesting permission to exceed the page limits for petitions for reconsideration, as well as oppositions and replies thereto. See Motion to Extend Page Limits on Reconsideration (''Motion''), filed by Diversity and Competition Supporters, Aug. 11, 2003. The Commission's rules state that petitions for reconsideration and oppositions to petitions for reconsideration of Commission actions shall not exceed 25 double-spaced typewritten pages, and replies to oppositions shall not exceed 10 double-spaced typewritten pages. 47 CFR 1.429 (d), (f) and (g). Petitioners ask that we increase the limits for petitions and oppositions to 50 pages for each and the limits for replies to 20 pages. They argue that the broadcast ownership proceeding contains several interrelated proceedings, and they cannot discuss their points ''coherently and thoroughly'' within the page limits articulated in the rules. They add that the Commission has previously relaxed the page limitations when parties seek reconsideration of extraordinarily complex decisions.

2. We agree with Petitioners that the issues presented in this proceeding are both complex and important. The Report and Order was the culmination of the most comprehensive review of broadcast ownership regulation in the agency's history. We therefore find that the public interest would be best served by granting the Petitioners' Motion in order to assure a complete record and thorough treatment of all the issues on reconsideration. In this proceeding, petitions for reconsideration and oppositions to petitions for reconsideration will be limited to 50 pages each, and replies to opposition to petitions for reconsideration will be limited to 20 pages.

3. Accordingly, Petitioners' Motion to Extend Page Limits on Reconsideration in the above-captioned proceeding is granted.

Federal Communications Commission.

Robert Ratcliffe,

Deputy Chief, Media Bureau.

[FR Doc. 03–21651 Filed 8–25–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–3195–02; I.D. 081602B]

RIN 0648–AQ04

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to identify gear modifications that sufficiently reduce the risk of entanglement to western North Atlantic right whales (right whales) under the Dynamic Area Management (DAM) program and, as such, allows NMFS to utilize the option of allowing gear with certain modifications within a DAM zone. Specifically, NMFS identifies anchored gillnet and lobster trap/pot gear modifications that could be allowed within a DAM zone. This final rule includes a provision to correct and clarify the regulations implementing the Seasonal Area Management (SAM) program with respect to lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area.

DATES: This final rule is effective September 25, 2003.

ADDRESSES: Copies of the final Environmental Assessment/Regulatory Impact Review for this action can be obtained from the ALWTRP website (see **SUPPLEMENTARY INFORMATION**). Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930 or Juan Levesque, NMFS, Southeast Region, 9721 Executive Center Drive, St.Petersburg, FL 33702–2432. For additional addresses and web sites for document availability see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9328 ext. 6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401 ext. 171.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Richard Merrick, NMFS, 166 Water Street, Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.wh.whoi.edu/psb/sar2002.pdf*. In addition, copies of the documents entitled ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options'' and ''Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation'' are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930 or can be downloaded from the Internet at *http://www.nero.nmfs.gov/whaletrp/*.

Background

This final rule identifies acceptable gear that would sufficiently reduce the risk of entanglement to right whales and could be allowed under the DAM program (67 FR 1133, January 9, 2002; 67 FR 65722, October 28, 2002). This final rule completes the regulatory actions planned and described in the recent amendments to the ALWTRP, which included the SAM program (67 FR 1142, January 9, 2002; 67 FR 65722, October 28, 2002), expanded gear modifications (67 FR 1300, January 10, 2002; 67 FR 15493, April 2, 2002), as well as the DAM program. Details concerning the justification for and development of the rule were provided in the preamble to the proposed rule (68 FR 10195; March 4, 2003) and, therefore, are not repeated here.

Lobster Trap and Anchored Gillnet Gear Modifications for Use in DAM Zones

The final gear modifications to the ALWTRP DAM program are based on the SAM anchored gillnet and lobster trap/pot gear, with allowance for a second buoy line and floating line on the bottom third of each buoy line, which are described below. These requirements are in addition to the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Great South Channel Restricted Lobster Area (July 1 through March 31), Stellwagen Bank/Jeffreys Ledge Restricted Area (lobster trap and gillnet area descriptions), Cape Cod Bay Restricted Area (lobster trap and gillnet area descriptions; May 16 through December 31), Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), Mid-Atlantic Coastal Waters (gillnet area description) and Other Northeast Gillnet Waters. If the requirements and exceptions for gear modifications in a DAM zone as provided in this final rule differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Time periods for critical habitat are incorporated to clarify when these are subject to the DAM program, which, as described (66 FR 50160, October 2, 2001; 67 FR 1142, January 9, 2002) and implemented by NMFS, are time periods when the requirements for critical habitat areas are no more conservative than the surrounding waters. Additionally, DAM gear modification requirements under the DAM program are applicable to ALWTRP management areas north of 40° N. latitude where a DAM zone could be triggered.

Lobster Trap Gear

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. Buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys; and

4. Fishermen are allowed to use two buoy lines per trawl string.

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Great South Channel Restricted Lobster Area (July 1 through March 31) and Offshore Lobster Waters

Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. Buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys; and

4. Fishermen are allowed to use two buoy lines per trawl string.

Anchored Gillnet Gear

In addition to the universal gear and gear marking requirements, fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters, Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. Buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys;

4. Each net panel must have a total of 5 weak links each with a maximum breaking strength of 1,100–lb (498.8–kg). Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include 3 floatline weak links. The placement of the weak links on the floatline must be as follows: one at the center of the net panel and one as close as possible to each of the bridle ends of the net panel. The remaining 2 weak links must be placed in the center of each of the up and down lines at the panel ends;

5. Fishermen are allowed to use two buoy lines per net string; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22–lb (10.0–kg) Danforth style anchor at each end of the net string.

Clarification of Weak Link Requirement for Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that Overlap With SAM Areas

Details concerning the justification for and clarification of the weak link requirement for Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that Overlap with SAM Areas were provided in the preamble to the proposed rule (68 FR 10195; March 4, 2003) and, therefore, are not repeated here. NMFS includes in this final rule a provision that lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlaps with a SAM area must have a weak link with a maximum breaking strength of 600–lb (272.4–kg) at all buoys.

Comments and Responses

Approximately 12 letters of comment were received during the public comment period on the proposed rule, which ended on April 3, 2003. A complete summary of the comments and NMFS' responses is provided here.

General Comments

Comment 1: One commenter expressed support for the preferred alternative because they believe it will provide the guidance necessary for fishermen to modify their gear in order to minimize impacts on marine mammals.

Response: NMFS appreciates the support and reiterates that identifying gear modifications in the final rule is necessary to complete the DAM program as an element of the Reasonable and Prudent Alternative (RPA) required under the Endangered Species Act (ESA) to protect right whales and avoid jeopardy. In addition, through the implementation of the gear modifications identified for potential use in a DAM zone, NMFS acknowledges the preference for management measures that allow fishing to continue with modified gear inside designated DAM zones while also sufficiently reducing the risk of serious injury and mortality to right whales from entanglements.

Comment 2: One commenter disagreed with the conclusion made in the proposed rule for the SAM program that the gear modifications prevent serious injury or mortality to right whales.

Response: NMFS recognizes the practical difficulties associated with identifying gear modifications designed to sufficiently reduce the risk of serious injury or mortality to right whales. As indicated in the Final Environmental Assessments for the SAM interim final rule and this final rule, it is not feasible, in a typical scientific fashion, to conduct and evaluate experiments on right whale interactions with modified gear configurations. For obvious reasons, NMFS cannot conduct field tests or even laboratory experiments on right whales to collect data. However, NMFS is able to scrutinize past entanglements, analyze these events, and develop ways to modify gear in order to sufficiently reduce risk of serious injury and mortality from future entanglements.

Comment 3: One commenter disagrees that interactions between large marine mammals and fixed gear types, such as gillnets, have a major impact. Another commenter disagreed with the assessment that the arc created by floating line between traps in a trawl posed a threat to whales.

Response: While it is often difficult to identify the specific gear type involved in each entanglement, NMFS does have evidence that fixed gear types, such as gillnets, have an impact on large whales. In 2001, there were two confirmed and several unconfirmed entanglements of large whales where gillnet gear was recovered. For example, in February 2001, gillnet gear was recovered from an entangled humpback whale off the coast of North Carolina. In April 2001, gillnet gear was recovered from an entangled humpback whale found dead near Virginia Beach, VA.

Floating line between traps has also been implicated in large whale entanglements; NMFS has evidence that establishes the risk associated with this gear configuration. Underwater video footage of typical lobster gear with floating groundline between traps revealed that the floating groundline forms large loops in the water column between traps. Similar underwater video footage of neutrally buoyant line between traps indicated that it did not have the same vertical profile as floating line; rather, it was located on or near the bottom, thus reducing the risk of entangling a large whale. Additionally, in the SAM proposed rule (66 FR 59394, November 28, 2001), NMFS discussed an analysis of gear profiles in the Offshore Lobster Waters area, which estimated that an 85% reduction in floating line would result if floating line were replaced by sinking or neutrally buoyant line in SAM areas. Therefore, NMFS expects that by eliminating most floating line and requiring sinking or neutrally buoyant line in a DAM zone,

a large percentage of the line within the water column would be eliminated.

Comment 4: One commenter suggested that NMFS add new mandatory provisions to all its permits or impose new mandatory regulations on fishing vessel personnel regarding marine trash and debris awareness and elimination, vessel strike avoidance, and injured/dead protected species reporting.

Response: NMFS appreciates the concerns raised by the commenter; however, these activities fall outside of the scope of this final rule under the DAM program in the ALWTRP. In addition, marine trash and debris awareness and elimination falls outside the scope for regulations promulgated under take reduction plans. Specifically, section 118 of the Marine Mammal Protection Act (MMPA), which authorizes NMFS to establish take reduction teams and develop plans for the purpose of reducing serious injury and mortality to marine mammals, is designed to address interactions between commercial fishing gear and marine mammals. Similarly, although ship strikes and the need to mitigate the risks posed by vessel traffic are important to large whale conservation and recovery, the take reduction team is established to deal solely with the interactions between marine mammals and commercial fishing. NMFS is developing a separate strategy to address ship strikes and will work with interested agencies and parties to implement that strategy. Finally, MMPA section 118 and NMFS implementing regulations have separate requirements for reporting incidental mortality and injury of marine mammals in the course of fishing operations (16 U.S.C. 1387(e) and 50 CFR 229.6) and similar requirements may be imposed under the ESA as necessary for the conservation of other protected species.

Comment 5: One commenter requested that NMFS immediately establish regulations to require all fish and shellfish traps and all gillnets in U.S. waters north of central Florida to use sinking or neutrally buoyant line for ground and buoy lines and a single buoy to mark gear.

Response: The DAM program, under which this final rule is promulgated, only applies to anchored gillnet and lobster trap gear in waters north of 40° N. latitude. Therefore, the gear modifications identified in this final rule would only be required in these waters and for these gear types in the event that a gear modification option is selected for implementation inside a DAM zone. However, NMFS and the ALWTRT have been discussing the need for bringing other fisheries under the auspices of the ALWTRP. Representatives from new trap/pot fisheries, such as hagfish, red crab, and black sea bass, have been added to the ALWTRT for the purpose of discussing, developing, and applying risk reduction measures to these fisheries. NMFS and the ALWTRT will continue to investigate the need to add representatives from other fisheries to the Team as warranted.

Comment 6: Several commenters encouraged NMFS to replace the DAM and SAM program with universal gear modifications to protect all large whales from entanglement.

Response: NMFS and the ALWTRT have identified ''universal'' or expanded gear modifications as a long term objective with the potential for replacing DAM and SAM. However, as indicated in the Biological Opinion that identified DAM, SAM, and expanded gear modifications, these three programs act as multiple management components for one RPA to avoid jeopardy to right whales. Therefore, in order to remove DAM and SAM and still avoid jeopardy, NMFS must replace these programs with management measures of at least equal or more conservation benefit to right whales. NMFS hopes that the implementation of DAM gear modification options through this final rule will help alleviate some of the hardship experienced by the fishing community that might otherwise be caused by requiring or requesting the complete removal of lobster trap/pot and anchored gillnet gear from a DAM zone while still protecting right whales.

DAM Gear Modification Comments

Comment 7: One commenter proposed that NMFS explore the feasibility of year-round breakaway gear, with in-season modifications, such as the anchoring requirement, when concentrations of large mammals are observed.

Response: NMFS and the ALWTRT have been developing and discussing alternative management measures, including year-round, ''universal'' or expanded gear modifications. However, under the current RPA, DAM, SAM, and additional gear modifications have been identified as multiple management components necessary to avoid jeopardy. In the meantime, NMFS will continue to work with the ALWTRT, fishermen, scientists and fishing gear manufacturers to develop and test gear modifications. NMFS will continue to discuss the need for additional gear modifications requirements under the ALWTRP with the ALWTRT.

Comment 8: Several commenters oppose the proposal to require the use of a single endline, also referred to as a buoy line. One commenter suggests allowing the use of two endlines on gillnets with Danforth-style anchors at each end to ensure the proper operation of weak links on the gear. In addition, this commenter and others felt that NMFS has failed to analyze the increased potential for gear conflicts and financial loss to fixed gear fishermen by prohibiting the use of two endlines. One commenter suggested that NMFS consider allowing fishermen to replace the second endline with a very weak buoy line for the purpose of marking the location of the gear during the 15–day DAM restricted period. Several commenters felt that this provision would lead to increased lobster gear loss because it is common for lobstermen to lose one buoy line. Finally, several commenters felt that prohibiting the use of two buoy lines may encourage fishermen to split their trawls into smaller units (i.e., to avoid increased gear conflict and gear loss), which could result in an increase in vertical lines in the water column, thereby defeating the purpose of requiring a single buoy line (i.e., to reduce the number of lines in the water). Additionally, commenters noted that two buoy lines should be allowed to minimize the risk to human safety that would result if fishermen could not haul from either end of a net string or trap trawl in adverse weather conditions.

Response: Since publication of the proposed rule, NMFS has become aware that requiring gear modifications with one buoy line in a DAM area may not necessarily result in a 50–percent reduction of vertical lines in the water column as fishermen may fish shorter trawls, which may result in the same or a greater number of buoy lines. Allowing SAM gear modifications with a second endline and one third polypropylene on the bottom third of the buoy line reduces both the potential for interaction through a significant reduction in floating line and the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths. In addition, having two endlines reduces the probability of gear conflicts and lost gear. Thus, this final rule implements a DAM gear modifications option that allows fishermen to retain a second endline, which addresses both gear conflict and financial burden concerns expressed by the commenter.

Comment 9: One commenter suggested that NMFS reconsider the

proposed prohibition of floating line because sinking and/or neutrally buoyant line is not compatible with all bottom types and all conditions.

Response: NMFS has reconsidered the prohibition on floating line in the proposed rule with respect to endlines only. In this final rule, endlines will be required to be composed entirely of either sinking and/or neutrally buoyant line except for the bottom third of the line, which may be made of floating line. Floating groundlines will be prohibited and must, therefore, be composed entirely of sinking or neutrally buoyant line. See also response to Comment 13.

Comment 10: Several commenters suggested that NMFS consider the current management measures in the Cape Cod Bay Critical Habitat Area for guidance with respect to regulating buoy lines. These regulations allow lobstermen to fish with two buoy lines on a trawl and allows for a section of floating line on the buoy line.

Response: The final rule implements a lobster gear modification option for DAM that is similar to those currently required in Cape Cod Bay from January 1 through May 15.

Comment 11: One commenter felt that it was premature for NMFS to suggest that the SAM gear modifications (e.g., the use of 600–lb (272.4–kg) and 1,100–lb (498.8–kg) weak links) have been demonstrated to prevent serious injury or mortality to right whales.

Response: See response to Comment 2.

Comment 12: Two commenters suggested that NMFS should adopt a more regional approach to developing gear modifications, which would take into account unique bathymetric features, especially those found along the coast of Maine. In addition, one of these commenters expressed opposition to the proposal for eliminating one buoy line, the prohibition on floating line on the bottom 1/3 of the endline, and the prohibition on floating groundline.

Response: NMFS is working with the ALWTRT, including the Maine Department of Marine Resources, to understand the unique bathymetric features throughout the Gulf of Maine and fishing operations in these areas. NMFS considers numerous factors when developing regulations to reduce interactions between large whales and commercial fisheries. For example, weak link requirements under the ALWTRP vary by fishery and management area. See also responses to Comments 9 and 13.

Comment 13: One commenter expressed opposition to the proposed requirement that buoy lines be comprised of entirely sinking or neutrally buoyant line because recent research from flume-tank testing of scale models suggests that this gear requirement has little or no conservation value.

Response: Based on this recent research, NMFS has reconsidered the prohibition on floating line identified in the proposed rule with respect to endlines only. The flume-tank testing results support underwater video footage taken by NMFS and discussed in the Environmental Assessment/Regulatory Impact Review (EA/RIR), which demonstrates that allowing one-third polypropylene line on the bottom third of the buoy line does not necessarily produce a loop in the water column, due to current and tidal action on the surface system, and, therefore, would not increase risk to right whales. NMFS does believe that there is conservation value in requiring two-thirds of the buoy line to be sinking and/or neutrally buoyant line, similar to the buoy line gear modification requirement in Cape Cod Bay Critical Habitat. Thus, endlines will be required to be composed entirely of either sinking and/or neutrally buoyant line except for the bottom third of the line, which may be made of floating line.

Comment 14: One commenter expressed support for the proposed requirement that groundlines be comprised entirely of sinking or neutrally buoyant line, but suggested that NMFS allow a phase-in period for fishermen to change their gear.

Response: This final rule will be effective 30–days after date of publication in the **Federal Register**. If a DAM zone is triggered after this time and NMFS requires gear modifications in the DAM zone, fishermen will be required to change their groundlines over to sinking or neutrally buoyant line in order to continue fishing inside the DAM zone during the restricted period if their groundlines are not currently configured in this manner. NMFS understands that some fishermen are already using sinking or neutrally buoyant line in their groundline.

Comment 15: One commenter asked NMFS to consider allowing floating endlines because the free end of the rope would be at the surface and would allow the fishermen to access the line more easily than sinking or neutrally buoyant line.

Response: The final rule will allow fishermen to use floating line on the bottom third of the endline. Under the regulations implementing the ALWTRP, gillnet and lobster trap fishermen are prohibited from having any portion of the buoy line that is directly connected to the gear at the ocean bottom from floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

Rulemaking Process Comments

Comment 16: One commenter felt that the 30–day comment period was too short and should be extended for an additional 30 days.

Response: NMFS considers the 30–day comment period on the DAM gear modifications proposed rule appropriate in light of the need to complete the DAM program as it was intended when initially promulgated in 2002. Because the DAM gear modifications proposed rule is an amendment to the already established DAM program, NMFS considers a 30–day comment period sufficient.

Comment 17: One commenter felt that NMFS did not consider enough options in the proposed rule and recommends additional options, such as the gear modifications accepted in Cape Cod Bay during the high use period or the prohibitions in place in the Great South Channel.

Response: An alternative with gear modifications similar to those currently implemented in Cape Cod Bay was analyzed as an option in the proposed rule. That alternative would allow fishermen to retain a second endline, and allow each endline to be comprised entirely of sinking or neutrally buoyant line except for the bottom third, which may be floating line. Based in part on comments received, NMFS is now adopting this option and it will be implemented through this final rule.

DAM Implementation Comments

Comment 18: One commenter felt that NMFS has failed to implement DAM properly and that, in the instances when DAM zones have been declared, the request for voluntary action alone is insufficient.

Response: In its implementation of the DAM program, NMFS has acted in accordance with the DAM rule and internal protocols designed by NMFS to respond to DAM triggers.

Comment 19: One commenter felt that it is unrealistic to require fishermen to modify gear within 48 hours of implementing a DAM zone.

Response: NMFS appreciates the time and effort involved in hauling fishing gear and modifying it in an area designated for DAM. NMFS also understands that some fishermen are already using sinking or neutrally buoyant line in their groundline.

However, if a DAM action is triggered and NMFS implements gear modifications in the DAM zone, fishermen will be required to comply with the specified gear modifications or remove their gear from the area. In order to provide fishermen with enough time to respond to restrictions in a DAM zone, NMFS will issue a notice at the time the action is filed with the Office of the **Federal Register**, which is usually 3 to 5 days prior to the regulation being published in the **Federal Register**. Once the decision has been made to modify gear inside a DAM zone, NMFS will notify the commercial fisheries affected as quickly and comprehensively as possible. In addition, NMFS will issue an alert via email to all ALWTRT members and post the alert on the website at *www.nero.nmfs.gov/whaletrp/*. NMFS hopes that members of the ALWTRT who receive an alert will circulate the information to other interested parties to help ensure that the fishermen who may have to comply with the gear restrictions in a DAM zone have time to respond. Fishermen, industry representatives, environmental groups, and all others interested in receiving alerts and notices over the Internet should provide their email address to the Northeast Regional Office (see **ADDRESSES**). NMFS will also mail letters providing notice to those who request it by contacting the Northeast Regional Office (See **ADDRESSES**).

Comment 20: One commenter suggested that NMFS exempt small-scale fishing operations in state waters from the DAM program. Another commenter expressed opposition to any DAMs or SAMs in state waters.

Response: The MMPA applies to state waters and there have been aggregations of right whales, which the DAM and SAM rules are designed to address, in state waters. NMFS is currently investigating the feasibility and practicality of revising the exempted waters of the ALWTRP to possibly include other inland areas where the presence of large whales is rare or non-existent.

Changes From the Proposed Rule

In the March 4, 2003 proposed rule (68 FR 10195), NMFS identified as its preferred alternative gear modifications for anchored gillnet and lobster trap/pot gear that could be allowed within a DAM zone. In the preamble to the proposed rule, NMFS sought comment from the public on the proposed regulations and the alternatives analyzed. Based on comments received during the public comment period, and as explained below, NMFS has concluded that its original preferred alternative may not afford the level of protection to right whales as one of the other alternatives discussed in the EA/RIR. Therefore, NMFS has determined that the alternative identifying SAM gear modifications with the allowance for a second endline and floating line on the bottom third of each endline should be implemented as gear that could be allowed within a DAM zone.

Comments received from the public requested that NMFS identify gear modifications similar to those currently required by the ALWTRP in Cape Cod Bay Critical Habitat during the high use time period for right whales (January 1 - May 15). The Cape Cod Bay Critical Habitat gear requirements allow two buoy lines with floating line on the bottom third of each endline. These gear modifications were analyzed in the Draft and Final EA/RIR. Based on this analysis, NMFS believes that this gear sufficiently reduces the risk of entanglement to right whales. This gear is currently allowed in a critical habitat area during the time period when high concentrations of whales occur in the area. Additionally, information received through the comment period supports underwater video footage taken by NMFS and discussed in the EA/RIR, which demonstrates that, due to current and tidal action on the surface system, allowing one-third polypropylene line on the bottom third of the buoy line does not typically produce a loop in the water column, which could increase risk to right whales. Since publication of the proposed rule, NMFS has determined that requiring gear modifications with one buoy line in a DAM area may not necessarily result in a 50–percent reduction in vertical line in the water column as fishermen may fish shorter trawls, which may result in the same or a greater number of buoy lines. Allowing SAM gear modifications with a second endline and one third polypropylene line on the bottom third of the buoy line in DAM zones reduces both the potential for interaction through a significant reduction in floating line (in the groundline) and the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths. Thus, DAM gear modifications, including replacing floating line with neutrally buoyant and/or sinking line in the groundline, installing additional weak links, and reducing breaking strengths for weak links, sufficiently reduces the risk of serious injury or mortality to right whales in DAM zones.

Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule would identify gear modifications that reduce the risk of entanglement to right whales sufficiently to be an option under the DAM program. The objective of this final rule, issued pursuant to section 118 of the MMPA, is to reduce the level of serious injury and mortality of right whales in East Coast lobster trap and finfish gillnet fisheries. Additionally, this final rule enables NMFS to exercise the full range of management options that the agency intended to be available under the DAM program.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. A copy of the FRFA is available from NMFS (see **ADDRESSES**). Four alternatives, including a status quo or no action alternative, the preferred alternative (PA), and two other alternatives were evaluated using a retrospective analysis based on 2000 right whale sightings data and 2000 Vessel Trip Report (VTR) data. Under all alternatives, from June 20th to July 6th, 45 vessels (29 lobster vessels and 16 sink gillnet vessels) were affected by a DAM zone. A summary of the analysis follows:

1. NMFS considered a ''no action'' or status quo alternative that would result in no changes to the current measures under the ALWTRP. The no action alternative would result in NMFS only having the options of requiring the removal of all lobster trap and anchored gillnet gear from a DAM zone or issuing an alert requesting the voluntary removal of all gear. NMFS rejected this alternative as NMFS would not be able to exercise the full range of management options that the agency intended to be available under the DAM program.

2. NMFS considered an alternative (NPA 1) that would allow SAM gear modifications to be used under the DAM program. SAM gear modifications include, among other requirements, the use of neutrally buoyant or sinking line on all ground lines and buoy lines and restricts fishermen to one endline (buoy line) per trawl or string. Due to comments received, NMFS understands that requiring gear modifications with one buoy line in a DAM area may result in fishermen splitting trawls or strings into shorter trawls or strings (to avoid increased gear conflict and gear loss), which may result in the same or a greater number of buoy lines, thus increasing the risk to whales. Furthermore, comments received and a study conducted after publication of the

proposed rule supports underwater video footage taken by NMFS and discussed in the EA/RIR. This information indicates that, due to current and tidal action on the surface system, allowing one- third polypropylene line on the bottom third of the buoy line does not typically produce a loop in the water column, and, therefore, does not increase risk to right whales.

3. The option selected in this final rule will implement SAM gear modifications with two endlines (buoy lines) and floating line on the bottom third of each endline. These are similar gear modifications required under the ALWTRP in Cape Cod Bay Critical Habitat during the high use time period for right whales (January 1 - May 15). NMFS believes that this gear, which is currently required in a critical habitat area during the time period when whales occur in the area, sufficiently reduces the risk of entanglement to right whales.

4. NMFS considered and rejected an alternative (NPA 2) that would implement SAM gear modifications with two endlines (buoy lines) and require that the buoy lines be composed entirely of sinking or neutrally buoyant line. NMFS rejected this alternative because information received during the comment period supports preliminary investigations by NMFS, which demonstrates that due to current and tidal action on the surface system, allowing some floating line on the buoy line does not typically produce a loop in the water column and, therefore, would not increase risk to right whales.

NMFS has taken steps to minimize the economic impact on small entities through this final rule by establishing the option of utilizing gear modifications rather than completely closing DAM areas.

NMFS received two public comments relating to the economic impacts of this final rule. These comments were considered by NMFS before it approved this final rule and are summarized by NMFS in the ''Comments and Responses'' section of the preamble to this final rule, as comment/response number eight. Changes to the rule were made, in part, as a result of these and other public comments.

The small entities affected by this final rule are anchored gillnet and lobster trap fishermen fishing north of 40° N. latitude. Since DAM is used to respond to unusual and unexpected sightings of right whales, it is difficult for NMFS to predict exactly where DAM zones may be implemented in the future. Therefore, providing an accurate estimate of the number of small entities that will be affected is problematic. In the northeast, there are potentially 7,147 vessels fishing lobster gear and 312 vessels fishing sink gillnet gear (Bisack 2000). However, NMFS does not expect that number of vessels to be affected by any one DAM zone because of the limited size and duration of a DAM zone. Data from aerial surveys in 2000 were used to retrospectively evaluate the use of the recommended DAM triggers. Based on the analysis of this data, six DAM zones would have been triggered in 2000. Four of the six hypothetical DAM zones would have been subsumed under the SAM program and the other DAM zone would have occurred in Canadian waters, which are outside of U.S. jurisdiction. Therefore, the impacts were assessed with respect to one hypothetical DAM zone from June 20 to July 6, 2000. For example, based on 2000 right whale sightings data and 2000 VTR data from June 20th to July 6th, the final rule would have affected 45 lobster and sink gillnet vessels (29 lobster vessels and 16 sink gillnet vessels), which represents 0.4 percent of the vessels (0.004=29/7,147 lobster vessels) associated with the lobster fleet and 5.1 percent of the vessels (0.051=16/312 sink gillnet vessels) associated with the sink gillnet fleet in the northeast.

This final rule contains no reporting, recordkeeping, or other compliance requirements. NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this final rule is consistent with the enforceable policies of the approved coastal management program for that state.

This final rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments. No comments on the federalism implications of the proposed action were received in response to this notification. However, two commenters did respond on the federalism implications during the comment period for the proposed rule. The comment is characterized and responded to by NMFS in the ''Comments and Responses'' section of the preamble to this final rule, as comment/response number twenty. No changes to the rule were made as a result of the comment received.

This final rule would also clarify that vessels in Northern Inshore State and Northern Nearshore Lobster Waters must install and use a 600 lb (272.4 kg) weak link at each buoy when fishing in SAM West during the time it overlaps the Northern Inshore State and Northern Nearshore Lobster Waters. The impacts of this requirement on small entities fall within the scope of the regulatory flexibility analyses performed in conjunction with the original SAM proposed and interim final rules. Among other requirements, the regulations implementing the ALWTRP currently require lobster trap fishermen in Northern Nearshore Lobster Waters to attach a weak link at the buoy with a breaking strength of 600–lb (272.4–kg) or less, and also includes this same weak link requirement as an option from the Lobster Take Reduction Technology List for Northern Inshore State Lobster Waters. Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(a) and (c), no further analysis is required. Copies of the SAM EA/RIR are available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 19, 2003.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 229.32, paragraph (g)(3)(iii)(B) is revised and (g)(4)(i)(B)(*2*)(*ii*) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g) * * *

(3) * * *

(iii) * * *

(B) Allow fishing within a DAM zone with anchored gillnet and lobster trap gear, provided such gear satisfies the requirements specified in paragraphs (g)(4)(i)(B)(*1*) and (g)(4)(i)(B)(*2*) of this section, except that a second buoy line

and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. These requirements are in addition to requirements found in § 229.32 (b) through (d) but supersede them when the requirements in paragraphs (g)(4)(i)(B)(*1*) and (g)(4)(i)(B)(*2*) of this section, with the exception that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone, are more restrictive than those in § 229.32 (b) through (d). Requirements for anchored gillnet gear in Other Northeast Gillnet Waters are as specified in paragraphs (g)(4)(i)(B)(*1*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. Requirements for lobster trap gear in Offshore Lobster Waters, Northern Nearshore Lobster Waters and Northern Inshore State Lobster Waters are as specified in paragraph (g)(4)(i)(B)(*2*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. Requirements for anchored gillnet gear in Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters are the same as requirements for Other Northeast Gillnet Waters. Requirements for lobster trap gear in Southern Nearshore Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31) and Stellwagen Bank/Jeffreys Ledge Restricted Area are the same as requirements for Northern Nearshore Lobster Waters and Northern Inshore State Lobster Waters. Requirements for lobster trap gear in the Great South Channel Restricted Lobster Area (July 1 through March 31) are the same as requirements for Offshore Lobster Waters.

* * * * *

(4) * * *

(i) * * *

(B) * * *

(*2*) * * *

(*ii*) Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters Areas buoy weak links—All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 600–lb (272.4–kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator for Fisheries.

* * * * *

[FR Doc. 03–21606 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 165
Tuesday, August 26, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1131

[Docket No. AO–368–A32, AO–271–A37; DA–03–04]

Milk in the Pacific Northwest and Arizona-Las Vegas Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders; Correction

7 CFR Part	Marketing area	AO Nos.
1124	Pacific Northwest	AO–368–A32
1131	Arizona-Las Vegas	AO–271–A37

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Agricultural Marketing Service is correcting the proposed rule that appeared in the **Federal Register** of August 6, 2003 (68 FR 46505), which gave notice of a public hearing to be held to consider proposals to amend the producer-handler provisions of the Arizona-Las Vegas and Pacific Northwest orders. The document was published with errors in the regulatory text regarding the amendments to the producer-handler definitions in § 1124.10 and § 1131.10. This docket corrects these errors.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231–Room 2971, 1400 Independence Avenue, Washington, DC 20250–0231, (202) 720–2357, e-mail address *jack.rower@usda.gov.*

SUPPLEMENTARY INFORMATION: Background notice of hearing was published in the **Federal Register** on August 6, 2003 (68 FR 46505), containing 5 proposals to be considered at a public hearing scheduled to begin on September 23, 2003. As published, errors contained in proposals 1 and 3 are misleading and are in need of clarification.

1. On page 46506, third column, § 1124.10, paragraph (a)(3) introductory text is corrected to read as follows:

§ 1124.10 Producer-handler.

* * * * *

(a) * * *

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

* * * * *

2. On page 46508, first column, § 1131.10, paragraph (a)(3) introductory text is corrected to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(a) * * *

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

* * * * *

Authority: 7 U.S.C. 601–674.

Dated: August 20, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–21787 Filed 8–25–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. No. CN–03–003]

Cotton Research and Promotion Program: Section 610 Review

AGENCY: Agricultural Marketing Service.

ACTION: Notice of regulatory review and request for comments.

SUMMARY: This document announces the Agricultural Marketing Service's (AMS) review of the Cotton Research and Promotion Program (conducted under the Cotton Research and Promotion Order), under the criteria contained in Section 610 of the Regulatory Flexibility Act (RFA).

DATES: Comments must be received by October 27, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning the notice to Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, Agricultural Marketing Service, USDA, Stop 0224, 1400 Independence Avenue, SW., Washington, DC 20250. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *cottoncomments@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this notice may be found at: *http://www.ams.usda.gov/cotton/rulemaking.htm*.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or e-mail at *whitney.rick@usda.gov*.

SUPPLEMENTARY INFORMATION: The Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101 *et seq.*) authorized a national Cotton Research and Promotion Program which is industry operated and funded, with oversight by USDA. The program's objective is to enable cotton growers and importers to establish, finance and carry out a coordinated program of research and promotion to improve the competitive position of, and to expand markets for cotton.

The program became effective on December 31, 1966, when the Cotton Research and Promotion Order (7 CFR Part 1205) was issued. Assessments began with the 1967 cotton crop. The Order was amended and a supplemental assessment initiated, not to exceed one percent of the value of each bale,

effective January 26, 1977. The current assessment is $1 per bale plus five-tenths of one percent of the value of the bale and is collected on every bale of cotton harvested and ginned in the U.S. and on imported raw cotton and on the non-U.S. cotton content of imported textile and apparel products. Assessments under this program are used to fund promotional campaigns and to conduct research in the areas of U.S. marketing, international marketing, cotton production and processing, and textile research and implementation.

The program is administered by the Cotton Board, which is composed of representatives of cotton producers and importers selected by the Secretary of Agriculture from nominations submitted by eligible producer and importer organizations. The Cotton Board has thirty-two members, thirty-two alternate members and one consumer advisor. All members and alternate members serve terms of three years.

AMS published in the **Federal Register** (64 FR 8014; February 18, 1999), its plan to review certain regulations, including the Cotton Research and Promotion Program (conducted under the Cotton Research and Promotion Order), under criteria contained in Section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). The plan was updated in the **Federal Register** on August 14, 2003 (68 FR 48574). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. Accordingly, this notice and request for comments is made for the Cotton Research and Promotion Order.

The purpose of the review is to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objects of the Cotton Research and Promotion Act of 1966) to minimize the impacts on small entities. AMS will consider the continued need for the order; the nature of complaints or comments received from the public concerning the order; the complexity of the order; the extent to which the order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with state and local regulations; and the length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

Written comments, views, opinions and other information regarding the order's impact on small business are invited.

Dated: August 20, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–21788 Filed 8–25–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM259; Notice No. 25–03–06–SC]

Special Conditions: Bombardier Aerospace Model BD–100–1A10; Side-Facing Single Occupancy Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Bombardier Aerospace Model BD–100–1A10 airplane. This airplane as modified by Learjet Inc. (Subsidiary of Bombardier Aerospace) will have novel or unusual design features associated with side-facing single-occupant seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before September 25, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM259, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM259. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Thompson, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1157; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On April 11, 2003, Learjet Inc. (subsidiary of Bombardier Aerospace) applied for a supplemental type certificate for installation of single-occupant side-facing seats on Bombardier BD–100–1A10 airplanes. Bombardier Aerospace has requested that special conditions be issued for these seats and that the special conditions be listed on the type certificate data sheet of the BD–100–1A10 airplane. The Model BD–100–1A10 is a twin engine, turbofan powered, transport category airplane which is currently the subject of a type certification program.

Section 25.785(a) at Amendment 25–64 requires that each seat ''at each station designated as occupiable during takeoff and landing must be designed so that persons occupying these seats will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562.'' Additionally, § 25.562 requires dynamic testing of all seats that are occupied during takeoff and landing. However, side-facing seats are considered a novel design for transport

category airplanes that include Amendment 25–64 in the certification basis and were not considered when those airworthiness standards were promulgated. Hence, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. In order to provide a level of safety that is equivalent to that afforded occupants of forward and aft facing seats, additional airworthiness standards in the form of special conditions are necessary.

These special conditions are applicable only to single-occupant side-facing seats. They are not sufficient or intended to be used for the certification of multiple-occupant side-facing divans or sofas.

Type Certification Basis

Under the provisions of § 21.101, Learjet Inc. (subsidiary of Bombardier Aerospace) must show that the Model BD–100–1A10 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in T00005NY or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in T00005NY are as follows:

14 CFR part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–98; 14 CFR part 34, effective September 10, 1990.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Aerospace Model BD–100–1A10 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Aerospace Model BD–100–1A10 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

Bombardier Aerospace has proposed to install single-occupant side-facing seats on BD–100–1A10 airplanes. Section 25.785(b) requires that each seat ''at each station designated as occupiable during takeoff and landing must be designed so that persons occupying these seats will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562.'' Additionally, § 25.562 requires dynamic testing of all seats that are occupied during takeoff and landing. However, side-facing seats are considered a novel design for transport category airplanes that include Amendment 25–64 in the certification basis, and were not considered when those airworthiness standards were promulgated. Hence, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. In order to provide a level of safety that is equivalent to that afforded occupants of forward and aft facing seats, additional airworthiness standards, in the form of special conditions, are necessary.

Discussion

The following special conditions are considered to provide occupants of single-occupancy side-facing seats a level of safety that is equivalent to that afforded occupants of forward and aft facing seats. These special conditions supplement 14 CFR part 25 and, more specifically, they supplement §§ 25.785 and 25.562.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Aerospace Model BD–100–1A10. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Bombardier Aerospace Model BD–100–1A10 airplanes. In addition to the airworthiness standards of §§ 25.562 and 25.785, the minimum acceptable standards for dynamic certification of Model BD–100–1A10 single-occupant side-facing seats are proposed as follows:

Injury Criteria

(a) *Existing Criteria:* All injury protection criteria of § 25.562(c)(1) through (c)(6) apply to the occupant of a side-facing seat. Head Injury Criterion (HIC) assessments are required only for head contact with the seat and/or adjacent structures.

(b) *Body-to-Wall/Furnishing Contact:* The seat must be installed aft of a structure, such as an interior wall or furnishing, that will support the pelvis, upper arm, chest, and head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) *Thoracic Trauma:* The Thoracic Trauma Index (TTI) injury criterion must be substantiated by dynamic test or by rational analysis, based on a previous test or tests of a similar seat installation. Testing must be conducted with a Side Impact Dummy (SID), as defined by 49 CFR Part 572, Subpart F, or its equivalent. TTI must be less than 85, as defined in 49 CFR Part 572, Subpart F. TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) Part 571.214, section S6.13.5.

(d) *Pelvis:* Pelvic lateral acceleration must be shown by dynamic test or by rational analysis based on previous test(s) of a similar seat installation to not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS Part 571.214, section S6.13.5.

(e) *Shoulder Strap Loads:* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total

strap tension loads must not exceed 2,000 pounds.

Test Requirements

The above performance measures must not be exceeded during the following dynamic tests:

(a) Conduct a longitudinal test per § 25.562(b)(2) with a SID, undeformed floor, no yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: TTI and pelvic acceleration.

(b) Conduct a longitudinal test per § 25.562(b)(2) with the Hybrid II ATD, deformed floor, 10 degrees yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: HIC, upper torso restraint load, restraint system retention and pelvic acceleration.

(c) Conduct a downward vertical test per § 25.562(b)(1) with a modified Hybrid II ATD with existing pass/fail criteria.

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

Kyle Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21769 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–15887; Airspace Docket No. 03–AWP–11]

Proposed Establishment of Class D Airspace; Ramona, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Ramona, CA. A non-federal contract tower is being constructed at the Ramona Airport. Weather reporting service will be available. Therefore, the airport will meet criteria for Class D airspace. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to but not including 3,800 feet MSL within a 4-mile radius of the airport.

DATES: Comments must be received on or before October 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15887/ Airspace Docket No. 03–AWP–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 2010, 15000 Aviation Boulevard, Lawndale, California 90261.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California; telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15887/Airspace Docket No. 03–AWP–11.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Ramona, CA. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Ramona, CA [NEW]

Ramona, CA

(Lat. 33°02.35′ N, long. 116°54.92′ W)

That airspace extending upward from the surface to but not including 3,800 feet MSL within a 4-mile radius of the Ramona Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on August 13, 2003.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 03–21770 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of public hearings; close of comment period.

SUMMARY: This document announces the addition of a fourth public hearing to receive comment on the proposed rule addressing diesel particulate matter exposure of underground metal and nonmetal miners published in the **Federal Register** on August 14, 2003 (68 FR 48668).

DATES: Post-hearing comments must be received on or before October 14, 2003. For dates of the public hearings, *see* the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Please identify your request to make an oral presentation or comments by Docket ID Number [RIN 1219–AB29]. Submit your request or comments to MSHA by any of the following methods:

- Fax to: 202–693–9441.
- Mail to: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209–3939.
- Hand delivery or Courier to: Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia.

For access to the docket to read comments received, go to *http://www.msha.gov/currentcomments.htm* and/or the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 2309, 1100 Wilson Boulevard, Arlington, Virginia.

For locations of the public hearings, *see* the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations and Variances, MSHA; phone: (202) 693–9440; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 14, 2003 (68 FR 48668), we published a proposed rule in the **Federal Register** that would revise the existing diesel particulate matter (DPM) interim concentration limit measured by total carbon (TC) to a comparable permissible exposure limit (PEL) measured by elemental carbon (EC) which renders a more accurate DPM exposure measurement; increase flexibility of compliance by requiring MSHA's longstanding hierarchy of controls for its other exposure-based health standards at metal and nonmetal mines, but prohibit rotation of miners for compliance; allow MSHA to consider economic as well as technological feasibility in determining if operators qualify for an extension of time in which to meet the DPM limits; and simplify requirements for a DPM control plan. The proposed rule would also make conforming changes to existing provisions concerning compliance determination, environmental monitoring and recordkeeping.

II. Public Hearings

In the **Federal Register** notice published on August 14, 2003, (68 FR 48668), we announced that we would hold three public hearings on the proposed rule. However, since that time, we have added a fourth public hearing. Please note the date below.

The public hearings will begin at 9 a.m. and will end after the last scheduled speaker testifies. The hearings will be held on the following dates and at the locations indicated.

Date	Location	Phone
September 16, 2003	University Park Marriott, 480 Wakara Way, Salt Lake City, UT 84108	(801) 581–1000
September 18, 2003	Renaissance St. Louis Hotel Airport, 9801 Natural Bridge Road, St. Louis, MO 63134.	(314) 429–1100
September 23, 2003	Hilton Pittsburgh, 600 Commonwealth Place, Pittsburgh, PA 15222	(412) 391–4600
October 7, 2003	U.S. Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, MSHA Conference Room, 25th Floor, Arlington, VA 22209.	(202) 693–9440

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations to a panel. You do not have to make a written request to speak. Speakers will speak in the order that they sign in. Any unallotted time will be made available for persons making same-day requests.

At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be included in the rulemaking record. Copies of this transcript will be available to the public, and can be viewed at *http://www.msha.gov*.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements, prior to the close of the comment period on October 14, 2003.

Dated: August 21, 2003.

John R. Correll,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03–21886 Filed 8–22–03; 1:35 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 3 and 7

RIN 1024–AD07

Boating and Water Use Activities

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to revise rules that regulate boating and water use activities in areas administered by the NPS. The proposed rule is intended to address changing visitor use patterns, changing technologies, compelling boating and water safety issues, and the evolution of related statutory authorities. The goal is to provide for greater consistency with United States Coast Guard (USCG) regulations and state laws and regulations, establish rules which will be more clearly understood by the visiting public, and which can be more effectively communicated and enforced by NPS personnel. Promulgation of the proposed rule will eliminate many requirements which are ineffective or out of date and apply new rules which will provide flexibility in managing safety, resource preservation, and public use needs throughout the National Park System.

DATES: Comments must be received by December 24, 2003.

ADDRESSES: Comments should be sent to Kym Hall, Special Assistant, National Park Service, 1849 C Street NW, Room 3145, Washington, DC 20240. Email: WASO_Regulations@nps.gov. Fax: (202) 208–4684.

FOR FURTHER INFORMATION CONTACT: Kym Hall, (202) 208–4206.

SUPPLEMENTARY INFORMATION: The regulations contained in parts 1 through 7 of Title 36 of the Code of Federal Regulations (CFR) are the basic mechanisms used by the National Park Service (NPS) to protect the natural and cultural resources of the parks and to protect visitors and property within the parks. Parts 1 through 6 are general regulations applicable to all areas of the National Park System, with some exceptions, while part 7 contains special regulations, which have been found necessary for individual parks as supplements to the general regulations. Part 3 is specific to boating and water activities. The part 3 regulations were last revised in 1983. Although amendments and additions have been made from time to time since 1983, this was usually in response to new situations for which the existing regulations were not sufficient. For example, personal watercraft (PWC) were addressed in 36 CFR 3.24, April, 2000. Between 1983 and the present, the evolution of statutory authorities, changing visitor use patterns, new technologies, and continued boating and water safety issues coupled with evolving national trends to address such issues, all revealed that a comprehensive review of part 3 regulations was needed.

A work group of experienced employees from a wide variety of parks with water-based recreation and resources management responsibilities was established to work on part 3. The work group included an experienced State Boating Law Administrator, representing the National Association of State Boating Law Administrators (NASBLA). Park superintendents were asked to provide comments regarding boating and water safety issues apart from those addressed in the existing part 3, and comments were received from sixteen parks and from the staff at the NPS Washington Office. All comments were evaluated by the workgroup. Some of the comments were incorporated into the proposed rule. Other comments were more appropriately addressed in section(s) of 36 CFR other than part 3. Some comments, specific to an individual park's circumstances, are more appropriately addressed as special regulations in part 7.

The NPS faced several situations where parks were unclear about enforcing USCG regulations and/or state laws and regulations. Specifically, an issue arose about the applicability of USCG regulations on a tour boat being operated on Crater Lake which is a non-navigable body of water. Lake Mead was also presented with a requirement to provide lifeguards on beaches because of Nevada state water use regulations. In addition to these specific questions, there has been some general confusion about the order of applicability or hierarchy of adopting USCG regulations and state laws and regulations in relation to NPS specific regulations contained in part 3. The required order of applicability, or hierarchy, of boating and water use regulations on park waters is as follows:

1. Regulations in Title 36, Code of Federal Regulations (CFR) will apply over any comparable law or regulation.

2. Laws and regulations of the USCG adopted pursuant to § 3.2 (a) will apply over any comparable state law or regulation.

3. Non-conflicting state boating safety laws and regulations that are not addressed by either 36 CFR or by the USCG are adopted pursuant to 3.2(b). The NPS is not adopting state water use laws or regulations unless specifically indicated in part 3.

The work group took several factors into consideration while discussing regulations to be changed, deleted, or written anew. Those factors include compliance with the NPS mission, safety issues, resource protection issues, clarity of existing regulations, reducing NPS regulations where possible and the uniformity of regulations with the USCG, the states, and among units of the National Park System to the extent possible. As a result of the review, the proposed changes to part 3 are expected to be more clearly understood by the public and be more effectively communicated and enforced by NPS employees. In addition the changes will enhance the NPS focus on safety and resource preservation issues, provide flexibility to address changing technologies, maintain minimum regulation necessary to address safety and resource preservation and provide for greater consistency in enforcement of NPS, USCG regulations and state boating laws and regulations.

Section-By-Section Analysis

Organizational Summary

The National Park Service (NPS) has prepared the following organizational summary to assist in the location and analysis of the proposed revisions.

NUMBERING

Old	New
3.1 Applicable Regulations	3.2
3.2 NPS Distinctive Identification.	Deleted
3.4 Accidents	3.5
3.5 Inspections	3.4
3.6 Prohibited Operations	3.8
3.7 Noise Abatement	3.14
3.20 Water Skiing	3.11
3.21 Swimming and Bathing	3.15
3.22 Surfing	Deleted
3.23 SCUBA and Snorkeling ...	3.17
3.24 Regulation of Personal Watercraft.	3.9

New sections
3.1 Applicability and Scope
3.6 Operator Age for Power Vessels
3.7 Personal Floatation Devices (PFDs)
3.10 Operating Under the Influence
3.12 Marine Sanitation Devices
3.13 Sunken, Grounded, Disabled Vessels
3.16 Swim Beach Areas
3.18 Submersibles

Section 1.4 What Terms Do I Need To Know?

In order to enhance clarity and consistency, ten definitions have been included in this section. One, defining vessel, is a revision of the current definition; it has been revised to more adequately describe the applicability of these regulations to all craft including tubes, rafts and other inflatable devices; surfboards, sailboards, and other rigid devices, specifically when these are used as a means of transportation. Nine others are added in order to reduce confusion in interpretation of regulations or to address issues new to part 3: dive flag, flat wake speed, harbor, manned submersible, power-driven vessel, sailing vessel, sewage, underwater diving, and un-manned submersible. The rationale for the addition of these terms appears in the preamble relative to the appropriate section.

Section 3.1 What Is the Applicability and Scope of This Section?

This section is added to include a description of the applicability of part 3 to all park waters. Other laws applicable have been removed from this section and now appear in § 3.2.

The objective of the regulations in this part is to provide for the proper management of boating and other water use activities within parks. Park waters are all waters that are subject to the jurisdiction of the NPS. This includes both navigable waters within the congressionally established boundaries of a park area and non-navigable waters where the United States owns or administers the lands and waters within the boundaries of a park area. Examples of park areas with navigable waters within the boundaries include Biscayne National Park, Assateague Island National Seashore, and Channel Islands National Park. Examples of park areas with non-navigable waters where the United States has jurisdiction over the lands and waters within the boundaries include Crater Lake National Park, Yellowstone National Park, and Glacier National Park or other areas with inland lakes and ponds.

Section 1.2 defines the primary applicability and scope of the NPS regulations found in 36 CFR parts 1 through 5, and parts 7 and 13. In § 1.2(a)(1) and (2) the NPS provides that the regulations in Chapter 1 apply, respectively, on lands and waters located within boundaries of park areas that are either federally owned or NPS-administered. While in § 1.2(a)(3) it states that the regulations shall apply to all waters subject to Federal jurisdiction that are located within National Park System boundaries.

In addition to the general regulatory authority delegated by Congress in 16 U.S.C. 3, the NPS has been authorized to ''[p]romulgate regulations concerning boating and other activities on or relating to waters located within areas of the National Park System. This includes waters subject to the jurisdiction of the United States: provided, that any regulations adopted pursuant to this section shall be complementary to, and not in derogation of, the authority of the United States Coast Guard to regulate the use of waters subject to the jurisdiction of the United States [.]'' 16 U.S.C. 1a–2(h). Under these authorities the NPS has managed and regulated activities occurring on and in the waters of the National Park System.

Section 3.2 Do Other Boating Laws and Regulations Apply To Me When I Operate My Boat on Park Waters?

The current § 3.2 pertains to ''National Park Service distinctive identification''. This is considered an unnecessary regulation since boat markings are addressed in NPS Director's Order 9 and Reference Manual 9. This regulation is deleted.

The proposed § 3.2(a) identifies USCG laws and regulations adopted with the addition of Title 33 and title 46 United States Code. Proposed paragraph (b) identifies applicable state laws and regulations adopted as non-conflicting boating safety laws and regulations, and it is not the intent of this section to include non-boating water-use laws and regulations including but not limited to swimming, bathing, beach management or SCUBA diving unless specifically adopted in a section of the part 3 regulations.

The intent of this section, a revision of the existing 3.1, is to clarify and emphasize that the NPS is seeking to apply existing federal and state law to its management of boating activities. Except in situations of specific need as identified and proposed in the part 3 revision, the NPS will enforce the laws and regulations of the United States Coast Guard and the state within whose exterior boundaries a park area or a portion thereof is located. The NPS is encouraging each park to develop an administrative file of all state laws and regulations the park intends to adopt under § 3.2(b).

This regulation continues to adopt USCG laws and regulations in order to promote uniformity of boating regulations throughout the National Park System. While the USCG's jurisdiction and therefore the application of laws and regulations by the USCG is limited to navigable waters, the NPS jurisdiction is not similarly restricted to navigable waters. The NPS adoption of the laws and regulations of the USCG makes them part of the NPS regulations and are subject to the same applicability and scope provisions as other NPS promulgated regulations. As such, the NPS applies pertinent USCG laws and regulations to all waters within park areas, whether the waters are navigable or non-navigable.

As directed by Congress in 16 U.S.C. 1a–2(h), this regulation recognizes the USCG laws and regulations as the guiding federal standard for regulating boating activities. However, this regulation also provides the opportunity for individual park areas to enforce state laws and regulations or NPS regulations where there is a specific need for public safety reasons, or in order to protect wildlife and the other resources, values, and purposes of a park area.

Section 3.3 Am I Required To Obtain a Permit To Operate a Vessel in a Park Area?

This section continues to allow the superintendent to manage boating use within park areas that may effect park resources or the visiting public by requiring a permit to operate a vessel in park waters. Recognizing the uniqueness of park areas, a

superintendent may require a permit to ensure communication of hazards, special conditions, specific policies, closures, equipment requirements or other restrictions (36 CFR 1.5 and 1.7). It also establishes factors that the superintendent should consider when determining requirements for the issuance of a permit (36 CFR 1.6).

Section 3.4 For What Purposes May My Vessel Be Inspected?

This section is changed to include the inspection of marine sanitation devices, and other pollution and noise abatement requirements within the authority of authorized persons, and to include noise level as one of those violations for which a vessel's use may be suspended.

The previous language in this section established the authority of authorized persons to stop and board vessels for the purposes of inspection and to terminate the voyage of vessels found in an unsafe condition as specified. This authority is in keeping with that granted to boarding officers of the USCG and many of the states.

The use of marine sanitation devices (MSDs) and discharge of sewage from vessels into park waters has come under increasing scrutiny as environmental awareness has grown. Park staff found that to simply adopt USCG regulations or state laws and regulations was ineffective. USCG regulations regarding the certification of MSDs give appropriate guidance regarding the devices themselves but do not address their use in waters of the National Park System. Park staff is increasingly required to inspect MSDs aboard vessels and to manage their use while on park waters.

Another issue of increasing importance faced by park management and enforcement staff has been the regulation of noise created by some power-driven vessels. NPS has made an attempt at such management for some time but was hampered by its own regulations. In this proposal NPS will enhance its ability to significantly improve this capability in proposed § 3.14.

It is the intent of this section to clearly authorize park staff to inspect vessels for compliance with marine sanitation device use, and with appropriate noise level requirements regardless of whether the vessel is underway. Further, the proposed language more clearly defines responsibilities to correct not only hazardous conditions but conditions involving pollution of park waters and excessive noise levels.

Section 3.5 Do I Have To Report an Accident Involving a Vessel to the National Park Service?

This section was formerly numbered 3.4 and is renumbered here to provide a more logical flow to the rules in Part 3 for the benefit of both the public and NPS staff.

The language in this section is changed to include only vessel accidents as opposed to the current term ''incidents''. Existing paragraph (a) is divided into proposed paragraphs (a), (b), and (c) in order to provide clarity. Proposed paragraph (a) identifies the vessel operator as the responsible reporting party. It also identifies a total property damage dollar value threshold for mandatory reporting of vessel accidents to the NPS. Proposed paragraph (b) identifies that otherwise the owner or an occupant of the vessel must assume this responsibility if the owner is incapable of doing so. The existing paragraph (b), which deals with ''failure to report'', is considered unnecessary and is deleted. A person who fails to report an accident would violate the reporting requirements of proposed paragraph (a). Proposed paragraph (c) identifies that the NPS reporting requirements may not fulfill the reporting requirements for the United States Coast Guard and the state.

It is the intent of the proposed changes in this rule to clarify for the public their responsibilities in vessel accident reporting. The changes in language to this section more clearly define who is required to report a vessel accident.

Section 3.6 What Age Must I Be To Operate a Power Driven Vessel?

This section is an addition to part 3. The intent of this section is to address a minimum age requirement for the operator of a power-driven vessel. Currently there is no NPS regulation establishing a minimum operator age. This has become a safety issue of growing concern as a result of changing technologies, increasingly crowded waterways, and a more complete understanding of the development of motor skills with age. Vessel operators can significantly impact the health, safety, and well being of other boaters and of park resources. This section establishes a minimum age of 16 to be the unsupervised operator of a power-driven vessel on park waters. It also allows children between the ages of 12 and 15 to operate power-driven vessels under the direct supervision of an adult.

There is a national trend to establish a minimum age for vessel operators in response to accident data. According to the NASBLA, 43 states have established a minimum age for the operation of power-driven vessels. Those ages range from 10 to 18, with several states setting 16 as a minimum and many other states requiring an adult to be present to supervise a child operator. In the interest of conforming with state regulations when possible and to reduce the potential for confusion of the boating public, this section is applicable in parks located in states that have adopted no minimum age for the operator of a power-driven vessel. If a park is located within a state that has different age requirements for operators of power-driven vessels then that state's regulation is adopted in lieu of this section.

Section 3.7 Who Must Wear a Personal Flotation Device (PFD)?

This section is an addition to part 3. The intent of this section is to enhance visitor safety in the boating environment through identifying circumstances when children will be required to wear PFDs and to encourage superintendents to examine other activities that might appropriately require wearing of PFDs.

PFDs required by this section must be USCG approved Type I, II, or III PFDs, in serviceable condition and of the correct size for the person wearing it, in accordance with 33 CFR 175.11–175.23. Type V are eliminated because they are identified for specific functions and uncommon in recreational boating.

This section requires children 12 years of age or younger to wear a PFD when aboard a vessel underway, except while in an enclosed cabin or below deck, and authorizes the superintendent to determine other circumstances that require that PFDs be worn. This is not intended to preclude children from playing on inflatable devices, without wearing a PFD, when close to shore or the devices are not being used as a method of transportation.

According to NASBLA, 32 of 50 states, Puerto Rico and the District of Columbia now require children to wear PFDs. The majority of those states require children 12 years of age and younger to wear PFDs.

NASBLA supports an age requirement of 12 years of age and younger nationwide, and has referenced work completed by Ballestreri Consulting Inc. involving research surrounding the physiological, emotional and motor skill changes that occur around the age of 12. Ballestreri Consulting's work suggests that prior to that age, children have neither the motor skills nor the emotional skills to put on a PFD in an emergency situation. The American Academy of Pediatrics recommends that

''* * * children should wear lifejackets at all times when on or near the water.'' The National Transportation Safety Board also recommends that children be required to wear PFDs.

The proposed rule exempts children inside an enclosed cabin or below deck from wearing a PFD. These individuals are in a more stable environment and risks of incidents resulting from falls overboard are significantly reduced.

Paragraph (a)(1) is intended to alleviate confusion by the boating public about the new regulation for children to wear PFDs. Although 32 states require children to wear PFDs, they have varying requirements. Since the boating public would be more familiar with existing state requirements, the NPS will defer to the state age for requiring children to wear PFDs. In the absence of a state requirement, the NPS requirement of age 12 or under would apply.

Paragraph (b) of this section relates to vessels that are inspected and certified under USCG regulations codified in Title 46 CFR to carry passengers for hire. These vessels are inspected annually by USCG personnel from a Marine Inspection Office and must be operated by a licensed captain. The higher standard of training, combined with the experience of individuals necessary to qualify for a USCG captain's license, and the fact that the vessels are subject to this rigorous inspection process, the wearing of PFDs by children is not required.

Paragraph (c) of this section is intended to clarify the superintendent's authority to require PFDs be worn on designated waters during specific water-based activities. However, it should be noted that the NPS has adopted 33 CFR 175.15 which applies to the carrying of PFDs for all persons on board a vessel. This paragraph emphasizes the potential need for wearing PFDs rather than just carrying them in certain waters or during certain water-based activities. There was considerable discussion by work group members regarding wearing PFDs during a wide variety of activities and circumstances that might be involved such as use of small inflatable, *i.e.* inner tubes, sail-boarding, or river rafting. It is clear that there is no uniform set of circumstances or conditions nationwide that allows the promulgation of a regulation sufficient to meet the needs of all national parks. This is an issue that is best left to superintendents to address through local restrictions utilizing §§ 1.5 and 1.7 of this chapter.

The part 3 work group feels strongly that with the promulgation of § 3.7, the potential for serious injury or death would be significantly reduced service-wide. All requirements pertaining to proper size, type, serviceability and carriage requirements are adopted by the NPS and applicable in parks in accordance with § 3.2.

Section 3.8 What Vessel Operations Are Prohibited?

The regulations in this section are currently addressed in § 3.6. It is the intent of this section to address several issues of unsafe or otherwise prohibited vessel operations that are not effectively dealt with through the adoption of USCG laws and regulations or state laws and regulations since these entities either do not regulate the activity or there is wide disparity among the various regulations nationwide. These are generally activities that create an unsafe condition or conflict with the orderly management of park visitor use. The order of the violations has also changed to reflect the nature of the violations from those posing the least risk to life or property to those acts that pose the most risk.

Paragraph (a), which solely addressed ''reckless or negligent operation'' has been broken into two distinct violations; negligent operations and grossly negligent operations under (b)(6) and (b)(7). This was done in order to bring boater education and park staff training more into concert with terminology and enforcement philosophy used by the USCG. It is expected that this change, along with the clarified language that describes the regulated activity, will significantly reduce the misunderstandings experienced in many parks regarding enforcement and education of this issue.

The act of negligence can be distinguished by the vessel operator's *failure* to exercise care, caution or prudence. Generally, the operator is not willful or malicious in their actions. For example, maneuvering quickly, turning sharply or swerving within 100 feet of another vessel; weaving through congested traffic; operating a vessel in the vicinity of a motorized vessel in a manner that obstructs the visibility of either operator. A negligent act may have an increased risk of causing harm but usually does not result in property damage or physical injury.

The act of gross negligence can be distinguished by the vessel operator's disregard for the rights of others through ''willful and wanton'' actions and consciousness that personal injury or property damage is a probable consequence of their actions. Generally, the operator is willful or malicious in their actions. For example, operating any vessel at extremely high speeds, operating a vessel within extremely close proximity to persons in the water, or causing a severe collision between vessels. A grossly negligent act has an increased risk of causing harm and usually results in property damage or physical injury; however, a person can be guilty of gross negligence without the damage or injury actually resulting.

Paragraph (b) of the current § 3.6, operating a vessel when under the influence of alcohol or controlled substance, has been removed from this section and is proposed as a stand-alone regulation in § 3.10.

Paragraph (c) is renumbered as (b)(2) with no change.

Paragraph (d) is renumbered as (b)(3). Amends ''5 mph or creating a wake'' to ''flat wake speed''. Paragraph (b)(3)(ii) deletes diver's marker and swimmer from this paragraph and adds ''a person swimming, wading, fishing, or floating with the aid of a non-motorized inflatable or rigid buoyant device, designated launch site, and manually-propelled, anchored, or drifting vessel.'' Since numerous states have ''speed in proximity'' laws, this paragraph allows for the adoption of those laws to avoid conflict.

The work group found that there was no consistency in describing to the public the desired condition in zones that were intended to require a slow speed. Most of these areas intend to prevent damage or injury resulting from boat wakes. The variety of terms used to notify the boating public of these zones included ''no wake'', ''wakeless speed'', ''5 mph'', ''slow speed'', ''idle'', and ''flat wake.'' Since a boat underway and making way creates some wake regardless of speed, the terms ''no wake'' and ''wakeless speed'' are not descriptive of the desired condition. ''5 mph'' may or may not create the desired condition and, in any case, is an action many boaters may not identify with since effective boat speedometers are rarely found on recreational vessels. Neither ''slow speed'' nor ''idle'' effectively address the desired condition.

''Flat wake speed'' is proposed as the appropriate alternative since the desired condition, a minimal disturbance of the water by a vessel in order to prevent damage or injury, is described. The capability of park staff to educate the boater or to enforce this section is also enhanced.

The additions to paragraph (b)(3)(ii) reflect the experience of the work group in a wide variety of water-based recreation situations nationwide. Accidents and visitor complaints identify these additions as necessary for

safe recreational use and for effective enforcement.

Additionally, the prohibition of operating around a diver's marker needed enhancement and has been moved to paragraph (b)(1). This is a change that enhances the prohibition formerly found in paragraph (d)(2) that limits vessels ''within 100 feet of a diver's marker'' to a speed less than ''5 mph''. The recommended change prohibits ''operating a power-driven or sailing vessel within 100 feet of a diver's marker.'' Excepted are ''vessels in support of dive operations'' which must ''maintain a flat wake speed''.

This paragraph responds to a safety issue long confused in the minds of both boat operators and underwater divers. Under the previous rules, a vessel was allowed to approach a dive flag when not in excess of 5 mph. At the same time, divers have been taught that a boat must avoid a dive flag. Many boating safety classes (USCG Auxiliary for example) also taught that a boat must avoid a dive flag. It is the intent of this regulation to establish a safety zone around underwater diving activities in order to reduce conflict and accidents between underwater divers and vessels. At the same time boats in support of diving activities are allowed to function as intended.

Paragraph (e) is renumbered as (b)(4). Deletes ''vessel not propelled by hand'' and adds ''power-driven or sailing vessel'' to the description of prohibited vessels. Amends ''location'' to ''shoreline'' designated as a swimming beach. Amends ''in excess of 5 mph or creating a wake'' to ''flat wake speed''.

This will clarify for the visiting public and for park staff the intent of the rule regulating vessel operation in proximity to designated swimming beaches. The prohibition under the former regulation restricted the operation of a vessel, other than a manually propelled vessel, to beyond 500 feet of a location designated as a swimming beach. There has been considerable confusion regarding how to measure the distance of 500 feet in relation to the designated swimming beach. The intent of this recommended change is to clearly define the point at which the 500 feet distance is to be measured with the result of more clearly and consistently defining the safety zone at designated swim beaches. It is expected that a resulting consistency in management, education, and enforcement actions will result and will enhance visitor safety.

Paragraph (f) is renumbered as (b)(5). Amends ''a vessel propelled by machinery'' to ''power-driven vessel''. Amends ''transom'' to ''top edge of the transom''. Adds ''motor cover or other unsafe positions'' to the description of prohibited activity. Deletes the exemption for a vessel ''being maneuvered for anchoring, mooring or casting off moorings''. Amends ''operating in excess of 5 mph'' to ''being operated above flat wake speed''.

Changes recommended to this section include changing the term ''flat wake speed'' instead of ''5 mph or creating a wake'', and changing ''a vessel propelled by machinery'' to ''power-driven vessel''.

These are recommended in order to provide consistency in terminology throughout part 3. Also recommended herein is the deletion of the allowance for unsafe riding when a vessel ''is being maneuvered for anchoring, mooring, or casting off moorings'' since this is redundant. A vessel engaged in such maneuvers will be already in compliance since its speed will be at ''flat wake speed'' in order to complete the maneuver.

Paragraph (g) is renumbered as (a)(5) without change.

Paragraphs (h) and (i) are combined and renumbered as (a)(2). Deletes reference to ''trailers'' and to ''a vessel propelled by machinery''. This clarifies the condition under which vessels may be launched in a park by combining the former paragraphs 3.6(h) and (i). The superintendent must designate launch sites and if local circumstances require may establish further conditions. The original paragraphs were redundant and resulted in some confusion. The proposed changes reduce the potential for confusion and enhance education and enforcement capability.

Paragraph (j) is renumbered as (a)(3). Amends ''vessel propelled by machinery'' to ''power-driven vessel''. Deletes ''directly'' from ''not directly accessible by road.''

Use of the term ''power-driven vessel'' rather than ''vessel propelled by machinery'' provides consistency throughout part 3. It is the intent of this proposal that the meaning of the paragraph is not altered.

Paragraph (k) is renumbered as (a)(1). Adds hovercraft. Airboats were previously prohibited in this section and that prohibition continues. The addition of hovercraft to part 3 is a result of new technologies increasingly available to the boating public and since this surface effect craft has the ability to be used on and over a variety of surfaces, including water. The ability to navigate into areas not accessible to other vessels or vehicles would open, in many cases, sensitive habitat to degradation and is inconsistent with the NPS mission. Due to the unique operating characteristics of hovercraft, the prohibition of hovercraft will also appear in part 2 of this chapter.

Paragraph (l) is renumbered as (a)(4). Amends ''size, length or width restrictions'' to ''length, width, or horsepower restrictions''. Adds the criteria used by the USCG to measure vessel length. This continues the authority of the superintendent to restrict the size of vessels using national park waters. It is herein proposed to add language to this paragraph that identifies horsepower restriction as one of those criteria that may be established by the superintendent utilizing §§ 1.5 and 1.7 of this chapter. The work group considered a proposal to establish these vessel size restrictions in part 3. However, it was clearly demonstrated that individual park needs vary considerably. The authority to establish size restrictions will remain with the park superintendent.

This rule proposes language that identifies the USCG standard for measuring vessels and it is the intent of this paragraph that this standard be used in all NPS areas.

Section 3.9 May I Operate a Personal Watercraft (PWC) in Park Waters?

This section has been renumbered from 3.24 to 3.9 and replaces 3.24 (a) and (b) with additions.

Over the past several years the NPS has been working to propose personal watercraft (PWC) use in some areas of the National Park System. As PWC rules are finalized there will be a need to regulate some types of their activity. It is the intent of this section to provide parks having authorized PWC use, rules to govern certain operations of PWC that are as consistent as possible with those of the states. Accordingly, the work group used the NASBLA model act as its guide. This act was developed by NASBLA in concert with the USCG and the Personal Watercraft Industry Association. The NPS agrees with these entities that PWC are sufficiently unique in their operation and safety issues that some specific regulations are necessary for these vessels.

Paragraph (a) of this section requires PWC use to be authorized with the promulgation of a special regulation. This requirement is carried over from 36 CFR 3.24(a) and (b). A PWC is defined under existing NPS regulations located at 36 CFR 1.4. Paragraphs (b)(1) through (b)(4) are designed to reduce conflicts between PWC operators and other vessels and improve safety. To adhere to the goal of consistency with the states, the NPS is proposing in paragraph (b)(5) that if a park area is within a state that regulates the operation of PWC, then the more restrictive state regulation applies

in lieu of paragraphs (b)(1) through (b)(4) of this section. In paragraph (b)(1) a person operating a PWC is required to wear rather than just carry a PFD. This is required because generally an operator or passenger rides on top of the vessel rather than in the confines of the hull, causing additional safety risks. In paragraph (b)(3) night operations are prohibited specifically for PWC.

It is the intent of this section that paragraphs (b)(1) through (b)(4) are applicable in park areas that may be located in a state that does not have more restrictive PWC regulations. Less restrictive state regulations are not adopted.

Section 3.10 What Are the Regulations Regarding Operating a Vessel While Under the Influence of Alcohol and/or Drugs?

This section is an amendment and expansion of the regulation found currently in § 3.6(b).

Operation of a vessel while under the influence of alcohol or drugs is proposed as a stand alone regulation due to the increased emphasis given this issue since part 3 was last reviewed and rewritten.

Further, the regulation in former paragraph 3.6(b) has been found through experience in prosecuting violations to be ineffective. This problem has been experienced in parks nationwide.

Coincident with the rise in boating under the influence awareness and enforcement, there has been an even greater emphasis on operation of a motor vehicle while under the influence. After considerable discussion, the work group came to realize that the regulations governing such activities vary considerably from state to state and that it was best that the NPS not rely on adopting state regulations in this instance.

Through Presidential Proclamation, the federal standard for blood alcohol level is now established at .08 BAC, while the states vary in their standards. This standard is to be employed whether involving vessels or motor vehicles.

With this as background, the work group examined 36 CFR 4.23 governing the operation of motor vehicles while under the influence of alcohol or drugs while in a National Park area. The group found that § 4.23 has been effective in the enforcement of motor vehicle DUI cases. As a result, the work group recommends adopting the language and methodology found in § 4.23 and application of the same standards to the boating environment with appropriate changes to address vessels rather than motor vehicles. While it is true that the operation of vessels and motor vehicles differ in some ways, the impairment of the operator is established at the same level for both (.08 BAC) and the same standards are applicable for public education, staff training, enforcement, and prosecution.

Section 3.11 May I Use a Vessel To Tow a Person for Water Skiing or Other Similar Activities?

This section has been renumbered from 3.20 to 3.11. The title of this section is amended from ''water skiing.'' This change encompasses the variety of recreational devices that individuals may ride on or in while being towed by a vessel. Examples of these devices may include but are not limited to water-ski, inflatables, wake boards, knee boards and other rigid devices.

Paragraph (a) is amended to read, ''allowed only in designated waters'' instead of ''prohibited, except in designated waters.'' It also allows for the superintendents to identify how towing may occur utilizing §§ 1.5 and 1.7 of this chapter.

Paragraph (a)(1) is an addition to part 3 and prohibits the towing of persons attached to airborne devices unless allowed by the superintendent. Some parks have determined this to be an appropriate public use activity; others have found it to be inappropriate. It is the intent of this workgroup to provide superintendents the flexibility to permit this activity, if appropriate, under § 1.6. This prohibition is not intended to include similar devices when used as a form of propulsion.

Paragraph (b) is amended to read ''* * * is designated, the following conditions apply'' instead of ''* * * is authorized, the following are prohibited.''

Paragraph (b)(1) is amended to read ''Towing is allowed only * * *''

Paragraph (b)(2) is amended to read ''In addition to the boat operator, a person at least 12 years of age must be present'' instead of ''Towing without one person (other than the operator)'.

The work group recommends the minimum age of 12 to be consistent with a majority of those states that have established a minimum age for observers. Twelve is also consistent with minimum age requirement for wearing of PFD's as recommended elsewhere in part 3.

Paragraph (b)(3) is amended to require that persons being towed wear a ''United States Coast Guard approved personal flotation device'' rather than ''a personal flotation device.''

Paragraph (b)(4) is an addition to part 3 and addresses unsafe acts committed by a person being towed. It was identified by the work group that a person being towed might commit acts that endanger others through manipulating skis or other devices in a manner that is outside of the control of the vessel operator. The intent of the work group is to place a burden of responsibility on a person being towed to participate in this activity in a safe manner. It is not the intent of the work group to absolve the vessel operator of responsibility for unsafe operation, but to not hold the vessel operator responsible for acts solely under the control of the person being towed.

Paragraph (b)(5) is an addition to part 3 and is added to address the carrying capacity restrictions of the towing vessel. It is the intention of this regulation to assure compliance with the manufacturer's recommended capacity limits on vessels. By assuring compliance with capacity limits, all individuals involved in a towing activity (operator, observer, other passengers, and person being towed), are guaranteed space on or in the vessel in a safe manner. This is intended to include individuals being towed by personal watercraft.

Section 3.12 What Conditions Apply to Marine Sanitation and the Use of Marine Sanitation Devices (MSD)?

This section is an addition to part 3. Neither the existing part 3 nor other Title 36 CFR regulations address the issue of Marine Sanitation Devices (MSDs) or their use on waters of the National Park System.

This section is proposed in order to clarify for the public and park staff the standard necessary to protect park resources with a consistent approach system-wide, while at the same time allowing the superintendent flexibility to accommodate local issues. This regulation provides clearer guidance, consistent with park standards, than is currently available in either USCG laws and regulations or state laws and regulations. USCG regulations regarding MSDs provide for the design of the devices, certification, and use in non-park waters but do not adequately address MSD use in park waters.

State laws vary such that an NPS System-wide standard is imperative to ensure the capability to effectively protect park resources. Part 2 regulations are not specific enough to the boating environment.

The proposed section does not address the issue of the discharge of ''gray-water'' from boats. The work group researched and discussed this issue as an agenda item brought forward as a concern for resource protection.

Several factors prevented its inclusion in the proposed regulations:

1. According to the EPA and the Federal Water Pollution Control Act, gray-water is not a pollutant or contaminant.

2. Vessels are not usually constructed with holding tanks for gray-water. Most vessels are constructed so that water generated from the shower, bath, laundry and sinks is plumbed to a small sump that is periodically (often automatically) discharged overboard, or is directly discharged overboard.

3. There is no requirement in the USCG regulations for carriage or certification of gray-water holding or a discharge device as there is with MSDs.

4. The nature of water resources vary considerably throughout the National Park System, and the impact of gray-water should be evaluated in each environment by appropriate professionals such as biologists or hydrologists.

The work group concluded that gray-water issues should be dealt with on a case-by-case basis at the park level and that the focus of this section is more appropriately directed toward ''black-water'' (sewage) containment aboard vessels.

Section 3.13 Am I Required To Remove a Sunken, Grounded, or Disabled Vessel?

USCG regulations clearly cover the removal of sunken or grounded vessels in navigable waters if the vessel poses a navigational hazard or immediate environmental threat.

The USCG generally ensures that the owner mitigate the hazard or threat by salvaging the vessel completely or by eliminating the object or substance which poses the threat (*i.e.*; removing masts to provide ample clear draft for vessel traffic, pumping out fuel from submerged tanks, towing disabled vessels to deeper water where they are purposely sunk). Depending on location, depth, insurance issues, time period after the sinking or disabling, the owners may decide it more cost effective to leave the vessel where it foundered (sank), grounded, or disabled once they have taken care of the navigational or environmental hazard.

In non-navigable waters, owners may not even be required to fully address these factors. It should be noted that the terms founder and sunken are synonymous with each other for the purposes of this regulation.

In recognizing the unique natural and cultural resources of park waters, shorelines, and submerged areas, the NPS proposes to empower superintendents with the clear authority to order owners of these vessels to remove them under clearly defined conditions. Removal would also include associated equipment, debris, and cargo from the vessel. Although the ''tradition of the sea'' has been to discard things overboard where they are out of sight and out of mind (even the USCG still approves of towing ships out to sea to sink them when they are no longer salvageable in some cases), this may not be in the best interest of park resources. Ultimately, this decision should be made by the NPS rather than by the vessel's owner.

The wording for this regulation was taken almost verbatim from 36 CFR 2.17(c)(1–3) regarding downed aircraft. The situation of downed aircraft in parks is very similar to that of sunken vessels, with the main difference being that one can easily see the aircraft, but cannot generally see the sunken vessel.

Disabled vessels were included in this regulation since they can easily founder or ground if action by the owner is not taken immediately. The regulation again gives authority to the superintendent to require action by the owners, which may prevent more serious problems later on.

Component parts, equipment and associated cargo may become detached from the vessel during the foundering, but can pose just as much or more problems to park resources than the vessels themselves. Therefore, they are included in the removal requirements. Examples of this would be lines, cables, shipping containers, lumber, vehicles, or a wide variety of cargo transported on board vessels.

Although there was some discussion to include the term ''abandoned vessels'' in this regulation, it was decided that this covers a wider range of vessels than was intended for this purpose. 36 CFR 2.22 ''Property'' covers the subject of abandoned property of any type sufficiently. Some parks requested authority to recover costs associated with vessel removal, however, we believe that authority already exists under 36 CFR 2.22(b)(4).

Section 3.14 What Is the Maximum Noise Level for the Operation of a Vessel?

This section is revised with the intent of updating the testing standards for noise level enforcement to encompass more recent standards adopted by the Society of Automotive Engineers (SAE). To accommodate the review of part 3 in its entirety this section is renumbered from 3.7 to 3.14.

The current testing procedures outlined in § 3.7 are appropriate for tests conducted in a laboratory or test facility but are impractical for field law enforcement use. They are difficult and cumbersome to use, thus rendering this regulation ineffective.

Noise abatement has not only continued as a concern on all waterways but has grown in importance as an issue addressed by the visiting public and park staff. According to the Reference Guide To State Boating Laws (2001—Sixth Edition), published by NASBLA, thirty-one states set maximum noise level for vessels. In order to meet the stated work group objective of uniformity with state regulations wherever possible, the rule proposed for noise testing and regulation is modeled after the NASBLA model act. This act has also been adopted whole or in part by many states. Since there is still some inconsistency among the states, with some not regulating noise level, a rule in part 3 is the most effective means to provide a standard applicable across the National Park System. The standards adopted are SAE J–2005 and SAE J–1970. These standards may be obtained through the Society of Automotive Engineer's Web site at *http://www.SAE.org.* These standards are sound testing procedures that allow the measurement of noise level for either stationary vessels or vessels underway. These procedures are more readily used in the field than the current testing procedures. The ease in use of these procedures places less of a burden on the boating public and will result in more effective management of noise level with the result of enhancing the visitor experience. The maximum decibel levels remain the same.

Section 3.15 May I Swim or Wade in Park Waters?

This section is renumbered from the current § 3.21. The title of the regulation is amended from ''Swimming and bathing'' to ''Swimming and wading''.

The title of the section is modified by replacing the term ''bathing'' with ''wading'' in order to clarify the range of activities intended for coverage under this rule. ''Bathing'', as used to refer to the act of swimming, is largely an out-dated term and may have more meaning to modern visitors as a term that addresses the act of ''cleansing'' the body using soap or cleansing agents. Bathing violations could be addressed under 36 CFR 2.14(a)(6).

Paragraphs (a)(1) and (2) of existing § 3.21 are deleted. Paragraph (a)(3) of existing § 3.21 is deleted. The work group decided there was no uniform set of circumstances service-wide regarding swimming from vessels underway, given the variety of water conditions that exist throughout the National Park

System. It is recommended that individual parks deal with this issue on an as-needed basis through designation of this restriction by the superintendent utilizing §§ 1.5 and 1.7 of this chapter. Paragraph (b) of existing § 3.21 is renumbered as a stand-alone regulation, § 3.17.

Section 3.16 What Regulations Apply to Swimming Areas and Beaches?

This section has been moved from paragraph (b) of existing § 3.21. The word ''sporting'' is deleted from the description of activities that may be restricted by the superintendent in order to provide greater flexibility to deal with swimming beach safety issues. These regulations distinguish between swimming areas (in the water) and swimming beaches (on the land).

Section 3.17 May I Snorkel or Underwater Dive in Park Waters?

The part 3 work group is recommending the promulgation of a new regulation to manage underwater activities. The title is amended from ''SCUBA and snorkeling'' to ''Snorkeling and underwater diving''.

In section 1.4, a definition of ''underwater diving'' was added to reflect new diving technologies. It encompasses compressed air as well as mixed gas and surface supplied air.

Paragraph (a) allows ''snorkeling and underwater diving in park waters except where designated as closed''. This is a change from the previous regulation that identified ''swimming, docking, or mooring areas'' as closed to these activities. Superintendents will now have the authority to designate waters that are closed utilizing §§ 1.5 and 1.7 of this chapter.

In Section 1.4, the term ''dive flag'' was added. Several states' dive flag standards were examined. If there were differences, they were most often found in the size of the flag. Many states had no standard and, as a result, the work group recognized a need for an NPS standard and chose the standard most often encountered in other regulations.

Paragraph (c) establishes the relationship in horizontal distance between a diver and the dive flag. It is not the intent of the work group that a diver's vertical distance from the flag be considered in this regulation. Regardless of depth, a diver must be within a 100-foot horizontal radius of the dive flag.

Paragraph (d) allows parks to adopt state laws or regulations that may apply a dive flag requirement to snorkeling as well as to underwater diving. It is not the intent of this section to require a dive flag for snorkeling in parks that are within states with no requirement. Since section 3.2 allows only for the adoption of state boating safety laws and regulations, this section is added to allow parks to adopt specific state water use regulations or laws that require dive flags for snorkelers.

Section 3.18 May I Operate a Submersible in Park Waters?

The part 3 work group is proposing the promulgation of a new regulation to manage submersibles within the national park areas. Definitions of manned and unmanned submersible appear in § 1.4 of this part. The regulation is established to manage, through the permit process, use that is consistent with the NPS mission to protect life, property and park resources. It is the intent of this section to allow the superintendents the discretion to establish conditions for permits.

Over the last several years, several park areas, particularly those with large bodies of water, have experienced an increase in the use of submersibles. The threat to the safety of visitors and submerged natural, cultural or historic resources far outweigh any inconveniences to the public that may result from implementation of the regulation.

Manned recreational submersibles are appearing on the retail market and although somewhat expensive for the average individual, operation requires very little in terms of training. It should also be noted that an automobile easily transports some of these submersible vessels giving the owner ready access to national park areas.

If the operation of these vessels remains unregulated, the potential for boating accidents increases significantly. For example, a submersible coming to the surface in front of an oncoming vessel without warning and without allowing either party sufficient time to maneuver out of harms way.

The use of remotely operated devices is included in the proposed new regulation. The documented use of these devices in national park areas has been primarily for official search and rescue/recovery operations. There is no intent to preclude the use of these devices for administrative purposes. However, the NPS recognizes these devices can easily be used to locate and loot submerged natural, cultural or historical resources. Therefore, the NPS proposes the requirement for a permit for private individuals.

Superintendent's Authority

Throughout this document, the Superintendent is given latitude to manage specific types of uses or activities based on local park needs or issues under the authority of 36 CFR 1.5 and 1.7. Exercising this authority may be accomplished using the authority as cited (§§ 1.5 and 1.7) or through promulgation of a special regulation (part 7).

Part 7

Several parks had existing marine sanitation regulations that were promulgated because there were no service-wide regulations covering the disposal of marine waste. Since MSD regulations are being proposed, the park specific regulations are now redundant and are proposed for removal as well. Other types of boating and water-use regulations also became redundant and have been deleted accordingly.

Compliance With Other Laws

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This rule only relates to the general operation of vessels on park waters and other water based activities but does not propose changes that would alter the numbers of users to a particular area. No economic impacts are likely to be recognized as a result of these regulations.

b. This rule will not create inconsistencies with other agencies' actions. These regulations only impact users of NPS areas and are written to provide greater consistency with the USCG and other state laws.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This rule will not raise novel legal or policy issues. Although this rule is a rewrite of the entire Part 3, it does not propose any significant changes to the way the public currently participates in water based activities. It does provide for greater consistency with state regulations that the public is more likely familiar with.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule affects vessel operation and imposes requirements that are generally already required by most states. There are no

regulations proposed that would likely change the amount of users to an NPS unit nor are there regulations that impose any restrictions on concessions or other vessel or water related businesses.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. This rule is not expected to have any economic affect on local communities or businesses because the scope of the regulations focuses on the way in which vessels are operated, not the amount of vessels to an area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. This rule has no association with costs for consumers nor does it impose any restrictions on businesses or governments of any kind.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule has no association with businesses or uses outside NPS areas.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. This rule has no affect on government entities, only the visiting public.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule is generally focused on safety regarding water use and vessel activity and does not impose any regulations on lands or waters outside the NPS or on any private property.

Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. A Federalism assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order. This rule is focused on providing clearer interpretation of existing regulations and consistency with USCG regulations and state laws and regulations in order to make it easier for the visiting public to comply with regulations.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and have determined that this rule is covered by a categorical exclusion adopted by this federal agency in accordance with the Council on Environmental Quality regulations, 40 CFR 1500–1508. The DOI Manual contains the categorical exclusions applicable to the National Park Service and the exceptions of the use of a categorical exclusion. The effect of the categorical exclusion to identify a category of activities that individually or cumulatively do not have significant effect on the human environment and therefore are exempt from the requirements to prepare an environmental impact statement. The federal action proposed in this rule is described in the categorical exclusion listed in the Departmental Manual at 516 DM 6, appendix 7, section 7.4.A(10) and none of the exceptions to the use of the categorical exclusions listed at 516 DM 2, appendix 2 are applicable.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, ''Consultation and Coordination with Tribal Governments'', and 512 DM 2:

We have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. This rule only pertains to water use and vessel operations on waters inside NPS boundaries and does not propose to change use patterns or amounts so is not likely to affect any tribes near an NPS unit with water use.

Drafting Information: The primary authors of this regulation were Jay Lippert, Fire Island National Seashore; Art North, Delaware Water Gap National Recreation Area; Bonnie Foist, Everglades National Park; Jerry Case, Pinnacles National Monument; Bob McKeever (retired), and Kym Hall, Regulations Program Manager, National Park Service.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail written comments to: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Email to: *WASO_Regulations@nps.gov.* Fax: (202) 219–8835. Please include ''Part 3 Rules'' in the subject line and your name and return address in the body of your message. Finally, you may hand deliver comments to Kym Hall, 1849 C Street NW., Room 7248, Washington, DC. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects

36 CFR Part 1

National Parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 3

Marine safety, National parks, Reporting and recordkeeping requirements.

36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Park Service proposes to amend 36 CFR Parts 1, 3 and 7 as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 16 U.S.C. 1, 3, 9a, 460 1–6a(e), 462(k); D.C. Code 8–137, 40–721 (1981).

2. Amend § 1.4 as follows:

a. Add the following definitions in alphabetical order.

b. Revise the existing definition of *vessel.*

§ 1.4 What terms do I need to know?

* * * * *

Dive flag means a flag not less than 12 inches square, red in color, with a white stripe running diagonally from the top of the staff to the opposite lower corner. The white stripe shall be one-fifth the width of the flag.

* * * * *

Flat wake speed means the minimum required speed to leave a flat wave disturbance close astern a moving vessel yet maintain steerageway, but in no case in excess of 5 statute miles per.

Harbor means a natural or artificially improved body of water providing protection for vessels, which may include anchorage, mooring or docking facilities.

* * * * *

Manned submersible means any vessel that carries or is capable of carrying passenger(s) within the confines of the vessel below the surface of the water.

* * * * *

Power-driven vessel means any vessel propelled by machinery.

* * * * *

Sailing vessel means any vessel under sail provided, if propelling machinery is fitted, it is not being used.

* * * * *

Sewage means human body waste or the waste from a toilet or other receptacle intended to receive or retain body waste.

* * * * *

Underwater diving means the use of any apparatus, whether self contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water, enabling that person to obtain or reuse air or any other gas or gasses for breathing without returning to the surface of the water. Underwater diving would include, but is not to be limited to use of SCUBA; surface supplied air, mixed gas, or re-breathers.

* * * * *

Un-manned submersible means any device operated by remote control, used or capable of being used, to search or collect below the surface of the water. This definition does not apply to a device being used lawfully for fishing.

* * * * *

Vessel means every type or description of craft capable of free flotation, other than a seaplane on the water, used or capable of being used as a means of transportation on or through the water. Non-traditional vessels such as a tube, raft or other inflatable device; surf board, sailboard, and other rigid device are vessels when being used as a means of transportation on or through the water.

* * * * *

PART 3—BOATING AND WATER USE ACTIVITIES

3.–4. Part 3 is revised to read as follows:

Sec.

Authority: 16 U.S.C. 1, 1a–2(h), 3.

§ 3.1 What is the applicability and scope of this part?

The applicability of the regulations in this part is described in § 1.2 of this chapter.

§ 3.2 Do other boating laws and regulations apply to me when I operate my boat on park waters?

(a) In addition to the regulations contained in this part, applicable laws and regulations of the United States Coast Guard apply to govern vessels and their operation on all waters (navigable and non-navigable) subject to NPS jurisdiction. Title 14 United States Code, Title 33 United States Code, Title 46 United States Code, and the United States Coast Guard regulations in 33 CFR Chapter I, 46 CFR Chapter I and III, and 49 CFR Chapter IV apply to such operation. Therefore, Federal regulations authorizing an action by the ''captain of the port'' or another officer or employee of the United States Coast Guard, authorize a like action by the superintendent.

(b) Unless specifically addressed by the regulation in paragraph (a) of this section, vessels and their operation on all waters subject to NPS jurisdiction are governed by non-conflicting boating safety laws and regulations of the state within whose interior boundaries a park area or portion thereof is located.

§ 3.3 Am I required to obtain a permit to operate a vessel in a park area?

Generally, you are not required to obtain a permit to operate a vessel in a park area. However, in certain circumstances, taking into consideration public safety, protection of park resources, weather and park management objectives or other factors, the superintendent may require a permit for use of a vessel within a park area, pursuant to §§ 1.5 and 1.7 and consistent with § 1.6 of this chapter.

§ 3.4 For what purposes may my vessel be inspected?

(a) An authorized person may at any time stop and/or board a vessel to examine documents, licenses or permits relating to operation of the vessel, and to inspect the vessel to determine compliance with regulations pertaining to safety equipment, vessel capacity, marine sanitation devices, and other pollution and noise abatement requirements.

(b) An authorized person who identifies a vessel being operated without sufficient life saving or firefighting devices, in an overloaded or other unsafe condition, as defined in United States Coast Guard regulations, or in violation of a noise level specified in § 3.15(a) of this part, may direct the operator to suspend further use of the vessel until the condition is corrected.

§ 3.5 Do I have to report an accident involving a vessel to the National Park Service?

(a) The operator of a vessel involved in an accident involving total property damage exceeding $2000, injury, or death or disappearance of a person must report the accident to the superintendent as soon as practical, but in any event within 24 hours of the accident.

(b) If the operator is physically incapable of making the report, the owner or an occupant of the vessel must

report the accident to the superintendent.

(c) Filing a report with the superintendent may not satisfy applicable United States Coast Guard, state or local accident reporting requirements.

§ 3.6 What age must I be to operate a power driven vessel?

(a) No person under the age of sixteen (16) years may operate a power-driven vessel on park waters except that a person twelve (12) to fifteen (15) years of age may operate a power-driven vessel if a person at least eighteen (18) years of age is on board the vessel.

(b) If a park area is located within a state having a similar requirement specifying a different age or having different conditions, then the applicable state law is adopted in lieu of paragraph (a) of this section.

§ 3.7 Who must wear a Personal Floatation Device (PFD)?

(a) Any child 12 years of age or younger must wear USCG approved Type I, II, or III PFD when aboard a vessel underway, except while inside an enclosed cabin. If a park area is located within a state having a similar requirement specifying a different age or with different conditions, then applicable state law applies in lieu of this paragraph (a).

(b) Paragraph (a) does not apply to a vessel that requires inspection by the U.S. Coast Guard when that vessel is certified for carrying passengers for hire pursuant to 46 CFR Chapter I or III.

(c) The Superintendent may require that a PFD be worn on designated waters or during designated water based activities in accordance with §§ 1.5 and 1.7 of this chapter.

§ 3.8 What vessel operations are prohibited?

(a) The following operations are prohibited:

(1) Launching or operating an airboat or hovercraft.

(2) Launching or recovering a vessel, except at a launch site designated by the superintendent.

(3) Operating a power-driven vessel on waters not accessible by road.

(4) Operating a vessel in excess of a length, width or horsepower restriction established by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter. For the purposes of this paragraph, vessel length is measured according to criteria established in 46 CFR Chapter I or III.

(5) Attaching a vessel to or interfering with a marker, navigation buoy or other navigational aid.

(b) The following operations are inherently unsafe and therefore prohibited:

(1) Operating a power-driven or sailing vessel within 100 feet of a diver's flag except a vessel in support of dive operations, which may not be operated in excess of flat wake speed.

(2) Failing to observe restriction(s) established by a regulatory marker.

(3) Operating a vessel in excess of flat wake speed:

(i) In designated areas, or

(ii) Within 100 feet of:

(A) A downed water skier, (B) Person swimming, wading, fishing or floating with the aid of a non-motorized inflatable or rigid buoyant device;

(C) Designated launch site; or

(D) Manually propelled, anchored or drifting vessel unless the park is located within a state specifying different conditions then that state law is adopted in lieu of this paragraph.

(4) Unless a designated area is marked otherwise, operating a power-driven or sailing vessel within 500 feet of a shoreline designated as a swimming beach. This prohibition does not apply in locations such as a river, channel, or narrow cove where passage is restricted to less than 500 feet. In such restrictive locations where swim beaches are designated, the operation of a vessel in excess of a flat wake speed is prohibited.

(5) Operating a power-driven vessel while a person is riding on the decking over the bow, gunwales, top edge of the transom, motor cover, or in any other unsafe position when the vessel is being operated above a flat wake speed. Provided however, that this provision does not apply when that portion of the vessel is designed and constructed for the purpose of carrying passengers safely at all speeds.

(6) Operating a vessel, or knowingly allowing another person to operate a vessel in a negligent manner, by failing to exercise that degree of care which a reasonable person, under like circumstances, would demonstrate in order to prevent the endangering of the life, limb, or property of a person(s) through the operator's lack of knowledge, inattention, or general carelessness.

(7) Operating a vessel or knowingly allowing another person to operate a vessel in a grossly negligent manner, by willfully and wantonly creating an unreasonable risk of harm to person(s) or property, regardless of whether the operator intended to cause harm.

§ 3.9 May I operate my personal watercraft (PWC) in park waters?

(a) A person may operate a PWC in park areas only where authorized by special regulation.

(b) Where authorized, operation of a PWC on park waters is subject to the following conditions:

(1) No person may operate a PWC unless each person aboard is wearing a type I, II, or III PFD approved by the United States Coast Guard.

(2) A person operating a PWC equipped by the manufacturer with a lanyard-type engine cut-off switch must attach such lanyard to his person, clothing, or PFD, as appropriate for the specific vessel.

(3) No person may operate a PWC anytime between sunset and sunrise.

(4) No person may operate a PWC by jumping the wake, becoming partially airborne or completely leaving the water while crossing the wake of another vessel within 100 feet of the vessel creating the wake.

(5) If a park area is located within a state that has more restrictive regulations for the operation of PWC, then applicable state law applies in lieu of paragraphs (b)(1) through (b)(4) of this section.

§ 3.10 What are the regulations regarding operating a vessel while under the influence of alcohol and/or drugs?

(a) Operating or being in actual physical control of a vessel is prohibited while:

(1) Under the influence of alcohol or a drug or drugs or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided, however, that if state law that applies to operating a vessel while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits apply rather than the limits specified in this paragraph.

(3) These provisions also apply to an operator who is or has been legally entitled to use alcohol or drugs.

(b) At the request or direction of an authorized person who has probable cause to believe that an operator of a vessel has violated provisions of paragraph (a) of this section, the operator must submit to one or more testing procedures of the blood, breath, saliva or urine for the purpose of determining blood alcohol and/or drug content.

(1) Refusal by an operator to submit to a test is prohibited and proof of

refusal may be admissible in any related judicial proceeding.

(2) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(3) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(c) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(d) The provisions of paragraph (c) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

§ 3.11 May I use a vessel to tow a person for water skiing or other similar activities?

(a) The towing of a person by a vessel is allowed only in designated waters, and in accordance with conditions established by the superintendent pursuant to §§ 1.5 and 1.7 of this chapter.

(b) Towing a person using a parasail, hang-glider or other airborne device may be allowed only in accordance with a permit issued by the superintendent pursuant to § 1.6 of this chapter.

(c) Where towing is designated, the following conditions apply:

(1) Towing is allowed only between the hours of sunrise and sunset.

(2) In addition to the boat operator, a person at least 12 years of age must be present to observe the action of the person being towed.

(3) A person being towed must wear a United States Coast Guard approved type I, II, or III PFD.

(4) A person being towed may not commit any act in a manner that endangers, or is likely to endanger, any person or damage property.

(5) Operating a vessel that does not have the capacity to carry the person(s) being towed in addition to the operator and observer is prohibited.

§ 3.12 What conditions apply to the use of Marine Sanitation Devices (MSD)?

(a) Discharging sewage from any vessel, whether treated or not, in park waters is prohibited.

(b) The owner or operator of any vessel that is equipped with toilet facilities and/or an MSD that is capable of discharge into park waters, must lock or otherwise secure the valves or mechanism of the device in a manner that prevents discharge while within the boundaries of park area waters. For the purposes of this section, a deck mounted pump-out fitting is not considered to be an overboard discharge outlet and is not subject to these requirements, when used in conjunction with an approved pump-out facility.

(c) The superintendent may require the owner and/or operator of the vessel to have all discharge outlets disconnected from through-hull fittings and have both ends of the disconnected line(s) capped or plugged in order to prevent the ability to discharge, pursuant to §§ 1 .5 and 1 .7 of this chapter.

(d) The superintendent may modify the requirements of this section through a special regulation.

§ 3.13 Am I required to remove a sunken, grounded or disabled vessel?

(a) Except as provided in paragraph (b) of this section, the owners or authorized salvager of a sunken, grounded, or disabled vessel must remove the vessel, all component parts and equipment, and all associated cargo thereof in accordance with procedures established by the superintendent. In establishing removal procedures, the superintendent is authorized to:

(1) Establish a reasonable date by which vessel removal operations must be complete;

(2) Determine times and means of access to and from the vessel, and

(3) Specify the manner or method of removal.

(b) The superintendent may waive the requirements of paragraph (a) of this section or prohibit removal of the vessel, equipment or cargo upon a written determination that:

(1) The removal would constitute an unacceptable risk to human life;

(2) The removal would result in extensive resource damage; or

(3) The removal is impracticable or impossible.

§ 3.14 What is the maximum noise level for the operation of a vessel?

(a) A person may not operate a vessel at a noise level exceeding:

(1) 75dB(A) measured utilizing test procedures applicable to vessels underway (Society of Automotive Engineers SAE—J1970); or

(2) 88dB(A) measured utilizing test procedures applicable to stationary vessels (Society of Automotive Engineers SAE—J2005).

(b) An authorized person who has reason to believe that a vessel is being operated in excess of the noise levels established in paragraph (a) of this section, may direct the operator of the vessel to submit the vessel to an on-site test to measure the noise level.

§ 3.15 May I swim or wade in park waters?

Swimming or wading is allowed in waters, subject to closures or restrictions designated by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter.

§ 3.16 What regulations apply to swimming areas and beaches?

(a) The superintendent may designate areas as swimming areas or swimming beaches pursuant to §§ 1.5 and 1.7 of this chapter.

(b) Within designated swimming areas, the use of a surfboard or similar rigid device is prohibited.

(c) The superintendent may prohibit the use or possession of flotation devices, glass containers, kites, or incompatible activities in swimming areas or swimming beaches pursuant to §§ 1.5 and 1.7 of this chapter.

§ 3.17 May I snorkel or underwater dive in park waters?

(a) Snorkeling and underwater diving is allowed in park waters, subject to closures or restrictions designated by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter.

(b) In waters open to the use of vessels, a diver must prominently display a dive flag.

(c) A diver must remain within a 100′ horizontal radius of the dive flag.

(d) If applicable state law or regulation requires a snorkler to display a dive flag, that provision of state law or regulation applies.

§ 3.18 May I operate a submersible within park waters?

The use of manned or unmanned submersibles may only occur in accordance with a permit issued by the superintendent pursuant to § 1.6 of this chapter.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

5. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under DC Code 8–137 (1981) and DC Code 40–721 (1981).

6. Section 7.45 is amended by removing and reserving paragraph (e)(8).

7. Section 7.48 is amended by removing and reserving paragraph (d).

8. Section 7.57 is amended by removing and reserving paragraph (c).

9. Section 7.70 is amended by removing and reserving paragraph (c).

10. Section 7.79 is amended by removing paragraph (c).

Dated: August 14, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife, and Parks.

[FR Doc. 03–21333 Filed 8–21–03; 4:26 pm]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA267–0402b; FRL–7526–7]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from general spray coating operations, surfactant manufacturing, and storage tanks at petroleum facilities. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 25, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov.*

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SCAQMD 481—Spray Coating Operations, SCAQMD 1141.2—Surfactant Manufacturing, and SCAQMD 1178—Further Control of VOC Emissions from Storage Tanks at Petroleum Facilities. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–21591 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 279–0401b; FRL–7526–5]

Revisions to the California State Implementation Plan; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Sacramento Metropolitan Air Quality Management District's portion of the California State Implementation Plan. These revisions concern a local fee rule that applies to major sources of volatile organic compound and nitrogen oxide emissions within the Sacramento Metropolitan ozone nonattainment area. We are proposing to approve a local rule that regulates these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by September 25, 2003.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *steckel.andrew@epa.gov.*

You can inspect copies of the submitted State Implementation Plan revisions and EPA's technical support document at our Region IX office during normal business hours. You may also see copies of the submitted revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: Sacramento Metropolitan Air Quality Management District Rule 307, Clean Air Act Fees. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–21589 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 245–0403b; FRL–7535–1]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from the transfer of organic compounds to mobile transport tanks. We are proposing to approve a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 25, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov.*

You can inspect a copy of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revision and TSD at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local SDCAPCD Rule 61.2. In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 8, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–21587 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 284–0399b; FRL–7536–3]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The BAAQMD revisions concern the emission of volatile organic compounds (VOCs) from the use of solvents and surface coatings. The SJVUAPCD revision concerns the emission of VOCs from a glycol dehydration system used on natural gas streams. We are proposing approval of local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 25, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov.*

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local BAAQMD Rules 8–4 and 8–16 and SJVUAPCD Rule 4408. In the rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 27, 2003.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 03–21585 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[NC–112L–2003–1–FRL–7549–5]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), North Carolina

Department of Environment and Natural Resources (NC DENR) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and the National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-chemical Pulp Mills. In the Rules section of this **Federal Register**, EPA is granting NC DENR the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the state's alternative requirements. A detailed rationale for this approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 25, 2003.

ADDRESSES: Comments may be submitted by mail to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, Supplementary Information section (part (I)(B)(1)(i) through (iii)) which is published in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9141. Mr. Page can also be reached via electronic mail at *page.lee@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: August 13, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–21780 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7549–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; extension of public comment periods.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announced its intent to delete the Selected Perimeter Area (SPA, 68 FR 44259) and the Surface Deletion Area (SDA, 68 FR 44265) of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU) from the National Priorities List (NPL) on July 28, 2003. Both 30-day public comment periods are scheduled to end on August 26, 2003. EPA has received a written request to extend these public comment periods. In response, EPA is extending both public comment periods for an additional 30 days concluding on September 25, 2003.

The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the SPA and SDA portions of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare, and the environment and that no further response action by responsible parties is appropriate.

The partial deletions pertain only to the SPA and SDA of the On-Post OU of the RMA/NPL Site and do not include the Off-Post OU or the rest of the On-Post OU. The Off-Post OU and rest of the On-Post OU will remain on the NPL and response activities will continue at those OUs.

DATES: Comments concerning the proposed partial deletions may be submitted to EPA on or before September 25, 2003.

ADDRESSES: Comments may be mailed to: Catherine Roberts, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, 1–800–227–8917 or (303) 312–6025.

Comprehensive information on the RMA/NPL Site, as well as information specific to both proposed partial deletions, is available through EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site and the Deletion Dockets for these partial deletions are maintained at the Joint Administrative Records Document Facility, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday or by appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, (303) 312–6660.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency Region 8 announces a thirty (30) day extension of the public comment periods for the proposed deletion of the Selected Perimeter Area and Surface Deletion Area of the Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site, Commerce City, Colorado, from the National Priorities List and requests comment on these proposed actions. The NPL constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). The partial deletions

from the RMA/NPL Site are proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (November 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for the SPA and SDA partial deletions from the RMA/NPL Site until September 25, 2003.

Section II of this action explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for these proposed partial deletions. Section IV explains how the SPA and SDA each meet the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the areas deleted if future site conditions warrant such actions.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for the proposed deletion of the SPA and SDA portions of the RMA/NPL Site:

(1) EPA has recommended the partial deletions and prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, concurred with publication of the notices of intent for partial deletion.

(3) Concurrent with the national Notices of Intent for Partial Deletion, a local notice was published in a newspaper of record and distributed to appropriate federal, State, and local officials, and other interested parties. These notices announced a thirty (30) day public comment period for each deletion package, both ending August 26, 2003, based upon publication of the notices in the **Federal Register** and a local newspaper of record.

(4) Concurrent with this national Notice of the Public Comment Extension, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day extension of the public comment periods, which end on September 25, 2003.

(5) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty (30) calendar day extension of the public comment periods, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletions. EPA will prepare a responsiveness summary for both the SPA and SDA for each significant comment and any significant new data received during the public comment periods and will address concerns presented in such comments and data. The responsiveness summaries will be made available to the public at the EPA Region 8 office and the information repository listed above and will be included in the final deletion packages. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summaries. If, after review of all such comments and data, EPA determines that either of the partial deletions from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the SPA or the SDA from the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of each final partial deletion package will be placed at the EPA Region 8 office and the information repository listed above after the final documents have been published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

This notice announces a thirty (30) day extension of the public comment periods for the proposed partial deletions from the RMA/NPL Site. EPA Region 8 announced its intent to delete the SPA and SDA portions of the RMA/NPL Site from the NPL on July 28, 2003. The original basis for deleting the SPA and SDA from the RMA/NPL Site has not changed. The **Federal Register** notice for the SPA (68 FR 44259) and the SDA (68 FR 44265) provide a thorough discussion of the bases for the intended partial deletions.

Dated: August 18, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–21781 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

RIN 1018–AC57

Revisions to General Permit Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the U.S. Fish and Wildlife Service's permit application fee schedule for permits issued by the Divisions of Migratory Bird Management, Endangered Species, Law Enforcement, and Management Authority. The rule also clarifies several aspects of Service permit application procedures, and updates permit-related Service addresses. Additionally, the rule extends the tenure of two types of migratory bird permits.

DATES: Send comments on this proposal by October 10, 2003.

ADDRESSES: You may mail or deliver comments to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MBSP 4107, Arlington, Virginia 22203–1610. Alternatively, you may submit your comments via the Internet to: *permitspart13@fws.gov*. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

If you submit comments by more than one medium, please note that at the beginning of your document. You may also fax in comments to 703/358–2272. When submitting comments, refer to the file number RIN 1018-AC57.

The complete file for this proposed rule, including public comments, is available, by appointment, during normal business hours at the same address. You may call 703/358–2329 to make an appointment to view the files.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703/358–1714.

SUPPLEMENTARY INFORMATION:

Background

In implementing its responsibilities under the Endangered Species Act of 1973, as amended (ESA), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Migratory Bird Treaty Act (MBTA), and other wildlife laws, the Service issues permits and certificates that authorize the holders to engage in certain wildlife-related activities that are regulated by international treaty or laws of the United States. The Service charges user fees to offset the cost of processing applications for these permits and certificates, as well as the cost of monitoring and maintaining active permit files.

The general statutory authority to charge fees for applications for permits and certificates is found in 31 U.S.C. 9701, which states that services provided by Federal agencies are to be ''self-sustaining to the extent possible.'' The authority to charge fees is also found under various wildlife laws. Specifically, the ESA, 16 U.S.C. Sec. 1540(f), authorizes the Secretary to ''charge reasonable fees for expenses to the Government connected with permits or certificates authorized by [the ESA] including processing applications.'' The Marine Mammal Protection Act (MMPA), 16 U.S.C. Sec. 1374(g), also provides that the ''Secretary shall establish and charge a reasonable fee for permits'' issued pursuant to the MMPA.

Federal user fee policy, as stated in Office of Management and Budget (OMB) Circular No. A–25, requires Federal agencies to recoup the costs of ''special services'' that provide benefits to identifiable recipients. Permits are special services, authorizing identifiable recipients to engage in activities not otherwise authorized for the general public. Some of the Service's permit programs receive no designated budget appropriations. Others receive some funding, but not enough to cover costs. Our ability to effectively provide these special services depends in large part on user fees. We are proposing that the standard permit application fee, which has not been revised since 1982, be increased in order to recoup more of the costs associated with providing permitting services.

The current schedule of permit application fees was published in the **Federal Register** on July 15, 1982 (47 FR 30785). The Service set what it calculated to be a reasonable standard fee in 1982 dollars to help defray the costs of processing permit applications, and monitoring and maintaining active permits. However, the standard $25 fee was not large enough to recover the total cost of administering the Service's permit programs, even when it was set in 1982.

In response to cost of living increases, average Federal Government salaries have increased by 128% since 1982, according to the Bureau of Labor Statistics Employment Cost Index. This means that labor costs, which constitute the major expense incurred in administering permit programs, have more than doubled during the 21 years since the standard fee was established.

Furthermore, during that time, the average permit application has become more complex and time consuming to process. For example, migratory bird depredation permit applications are increasing in both frequency and complexity as greater numbers of people have more frequent interactions with migratory birds, resulting in more extensive, and different types of, property damage. Before issuing these permits, the Service must document that it considered and complied with the requirements of the National Environmental Policy Act (NEPA). As part of NEPA compliance, some of these permit issuances require preparation of environmental assessments. For migratory bird rehabilitation, permit conditions and criteria have had to become more complex to keep pace with an expanding and evolving profession, as larger, better-equipped facilities open, providing greater numbers of birds with more sophisticated treatment. In general, permit administration today requires more coordination between Service programs, other Federal programs, and State governments than it did 2 decades ago, in order to comply with the growing body of wildlife regulations needed to address the increasing impacts of an expanding human society. This increased complexity and workload of permit administration results in larger costs to the Service.

Proposed Revised Fee Schedule

Given the shortfall between program costs and fee collection, the Service is proposing to implement a new permit application fee schedule. The Service proposes to replace the current standard and nonstandard fees with a new table of fees to be designated under title 50 of the Code of Federal Regulations (CFR) at § 13.11(d)(4). This rule does not affect permit application fees for migratory bird banding and marking permits, which are issued by the U.S. Geological Survey, Bird Banding Laboratory.

The proposed fee structure is what the Service deems to be reasonable based on the nature of the activities being permitted, as well as the level of complexity and time required to process applications and maintain active permit files. Greater complexity results in greater workload and costs to the Federal Government for providing these special services. For example, fees for marine mammal public display permits are set at the rate of $300 since they are among the most burdensome to process. These permit applications are often complex and require Service coordination with the National Marine Fisheries Service and the Marine Mammal Commission, as well as publication of notices in the **Federal Register** on receipt of an application and issuance of the permit. Permits to import marine mammals generally require a greater allocation of Service administrative and professional resources to process than a comparable CITES Appendix-I import permit and are significantly more complex to process than, for example, a simpler CITES Appendix-II permit application.

While cost considerations were important in developing the new fee structure, the Service does not intend this fee schedule to precisely mirror the actual cost of processing and maintaining the various types of permits we issue. For some types of permits, the cost of processing applications and monitoring active permits far exceeds what the Service can reasonably expect the applicant to pay, and thus the proposed permit application fee defrays only a minor portion of the actual cost to the Service. The proposed fee structure is a compromise between charging permit applicants the entire cost of providing these special services and the need to establish a uniform, straightforward fee schedule that reflects a reasonable cost for processing applications and maintaining active files.

In addition to cost, the Service considered several other factors in developing the new permit application

fee schedule in accordance with 31 U.S.C. 9701, which states that charges for services provided by the Government shall be based on (1) the costs to the Government; (2) the value of the service or thing to the recipient; (3) public policy or interest served; and (4) other relevant facts. Thus, the Service took into consideration such factors as whether the permit serves the public interest, and whether the type of permit to be issued typically provides a commercial benefit, either directly or indirectly, to the recipient.

While the Service's proposed new fee schedule will more closely conform to the Federal user fee policy by recovering a greater portion of the direct and indirect costs of providing special services than is currently being recovered, the proposed fee increases are not great enough to recover the full cost of administering the Service's permit programs. Administrative costs include research and analysis, policy development, consultation, outreach, publication of notices in the **Federal Register**, and overall management of the permit programs. Remaining costs, not captured through permit application fees, must be met with money appropriated for base funding of Service programs.

The Service will review permit application fees on a regular basis, using the cost of living index, as reported by the Bureau of Labor Statistics, as well as other factors that impact the cost to the Government of providing these services, to determine when it is appropriate and necessary to adjust fees.

Native American Cultural and Religious Possession Permits

Native American applicants for permits to possess or travel with eagle and other migratory bird carcasses, parts, and feathers for cultural and religious use will not be required to pay a permit processing fee. We do not consider this type of permit to be a special service like the other permits the Service issues. The Service issues Native American cultural and religious possession permits as part of the Federal Government's trust responsibility toward Federally recognized Native American tribes, and in order to fulfill Native Americans' First Amendment Constitutional rights, and in accordance with the American Indian Religious Freedom Act of 1978. To require Native Americans to pay a fee in order to carry out traditional cultural and religious ceremonies could unduly burden their religious freedom. Thus, we have not proposed a processing fee for applications for permits to take, possess, or transport (including CITES applications) eagle or other migratory bird carcasses, parts, and feathers for Native American cultural and religious use.

Migratory Bird Rehabilitation Permit Application Fees

For many years, applicants for migratory bird rehabilitation permits have paid no application fee. Although part 13 has never provided a formal exemption for rehabilitators, as a matter of practice, application fees for those permits have been waived. On December 6, 2001, the Service proposed a regulation to establish a specific permit category under which migratory bird rehabilitators will be permitted (66 FR 63349). Under that proposed rulemaking, migratory bird rehabilitation permit applicants are required to pay the fee listed in part 13, which is currently $25. As part of that same rulemaking, migratory bird rehabilitation permits are proposed to be extended from a 3-year to a 5-year tenure. The net result of those changes is that migratory bird rehabilitation permit holders would pay $5 per year in permit processing costs.

Under the present rulemaking proposed herein, the rehabilitation permit application fee would increase to $50, resulting in a net increase to rehabilitation permit holders of another $5 per year. While we recognize that migratory bird rehabilitators provide benefits to injured wildlife, the Service nevertheless incurs substantial costs when processing these permits. For the same reasons we are obliged to increase permit application fees Servicewide, we need to recoup the costs of issuing migratory bird rehabilitation permits, and we do not consider a fee equivalent to $10 per year to be a significant economic burden for permit applicants.

Native Endangered and Threatened Species Permit Application Fees

Under the present rulemaking proposed herein, the application fee for native endangered and threatened species permits under the ESA will increase from $25 to: $100 for recovery and interstate commerce; $50 for enhancement of survival permits with Safe Harbor Agreements; $50 for enhancement of survival permits with Candidate Conservation Agreement with Assurances; and $100 for incidental take permits with Habitat Conservation Plans. While we recognize that many of the activities authorized under these permits provide conservation benefits for endangered and threatened species, and the habitats upon which they depend, ESA permit applications for native species have risen significantly in both number and complexity since the application fees were set in 1982. For the same reasons we are obliged to increase permit application fees Servicewide, we need to recoup costs of issuing native endangered and threatened species permits, and we do not consider this modest increase in permit application fees to be a significant economic burden for permit applicants.

Recent Changes in CITES Permits and the Corresponding Fee Changes

With the implementation of new CITES Resolutions and in an effort to improve the efficiency of the permitting process in the Division of Management Authority, changes to the permit procedures have been implemented. The implementation of new Resolutions has been addressed in a previous **Federal Register** notice (65 FR 26664; May 8, 2000). Other procedural changes are outlined below. In some cases, these new Resolutions and charges require that new fees be adopted to offset some new administrative costs.

(1) *Security Paper.* The Service has recently started to issue certain CITES permits and certificates on security paper, rather than using plain paper with a CITES security stamp. Security paper is specially produced paper that contains a variety of security features to prevent fraudulent use of the document. One aspect is a feature that does not allow the document to be clearly reproduced by photocopying. Since these documents cannot be photocopied, the Service needs to alter how we issue certain CITES documents.

(2) *Discontinuation of Multiple-Use Permits.* In the past, we have issued multiple-use permits that allowed multiple exports of specific items. These items have included artificially propagated plants, biological samples, circus animals, ginseng, and personally owned pets. With the exception of personally owned pets and circus animals, we have not issued multiple-use permits to export live animals. In appropriate situations, the applicant would submit a single application and, if approved, would receive a single document that could be used multiple times. Each time the document was used, a photocopied version would be submitted for clearance and would accompany the shipment. However, with the shift to security paper and because fewer countries are willing to accept photocopied documents, the Service has decided to discontinue the issuance of multiple-use permits.

(3) *Multiple Single-Use Permits.* As an alternative to multiple-use permits, we will begin issuing multiple single-use

permits. The permittee will receive a number of single-use permits, valid for 6 months from the issuance date. Each shipment exported must be accompanied by an original document. This new procedure would require that an individual or business submit an application that, if approved, would allow the Service to set up a ''Master File.'' All information regarding the applicant and activities being requested would be maintained in this file. The Service would then be able to issue single-use permits based on the Master File. Since the permits would be valid only for 6 months, the permittee would need to evaluate how many permits would be required during this time period and request that number of permits. The original application for the Master File would require an application fee of $200, and the file would be valid for 3 years. As long as no changes are made to the file, no additional application fee would be required for the 3 years. If, however, changes or amendments are made to the file, an additional application fee of $100 (one half of the original fee) would be charged. After 3 years, the Master File would need to be updated if the permittee wishes to continue receiving single-use permits. This will require that the permittee submit a renewal application and an application fee of $100. A $5 fee charge will be assessed for each single-use permit issued from the Master File. Any permit not used within the 6-month period will expire, and no refund or exchange will be made. Please note that we consider permittees who currently receive multiple-use permits to already have a Master File established and, therefore, they will not need to apply to the Division of Management Authority to establish a new one. They will need to update these files every 3 years and pay the $100 renewal fee.

(4) *Passport Documents*. In addition to switching to security paper, the Service will also begin issuing ''passport'' documents for personally owned pets and traveling exhibition live animals. Under CITES, a passport can be issued for personal pets and traveling exhibition animals in lieu of a typical CITES permit. The passport is valid for 3 years and is issued for a single animal. The animal must travel with the original passport, which must be presented to the appropriate agents at the ports of exit and entry. The passport is only valid for the single animal listed on the document. If the animal is lost, sold, or dies, the passport must be returned to the Division of Management Authority. The application fee for a CITES passport for a personal pet or traveling exhibition animal is $75 and is valid for 3 years. The fee for a passport for an animal listed under both CITES and the ESA is $100 and is also valid for 3 years. Since the passport is issued for a specific specimen and must be returned to the Division of Management Authority if any changes occur to the status of the specimen, we cannot amend the passport once it has been issued.

(5) *Native Appendix III Species*. Under CITES, any Party can unilaterally list a native species in Appendix III. The country that lists a species in Appendix III must issue export permits for any specimens that are exported from that country. Specimens from another country would normally require a Certificate of Origin to be exported or reexported, indicating that they did not originate in the listing country. Currently, the United States has not listed any native species in Appendix III. However, in anticipation of this possibility, we propose an alternative fee schedule to address unique aspects of such a listing. One such aspect could be the need to permit the export of specimens from captive-breeding operations that produce large numbers of specimens intended for a limited number of exportations under very restricted conditions. Permitting for the export of specimens from such an operation could be conducted under a permitting procedure similar to a Master File (described above). We are proposing that a fee schedule be established that would allow an applicant to set up an Annual Program for a $50 processing fee. If approved, the Annual Program permittee would be issued a number of single-use permits, valid for 6 months, that would allow for specimens produced by that permittee to be exported by that permittee. As with permits issued under a Master File, each permit would cost $5 to cover processing. Annual Programs could also be established for Appendix-III species that are harvested from the wild which, due to perishability, must be exported within a few days of harvest. Finally, Annual Programs could be established for breeding operations of native Appendix-II species that are being produced in a closed production system. As with personally owned pet passports, Annual Programs will be established for very specific situations. If the permitted program changes, the Division of Management Authority would need to re-evaluate the complete program. As such, any amendments or changes to the program would void the currently permitted program, and a new application would need to be submitted.

(6) *Wild Bird Conservation Act Cooperative Breeding Programs*. Under the WBCA, cooperative breeding programs can be established to import and breed specifically authorized avian species. These programs are made up of individuals or zoological institutions with specialized skills in the propagation of a particular species. If the program is approved, authorization can be given to import birds under the WBCA. Currently, no fee has been charged to apply for the approval of a cooperative breeding program or to amend and renew currently authorized programs. However, given the length of time and expertise required to review applications for cooperative breeding programs, we will now require an application fee to cover a small portion of the costs involved. We will charge a fee of $200 to process an application to establish a new cooperative breeding program, and a fee of $100 to amend a current program. Amendments would consist of adding a species to or removing a species from the program. We will charge $50 to renew a current breeding program. If an amendment is requested at the time of renewal, the application fee would be only $100.

Combining Permit Authorizations

Sometimes applicants need more than one type of permit to cover their proposed activities, for example, for the export of a bird covered by both CITES and the MBTA, or the take from the wild of a bird covered by both the ESA and MBTA. In such cases, where the applicant requires two or more permit authorizations simultaneously for the same activity, or for more than one activity involving the same wildlife, and the authorizations can be made by the same permit issuance office, the Service can issue a consolidated permit combining the multiple authorizations (see 65 FR 26664, May 8, 2000, Revisions of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora). In such cases, the applicant would pay a single fee for the more costly permit.

Renewals and Amendments

To ensure consistency, the Service is clarifying its policy on permit renewals and amendments. Applications to renew a permit when the tenure of a permit is expiring or has expired are effectively new permit applications. Therefore, all applicable fees will be applied.

The Service will assess a fee for amendments to a valid permit where the amendment reflects a substantive change within the scope of the permit. We will not charge permittees for

administrative changes to valid permits, such as address and telephone number changes. The amount of the amendment fee will typically be half of the application fee for the type of permit (see fee schedule at the end of this document). Examples of substantive amendments include changing the species covered under a scientific collecting permit, requesting authorization to import wildlife through an additional nondesignated port, and relocating a wildlife operation to new facilities at a different site. With some exceptions, most migratory bird permits will not require fees for amendment because amendments to migratory bird permits typically do not require significant additional staff time on the part of the Service to process. Amending a valid permit will not extend the tenure of the permit beyond the original expiration date. Amendments to Master Files, Annual Programs, and WBCA cooperative breeding programs will be treated differently (see above). Some permits cannot be amended; the fee schedule therefore does not reflect any amendment cost for these types of permits (see fee schedule at the end of this document).

Waivers

Currently, § 13.11(d)(3) provides for a waiver of permit fees for governmental entities. This section provides that a fee will not be charged to any Federal, State, or local government agency, nor to any individual or institution under contract to such agency for the proposed activity. In the past, the Service has extended fee waivers to other public institutions provided that proof of their status as a ''public institution'' accompanied the permit application. We are now proposing to limit the fee waiver provided for public institutions to only Federal and State governmental agencies, and to individuals or institutions under contract to such agencies for the activities being permitted. We find it necessary to limit exemptions given the substantial time and effort the Service dedicates to processing permit applications and monitoring and maintaining permits of public institutions. In addition, many of the affected institutions receive benefits from Service permits beyond those that accrue to the general public or to Federal or State governments.

This rule further provides that a Regional Director or Assistant Director may waive or reduce any fee on a case-by-case basis for extraordinary extenuating circumstances. We envision this provision will be used rarely, if ever.

Additional Revisions

We have proposed several administrative changes to § 13.3, entitled ''Scope of regulations.'' Specifically, the titles of several parts of the CFR in Title 50, that are referenced within this section, have been brought up to date. The rule further proposes to revise the term ''permit'' to include documents issued by authorized foreign government agencies for purposes of CITES.

The proposed rule makes revisions to § 13.11(b) to provide updated Service addresses for requesting and submitting permit applications.

We are proposing to revise § 13.11(c) to advise applicants that the time required for the processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects, and may require more than 90 calendar days. Permit applicants are also now informed that the time required for processing some permits may be increased by the procedural requirements of NEPA, the requirement to publish a notice in the **Federal Register** for a 30-day public comment period upon receipt of a permit application, as well as the need to obtain review of the permit application by Service Regional and Field Offices. The Service will work to complete all steps of the permitting process as expeditiously as possible.

Finally, the proposed rule amends § 13.42, to clarify that, in addition to any conditions set forth in the regulations for a given permit type, individual permits may be further conditioned at the time of issuance, at the discretion of the Director, as noted on the face of the permit.

Extension of Permit Tenure for Two Migratory Bird Permits

We are revising § 21.24, taxidermist permits, and § 21.25, waterfowl sale and disposal permits, to extend the tenure of these permits from 3 years to 5 years. These migratory bird permits authorize a service or activities that occur on an ongoing basis. They do not authorize take from the wild, and as such necessitate less Service oversight and monitoring. Taxidermy permits are the most numerous migratory bird permit, representing over 8,000 active permits at any given time. Reducing the frequency of renewal of these permits would reduce Service costs associated with administering these permits.

Endangered Species Act Consideration

Section 7 of the ESA (16 U.S.C. 1531 *et seq.*), provides that, ''[t]he Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act.'' Furthermore, section 7(a)(2) of the Act requires all Federal agencies to ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat.'' Our review of this proposed rule pursuant to section 7 of the ESA concluded that this action will not affect listed or proposed species.

Required Determinations

Responsibilities of Federal Agencies To Protect Migratory Birds (E.O. 13186)

This rule has been evaluated for impacts to migratory birds, with emphasis on species of management concern, and is in accordance with the guidance in Executive Order 13186.

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB has made this determination of significance under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The purpose of this rule is to more closely align the fee structure with the Federal cost of permit processing for permits issued by the Divisions of Migratory Bird Management, Law Enforcement, and Management Authority. Fees charged for permits issued by the Fish and Wildlife Service have not increased since 1982. During that time period, Federal salaries have increased by 128 percent and since permit reviews are a labor-intensive activity, Service programs have had to absorb the additional cost of permit processing.

In total, the Service processes approximately 25,000 permits annually. About half of these permits are issued to small entities, many of whom can pass the economic effect of the fee increase (an average of $50 per year per permit) to consumers, depending on the elasticity of demand. The maximum loss in consumer surplus, if all costs were passed along to consumers, would be $1.25 million annually. However, for commercial permittees, the average $50 cost increase of the permits will be spread over many products and result in negligible price increases to consumers.

The Service believes that the permit fee for working with regulated plants and wildlife is a very small part of the cost of these activities and will result in a negligible economic impact to consumers and businesses.

The benefit of better aligning the permit application fees schedule to the cost of Federal processing is that this will shift the burden of payment for these services from taxpayers as a whole to those persons who are receiving the government services. User fee increases reflect a related shift in appropriations of taxes to government programs, allowing those tax dollars to be applied to other programs that benefit the general public.

The administrative costs involved in implementing this proposed rule are minimal, since the Service permit programs are already established, and the mechanisms for collecting the permit application fees are already in place. Therefore the net gain of reducing the costs on taxpayers greatly outweighs the costs of introducing the user fee increases.

b. This rule will not create serious inconsistencies or otherwise interfere with other agencies' actions. This rule pertains to a Federal permit application process that already exists, and the only purpose of this rule is to update the fee structure to recover Federal costs of processing the permit applications. Non-Federal agencies are not affected by this rule, except that some local agencies previously exempt will now be subject to permit application fees.

c. This rule will not negatively impact or affect entitlements, other grants, user fees, loan programs, or the rights and obligations of their recipients. This rule affects user fees charged for plant and wildlife permits by updating and better aligning the fees with the Federal cost of processing the permits. The average fee increase will be $50 per year with a range of annual fee increases running from $10 for a migratory bird rehabilitation permit to $275 dollars for a marine mammal public display permit. Multiplying the expected 25,000 permits issued annually by the average fee increase of $50 yields a maximum of $1.25 million, which is well below the threshold for a significant regulatory action.

d. This rule does not raise novel legal or policy issues. The current fee schedule for plant and wildlife related permits has been in place since July 15, 1982. No new permits are included in this rulemaking.

The only purpose of this rulemaking is to update and better align the permit fee schedule with the actual Federal cost for processing the applications.

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Service has performed the threshold analysis required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) and the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.* (SBREFA), and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

a. The proposed increase in user fees for Federal permits will affect approximately 12,737 small entities, including importers and exporters of plants, wildlife, and animal products, wildlife propagators, museums, airports, animal exhibitors, migratory bird taxidermists, and migratory bird rehabilitators. The average user fee under this proposal will increase approximately $50 per year. This average includes annual increases ranging from $10 for a migratory bird rehabilitation permit to $275 for a marine mammal public display permit. The total cost increase for small entities applying for permits will be approximately $642,244 for the approximately 12,737 permits that are issued annually to small entities.

The economic effect on small entities of this proposed rulemaking will be an increased cost of doing business. Depending on the elasticity of demand for the goods and services authorized by the permits, much of the cost increase will be passed on to consumers. Thus, the Service does not anticipate that this proposed rule will result in a significant economic burden to small businesses.

b. This proposed rule does not introduce any new reporting, record keeping, or other compliance requirements, and does not introduce any new legal requirements that duplicate other Federal regulations. The average cost increase will be borne by all entities doing business involving wildlife.

c. This proposed rule will not cause major increases in prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or have significant adverse impacts on competition, employment, investment, innovation, or the ability of U.S.-based enterprises to compete with foreign enterprises. A small cost increase to better reflect the cost of review of the permit application will not adversely affect competition in this industry since all entities will be required to pay the increased fees. Since the increase of the cost of the permits will be spread over many products, it will result in negligible price increases to consumers, and will not have a significant effect on the number of permit applications and the corresponding total number of permitted wildlife-related activities conducted.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The Service has determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. The proposed rulemaking only affects the Federal review and issuance of permits under Federal laws. This proposed rule does not apply to State regulations.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The process of wildlife permit application review and issuance is already in place, and this proposed rulemaking is only updating the fee schedule to better align it with the actual cost of processing permits.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, and based on the discussions in Regulatory Planning and Review above, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. Information collection associated with this proposed rule is covered by existing OMB approval Nos. 1018–0022 (expires 4/30/2004), 1018–0094 (expires 7/31/2004), 1018–0093 (expires 3/31/2004), and 1018–0092 (expires 7/31/2004). The Service 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.

National Environmental Policy Act

We have determined that this rule is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.10.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, this rule will have no effect on federally recognized Indian tribes.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued an Executive Order addressing regulations that affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is only updating the fee schedule for permit application review and issuance, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. You may call 703/358–2329 to make an appointment to view the files. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. Under limited circumstances, as allowable by law, we can withhold from the rulemaking record a respondent's identity. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representing an organization or business, available for public inspection in their entirety.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons set forth in the preamble, title 50, chapter I, subchapter B of the Code of Federal Regulations is proposed to be amended as follows:

PART 13—[AMENDED]

1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j-l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

2. Section 13.3 is revised to read as follows:

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including ''Importation, Exportation and Transportation of Wildlife'' (part 14), ''Wild Bird Conservation Act'' (part 15), ''Injurious Wildlife'' (part 16), ''Endangered and Threatened Wildlife and Plants'' (part 17), ''Marine Mammals'' (part 18), ''Migratory Bird Permits'' (part 21), ''Eagle Permits'' (part 22), and ''Endangered Species Convention'' (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) (part 23). As used in this part 13, the term ''permit'' will refer to a license, permit, certificate, letter of authorization, or other document as the context may require, and to all such documents issued by the Service or other authorized United States or foreign government agencies.

3. Revise § 13.11 to read as follows:

§ 13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this subchapter B unless you have filed an application in accordance with the following procedures:

(a) *Forms.* Applications must be submitted in writing on a Federal Fish and Wildlife License/Permit Application (Form 3–200) or as otherwise specifically directed by the Service.

(b) *Forwarding instructions.* Applications for permits in the following categories should be forwarded to the issuing office indicated below.

(1) You may obtain applications for migratory bird banding permits (50 CFR 21.22) by writing to: Bird Banding Laboratory, USGS Patuxent Wildlife Research Center, 12100 Beech Forest Road, Laurel, Maryland 20708–4037.

(2) You may obtain applications for designated port exception permits and import/export licenses (50 CFR 14) by writing to the Assistant Regional Director for Law Enforcement of the Region in which you reside (see 50 CFR 2.2 for addresses and boundaries of the Regions).

(3) You may obtain applications for Wild Bird Conservation Act permits (50 CFR 15); injurious wildlife permits (50 CFR 16); captive-bred wildlife registrations (50 CFR 17); permits authorizing import, export, or foreign commerce of endangered and threatened species, and interstate commerce of non-native endangered or threatened species (50 CFR 17); marine mammal permits (50 CFR 18); and permits and certificates for import, export, and reexport of species listed under the Convention on International Trade in Endangered Species of Wild Fauna and

Flora (CITES) (50 CFR 23) from: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203–1610. Submit completed permit applications to the same address.

(4) You may obtain Endangered Species Act permit applications (50 CFR 17) for native species, including incidental take, scientific purposes, enhancement of propagation or survival (*i.e.*, recovery), and enhancement of survival by writing to the Regional Director (Attention: Endangered Species Permits) of the Region where the activity is to take place (see 50 CFR 2.2 for addresses and boundaries of the Regions). Submit completed applications to the same address (the Regional office covering the area where the activity will take place). Permit applications for interstate commerce for native listed species should be obtained by writing to the Regional Director (Attention: Endangered Species Permits) of the Region that has the lead for the particular species, rather than the Region where the activity will take place. You can obtain that information on the Internet at *http://endangered.fws.gov/wildlife.html,* by entering the common or scientific name of the listed species in the Regulatory Profile query box. Send interstate commerce permit applications for native listed species to the same Regional Office that has the lead for that species.

(5) You may obtain applications for bald and golden eagle permits (50 CFR 22) and migratory bird permits (50 CFR 21), except for banding and marking permits, by writing to the Migratory Bird Permit Program Office in the Region in which you reside (see 50 CFR 2.2 for addresses and boundaries of the Regions). Send completed applications to the same address (the Regional office covering the State where you reside).

(c) *Time notice.* The Service will process all applications as quickly as possible. However, we cannot guarantee final action within the time limit you request. You should ensure that applications for permits for marine mammals and/or endangered and threatened species are postmarked at least 90 calendar days prior to the requested effective date. The time we require for processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects. Submit applications for all other permits to the issuing/reviewing office and ensure they are postmarked at least 60 calendar days prior to the requested effective date. Our processing time may be increased by the procedural requirements of the National Environmental Policy Act (NEPA), the requirement to publish a notice in the **Federal Register** for a 30-day public comment period upon receipt of certain types of permit applications, and/or the time required for extensive consultation within the Service, with other Federal agencies, and/or State or foreign governments. When applicable, we may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the procedural requirements of NEPA.

(d) *Fees.* (1) You must pay the required permit processing fee at the time that you apply for issuance or renewal of a permit. You must pay by check or money order made payable to the ''U.S. Fish and Wildlife Service.'' The Service will not refund any application fee under any circumstances if we have processed the application. However, we may return the application fee if you withdraw the application before we have significantly processed it.

(2) If regulations in this subchapter require more than one type of permit for an activity and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity pursuant to § 13.1. You may submit a single application in such cases, provided that the single application contains all the information required by the separate applications for each permitted activity. Where more than one permitted activity is consolidated into one permit, the issuing office will charge the highest single fee for the activity permitted.

(3) We will not charge a fee to any Federal or State government agency or to any individual or institution under contract to such agency for the proposed activities. Proof of status as a Federal or State government agency, or contractor to such agency, must accompany your application. Except as otherwise authorized or waived, if you fail to submit evidence of such status with your application, we will require the submission of all processing fees prior to the acceptance of the application for processing. We may waive the fee on a case-by-case basis for extraordinary extenuating circumstances provided that the issuing permit office and a Regional or Assistant Director approve the waiver.

(4) User fees.

Type of permit	Citation	Fee	Amendment fee
Migratory Bird Treaty Act			
Migratory Bird Import/Export	50 CFR 21	$75	.....
Migratory Bird Banding or Marking	50 CFR 21	.....	.....
Migratory Bird Scientific Collecting	50 CFR 21	100	50
Migratory Bird Taxidermy	50 CFR 21	100	.....
Waterfowl Sale and Disposal	50 CFR 21	75	.....
Special Canada Goose	50 CFR 21	.....	.....
Migratory Bird Special Purpose/Education	50 CFR 21	75	.....
Migratory Bird Special Purpose/Salvage	50 CFR 21	75	.....
Migratory Bird Special Purpose/Game Bird Propagation	50 CFR 21	75	.....
Migratory Bird Special Purpose/Miscellaneous	50 CFR 21	100	.....
Falconry	50 CFR 21	100	.....
Raptor Propagation	50 CFR 21	100	.....
Migratory Bird Rehabilitation	50 CFR 21	50	.....
Migratory Bird Depredation	50 CFR 21	100	50
Migratory Bird Depredation/Homeowner	50 CFR 21	50	
Bald and Golden Eagle Protection Act			
Eagle Scientific Collecting	50 CFR 22	100	50
Eagle Exhibition	50 CFR 22	75	.....
Eagle Falconry	50 CFR 22	100	.....

Type of permit	Citation	Fee	Amendment fee
Eagle—Native American Religion	50 CFR 22	.....	.....
Eagle Depredation	50 CFR 22	100	50
Golden Eagle Nest Take	50 CFR 22	100	50
Eagle Transport—Scientific or Exhibition	50 CFR 22	75	.....
Eagle Transport—Native American Religious Purposes	50 CFR 22	.....	.....
Endangered Species Act/CITES/Lacey Act			
ESA Recovery	50 CFR 17	100	50
ESA Interstate Commerce	50 CFR 17	100	50
ESA Enhancement of Survival (Safe Harbor Agreement)	50 CFR 17	50	25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances)	50 CFR 17	50	25
ESA Incidental Take (Habitat Conservation Plan)	50 CFR 17	100	50
ESA and CITES Import/Export and Foreign Commerce	50 CFR 17	100	50
ESA and CITES Museum Exchange	50 CFR 17	100	50
ESA Captive-bred Wildlife Registration	50 CFR 17	200	100
—Captive-bred wildlife registration renewal	50 CFR 17	100	.....
CITES Import (including Trophies under ESA and MMPA)	50 CFR 17, 18, 23	100	50
CITES Export	50 CFR 23	100	50
CITES Pre-Convention	50 CFR 23	75	40
CITES Certificate of Origin	50 CFR 23	75	40
CITES Re-Export	50 CFR 23	75	40
CITES Personal Effects and Pet Export/Re-Export	50 CFR 23	50	.....
CITES Appendix II Export (native furbearers and alligators—excluding live)	50 CFR 23	100	50
CITES Master File (includes files for artificial propagation, biomedical, etc. and covers import, export, and reexport documents).	50 CFR 23	200	100
—Renewal of CITES Master File	50 CFR 23	100	.....
—Single-use permits issued on Master File	50 CFR 23	[1] 5	.....
CITES Annual Program File	50 CFR 23	50	.....
—Single-use permits issued under Annual Program	50 CFR 23	[1] 5	.....
CITES replacement documents (lost, stolen, or damaged documents)	50 CFR 23	50	50
CITES Passport for Traveling Exhibitions and Pets	50 CFR 23	[2] 75	.....
CITES/ESA Passport for Traveling Exhibitions	50 CFR 23	[2] 100	.....
Import/Export License	50 CFR 14	100	50
Designated Port Exception	50 CFR 14	100	50
Injurious Wildlife Permit	50 CFR 16	100	50
—Transport Authorization for Injurious Wildlife	50 CFR 16	25	.....
Wild Bird Conservation Act			
Personal Pet Import	50 CFR 15	50	.....
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding	50 CFR 15	100	50
WBCA Approval of Cooperative Breeding Programs	50 CFR 15	200	100
—Renewal of a WBCA Cooperative Breeding Program	50 CFR 15	50	.....
WBCA Approval of a Foreign Breeding Facility	50 CFR 15	[3] 250	.....
Marine Mammal Protection Act			
Marine Mammal Public Display	50 CFR 18	300	150
Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery	50 CFR 18	150	75
—Renewal of Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery	50 CFR 18	75	.....

[1] Each.
[2] Per animal.
[3] Per species.

(5) We will charge a fee for substantive amendments made to permits within the time period that the permit is still valid. The fee will be half the original fee assessed at the time that the permit is processed. Substantive amendments are those that pertain to the purpose and conditions of the permit and are not purely administrative. Administrative changes, such as updating name and address information, are required under § 13.23(c), and we will not charge a fee for such amendments.

(6) Except where specifically addressed above, a permit renewal is an issuance of a new permit, and applicants for permit renewal must pay the appropriate fee listed in paragraph (d)(4) of this section.

(e) *Abandoned or incomplete applications.* Upon receipt of an incomplete or improperly executed application, or if you do not submit the proper fees, the issuing office will notify you of the deficiency. If you fail to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, we will consider the application abandoned. We will not refund any fees for an abandoned application.

4. Amend § 13.12 by adding a new paragraph (c) to read as follows:

§ 13.12 General information requirements on applications for permits.

* * * * *

(c) When applicable, the Service may require permit applicants to provide additional information about the

activity for which permit authorization is being requested and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with the National Environmental Policy Act, other Federal laws, and Executive orders, consistent with 40 CFR 1506.5 and Departmental procedures in 516 DM 6, Appendix 1.3A.

5. Revise § 13.42 to read as follows:

§ 13.42 Permits are specific.

A permit is subject to the conditions of this subpart D, as well as the conditions within the regulations in this subchapter under which the permit is issued, and any other conditions deemed appropriate and included on the face of the permit at the discretion of the Director. The authorizations on the face of a permit that set forth specific times, dates, places, methods of taking or carrying out the permitted activities, numbers and kinds of wildlife or plants, location of activity, and associated activities that must be carried out; authorize certain circumscribed transactions; or otherwise permit a specifically limited matter, are to be strictly construed and will not be interpreted to permit similar or related matters outside the scope of strict construction.

PART 21—[AMENDED]

6. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712(2); Pub L. 106–108.

7. Amend § 21.24 by revising paragraph (e) to read as follows:

§ 21.24 Taxidermist permits.

* * * * *

(e) *Term of permit.* A taxidermist permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit will not exceed five (5) years from the date of issuance or renewal.

8. Amend § 21.25 by revising paragraph (d) to read as follows:

§ 21.25 Waterfowl sale and disposal permits.

* * * * *

(d) *Term of permit.* A waterfowl sale and disposal permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit will not exceed five (5) years from the date of issuance or renewal.

Dated: July 30, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–21489 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AI05

Review of Captive-Reared Mallard Regulations on Shooting Preserves

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a Final Draft of a review of regulations pertaining to the release and take of captive-reared mallards on licensed shooting preserves is available for public review. Comments and suggestions are requested.

DATES: You must submit comments pertaining to the review of regulations governing the release of captive-reared mallards by December 20, 2003.

ADDRESSES: Send your comments to: Jerome R. Serie, Atlantic Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 12100 Beech Forest Drive, Room 224, Laurel, Maryland 20708–4038. Copies of the Final Draft ''Review of Captive-reared Mallard Regulations on Shooting Preserves'' can be obtained by writing to the above address. The Final Draft may also be viewed via the U.S. Fish and Wildlife Service's Home Page at *http://migratorybirds.fws.gov.* All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerome R. Serie, Atlantic Flyway Representative, (301) 497–5851.

SUPPLEMENTARY INFORMATION: On June 1, 1993, we published in the **Federal Register** (58 FR 31247) a notice of intent to review all aspects of regulations pertaining to the release and harvest of captive-reared mallards. This review was subsequently suspended until all the appropriate field studies were completed and results reviewed. On August 28, 2001, we reinitiated our review by publishing in the **Federal Register** (66 FR 45274) an updated notice of intent to review all aspects of regulations pertaining to the release and harvest of captive-reared mallards and provided the public with background information. These regulations, stated in § 21.13 of title 50 of the Code of Federal Regulations (CFR), allow captive-reared mallards, provided they are properly marked prior to 6 weeks of age by removal of the right hind toe, banding with a seamless metal band, pinioning, or tattooing, to be possessed and disposed of in any number, at any time, by any person, without a permit. Further, this regulation stipulates that such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the take of mallard ducks from the wild, with the exception provided; that such birds may be killed by shooting, in any number, at any time, within the confines of any premises operated as a shooting preserve under State license, permit, or authorization. Because captive-reared mallards are classified as a ''migratory bird'' by definition in 50 CFR 10.12, and simply excepted by regulations in § 21.13 allowing their take, they remain protected under the Migratory Bird Treaty Act.

We do not oppose the shooting of captive-reared mallards on shooting preserves to supplement hunting opportunities for the public when precautions are taken to control the distribution of these birds. However, since 1985, this regulation has become more broadly interpreted and some shooting preserves actively release captive-reared mallards in large numbers in free-ranging situations on their premises. Often these properties are in areas frequented by wild ducks. Because both classes of mallards (captive-reared and wild) are indistinguishable until in the hand, regulatory conflicts can arise from allowing free-ranging, captive-reared birds to be taken without bag limits during closed seasons for wild ducks. Similarly, regulations involving live decoys and baiting (50 CFR 20.21) come into effect, which necessitate a discretionary interpretation by enforcement personnel in the field. Also, releases of thousands of uncontrolled, free-flighted captive-reared mallards into areas inhabited by wild ducks pose potential threats of disease transmission and genetic introgression or hybridization, and potentially render data-gathering activities by Federal, State, and Flyway waterfowl management programs less effective. Information pertaining to these potential conflicts is discussed, and recommendations to modify these regulations are considered. The primary focus is to assess the potential effects of

the captive-reared releases and harvest on the status and management of wild migratory waterfowl.

We believe several options are available to alleviate potential conflicts and resolve management problems associated with captive-reared mallard release programs without adversely affecting the opportunities and operations on shooting preserves. Many of these options would require some modification of Federal regulations (50 CFR parts 20 and 21). We intend to explore these options and invite public comment on any options that may alleviate this problem. Comments may be sent to the address indicated under the caption **ADDRESSES.**

Authority

Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior has responsibility for setting appropriate regulations for the hunting of migratory birds, with due regard for maintaining such populations in a healthy state and at satisfactory levels. The Fish and Wildlife Act of 1956 (16 U.S.C. 742 a–j) more specifically authorizes collection of such information as is necessary and to take steps as may be required to protect wildlife resources.

Dated: August 19, 2003.

Matt Hogan,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–21761 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 030714172–3172–01; I.D. 063003A]

RIN 0648–AR33

Atlantic Striped Bass Conservation Act; Atlantic Striped Bass Fishery; Reopening of the Comment Period

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

ACTION: Advance Notice of Proposed Rulemaking (ANPR); reopening of comment period.

SUMMARY: In a document published in the **Federal Register** on July 21, 2003, NMFS requested comments on potential revisions to the Federal Atlantic striped bass regulations for the U.S. Exclusive Economic Zone (EEZ) in response to recommendations from the Atlantic States Marine Fisheries Commission (Commission) to the Secretary of Commerce (Secretary). The comment period for the ANPR closed on August 20, 2003. The intent of this document is to announce the reopening of the public comment period from August 26, 2003 to September 25, 2003.

DATES: Written comments must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. Eastern Standard Time on or before September 25, 2003.

ADDRESSES: Written comments must be sent to: Anne Lange, Chief, State-Federal Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13317, Silver Spring, MD 20910. Comments may also be sent via fax to (301) 713–0596. Comments submitted via e-mail or Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, Fishery Management Biologist, (301) 713–2334, fax (301) 713–0596.

SUPPLEMENTARY INFORMATION: As announced in the **Federal Register** on July 21, 2003 (68 FR 43074), NMFS requested comments on potential revisions to the Federal Atlantic striped bass regulations for the U.S. EEZ in response to recommendations from the Commission to the Secretary. NMFS also solicited comments on possible management measures and issues that NMFS should consider relative to these recommendations. The ANPR comment period closed on August 20, 2003. While NMFS received numerous correspondence expressing opinions about opening the EEZ during the comment period on the original ANPR, NMFS believes that additional concrete information would be useful to make a decision whether to proceed with this rulemaking. Therefore, NMFS is reopening the comment period to solicit additional data or other information that it should consider relative to making a decision regarding possible management measures to address the Commission's recommendations.

Background

Atlantic Striped Bass management is based on the Commission's Atlantic Striped Bass Interstate Fishery Management Plan (ISFMP), first adopted in 1981. From 1981–1994, four ISFMP Amendments were developed that provided a series of management measures that led to the rebuilding of the stocks. In 1995, the Commission declared the Atlantic striped bass population fully restored and implemented Amendment 5 to the ISFMP to perpetuate the stock so as to allow a commercial and recreational harvest consistent with the long-term maintenance of the striped bass stock. Since then the population has expanded to record levels of abundance. To maintain this recovered population, the Commission approved Amendment 6 to the ISFMP (Amendment 6) in February 2003 (copies of Amendment 6 are available via the Commission's website at www.asmfc.org). The Commission believes that the measures contained in Amendment 6 are necessary to prevent the overfishing of the Atlantic striped bass resource while allowing growth in both the commercial and recreational fishery. Development of Amendment 6 took almost four years and involved extensive input from technical and industry advisors, and provided numerous opportunities for the public to comment on the future management of the species.

Amendment 6 incorporates results of the most recent Atlantic striped bass stock assessment, developed by the Atlantic Coast States, the Commission, NMFS, and the U.S. Fish and Wildlife Service (see section 1.2.2 of Amendment 6). In summary, the 2001 stock assessment concluded that the overall abundance of the stock is very high and fishing mortality remains below the target rate. The stock's abundance increased steadily between 1982 and 1997 and since then has remained stable. The fishing mortality rate increased steadily until 1999, but decreased slightly in 2000. Amendment 6 also includes recommendations to the Secretary on the development of complementary measures in the EEZ. Management of Atlantic striped bass in the EEZ was one of the issues that was considered throughout development of Amendment 6.

Recommendation to the Secretary

On April 24, 2003, the Secretary of Commerce received a letter from the Commission with the following three recommendations for implementation of regulations in the EEZ: (1) Remove the moratorium on the harvest of Atlantic striped bass in the EEZ; (2) implement a 28–inch (71.1 cm) minimum size limit for recreational and commercial Atlantic striped bass fisheries in the EEZ; and (3) allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdictions.

In support of its request, the Commission provided a number of reasons to justify opening the EEZ to striped bass fishing. These reasons include:

(1) In 1995, due in part to a closure of the EEZ in 1990 to striped bass

harvest, the population of this species was declared fully restored by the Commission. The purpose of closing the EEZ was to protect strong year classes entering the population and to promote rebuilding of the overfished population.

(2) The commercial harvest is controlled by hard quotas; when they are reached the fishery is closed; and overages are taken out of next year's quotas. The Commercial quota will be landed regardless of whether or not the EEZ is opened.

(3) Currently, recreational and commercial catches are occurring in the EEZ and these fish are required to be discarded. Opening the EEZ will convert discarded bycatch of striped bass to landings.

(4) Because of management measures implemented since 1990, the striped bass population has recovered to a point where further examination of whether this fishery should occur in the EEZ is appropriate. There are expectations among a number of fishing industry stakeholders that their past sacrifices would result in future opportunities to harvest striped bass, and therefore, there are potential credibility issues associated with keeping the EEZ closed, especially in light of the current status of the Atlantic striped bass stock.

(5) The recommendation to open the EEZ is part of Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan (Amendment 6) which incorporates new management standards to ensure stock conservation including targets and thresholds for both mortality and spawning stock biomass. Fishing mortality is currently below the target level, and spawning stock biomass is 1.5 times the target level.

(6) Amendment 6 includes monitoring requirements and triggers that will allow the Commission to respond quickly to increased mortality.

(7) The bulk of the public comment received by the Commission in opposition to opening the EEZ during the development of Amendment 6 cited expansion of the commercial fishery as rationale not to open the EEZ. The Commission believes the rationale is incorrect because the commercial fishery is controlled by a hard quota.

The Commission stated that its Atlantic Striped Bass Technical Committee would monitor annually the Atlantic striped bass population, and, if at some point in the future the Commission determines that the Atlantic striped bass population is overfished or that overfishing is occurring, it may recommend further management measures for the EEZ.

By this document, NMFS is reopening the public comment period. There were no changes from the ANPR previously published. NMFS is specifically soliciting additional data or other information that it should consider relative to making a decision regarding possible management measures to address the Commission's recommendations. After review of comments received from this notice and the ANPR, NMFS will decide whether to initiate a lengthy review and decision-making process, which would include preparation of either an Environmental Impact Statement or an Environmental Assessment, and the development of management measures to revise current Federal regulations for Atlantic striped bass in the EEZ.

Authority: 16 U.S.C. 1851 note.

Dated: August 21, 2003.

Bruce C. Morehead,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21806 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 165
Tuesday, August 26, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Visitor's Permit Form FS–2300–30 and Visitor Registration Card Form FS–2300–32

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 the extension of a previously approved information collection, for the Visitor's Permit Form (FS–2300–30) and the Visitor Registration Card Form (FS–2300–32). Moreover, the Organic Administration Act (16 U.S.C. 473), the Wilderness Act (16 U.S.C. 1131), Wild and Scenic Rivers Act (16 U.S.C. 1271) and Executive Order 11644 (Use of Off-Road Vehicles in the Public Lands), require the Forest Service to manage the forests to benefit both land and people. To this end, the information collected from the Visitor's Permit Form and Visitor Registration Card Form will help the Forest Service ensure that visitors' use of National Forest System lands is in the public interest and is compatible with the mission of the agency. Information will be collected from National Forest System land visitors, who will be asked to describe their intended use of the land and their estimated duration of use.

DATES: Comments must be received in writing on or before October 27, 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 Wilderness Program Manager; Recreation, Heritage, and Wilderness Resources Staff, Mail Stop 1125, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20090–1125.

Comments also may be submitted via facsimile to (202) 205–1145 or by e-mail to *dfisher/wo@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Recreation, Heritage, and Wilderness Resources Staff, 201 14th Street, SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to (202) 205–0818 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Don Fisher, Wilderness Program Manager, Recreation, Heritage, and Wilderness Resources Staff at (202) 205–1414. 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:

Description of Collection

1. *Title:* Visitor's Permit Form (FS–2300–30).

OMB Number: 0596–0019.

Expiration Date of Approval: 11/30/2003.

Type of Request: This is a request for extension of an information collection previously approved by the Office of Management and Budget.

Abstract: The Visitor's Permit Form is required for visitors to enter many special management areas on National Forest System Lands, including Wilderness Areas, Scenic Rivers, restricted off-road vehicle areas, and campgrounds where use is controlled through reservation and permit systems. The permit is only used where public use levels must be managed and monitored to prevent resource damage, to preserve the quality of the experience, or to maintain public safety. The information collected from the Visitor's Permit Form can also be used to respond to indicators or standards in a Forest plan or Wilderness Area plan.

Forest Service employees collect and analyze the information from the Visitor's Permit Form. The personal contact generated by issuance of the permit results in improved visitor education and information about proper camping techniques, fire prevention, safety, and sanitation. The Visitor's Permit Form also allows managers to identify heavily used areas and move use to lesser-impacted areas; and helps managers locate lost forest visitors. Not having the Visitor's Permit Form could result in overuse and site deterioration in some environmentally sensitive areas. Furthermore, without the permit, the Forest Service would be required to undertake special studies to collect use data, and could be pressed to make management decisions based on insufficient or inaccurate data.

The Visitor's Permit Form captures the visitor's name and address, area to be visited, dates of visit, length of stay, method of travel, number of people, and number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group.

Method of Collection

The Visitor's Permit Form is generally issued by Forest Service employees at an office location and requires visitors to obtain the permit in person, or to call ahead and provide the required information over the phone. The information collection does not involve the use of automated, electronic, mechanical, or other technological collection techniques. The information collected will not be shared with other organizations inside or outside the government.

Estimate of Annual Burden: 3 minutes per permit.

Type of Respondents: Individuals and groups requesting use of National Forest System wilderness and special management areas.

Estimated Annual Number of Respondents: 126,500 per year.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,325 hours.

Description of Collection

2. *Title:* Visitor Registration Card (FS–2300–32).

OMB Number: 0596–0019.

Expiration Date of Approval: 11/30/2003.

Type of Request: This request for extension of an information collection previously approved by the Office of Management and Budget.

Abstract: The Visitor Registration Card Form is a voluntary registration card, which provides Forest Service managers with an inexpensive means of gathering visitor use information required by management plans, without imposing mandatory visitor permit regulations. Moreover, the information

collected can be used to respond to indicators or standards in a Forest plan or Wilderness Area plan without requiring a mandatory permit system to gather and record the data. Use of the Visitor Registration Card Form is one of the most efficient means of collecting data from visitors. It allows the Forest Service to collect data in remote locations, where it is not feasible to have permanent staffing.

The Visitor Registration Card Form allows managers to identify heavily used areas, to prepare restoration and monitoring plans that reflect where use is occurring, and in extreme cases, to develop plans to move forest users to lesser impacted areas. It also provides managers with information useful in locating lost forest visitors. Not having the Visitor's Registration Card Form could result in overuse and site deterioration in some environmentally sensitive areas. Furthermore, without the registration card, the Forest Service would be required to undertake special studies to collect use data, and could be pressed to make management decisions based on insufficient or inaccurate data.

The Visitor Registration Card Form provides information from wilderness and special management area visitors including name and address, area to be visited, dates of visit, length of stay, method of travel, number of people, and number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group, and number of watercraft or vehicles.

Method of Collection

The Visitor Registration Card Form (FS–2300–32) is normally made available at un-staffed entry locations such as trailheads, and is completed by the visitor without Forest Service assistance. The information is collected once from visitors during their visit, by Forest Service employees who then analyze the information. The information collected will not be shared with other organizations inside or outside the Government.

Estimate of Annual Burden: 3 minutes per card.

Type of Respondents: Individuals and groups requesting use of National Forest System wilderness and special management areas.

Estimated Annual Number of Respondents: 241,500 per year.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,075 hours.

Comment Is Invited

Comment is invited on: (1) The necessity of the information for the stated purposes and the proper performance of agency functions, including the practical or scientific utility of the information; (2) the accuracy of the agency's estimated burden of the information collection, including the validity of the methodology and assumptions used; (3) the enhancement of the quality, utility, and clarity of the information to be collected; and (4) the minimization of the information collection burden 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 19, 2003.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–21778 Filed 8–25–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Wednesday, September 10, 2003, at the Sunnyslope Fire Station, 206 Easy Street, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting we will discuss Forest Plan Revision, Farewell Fire update, noxious weed management and prevention, and updates on implementation of the Northwest Forest Plan. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, (509) 662–4335.

Dated: August 19, 2003.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests.

[FR Doc. 03–21730 Filed 8–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman's Report, (5) Update on Approved Projects from the Mendocino, (6) Report from Tehama Fire Plan, (7) General Discussion, (8) Next Agenda.

DATES: The meeting will be held on September 11, 2003, from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; email *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 8, 2003, will have the opportunity to address the committee at those sessions.

Dated: August 19, 2003.

Robert McCabe,

Acting Designated Federal Official.

[FR Doc. 03–21728 Filed 8–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 082003A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Basic Requirements for All Marine Mammal Special Exception Permits to Take, Import and Export Marine Mammals, and for Maintaining a Captive Marine Mammal Inventory under the Marine Mammal Protection Act, the Fur Seal Act, and the Endangered Species Act.

Form Number(s): None.

OMB Approval Number: 0648–0084.

Type of Request: Regular submission.

Burden Hours: 6,411.

Number of Respondents: 481.

Average Hours Per Response: 29 hours for an application for a scientific research or enhancement permit; 20 hours for an application for a public display permit or a General Authorization Letter of Intent; 10 hours for an application for a photography permit; 19 hours for a major amendment to a permit; 3 hours for a minor amendment to a permit or for a change to a General Authorization; 2 hours for a request to retain or transfer a rehabilitated marine mammal; 12 hours for a scientific research/enhancement annual or final report; 2 hours for public display or photography permit annual or final report; 12 hours for a General Authorization annual or final report; 2 hours for a marine mammal inventory (1 hour for a transport notification, 30 minutes for a data sheet, and 30 minutes for a person/holder/facility sheet); and 2 hours for recordkeeping.

Needs and Uses: The Marine Mammal Protection Act (MMPA), the Fur Seal Act (FSA) and the Endangered Species Act (ESA) prohibit the taking, import, and export of marine mammals with certain exceptions. Applicants desiring a permit or authorization to take, import, or export must provide certain information to be used as a basis for determining whether the proposed activity is consistent with the purposes, policies, and requirements of the MMPA, ESA, and/or FSA and if a permit or authorization should be issued. Permit holders and authorized researchers under the General Authorization are required to report periodically on activities conducted and species taken. This requirement ensures compliance with permit conditions and protection of the animals, and updates information, as necessary, on any marine mammals held captive for purposes of maintaining the marine mammal inventory as required under the 1994 Amendments to the MMPA.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 19, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21725 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 92–7A001.''

The original Certificate for Aerospace Industries Association of America, Inc. was issued on April 10, 1992 (57 FR 13707, April 17, 1992) and previously amended on September 8, 1992 (57 FR 41920, September 14, 1992); October 8, 1993 (58 FR 53711, October 18, 1993); November 17, 1994 (59 FR 60349, November 23, 1994); June 26, 1995 (60 FR 36262, July 14, 1995); November 12, 1998 (63 FR 64061, November 18, 1998); and December 4, 2001 (66 FR 64216, December 12, 2001). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Aerospace Industries Association of America, Inc., 1000

Wilson Boulevard, Suite 1700, Arlington, Virginia 22209–3901.

Contact: Matthew F. Hall, Counsel, Telephone: (202) 862–9700.

Application No.: 92–7A001.

Date Deemed Submitted: August 14, 2003.

Proposed Amendment: Aerospace Industries Association of America, Inc. seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Areté Associates, Arlington, VA; AstroVision International, Inc., Bethesda, MD; B&E Tool Company, Inc., Southwick, MA; Celestica Corporation, Toronto, Ontario; Computer Sciences Corporation, El Segundo, CA; Crane Aerospace & Electronics, Lynwood, WA (Controlling Entity: Crane Company, Stamford, CT); Dy 4 Systems Limited, Kanata, Ontario (Controlling Entities: Force Computers, Fremont, CA and Solectron Corporation, Milpitas, CA); EDO Corporation, New York, NY; EFW Inc., Fort Worth, TX; ESIS, Inc., San Diego, CA; Federation, Inc., Centennial, CO; HITCO Carbon Composites, Inc., Gardena, CA; JEDCO, Inc., Grand Rapids, MI; L–3 Communications Holdings, Inc., New York, NY; 3M Company, St. Paul, MN; Orbital Sciences Corporation, Dulles, VA; PerkinElmer, Inc., Wellesley, MA; Proficiency, Inc., Marlborough, MA; The Purdy Corporation, Manchester, CT; Remmele Engineering, Inc., New Brighton, MN; RTI International Metals, Inc., Niles, OH; Silicon Graphics, Inc., Mountain View, CA; SM&A, Newport Beach, CA; and Titan Corporation, San Diego, CA;

2. Delete the following companies as ''Members'' of the Certificate: The Aerostructures Corporation, Nashville, TN; Davis Tool, Inc., Hillsboro, OR; Fairchild Dornier, Corporation, Wessling, Germany; The Fairchild Corporation, Dulles, VA, for the activities of Fairchild Fasteners, Dulles, VA; Genuity Solutions, Inc., Woburn, MA; Groen Brothers Aviation Incorporated, Salt Lake City, Utah; i2 Technologies, Washington, DC; The NORDAM Group, Tulsa, OK; Robinson Helicopter Company, Torrance, CA; and Space Access, LLC, Palmdale, CA; TRW Inc., Cleveland, OH; and

3. Change the listing of the following Members: ''Stellex Aerostructures, Inc., Woodland Hills, CA'' to the new listing ''Stellex Aerostructures, Inc., Lebanon, NJ''; ''GenCorp, Sacramento, CA'' to the new listing ''Aerojet, Rancho Cordova, CA''; ''Parker Hannifin Corporation, Cleveland, OH'' to the new listing ''Parker Aerospace, Irvine, CA''; ''Embraer Aircraft Corporation, Brazil'' to the new listing ''Embraer Aircraft Holding, Inc., Fort Lauderdale, FL''; ''GKN Aerospace, Inc., Reston, VA'' to the new listing ''GKN Aerospace Services, Farnham, Surrey, UK''; ''The Boeing Company, Seattle, WA'' to the new listing ''The Boeing Company, Chicago, IL''; ''Honeywell Incorporated, Morristown, NJ'' to the new listing ''Honeywell Aerospace, Phoenix, AZ''; ''MatrixOne, Inc., Chelmsford, MA'' to the new listing ''MatrixOne Inc., Westford, MA''; and ''Smiths Group, PLC, London, England, UK, for the activities of Smiths Aerospace Actuation Systems, Los Angeles, Duarte, CA'' to the new listing ''Smiths Aerospace Actuation Systems, Duarte, CA''.

Dated: August 20, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–21789 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the contact officer indicated for each individual mission below.

Bonjour Quebec!

Montreal, Canada, October 28–29, 2003, recruitment closes September 15, 2003.

For Further Information Contact: Mr. Pierre Richer, U.S. Commercial Service Montreal, telephone (514) 908–3661, or email *Pierre.Richer@mail.doc.gov.*

Aerospace Executive Service at the Dubai 2003

Dubai, United Arab Emirates, December 8–10, 2003, recruitment closes November 1, 2003.

For Further Information Contact: Mr. Adel Fehmi, U.S. Commercial Service, Dubai, telephone: 011–971–4–311–6128 or email *Adel.Fehmi@mail.doc.gov.*

Healthcare Technologies Trade Mission

Brussels, Belgium and Amsterdam, the Netherlands, February 9–13, 2004, recruitment closes January 9, 2004.

For Further Information Contact: Mr. William Kutson, U.S. Department of Commerce, telephone (202) 482–2839, or e-mail *William.Kutson@mail.doc.gov.*

Information and Communication Technologies Trade Mission

Singapore, Kuala Lumpur, Malaysia and Bangkok, Thailand, March 15–23, 2004, recruitment closes January 30, 2004.

For Further Information Contact: Mr. Matthew H. Wright, U.S. Department of Commerce, telephone (202) 482–2567, or e-mail *Matthew.Wright@mail.doc.gov.*

Recruitment and selection of private sector participants for these trade missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

For Further Information Contact: Mr. John Klingelhut, U.S. Department of Commerce, telephone (202)482–3304 or e-mail *John.Klingelhut@mail.doc.gov.*

Dated: August 19, 2003.

John Klingelhut,

Senior Advisor, Export Promotion Services.

[FR Doc. 03–21731 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082003B]

Proposed Information Collection; Comment Request; Electronic Chart System and Electronic Chart Display and Information System User Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 27, 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 and instructions should be directed to CDR Timothy D. Tisch, NOAA, U.S. Department of Commerce, NOAA, National Ocean Service, Office of Coast Survey, N/CS, U.S. Merchant Marine Academy, 300 Steamboat Road, Bowditch Hall, Kings Point, NY 11024 (phone: 516– 773–5221).

SUPPLEMENTARY INFORMATION:

I. Abstract

Electronic Chart Systems (ECS) and Electronic Chart Display and Information Systems (ECDIS) are extremely complex navigation systems which gives the operator broad discretion over display setup. As with any complex system they are particularly vulnerable to human factor errors. It is extremely important to examine and re-evaluate knowledge and skill sets that a mariner will need to have to use these revolutionary pieces of navigation equipment to their maximum benefit and maximum safety. Users of ECS and ECDIS would be surveyed for the purpose of determining the current state of ECDIS/ECS usage by the mariner and identifying technical problems, best practices, personal preferences, near misses, reasons for mariners preferences on equipment setup, and skill sets and knowledge that mariners feel are important to the safe efficient use of this equipment.

Ongoing research at the United States Merchant Marine Academy proposes to use an existing full mission bridge simulator to identify human factor errors associated with ECS and ECDIS by the observation of casualties in a virtual environment. The intent is to use this information and research to help develop training and educational aids which proactively work to reduce the likelihood of human factors errors with ECS and ECDIS.

II. Method of Collection

Survey questionnaires mailed to users of ECS and ECDIS equipment will collect data on vessel and equipment type, wheelhouse ergonomics, electronic charts in use, equipment usage, navigation, and operator backgrounds.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households, business or other for-profit organizations, and Federal Government.
Estimated Number of Respondents: 1000.
Estimated Time Per Response: 40 minutes.
Estimated Total Annual Burden Hours: 667.
Estimated Total Annual Cost to Public: $0.

IV. Request for 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 shall 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, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 19, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21724 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–KE–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081803B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the Cape Cod Commercial Hook Fisherman's Association (CCCHFA), in collaboration with Massachusetts Division of Marine Fisheries (DMF), and Manomet Center for Conservation Sciences (Manomet). These EFPs would allow up to 18 vessels (including 2 alternates) to fish for haddock using longline gear or jig gear in NE multispecies year-round Georges Bank (GB) Closed Area I (CA I) during the months of October through December 2003. The purpose of the study is to collect observer-based data to determine whether reinstating traditional access to GB CA I for haddock for hook-and-line fishermen while minimizing bycatch of GB cod is possible. This information could then be used by the New England Fishery Management Council (Council) and NMFS to determine the feasibility of establishing a traditional haddock hook-and-line fishery in CA I.

DATES: Comments on this action must be received at the appropriate address or fax number on or before September 10, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Haddock EFP Proposal.'' Comments may also be sent via fax to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Draft Environmental Assessment (EA) are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Heather Sagar, Fishery Management Specialist, phone: 978–281–9341, fax: 978–281–9135, email: *heather.sagar@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

Three year-round closed areas were established in 1994 under Amendment 5 to the FMP to provide protection to concentrations of regulated NE multispecies, particularly cod, haddock, and yellowtail flounder. These closure areas, CA I, Closed Area II and the Nantucket Lightship Closure Area, have

proven to be effective in improving the stock status of several species, in particular of GB haddock. Spawning stock biomass for GB haddock declined from 69,000 mt in 1978 to 11,000 mt by 1993, and has since increased to 74,000 mt in 2001. Fishing pressure has been reduced by days-at-sea management, mesh sizes, and trip limits.

In their EFP application, the applicants indicated that common knowledge within the fishing and scientific communities suggests that cod are less available than haddock in certain portions of CA I. The applicants believe that there is a need to support this knowledge with scientific data, potentially enabling the rebuilt GB haddock resource to be utilized without impacting the management programs that currently protect the rebuilding of GB cod.

Proposed EFP

On August 7, 2003, CCCHFA, in collaboration with Massachusetts DMF and Manomet, submitted a complete application for 18 EFPs. Of the 18 EFPs, 11 would be issued to longline vessels (including 1 alternate) and 7 would be issues to jig vessels (including 1 alternate). Although 18 EFPs would be issued, only 16 vessels would take part in this study, as 2 vessels would be used as alternates only. The purpose of this study is to determine if a directed hook-gear fishery for haddock in GB CA I can occur with minimal impact to GB cod. Exemptions would be necessary to relieve vessels from the CA I restrictions specified under 50 CFR 648.81(a) and hook gear restrictions under 50 CFR 648.80(a)(4)(v) of the FMP.

The proposed study would occur in a specified area within the northwest portion of CA I, defined by the following Loran coordinates: 13700 X 43820; 13625 X 43820; 13625 X 43680; 13700 X 43680. The experiment would occur during the months of October and December 2003, during which approximately 3 longline and 2 jig trips would occur weekly, for a total of 64 day trips for the study. Participating vessels would be prohibited from fishing in areas outside of CA I during an experimental fishing trip. This study would follow normal fishing practices. A total allowable catch (TAC) of 15 mt for GB cod and 100 mt for GB haddock would be allowed for the experimental fishery. The applicant estimates that longline trips would average 1,500 to 3,000 lb (680 kg to 1,360 kg, respectively) of haddock and less then 300 lb (136 kg) of cod daily. Jig trips are estimated to land a maximum of 2,000 lb (907 kg) of haddock and less then 100 lb (45 kg) of cod daily. All fish landed would be subject to the minimum size and trip limit requirements.

Manomet scientific staff would be present on board each participating vessel, equating to 100–percent observer coverage for this experimental fishery. Observers would be responsible for collecting all biological and environmental data on NMFS observer forms. Manomet will also be developing a full report of results and will submit this information to the Regional Administrator monthly. The EFPs would contain a provision authorizing the Regional Administrator to continue the proposed experimental fishery on a month-by-month basis, e.g., if the cod TAC of 15 mt, or haddock TAC of 100 mt, is exceeded or projected to be exceeded by the end of December 2003.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the activities proposed to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to 18 vessels exempting them from the CA I, and 3,600–hook limit restrictions of the FMP.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

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

Dated: August 19, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21722 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081803C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemption from the Georges Bank cod landing limit for one commercial vessel, for not more than 26 days-at-sea (DAS). The experiment would test the effectiveness of two cod-avoiding flatfish trawl designs for reducing bycatch of cod (*Gadus morhua*) and sub-legal size yellowtail flounder (*Limanda ferruginea*) while maintaining catch rates of legal-sized yellowtail flounder.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before September 10, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Massachusetts DMF Cod-Avoiding Trawl Net EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Susan Chinn, Fishery Management Specialist, phone 978–281–9218.

SUPPLEMENTARY INFORMATION: The Massachusetts Division of Marine Fisheries (DMF) submitted an application for an EFP on June 9, 2003,

to implement a Salstonstall-Kennedy grant, with a final, revised submission on July 30, 2003. DMF proposes to conduct 100 tows for each design with a twin trawl net, in which the test net is rigged alongside a standard net, for 200 total tows, and limited to 200 hours of bottom-time. The experimental fishing would take place between September 1, 2003, and March 1, 2004, on Georges Bank in 30–minute squares 62–63, 79–80, 92–99, 109–114, 118–119, excluding year-round Closed Areas I and II. DMF requests exemption from the trip limit for haddock, specified at 50 CFR 648.86(a)(1), and the Georges Bank cod landing limit, specified at 50 CFR 648.86(b)(2), and requests retention of legal-sized fish for sale, with the vessel receiving the revenues as compensation for using its DAS. The participating vessel would be required to comply with applicable state landing laws and Federal commercial DAS requirements, and to report all landings on the Federal Fishing Vessel Trip Report.

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

Dated: August 19, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21723 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Sea Grant College Program

AGENCY: National Oceanic and Atmospheric Administration Office of Oceanic and Atmospheric Research (OAR) National Sea Grant Review Panel, Commerce.

ACTION: Notice of Solicitation for Sea Grant Review Panelists.

SUMMARY: This notice responds to the National Sea Grant College Program Act, at 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the Sea Grant Review Panel. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by 30 days from publication.

ADDRESSES: Dr. Ronald C. Baird, Director; National Sea Grant College Program; 1315 East-West Highway, Room 11716; Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Baird of the National Sea Grant College Program at the address given above; telephone (301) 713–2448 or fax number (301) 713–1031.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a Sea Grant Review Panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) The Sea Grant Fellowship Program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under the Sea Grant Program Improvement Act of 1976, as amended at 33 U.S.C. 1124;

(c) The designation and operation of sea grant colleges and sea grant institutes; and the operation of the sea grant program;

(d) The formulation and application of the planning guidelines and priorities under 33 U.S.C. 1123 (a) and (c)(1); and

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows; Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension service, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of any grant or contract under 33 U.S.C. 1124 or (c) a full-time officer or employee of the United States. The Director of the Naitonal Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Panel members are appointed for a 4-year term.

Dated: August 19, 2003.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 03–21831 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073003D]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Eastern Tropical Pacific Ocean

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

ACTION: Notice of receipt of application and proposed authorization for a small take authorization; request for comments.

SUMMARY: NMFS has received an application from the Scripps Institution of Oceanography (SIO), a part of the University of California, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys in the Eastern Tropical Pacific Ocean (ETP). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental take authorization to SIO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within a one-year period.

DATES: Comments and information must be received no later than September 25, 2003.

ADDRESSES: Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines ''harassment'' as:

...any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On June 16, 2003, NMFS received an application from SIO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program in international waters of the ETP and in several Exclusive Economic Zones (EEZ) of several coastal states (Mexico, Costa Rica, Panama, Columbia, Ecuador, and Peru), from which permission to conduct this type of scientific research has been requested. SIO's *R/V Roger Revelle* is scheduled to undertake a multidisciplinary research cruise, including some seismic reflection profiling and echo-sounding studies, in the ETP from September 2003 to February 2004, primarily 100–400 nautical miles (nm) (185 - 741 km) west of northern Peru and 200–1000 nm (370 - 1852 km) west of the Galapagos Islands. None of these operations would be in U.S. territorial waters or in the U.S. EEZ. A low-energy seismic reflection profiler with a small airgun sound source will be used on 3 of the 8 legs of the cruise. The purpose of this survey is to study the shape and structure of the sediment-buried oceanic crust in this part of the ETP.

Description of the Activity

SIO's seismic surveys will involve one vessel, the *R/V Roger Revelle* (under a cooperative agreement with the U.S. Navy, owner of the vessel). The *Roger Revelle* will deploy two airguns as an energy source, plus a single short (300 m or 984 ft) towed streamer of hydrophones to receive the returning acoustic signals, that can be retrieved and deployed in less than 20 minutes.

The bubble-generating chambers of the two small General-Injector airguns have a combined volume of 90 cubic inches (1475 cubic centimeters (cc)), contrasting with 3000–9000 cubic inches (49,161–147,484 cc) of the large gun arrays typical of academic and commercial seismic surveys. The primary seismic pulse is produced by a 45–in3 (737 cc) generator chamber, while compressed air from a 105–in3 (1721 cc) injector chamber is used to maintain the shape of the bubble and reduce its sound-making oscillation. The pair of simultaneously fired airguns would have a peak-to-peak (p-p) amplitude of 236 dB re 1 μPa. In addition, a hull-mounted mid-frequency multibeam echo-sounder sonar for seafloor mapping will be routinely operated whenever the Revelle is underway. The Kongsberg-Simard EM–120 sonar images the seafloor over a 120–140 degree-wide swath (about 10–20 km, or 5–10 nm wide), using very short (15 msec) transmit pulses with a 10–20 second repetition rate and a 11.25–12.60 kHz frequency sweep. Source level in deep water is 240 dB rms, but the brevity, directivity, and narrow beam-width (1 degree fore-and-aft) of the transmit pulses make it unlikely that operation of this depth sonar will affect marine mammals.

None of the 3 research legs for which an IHA is requested will be a dedicated seismic reflection survey of the sort typically conducted by a specialized seismic vessel. The seismic reflection profiler will be used as just one tool in integrated marine geology and geophysical studies that also employ bathymetric echo-sounders, passive geophysical sensors (such as a gravimeter and magnetometer), and geologic sampling tools (like rock dredges and cores). Typical operating procedure during these three legs of the cruise will be to conduct seismic profiling, at a ship speed of 9–11 knots for periods of 8–12 hours, interspersed with episodes of geologic sampling and periods of faster steaming with no profiling system deployed. In a few instances (1–3 per leg), longer profiles will need to be collected, requiring up to 36 hours of continuous airgun operation. The objective is not to image deep crustal structureor the stratigraphy of thick sedimentary units (the typical goals of seismic surveys); instead the purpose is to measure the varying thickness of the 100–400 m-thick (328–1312 ft) cover of pelagic sediment that buries and obscures the igneous oceanic crust in our study areas, because establishing the relief of the buried crust is essential for interpreting the bathymetric, magnetic and gravity data. For this limited objective, the large powerful sound sources and hydrophone streamers several kilometers long that typify dedicated seismic surveys are not required. Nor will any broad ocean volume be ensonified by profiling on closely-spaced seismic lines.

Leg 1 of the cruise, from San Diego to Puerto Caldera, Costa Rica, is planned for September 27–October 9, 2003. This will be primarily a staging and instrument testing and calibration leg, but with 2 days of seismic reflection profiling and rock-dredging 40–80 nm (74–148 km) off the coast of Costa Rica. In addition to the approximately 24 hours of seismic profiling, it is also planned during this leg to test and calibrate new components of the system, and train shipboard technicians in their use, with 2 or 3 12–18 hour test runs along parts of the transit track. Because these test profiles may obtain scientifically useful data, specific sites that are of interest to Mexican researchers have been targeted, in partial fulfillment of SIO's foreign-

clearance obligation to collect data of value to coastal states.

Leg 2, from Puerto Caldera, Costa Rica, to Manta, Ecuador, is planned for October 10–November 6, 2003. The plan for this leg is to (i) conduct a 2–day seismic reflection plus rock dredging survey of Cobia Ridge, south of Panama, (ii) collect a north-south seismic reflection plus magnetics profile across the eastern Panama Basin, and (iii) conduct a 14–day seismic reflection plus bathymetry plus rock dredging survey off northern Peru. A total of 200–250 hours of seismic reflection profiling is anticipated for this leg of the cruise.

Leg 5, from Callao, Peru, to Puerto Caldera, Costa Rica, is planned to take place from December 28–February 23, 2003. Primary survey tools will be a multibeam echo-sounder and a new magnetometer system. Seismic reflection profiling will have a subsidiary role, imaging the relief of the igneous crust in the approximately 20 percent of the survey area that has a significant cover of structure-obscuring sediment. A total of 150–200 hours of profiling is anticipated for this leg of the cruise. All three legs will use the same bathymetric sonar and seismic profiling system, described above.

All planned geophysical data acquisition activities are funded by the National Science Foundation (NSF) and will be conducted by SIO scientists, with a specific Principal Investigator aboard the vessel. Additional information on the airgun array and bathymetric multibeam sonar is contained in the application, which is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the ETP and its associated marine mammals can be found in the SIO application (as updated by Peter Lonsdale) and in a number of documents referenced therein. That information is not repeated here. Throughout the entire proposed study regions during the fall and winter months of 2003, approximately 21 species of cetaceans and four species of pinnipeds are likely to occur. These species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), spinner dolphin (*Stenella longirostris*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidis*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), blue whale (*Balaenoptera musculus*), Guadalupe fur seal (*Arctocephalus townsendi*), northern elephant seal (*Mirounga angusirostris*), South American sea lion (*Otaria flavescens*), and California sea lions (*Zalophus californianus*). It is also possible that four species of beaked whales may be encountered within the proposed survey areas: Longman's beaked whale (*Indopacetus pacificus*), pygmy beaked whale (*Mesoplodon peruvianus*), Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), and Blainville's beaked whale (*Mesoplodon densirostris*). In addition, four other species of cetaceans have been reported in the area of the proposed surveys, but have been rarely or never seen during NMFS population assessments. These species are the dusky dolphin (*Lagenorhynchus obscurus*), Fraser's dolphin (*Lagenodelphis hosei*), fin whale (*Balaenoptera physalus*), and Baird's beaked whale (*Berardius bairdii*). Additional information on most of these species can be found in the application, but is also contained in Caretta *et al.* (2001, 2002) which are available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html.*

Potential Effects on Marine Mammals

NMFS described the characteristics of acoustic sources from airguns and from mid-frequency sonar and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential hearing impairment and other physical effects in another Notice of Receipt of an IHA application and proposed IHA involving seismic survey activities, published on April 14, 2003 (68 FR 17909). That information is not repeated here. The SIO application also provides information on what is known about the effects on marine mammals from the types of seismic operations planned by SIO.

Estimates of Take by Harassment for the ETP Cruise

As described previously (68 FR 17909), animals subjected to sound levels ≥160 dB may alter their behavior or distribution, and therefore might be considered taken by Level B harassment.

The estimates of takes by harassment are based on the number of marine mammals that might be found within the 160 dB isopleth radius and potentially disturbed by operations with the 2 GI-guns planned for the project. Based on summer/fall marine mammal density calculations by Ferguson and Barlow (2001), SIO used their average marine mammal densities from the ETP to compute a ''best estimate'' of the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1μPa (rms) (NMFS' current criterion for onset of Level B harassment). The average densities were then converted to per-km abundances and multiplied (for the appropriate region) by the area that is planned to be ensonified at levels ≥160 dB re 1 μPa (rms) during the proposed seismic survey program. Where abundance estimates for certain species (pacific white-sided dolphins, pygmy sperm whales, minke whales, and humpback whales) were not readily available for stocks found within the proposed survey areas, minimum population estimates were taken from individual Marine Mammal Stock Assessment Reports, which are available online as mentioned previously.

SIO did not estimate numbers of pinnipeds potentially vulnerable to harassment due to insufficient data on distribution, seasonal abundance, and pinniped response. However, SIO determined that it is unlikely to encounter significant numbers of any of the pinniped species that live, at least part of the year, in the area of the proposed activity. We preliminarily agree.

Based on this method, Table 3 in the application gives the best estimates of numbers for each species of cetacean that might be exposed to received levels ≥160 dB re 1 μPa (rms), and thus potentially taken by Level B harassment, during seismic surveys in the proposed study areas of the ETP.

Eight species of delphinidae would account for 95 percent of the overall estimate for potential taking by harassment. Common dolphins are the most abundant delphinid in the proposed seismic survey areas, representing 71 percent of the total estimate for potential taking by harassment. Most of the remaining 5 percent of the overall estimate for potential taking by harassment consists of pilot whales, dwarf sperm whales, and five species of beaked whales.

Conclusions-effects on Cetaceans

Baleen whales have been seen to avoid operating airguns with avoidance

radii that are quite variable, while some baleen whales show considerable tolerance of seismic pulses. Whales are often reported to show no overt reactions to airgun pulses at distances beyond a few kilometers, even though the pulses remain well above ambient noise levels out to much longer distances. However, recent studies of humpback and especially bowhead whales show that reactions, including avoidance, sometimes extend to greater distances than documented earlier, possibly even exceeding the distances at which boat-based observers can see whales. Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 n.mi.) and occasionally as far as 20–30 km (10.8–16.2 n.mi.) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 n.mi.) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels, occasionally even at close distances. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels. In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans because few mysticetes occur in the area where seismic surveys are proposed.

For most species, including endangered sperm and blue whales, the total estimated ''take by harassment'' by species presented in Table 3 of the application (Scripps 2003) represents less than 1.0 percent of the eastern tropical Pacific population of any of these species. For the remaining three cetacean species, the total estimated ''take by harassment'' are 1.8 percent of the estimated pygmy sperm whale population in and adjacent to the study area, 6.2 percent of the dwarf sperm whale population, and 1.8 percent of endangered humpback whales would receive seismic sounds ≤160 dB. Although the absolute numbers of odontocetes that may be harassed by the proposed activities may be large, the population sizes of the main species are also large; therefore, the numbers potentially affected are small relative to the population sizes.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' Based on the relatively low numbers of marine mammals that will be exposed at levels ≤160 dB and the expected impacts at these levels, NMFS has preliminarily determined that this action will have a negligible impact on the affected species or stocks of cetaceans.

Conclusions-effects on Pinnipeds

Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Early observations provided considerable evidence that pinnipeds are often quite tolerant of strong pulsed sounds. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior. These studies show that pinnipeds frequently do not avoid the area within a few hundred meters of an operating airgun array. Even so, results from initial telemetry studies suggest that avoidance and other behavioral reactions may be stronger than has been evident from visual studies.

Very few, if any, pinnipeds are expected to be encountered during the proposed seismic survey in the ETP, and it is therefore unlikely that the seismic vessel will encounter significant numbers of any of the four pinniped species that live, for at least part of the year, in the area of proposed seismic profiling.

If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. Therefore, NMFS' preliminary determination is that impacts will be negligible.

Mitigation

For the proposed seismic operations in the ETP, SIO will use 2–GI guns with a total volume of 90 in3 (1475 cc). These airguns will be spread out horizontally, so that the energy from the array will be directed mostly downward. The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed ETP seismic survey program.

Shutdown Procedures

SIO proposes to shut down seismic sources whenever marine mammals are observed close enough to the vessel that they are at risk of exposure to sound levels greater than 180 dB (rms), where there is a possibility of Level A harassment. Airgun operations will be suspended immediately when marine mammals are observed within, or about to enter, this designated safety zone. Current NMFS guidance dictates that cetaceans and pinnipeds should not be exposed to impulsive sounds exceeding 180 and 190 dB rms (the level for the potential for Level A harassment), respectively. SIO will adopt a 180–dB threshold for all marine mammals because pinnipeds have less developed (or less documented) avoidance behaviors, and because of the low liklihood that pinnipeds will be encountered.

SIO has adopted conservative methods in defining safety zone calculations using (i) a 9–dB difference between p-p and rms, and (ii) spherical spreading of the sound, even though it is clear that at the low acoustic frequencies which dominate SIO's airgun output, the generated sound pulses have considerable directivity, favoring downward propagation over horizontal propagation (because in the near-horizontal direction the direct gun pulse is closely followed by the opposite-phased bounce off the sea surface, if the source is within an acoustic wavelength of the surface; this effect can reduce the effective near-horizontal output by as much as 10 dB). Because the actual seismic source is a distributed sound source rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

As described earlier, the pair of simultaneously fired airguns would have a p-p amplitude of 236 dB re 1 μPa. Converting to a rms dB using the 9 dB difference between p-p and rms for a sine wave yields an output level of 227 dB rms. Therefore, SIO's modeled results for the 2–gun array indicate that, assuming spherical spreading, the paired guns would produce sound levels of 180 dB re 1 μPa (rms) at a range of about 225 m (738 ft); i.e., the radius around the 2–gun array where the received level would be 180 dB re 1 μ\Pa (rms), is estimated to be 225 m (738 ft). The effect of using a conservative calculation, which yields this safety zone for 180 dB rms sound, is to build a safety factor into the airgun

shut-down radius; this is desirable because mammals may not be observed while submerged, and might move towards the acoustic sources during dives.

Airgun operations will not resume until the marine mammal is observed outside the safety radius or a minimum of 15 minutes has elapsed since the last sighting. Once the safety zone is clear of marine mammals, the observer will advise that seismic surveys can re-commence.

Gradual ramp-up of the output of the airgun array, a standard mitigation procedure during seismic surveys employing numerous guns of varying size, is inapplicable to the proposed operations which use only two small sound sources with a small total air discharge volume (90 in3).

Course Alteration

If a marine mammal is detected at any range beyond the 225 m (738 ft) safety radius but, based on its position and the relative motion, appears to be on a converging course with the ship while profiling is underway, the vessel will be maneuvered in an attempt to maintain a range greater than the shut-down radius. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Because of the ineffectiveness of mammal observers during darkness (even though the vessel is equipped wit night-vision binoculars), seismic reflection profiling will be concentrated during daylight hours. As noted earlier, there are just 1–3 occasions on each leg when the scientific objectives require collection of seismic profiles that are too long to complete in a single daylight period, and limited nighttime profiling is needed to allow completion of the marine geophysical research. In no instance will seismic profiling be initiated during darkness, a situation where unobservable mammals would be at risk from the sudden onset of G.I.-gun noise.

Marine Mammal Monitoring

Effective implementation of these procedures requires surveillance by appropriately equipped skilled observers, who will monitor for marine mammals in the vicinity of the array. Each leg of the cruise will be staffed with two observers who have previously worked for the Southwest Fisheries Science Center of NMFS, and who are recommended by the Center. These observers will share surveillance duties during daylight hours, and be responsible for computer entry of their observations while off watch. They will be equipped with binoculars and have access to the 50X ''big-eye'' binoculars mounted on the Revelle's bridge (though their normal station, except in inclement weather will be outside on the upper deck). For estimating the range of marine mammals that are sighted, the observers will use the optical fixed-interval range-finder described by Heinemann (1981); this instrument relies on measuring the angle between the mammal and the visual horizon, by an observer at known height above sea-level. The observers will be in wireless communication with ship officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or G.I. gun shut-down.

Monitoring and Reporting

Vessel-based Visual Monitoring

SIO proposes to conduct marine mammal monitoring of its seismic surveys in the ETP in order to satisfy the anticipated requirements of the IHA. Monitoring of marine mammals by experienced observers will occur during all daylight hours of the 3 legs of the cruise on the *Revelle*, whether or not G.I. guns are in operation. Except in bad weather, when they will occupy the bridge, observers will be stationed outside, forward on the 03 deck at a height of 9 m (30 ft) above the waterline; this has proved to be an effective station for marine mammal surveillance during previous mammal and seabird monitoring exercises from the *Revelle*.

Reporting

Observers will record their observations and range measurements on tape, for subsequent transcription into NMFS format. When a marine mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (seismic activity or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) above will also be recorded at the start and end of each observation watch and during a watch, and whenever there is a change in one or more of the variables.

Results from the vessel-based observations will provide: (1) the basis for real-time mitigation (airgun shutdown); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS within 90 days after the end of the seismic profiling program (before May 2004). The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to most all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act (NEPA)

An Environmental Assessment (EA) on a similar action for this area of the Pacific Ocean was prepared and released to the public on July 11, 2003 (68 FR 41314). The proposed acoustic survey described in this document will use acoustic instruments that are significantly less intense and will therefore have a significantly lower impact on the marine environment than acoustic sources addressed in the earlier EA. NMFS' analysis resulted in a Finding of No Significant Impact (FONSI). Therefore, based on that EA and the IHA application from Scripps, NMFS has preliminarily determined that this action will not have a significant impact on the human environment. Accordingly, this proposed action qualifies for a categorical exclusion under NEPA and NOAA Administrative Order 216–6 and

is therefore exempted from further environmental review. A copy of relevant previous EA is available (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting a seismic survey program in the ETP will result, at worst, in a temporary modification in behavior by certain species of marine mammals. While behavioral modifications may be made by these species as a result of seismic survey activities, this behavioral change is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document.

Proposed Authorization

NMFS proposes to issue an IHA to Scripps for conducting a 2–GI gun seismic survey program in the ETP, provided the proposed mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: August 20, 2003.

Donna Wieting,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–21794 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081903D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: The SEP meeting will be held beginning at 8:30 a.m. on Wednesday, September 10, 2003, and will conclude at 12 noon on Friday, September 12, 2003.

ADDRESSES: The meeting will be held at the Omni Royal Orleans, 621 St. Louis Street, New Orleans, LA; telephone: 504–529–5333.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SEP will meet to review available social and economic information on yellowtail snapper. The SEP will also review a project proposal, submitted to the Council by researchers from Florida State University, that will attempt to estimate the economic impacts of the various fisheries in the Gulf. In addition, the SEP will hear presentations on the individual fishing quota for the red snapper commercial fishery.

A report will be prepared by the SEP containing their conclusions and recommendations. This report will be presented for review to the Council's Reef Fish Advisory Panel and Standing and Special Reef Fish Scientific and Statistical Committee at meetings to be held in October 2003 in Tampa, FL and to the Council at its meeting on November 9–12, 2003 in Biloxi, MS.

Composing the SEP membership are economists, sociologists, and anthropologists from various universities and state fishery agencies throughout the Gulf. They advise the Council on the social and economic implications of certain fishery management measures.

A copy of the agenda can be obtained by calling 813–228–2815. Although other non-emergency issues not on the agenda may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 3, 2003.

Dated: August 20, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21720 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081903B]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Dogfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, September 10, 2003, from 10 a.m. to 4 p.m.

ADDRESSES: This meeting will be held at the BWI Airport Marriott, 1743 W. Nursery Road, Baltimore, MD, telephone: 410–859–8300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop management measures including quotas and trip limits to recommend to the Councils for the 2004/05 specifications setting for spiny dogfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 20, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21718 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081903C]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Trawl Survey Advisory Committee, composed of representatives from the Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

DATES: The meeting will be held on Wednesday, September 10th, from 9 a.m. to 5 p.m. and Thursday, September 11th, from 9 a.m. until 2 p.m.

ADDRESSES: This meeting will be held at the Brookshire Suites at the Inner Harbor, 120 East Lombard Street , Baltimore, MD, telephone: 410–625–1300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to finalize the short-term priorities and identify and develop the long-term priorities needed to provide important advice and feedback to the NEFSC on its trawl surveys.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMS's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 20, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21719 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081103C]

Notice of Additional Regional Fisheries Management Meetings

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

ACTION: Notice of public meeting.

SUMMARY: NMFS is scheduling an additional constituent session in San Francisco, CA. This is part of a series of regional constituent sessions that started in June and are running through September to gather public input on ways to improve the effectiveness of NMFS and its management of living marine resources. The regional sessions are a collaborative effort involving all major marine fisheries interests. The primary objective is to assemble and provide a comprehensive analysis of the diverse opinions, attitudes, and perspectives of marine resource stakeholders as they relate to broad themes in fisheries management. The secondary objective is to identify performance measures.

DATES: The additional session will be held September 24, 2003 from 6 p.m. – 9 p.m. at The Westin St. Francis in San Francisco, CA. To submit comments, see **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The session will be held at The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102–1875. Information on the meetings will be updated periodically on NMFS' web page: *http://www.nmfs.noaa.gov/emeetings*.

FOR FURTHER INFORMATION CONTACT: Patricia Lawson, NMFS, telephone: 301–713–2239; fax: 301–713–1940; email: *patricia.lawson@noaa.gov*. To submit e-Comments (see E-Comments Pilot Program).

SUPPLEMENTARY INFORMATION:

E-Comments Pilot Program

NMFS encourages the public to participate in submitting comments by the e-comment program. To this end, NMFS is accepting comments by submitted mail, fax, and the Internet as part of its e-Comments pilot project. The e-Comments pilot project is designed to introduce electronic commenting to its constituents. You can respond to the questions on the e-comment page through NMFS' web page *http://www.nmfs.noaa.gov/emeetings*. The public is encouraged to use the new web site to compose and submit comments on the regional constituent meetings. In submitting comments, please include your name, address, and region for each comment. NMFS also invites public comments on the e-Comments program that allows you to submit your comments on line. Please submit your comments by only one means. Comments received from the public will become part of the public record and will be posted on the e-Comments web site *http://www.nmfs.noaa.gov/emeetings*.

Areas NMFS is soliciting public comments on:

(1) What is the most important issue facing fisheries in your region?

(2) Who has responsibility over this issue? If unclear, or uncertain, who should be in charge?

(3) Identify and describe a possible solution or solutions that would remedy the issue?

(4) Does the solution require (a)no changes to the present administrative or statutory structure, or (b)administrative changes, and if so, what changes would you propose, or (c) statutory changes, and if so, what would they be?

(5) How could one measure whether the solution is being properly implemented and working?

(6) Briefly describe the best way to keep you informed about changes within NMFS and fisheries management.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patricia Lawson (see **FOR FURTHER INFORMATION CONTACT**) 2 weeks before each meeting.

Dated: August 21, 2003.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 03–21793 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D 080403A]

Endangered Species; File No. 1397

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Jeanette Wyneken, Florida Atlantic University, 777 Glades Rd., Boca Raton, FL 33431, has been issued a permit to take green sea turtles (*Chelonia mydas*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301)713–1401 or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 27, 2002, notice was published in the **Federal Register** (67 FR 70934) that a request for a scientific research permit to take green sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant will hand capture, handle, transport, temporarily hold, measure, weigh, sonic tag, paint a number on the carapace of, flipper tag, PIT tag, tissue sample, lavage, photograph, track, recapture and remove the sonic tag from, and release up to 10 green sea turtles annually. Although not included in the original permit application, NMFS received comments during the application review which recommended that the applicant flipper tag, PIT tag, and tissue biopsy each of the turtles captured during the proposed research. Tagging will facilitate individual identification of the turtles and provide information on migratory movements in the event of recapture by other researchers or stranding in the future. A biopsy sample will allow researchers to determine the genetic identity(s) of this group of animals, a priority research goal identified by NMFS. NMFS contacted the applicant to discuss these recommendations, and the applicant agreed to conduct these additional research activities. The purpose of the research is to determine the number and distribution of green sea turtles (Chelonia mydas) on shallow reef habitat located in Palm Beach County, FL as well as quantify their daily movements and establish what food and other resources of importance to this species are present there. The permit duration is 2 years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 19, 2003.

Jennifer Skidmore,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–21721 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

August 20, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 26, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 65340, published on October 24, 2002.

James C. Leonard III

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 2003.

Commissioner,

Bureau of Customs and Border Protection,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 18, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 26, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
433	27,990 dozen.
443	173,859 numbers.
444	79,079 numbers.
448	42,721 dozen.

[1]The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21746 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

August 20, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 26, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68577, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 26, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group II	
237, 239pt [2], 331pt. [3], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [4], 659–H [5], 359pt. [6], 433-438, 440, 442, 443, 444, 445/446, 447/448, 459pt. [7], 631pt. [8], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [9], 659pt. [10], 846 and 852, as a group.	609,060,139 square meters equivalent.
Sublevels in Group II	
336	166,779 dozen.
340	1,249,024 dozen.
345	147,035 dozen.
352/652	3,733,424 dozen.
435	28,129 dozen.
438	31,315 dozen.
445/446	147,566 dozen.
638/639	6,533,712 dozen.
640	1,002,515 dozen of which not more than 281,710 dozen shall be in Category 640–Y [11].
642	799,193 dozen.
647/648	5,404,466 dozen of which not more than 5,141,289 dozen shall be in Categories 647–W/648–W [12].
659–H	2,511,597 kilograms.
659–S	1,729,838 kilograms.
Group II Subgroup	
333/334/335, 341, 342, 351, 447/448, 636, 641 and 651, as a group	74,322,479 square meters equivalent.
Within Group II Subgroup	
333/334/335	338,564 dozen of which not more than 183,391 dozen shall be in Category 335.
341	368,564 dozen.
342	274,698 dozen.
351	276,982 dozen.

Category	Twelve-month limit [1]
447/448	23,092 dozen.
636	407,264 dozen.
651	598,197 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[7] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[8] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[11] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[12] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21744 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 20, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63899, published on October 16, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man–made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 27, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
219	2,284,553 square meters.
226/313	3,906,641 square meters.
317	57,256,182 square meters.

Category	Adjusted limit [1]
326	3,687,875 square meters.
334/634	458,165 dozen.
335/635	312,142 dozen.
336/636	425,317 dozen.
338/339	1,190,864 dozen of which not more than 696,098 dozen shall be in Categories 338–S/339–S [2].
340/640	752,488 dozen.
341/641	658,920 dozen.
342/642	494,764 dozen.
347/348	828,559 dozen of which not more than 410,946 dozen shall be in Categories 347–T/348–T [3].
351/651	356,949 dozen.
352	693,599 dozen.
363	12,292,915 numbers.
369–O [4]	150,192 kilograms.
369–S [5]	171,119 kilograms.
638/639	465,585 dozen.
647/648	703,412 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21747 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

August 20, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection providing for the use of a new textile export license/commercial invoice bearing a new watermark.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Governments of the United States and the People's Republic of China have agreed to amend the existing export visa requirements to provide for the use of a new textile export license/commercial invoice, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on and after January 1, 2004. The new license/invoice will bear a watermark issued by ''the Ministry of Commerce of the People's Republic of China.'' This replaces the old watermark issued by ''the Ministry of Foreign Trade and Economic Cooperation.'' The visa stamp is not being changed at this time.

Shipments of textile and apparel products which are produced or manufactured in China and exported from China during the period January 1, 2004 through January 31, 2004 may be accompanied by a visa bearing either the old or new watermark, as described above.

Products exported on and after February 1, 2004 must be accompanied by an export visa issued by the Government of the People's Republic of China bearing the new watermark, as described above.

The requirements for ELVIS (Electronic Visa Information System) remain unchanged.

See 62 FR 15465, published on April 1, 1997.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on January 1, 2004, for products exported from China on or after January 1, 2004, you are directed to amend the March 27, 1997 directive to provide for the use of export licenses/commercial invoices issued by the Government of the People's Republic of China which bear the watermark ''the Ministry of Commerce of the People's Republic of China.'' This watermark replaces the old watermark issued by ''the Ministry of Foreign Trade and Economic Cooperation.''

To facilitate implementation of this amendment to the export licensing system, you are directed to permit entry of textile products, produced or manufactured in China and exported from China during the

period January 1, 2004 through January 31, 2004, for which the Government of the People's Republic of China has issued an export license/commercial invoice bearing either the old or new watermarks, as described above.

Products exported on and after February 1, 2004 must be accompanied by an export visa issued by the Government of the People's Republic of China bearing the new watermark, as described above.

The requirements for ELVIS (Electronic Visa Information System) remain unchanged.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21745 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Commercial Availability Petition under the North American Free Trade Agreement (NAFTA); Correction

August 20, 2003.

In the **Federal Register** notice, published on August 20, 2003 68 FR 50126, Column 2, Line 17, under ''**Summary''**, please insert the number ''6203.31'' right after ''6203.11,'' as it was inadvertantly left out.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21748 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m., Friday September 5, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 9012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21912 Filed 8–22–03; 1:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING

Sunshine Act; Meetings

TIME AND DATE: 10:30 a.m., Friday, September 12, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 9012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21913 Filed 8–22–03; 1:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meetings

TIME AND DATE: 10:30 a.m., Friday, September 19, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21914 Filed 8–22–03; 1:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meetings

TIME AND DATE: 10:30 a.m., Friday September 26, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED. Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21915 Filed 8–22–03; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meetings

TIME AND DATE: 10:30 a.m., Tuesday September 30, 2003.

PLACE: 1155 21st St., NW., Washington DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21916 Filed 8–22–03; 1:07 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Record of Decision To Establish a Ground-Based Midcourse Defense Extended Test Range

AGENCIES: Missile Defense Agency, Department of Defense; Federal Aviation Administration; Office of the Associate Administrator for Commercial Space Transportation.

ACTION: Notice.

SUMMARY: The Missile Defense Agency (MDA) is issuing this Record of Decision (ROD) to establish a Ground-Based Midcourse Defense (GMD) extended test range capability, to provide for the construction and operation of a Sea-Based Test X-Band Radar (SBX), and to determine the location of the SBX Primary Support Base (PSB). The extended test range and the SBX are capabilities of the GMD element within the broader conceptual Ballistic Missile Defense System (BMDS). This action will enhance the current test capabilities that include missile launch sites, sensors, and other test equipment associated with the Ronald Reagan Ballistic Missile Test Site (RTS) at Kwajalein Atoll, the Pacific Missile Range Facility (PMRF) in Hawaii, the Kodiak Launch Complex (KLC) in Alaska, Vandenberg Air Force Base (AFB) in California, and other Pacific locations.

FOR FURTHER INFORMATION CONTACT: For further information on the GMD Extended Test Range (ETR) Environmental Impact Statement (EIS) or this ROD contact Ms. Julia Elliot, U.S. Army Space and Missile Defense Command, Attn: SMDC–EN–V, P.O. Box 1500, Huntsville, Alabama 35807–3801.

Public reading copies of the Final EIS and the ROD are available for review at the public libraries within the communities near proposed activities and at the MDA Internet site: *http://www.acq.osd.mil/bmdo/.*

SUPPLEMENTARY INFORMATION:

A. MDA Decision

The MDA is issuing this ROD, selecting portions of Alternative 2 as described in the GMD ETR EIS, to establish a GMD extended test range capability, to provide for the construction and operation of an SBX, and to select the location of the SBX PSB. This decision includes the capability to conduct single and dual launches of interceptor and target missiles at RTS and Vandenberg AFB. Development of these capabilities will include target launch facility modifications/construction at RTS; modification of launch and support facilities at Vandenberg AFB; construction of an In-Flight Interceptor Communication System Data Terminal (IDT) at Titan Pasture at Vandenberg AFB; a TPS–X radar; added range instrumentation (tracking and range safety radars) at the test site and test support locations; and use of either existing GMD Fire Control/Communications (GFC/C) facilities and links at RTS, or new GFC/C facilities that may be developed at Fort Greely, Alaska and/or Schriever AFB or Cheyenne Mountain Complex, Colorado.

Additionally, MDA has decided to construct an SBX for Pacific range testing. MDA has also decided to establish a Primary Support Base at Adak, Alaska. The vessel will be constructed and outfitted with an XBR and ancillary test equipment in the Gulf of Mexico and will transit to the Primary Support Base (PSB) and testing region when completed.

This Record of Decision makes no decision regarding Alternative 2's components at KLC. The FAA is contemplating re-licensing activities at KLC. Should FAA re-license KLC activities, MDA may issue a second ROD regarding the KLC portion of Alternative 2.

B. Background

In July 2000, the MDA completed the National Missile Defense (NMD) Deployment EIS to support decisions concerning deployment of a GMD (formerly NMD element. At the direction of the Secretary of Defense, the MDA re-directed the GMD element to focus on operationally realistic testing. The GMD ETR EIS analyzed the proposed GMD Extended Test Range actions and alternatives for potential impacts on the environment.

The proposed action analyzed in the GMD ETR EIS is to develop the capability to conduct more realistic interceptor flight tests in support of GMD. The extension of the existing GMD test range will increase the realism of GMD testing by using multiple engagement scenarios, trajectories, geometries, distances, and speeds of target and interceptors that closely resemble those in which an operational system will be required to provide an effective defense. Extended range testing will include pre-launch activities, launch of targets and Ground-Based Interceptors (GBI) from a number of widely separated geographic locations, and missile intercepts over the Pacific Ocean.

On December 16, 2002, President George W. Bush issued National Security Presidential Directive 23 announcing plans to begin fielding an initial set of missile defense capabilities by the year 2004. The MDA proposes to use existing test facilities and infrastructure to the extent possible in fielding these initial capabilities. Some of the assets proposed for the Initial Defensive Operations (IDO) capability are analyzed as part of the GMD ETR EIS. For example, facilities at Vandenberg AFB will also be used in support of the IDO capability. Due to the nature of the IDO, the configuration and use of those assets will be separately analyzed under NEPA, and are also assessed in the relevant cumulative effects sections. Some assets, such as the SBX, will also be used in support of IDO. As the SBX in an IDO role will be operated in the same manner as in a test mode, no further NEPA analysis is required.

C. NEPA Process

The GMD ETR EIS was prepared pursuant to the Council on Environmental Quality (CEQ) regulation implementing the NEPA (40 CFR Parts 1500–1508), Department of Defense (DoD) Instruction 4715.9, and the applicable service environmental regulations that implement these laws and regulations.

The Notice of Intent (NOI) to prepare an EIS for the GMD Extended Test Range was published in the **Federal Register** on March 28, 2002, initiating the public scoping process. Public scoping meetings were held from April from December 2002 in eight communities perceived to be affected by the proposed GMD extended test range. The Notice of Availability (NOA) of the GMD Extended Test Range Draft EIS was published in the **Federal Register** on February 7, 2003. This initiated a public review and comment period for the Draft EIS. Seven public hearings were held from February 24 through March 6, 2003. Comments on the Draft EIS were considered in the preparation of the Final EIS. The NOA for the Final EIS was published in the **Federal Register** on July 15, 2003, initiating an additional 30-day review period. This ROD is the culmination of the NEPA process.

D. Alternatives Considered

1. No-Action Alternative

As required by the CEQ regulations, the GMD ETR EIS evaluated a No-Action Alternative. Under this alternative, the GMD ETR would not be established and interceptor and target launch scenarios would not be fully tested under operationally realistic conditions. All existing launch areas and other support facilities would continue current operations for GMD and other mission activities.

2. Alternative 2 (Selected Alternative)

Target missiles will be launched from Vandenberg AFB, KLC, PMRF, RTS, or from mobile platforms in the Pacific Ocean. GBIs will be launched from Vandenberg AFB or RTS. Dual target and GBI missiles launches will occur in some scenarios. Existing, modified, or newly constructed launch facilities and infrastructure will support these launch activities at the various locations.

Missile acquisition and tracking will be provided by existing test range sensors, shipborne sensors, an SBX, and/or a mobile sensor (TPS-X) positioned at Vandenberg AFB, PMRF, or RTS; and existing/upgraded radars at Beale AFB, California, and Clear Air Station and Eareckson Air Station, Alaska. An IDT will be constructed/installed at a site near the proposed Ground-Based interceptor launch sites on Vandenberg AFB. Six potential sites were considered at Vandenberg for the IDT. Commercial satellite communications terminals will be constructed at launch locations that do not have fiber optic communications links.

3. Alternative 1

Alternative 1 is similar to Alternative 2, with the exception that ground-based interceptor launches would be from KLC and RTS instead of Vandenberg AFB and RTS. The GBI launch would require construction of an IDT and modifications of existing launch support facilities at KLC. Alternative 1 would include site preparation and operation of a TPS-X radar at KLC, Vandenberg

AFB, RTS or PMRF and the construction of two GBI silos or one GBI launch pad, and an additional target launch pad that could accommodate GBI launches if needed, and associated support facilities at KLC. There would also be target pad modifications at KLC and RTS along with the installation of a COMSATCOM at KLC. Placement of small mobile telemetry units and mobile C-band radar at KLC and at one or two of the following locations: Pasagshak Point, Kenai, Homer, Soldotna, King Salmon, Adak, Cordova, and Pillar Mountain, Alaska; Pillar Point, California; Bremerton, Washington; Makaha Ridge and PMRF, Hawaii. The other components described in Alternative 2 would remain the same.

4. Alternative 3

Alternative 3 would include activities proposed for Alternatives 1 and 2. This would include GBI launches from KLC, RTS, and Vandenberg AFB, and construction of the required support facilities for dual launches of GBI and target missiles at each location.

5. SBX Primary Support Base Decision. Encompassed within all three alternatives was a proposal to construct and operate the SBX. Six potential sites for a primary support base for the SBX were analyzed in the EIS.

E. Environmental Impacts of Alternatives

The GMD ETR EIS analyzed the environment in terms of 14 resource areas: air quality, airspace, biological resources, cultural resources, geology and soils, hazardous materials and hazardous waste, health and safety, land use, noise, socioeconomics, transportation, utilities, visual and aesthetic resources, and water resources. Subsistence resources were also considered for potential sites in Alaska. Environmental Justice was addressed separately. Each resource area was discussed at each location as applicable. The potential for cumulative impacts was also evaluated in the EIS.

The impacts of the various alternatives are summarized in depth in Tables ES–1A, ES–1B, and Tables ES 2 through ES 11 in the Final ETR EIS (available on the MDA Internet site: *http://www.acq.osd.mil/bmdo/*). The following is a short comparison of the potential impacts of the alternatives, including the no-action alternative:

1. Kodiak Launch Complex

a. *Air Quality.* Under the No-Action alternative, single target and commercial launches would continue. Under Alternative 2 (the Selected Alternative), a minimal increase in air emissions from target launch and support facilities construction and operation of mobile telemetry would not affect the region's current attainment status. The results of modeling a dual Peacekeeper target launch to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that the level of hydrogen chloride would be below the 1-hour Air Force standard, but would exceed the peak hydrogen chloride standard for a short duration. Other emissions were determined to be within National Ambient Air Quality Standards (NAAQS) and Alaska Ambient Air Quality Standards (AAQS). A single Peacekeeper target launch would be within NAAQS, Alaska AAQS, and U.S. Air force standards. Significant air quality impacts due to target launches are not anticipated. Under Alternative 1, the impacts would be the same as Alternative 2 with the addition of GBI silo construction and GBI launches. The results of modeling to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that concentrations produced by dual launches of a Ground-Based Interceptor would remain within National Ambient Air Quality Standards (NAAQS), Alaska Ambient Air Quality Standards (AAQS), and U.S. Air Force standards. Significant air quality impacts due to Ground-Based Interceptor launches are not anticipated. Alternative 3 would have the same impacts as both Alternatives 1 and 2.

b. *Biological Resources.* Under the No Action Alternative, temporary effects to vegetation from emissions, discoloration and foliage loss and temporary, short-term startle effects from noise to wildlife and birds are possible during testing. Although a remote possibility, individual animals close to the water's surface could be hit by debris. Under Alternative 2 (the Selected Alternative), loss of small amounts of mainly upland vegetation could occur due to construction. Fence lines would likely be altered to avoid impacts to wetlands. Testing impacts would be similar to those noted in the No Action Alternative. Mobile sensors necessary to support Ground-Based Midcourse Defense Extended Test Range activities would be located on existing disturbed areas with minimal effect to biological resources. Alternatives 1 and 3 would have the same impacts as Alternative 2.

c. *Hazardous Materials and Hazardous Waste.* Under the No Action Alternative, continued handling and use of limited quantities of hazardous and toxic materials related to pre-launch, launch and post-launch activities would generate small quantities of hazardous waste. Under Alternative 2 (Selected Alternative), the target launch activities and support facilities construction would use small quantities of hazardous materials, which would result in the generation of some hazardous and non-hazardous waste that would be similar to current operations. All hazardous materials and waste would be handled in accordance with applicable state and federal regulations. No impact from short-term operation of mobile sensors at existing gravel pad areas are expected. Alternatives 1 and 3 would have the same impacts as Alternative 2.

d. *Health and Safety.* Under the No Action Alternative, planning and execution of target and commercial launches would continue. Ground and Launch Hazard Areas, Notices to Airmen and Notices to Mariners, and program Safety plans would protect workers and the general public. Under Alternative 2 (Selected Alternative), planning and execution of single and dual target launches would include establishing ground and Launch hazard Areas, issuing Notices to Airmen and Notices to Mariners, and adherence to program Safety plans. These actions would be in compliance with federal, state, and local health and safety requirements and regulations, as well as Department of Defense and Kodiak Launch Complex Safety Policy and would result in no impacts to health and safety. Due to the same precautions taken above, Alternatives 1 and 3 would also result in no impacts to health and safety.

e. Land Use. Under the No Action Alternative, Publication of availability of KLC's beaches and coastline will continue. Under Alternative 2 (Selected Alternative), minimal impacts would occur as a result of site preparation and new construction. This activity will limit the use of a small portion of the overall land available for livestock grazing. Only temporary closures during the transportation of missile components to the launch facilities and up to a full day closure on launch days would occur for the Pasagshak Point Road at the KLC site boundary. Under Alternative 1, the proposed activities would not significantly impact the availability of recreational opportunities. Impacts under Alternatives 1 and 3 would be the same as Alternative 2.

f. Water Resources. Under the No Action Alternative, Alternative 2 (Selected Alternative), and Alternatives 1 and 3, there is a minor potential for short-term increase in erosion and turbidity of surface waters during construction. Missile launches would disperse exhaust emission products over

a large area. These emissions would not cause a significant water quality impact. Water quality monitoring would continue on an as-needed basis.

2. Vandenberg Air Force Base

a. Air Quality. Under the No Action Alternative, current missile activities would continue. Under Alternative 2 (Selected Alternative) and Alternative 3, the results of modeling to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that concentrations produced by dual launches of a Ground-Based Interceptor would remain within NAAQS, California AAQS, and U.S. Air Force standards. Based upon this, the proposed launches would not cause or contribute to violation of any air quality standards. Under Alternative 1, 2 and 3 the results of modeling a dual Peacekeeper target launch to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that the level of hydrogen chloride would be below the 1-hour Air Force standard, but would exceed the peak hydrogen chloride standard for a short duration. Other emissions were determined to be within NAAQS and California AAQS. A single Peacekeeper target launch would be within NAAQS, California AAQS, and U.S. Air Force standards. The proposed launches would not cause or contribute to violation of any air quality standards.

b. Biological Resources. Under all alternatives, temporary effects to vegetation from emissions, discoloration and foliage loss and temporary, short-term startle effects from noise to wildlife and birds are possible. Although a remote possibility, individual animals close to the water's surface could be hit by debris.

c. Cultural Resources. Under the No Action Alternative, resources would continue to be managed in accordance with cultural resources regulations. For GBI launches under Alternative 2 (Selected Alternative) and Alternative 3, possible minor modifications may be required for buildings 1819 and 1900, as well as LF–02, LF–03, or LF–10. All of these are listed as National Register of Historic Places-eligible. Prior to the reuse of these facilities, consultation would occur with the State Historic Preservation Officer to ensure their protection or appropriate mitigation to preserve information concerning these buildings. Only in the unlikely event of flight termination over land (necessary debris recovery within the region of influence) would the possibility for impacts to cultural resources from off-road vehicle activity exist. Even then, all areas affected by ground impacts of flight hardware would be cleared of all recoverable debris in strict accordance with current Vandenberg Air Force Base policy. Under Alternatives 1, 2, and 3, possible minor modifications may be required for target facilities. LF–03 and LF–06 are listed as National Register of Historic Places-eligible. Prior to the reuse of these facilities, consultation would occur with the State Historic Preservation Officer to ensure facilities, consultation would occur with the State Historic Preservation Officer to ensure their protection or appropriate mitigation to reserve information concerning the sites. The potential for impacts due to a flight termination over land would be the same as in Alternative 2.

d. Land Use. Under the No Action Alternative, there would be no impact Vandenberg Air Force Base publicizes recreation availability, and activities are consistent with the California Coastal Zone Management Program. Under Alternative 2 (Selected Alternative) and Alternatives 1 and 3, disruption to land use would occur from routine closures of recreation areas near the region of influence during launches. Such action would represent a minimal impact to land use.

3. Ronald Reagan Ballistic Missile Test Site

Biological Resources. Under all alternatives, temporary affects to vegetation from emissions, discoloration and foliage loss and temporary, short-term startle effects from noise to wildlife and birds are possible. Although a remote possibility, individual animals close to the water's surface could be hit by debris. Personnel would be instructed to avoid areas designated as avian or sea turtle nesting or avian roosting habitat and to avoid all contact with any nest that may be encountered.

4. Pacific Missile Range Facility

a. Air Quality. Under the No Action Alternative, current missile activities would continue. Under Alternative 2 (Selected Alternative) and Alternatives 1 and 3, it is anticipated that operation of the TPS–X or continued missile launches would have no adverse impacts on regional air quality at PMRF. Therefore, there would be no change to the region's current attainment statistics.

b. Biological Resources. Under the No Action Alternative, short-term disturbance to wildlife, including migratory birds, from minor site preparation activities and increased personnel could occur. Reflection from outdoor lighting could disorient the Newell's Townsend's shearwater. Temporary effects to vegetation from emissions, discoloration and foliage loss and temporary, short-term startle effects from noise to wildlife and birds are possible. Although a remote possibility, individual animals close to the water's surface could be hit by debris. For Alternative 2 (Selected Alternative) and alternatives 1 and 3, the TPS–X Radar is not expected to add any additional impacts above those identified in the No Action alternative because the TPS–X will not radiate lower than 5 degrees above horizontal and the relatively small radar beam would normally be in motion which reduces the probability of bird species remaining within this limited region of space.

c. Hazardous Materials and Hazardous Waste. Under the No Action Alternative, continued handling and use of limited quantities of hazardous and toxic materials related to pre-launch, launch and post-launch activities would generate small quantities of hazardous waste. Under Alternative 2 (Selected Alternative) and alternatives 1 and 3, in addition to missile launch activities, TPS–X Radar activities would generate small quantities of hazardous waste. The use and disposal of hazardous materials and wastes would be in accordance with Pacific Missile Range Facility, State of Hawaii, Environmental Protection Agency, Occupational Safety and Health Administration, Department of Transportation, and Department of Defense policies and procedures.

d. Health and Safety. Under the No Action Alternative, planning and execution of target launches would continue. Ground and Launch hazard Areas, Notices to Airmen and Notices to Mariners, and implementation of Safety plans would protect workers and the general public. Under Alternative 2 (Selected Alternative) and Alternatives 1 and 3, TPS–X Radar Electromagnetic Radiation hazard zones would be established within the beam's tracking space and near emitter equipment. A visual survey of the area would verify that all personnel are outside the hazard zone prior to startup. The TPS–X Radar would be prevented from illuminating in a designated cutoff zone, in which operators and all other system elements would be located. Potential interference with other electronic and emitter units (flight navigation systems, tracking radars, etc.) would also be examined prior to startup. Compliance with federal, state, and local health and safety requirements and regulations, safety procedures relative to radar operations, as well as Department of Defense and Pacific Missile Range Facility Safety Policy would result in no impacts to health and safety. Missile

launch activities would use the same safety plans and procedures as in the No Action Alternative.

5. Sea-Based Text X-Band Radar

a. Air Quality

1. RTS: The SBX would not be considered a stationary source and would not require a U.S. Army Kwajalein Atoll Environmental Standards New Source Review. The increase in air emissions from operation of the SBX would not affect the region's attainment status.

2. Pearl Harbor: The SBX would not be considered a stationary source and would not require a Prevention of Significant Deterioration review or a Title V permit. Air emissions from the operation of the SBX would be in compliance with appropriate State Implementation Plans.

3. Naval Base Ventura County: The SBX would not be considered a stationary source and would not require a Prevention of Significant Deterioration review or a Title V permit. Air emissions from the operation of the SBX would be in compliance with appropriate State Implementation Plans.

4. Naval Station Everett: The SBX would not be considered a stationary source and would not require a Prevention of Significant Deterioration review or a Title V permit. Air emissions from the operation of the SBX would be in compliance with appropriate State Implementation Plans. Dust suppression measures such as periodic watering of areas being graded, minimizing area traffic, reducing vehicle speeds near work areas, and wet sweeping or otherwise removing soil deposits from paved roadways and parking areas, would be used as required for support facility construction.

5. Adak, Alaska (Selected Alternative): The SBX would not be considered a stationary source and would not require a Prevention of Significant Deterioration review or a Title V permit. Air emissions from the operation of the SBX would be in compliance with appropriate State Implementation Plans.

6. Valdez, Alaska: The SBX would not be considered a stationary source and would not require a Prevention of Significant Deterioration review or a Title V permit. Air emissions from the operation of the SBX would be in compliance with appropriate State Implementation Plans.

b. Airspace. All sites: Potential impacts to airspace would be minimized by adhering to operational requirements. An Electromagnetic Radiation/Electromagnetic Interference survey and analysis and DD Form 1494 would be required as part of the spectrum certification and frequency allocation process. The SBX high-energy radiation area would be configured to minimize potential impacts to aircraft and other potentially affected systems, and would be published on aeronautical charts. In addition, SBX information would be published in the Airport Facility section of the FAA Airport Guide, and local Notices to Airmen would be issued. Flight service personnel would brief pilots flying in the vicinity about the SBX high-energy radiation area.

c. Biological Resources. For all sites, minor, short-term impacts from construction noise, such as starting and temporary displacement, may occur. The SBX is not expected to radiate lower than 10 degrees above horizontal for calibration and maintenance testing at the mooring site. The relatively small radar beam would normally be in motion that reduces the probability of bird species, marine mammals, or sea turtles remaining within this limited region of space. The SBX vessel would incorporate marine pollution control procedures such as keeping decks clear of debris, cleaning spills, and residues, and engaging in spill and pollution prevention practices in compliance with the Uniform National Discharge Standards provisions of the Clean Water Act. The potential for impacts to marine mammals or sea turtles due to an accidental release of diesel fuel is considered low. The relatively slow speed of the SBX platform would preclude the potential for collision with a free-swimming marine mammal.

1. RTS: Overall no adverse impacts to marine mammals or sea turtles are anticipated.

2. Pearl Harbor: Overall no adverse impacts to marine mammals or sea turtles are anticipated.

3. Naval Base Ventura County: No significant long-term adverse impacts are anticipated to seabirds and shorebirds, Guadalupe fur seals, California sea lions, northern elephant and harbor seals and sea otters or to widely distributed, open water species such as gray and killer whales.

4. Naval Station Everett: No significant long-term adverse impacts are anticipated to seabirds and shorebirds (bald eagle), Chinook salmon, bull trout, or widely distributed, open water species such as humpback, blue, fin, sei, and sperm whales; green, leatherback, and loggerhead sea turtles; and Steller sea lions.

5. Adak, Alaska (Selected Alternative): No significant long-term adverse impacts are anticipated to seabirds and water fowl or widely distributed, open water species such as Steller sea lions, sea otters, harbor seals, and whales.

6. Valdez, Alaska: No significant long-term adverse impacts are anticipated to Essential Fisk Habitat, area seabirds and water fowl, or widely distributed, open water species such as humpback, killer and minke whales, sea otters, Steller sea lions, harbor seals, and Dall and harbor porpoise.

d. Hazardous Materials and Waste. All potential sites: The small quantities of potentially hazardous materials used during construction activities would result in generation of added wastes that would be accommodated in accordance with existing protocol and regulations. The SBX would follow U.S. Navy requirements that, to the maximum extent practicable, ships shall retain hazardous waste aboard ship for shore disposal. In compliance with Uniform National Discharge Standards, the SBX vessel would incorporate marine pollution control devices, such as keeping decks clear of debris, cleaning spills and residues and engaging in spill and pollution prevention practices, in design or routine operation. Handling and disposal of hazardous materials and hazardous waste would be in accordance with state, Environmental Protection Agency, Occupational Safety and Health Administration, Department of Transportation, and Department of Defense policies and procedures.

e. Health and Safety. All potential sites: An Electromagnetic Radiation/Electromagnetic Interference survey and analysis and DD Form 1494 would be required as part of the spectrum certification and frequency allocation process. Implementation of SBX operational safety procedures, including establishment of controlled areas, and limitations in the areas subject to illumination by the radar units, would preclude any potential safety hazard to either the public or workforce. These limitations would be similar to the existing Ground-Based Radar Prototype on Kwajalein, resulting in no impacts to health and safety.

f. Visual and Aesthetic Resources.

1. RTS: No impact.

2. Pearl Harbor: Visual impacts would be minor, as the SBX would be comparable to ships passing along the horizon. The SBX would be moored at an adequate distance away from the shore and would not obstruct panoramic views. Visual resources could be affected by the SBX if it is in the line of site from boats to the island; however,

the SBX would only inhibit the view of the island temporarily as the boat passes by.

3 Naval Base Ventura County: No impact.

4. Naval Station Everett: While there is a high amount of viewer concern, the SBX would be considered visually compatible with the port and present military uses; therefore only moderate impacts are expected.

5. Adak, Alaska (Selected Alternative): Due to limited visibility, a moderate scenic value, and low viewer concern, there would be minimal adverse impacts.

6. Valdez, Alaska: Because Valdez is the site of the terminus of the Trans-Alaska Pipeline, numerous oil tankers are entering Prince William Sound which would limit the impacts to visual resources caused by the SBX. However, adverse impacts to visual resources could occur due to some concerned viewers and a high scenic integrity.

F. Mitigation Measures and Monitoring

The applicable mitigation measures specified for each of the sites selected will be implemented as part of the GMD ETR action. A Mitigation Monitoring Plan has been developed to assist in tracking and implementing these mitigation measures. With the implementation of the mitigation measures, all practicable means to avoid or minimize environmental harm from establishing the GMD ETR considered in this ROD have been adopted.

G. Environmentally Preferred Alternative

The environmentally preferred alternative in the EIS is the No-Action Alternative (not proceeding with the GMD ETR) since there will be no new construction or operation of GMD elements at any of the potential sites. Continuation of current site operations at these locations will result in few additional environmental impacts.

Among the three alternatives to the Proposed Action in the EIS, Alternative 2 is the environmentally preferred action to establish and operate the GMD ETR because the proposed GBI launches from existing silos at Vandenberg AFB will require less construction and ground disturbance than the other alternatives. The proposed launches from Vandenberg AFB would be within the number of launches per year allowed in existing agreements with state and federal regulatory agencies. Adak, Alaska is the environmentally preferred location to establish a SBX PSB because, while placement of the mooring may cause minor impacts to the environment, locating the SBX at Adak would require little or no new construction of administrative or warehouse facilities and operations would have minimal adverse impacts on the surrounding environment.

Conclusion

In accordance with NEPA, I have considered the information contained within the GMD ETR EIS as well as cost, mission requirements and other factors in deciding to establish an extended GMD test range capability.

I have decided to select Alternative 2 over the other alternatives to the proposed action. Although the No-Action Alternative has fewer environmental impacts, it does not support the agency's ability to conduct realistic testing nor does it support IDO as directed by the President. Selection of Alternative 2 will meet the mission requirements of creating an extended test range for the GMD wile utilizing, to the greatest extent practicable, existing test assets at Vandenberg AFB, the Pacific Missile Range Facility and the Reagan Test Site and associated test support sites. Alternative two also offers the quickest path to enable the program to support IDO and provide a protective capability for the nation.

I have chosen Alternative 2 over Alternative 3 because there are currently no plans to finance GBI interceptors at KLC. If funding becomes a realistic possibility in the future, I will re-assess this view, and perform additional NEPA as appropriate before making any decisions in this regard.

LTG R. KADISH have also decided to defer any decisions at KLC regarding the remainder of the actions contemplated in Alternative 2. FAA, as cooperating agency to this EIS, may entertain relicensing activities at KLC. LTG R. Kadish believe my decision should be deferred pending those activities so that LTG R. Kadish can be confident that all operational and environmental concerns have been addressed.If FAA acts to re-license KLC, LTG R. Kadish may issue an additional ROD at that time, as appropriate.

LTG R. Kadish have further decided to construct and operate the SBX, and have chosen Adak, Alaska as the location for the PSB. When work commenced on this EIS, the President had not directed the IDO capability enhancements. Accordingly, the SBX PSB analysis was focused only on various test locations in the Pacific region. In view of the President's directive on 16 December 2002, LTG R. Kadish have re-examined candidate PSB locations and selection Adak, Alaska as the most prudent location to support IDO while still supporting the test program.

Dated: August 19, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–21653 Filed 8–25–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License to Foster Miller, Inc.

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent application number 09,715,496 filed November 17, 2000 entitled ''Wearable Transmission Device'' to Foster Miller, Inc. with its principal place of business at 350 Second Avenue, Waltham, MA 02451.

DATES: File written objections by September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: The prospective partially exclusive licenses will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive licenses may be granted, unless within fifteen (15) days from the date of this published notice, Soldier and Biological Chemical Command receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–21791 Filed 8–25–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Renourishment of the Brunswick County Beaches—Caswell Beach, Oak Island, and Holden Beach Portion, Brunswick County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Recent storms, in addition to natural coastal processes, have seriously eroded the oceanbront beaches of the Caswell Beach, Oak Island, and Holden Beach communities, located adjacent to the Atlantic Ocean, in Brunswick County, North Carolina. The proposed project will renourish the beach and dunes for approximately 11.8 miles of Caswell Beach and Oak Island, and 7.1 miles of Holden Beach, using beach compatible sand from one or more offshore borrow sources. Benefits that will accrue from the proposed beach renourishment include the protection of developed property from future storm and erosion damages, and the maintenance and enhancement of the Brunswick County Beaches tourism industry.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Environmental Impact Statement (DEIS) can be answered by: Mr. Jeff Richter; Environmental Resources Branch; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, NC 28402–1890; telephone (910) 251–4636.

SUPPLEMENTARY INFORMATION: Project alternatives being considered include other methods of storm damage reduction and property protection, different project designs, various sand borrow sites, and no action. Hydraulic pipeline dredges are to be used to dredge and pump sand from the selected offshore borrow site(s) to the beach. As the discharge site moves along the beach away from the dredge, bulldozers move the sand and shape the new beach.

All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the intent to prepare a DEIS and are invited to comment at this time. Also, a scoping letter requesting input to the study was sent to all known interested parties on January 24, 2000. Based on comments received to date, a scoping meeting will not be needed. All comments received as a result of this notice of intent and the scoping letter will be considered in the preparation of the DEIS.

Significant issues to be analyzed in the DEIS include: (1) Dredging of benthic resources; (2) impact on primary nursery areas, anadromous fish, threatened and endangered sea turtles and piping plovers, and marine mammals; and (3) impacts to intertidal invertebrates, nektonic and benthic species, and other marine species occurring near the subject beaches.

The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, nor requested by, any other agency.

The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State Laws and Executive Orders.

The DEIS is currently scheduled to be available in July 2004.

Dated: August 8, 2003.

Charles R. Alexander, Jr.,

Colonel, U.S. Army, District Engineer.

[FR Doc. 03–21792 Filed 8–25–03; 8:45 am]

BILLING CODE 3710–CE–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.019A]

Office of Postsecondary Education; Fulbright-Hays Faculty Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The Fulbright-Hays Faculty Research Abroad Fellowship Program offers opportunities to faculty members of institutions of higher education for research and study in modern foreign languages and area studies.

For FY 2004 the competition for new awards focuses on projects designed to meet the priority we describe in the PRIORITY section of this application notice.

Eligible Applicants: Institutions of higher education.

Applications Available: August 26, 2003.

Deadline for Transmittal of Applications: October 20, 2003.

Estimated Available Funds: The Administration has requested $1,575,000 for Fulbright-Hays Faculty Research Abroad Fellowship Program new awards for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $20,000–$100,000.

Estimated Average Size of Fellowship Awards: $47,727.

Estimated Number of Awards: 33 fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2004. Faculty may request funding for 3–12 months.

Page Limit: The application narrative is where the faculty applicant addresses the selection criteria that reviewers use to evaluate the application. The faculty applicant must limit the narrative to the equivalent of no more than 10 pages, and the references to the equivalent of no more than 2 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the bibliography. However, the faculty applicant must include the complete response to the selection criteria in the application narrative.

We will reject an application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 663.

Priority

This competition focuses on projects designed to meet a priority in the regulations for this program (34 CFR 663.21(d)), which provides that priorities may be established for projects focusing on certain geographic areas in addition to certain other categories.

Absolute Priority

A research project that focuses on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico, and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Performance Measures: The effectiveness of the Fulbright-Hays Faculty Research Abroad Fellowship Program will be measured by the improvement of language proficiency of fellows. All grantees will be expected to provide documentation of the improved language proficiency of fellows through the Department's Evaluation of Exchange, Language, International and Area Studies (EELIAS) electronic reporting system for the purposes of assessing the effectiveness of individual projects and the program overall.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2004 under the Fulbright-Hays Faculty Research Abroad Fellowship Program be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

An applicant who is unable to submit an application through the e-GRANTS system may submit a written request for a waiver of the electronic submission requirement. In the request, the applicant should explain the reason or reasons that prevent the applicant from using the Internet to submit the application. The request should be addressed to: Eliza Washington or Amy Wilson, U.S. Department of Education, 1990 K St., NW., Suite 6000, Washington, DC 20006–8521. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, an applicant is unable to submit an application electronically, the applicant must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Fulbright-Hays Faculty Research Abroad Fellowship Program—CFDA 84.019A is one of the programs included in the pilot project. If you are an applicant under the Fulbright-Hays Faculty Research Abroad Fellowship Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

Note: In order for institutions to apply electronically, potential project directors must email the following information to fra@ed.gov: first and last name of potential project director, university, and email address. This information must be submitted no later than September 8, 2003.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC, time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Fulbright-Hays Faculty Research Abroad Fellowship Program at: *http://e-grants.ed.gov*.

Note: An applicant institution of higher education must submit all individual applications in electronic format unless the institution receives a waiver of this requirement. Individuals interested in funding under this program must check with the applicant institution to see if the institution is participating in e-Application, or has requested a waiver.

FOR FURTHER INFORMATION CONTACT: Eliza Washington or Amy Wilson, International Education and Graduate Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700 or via Internet: *fra@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in PDF at the following site: *http://www.ed.gov/HEP/iegps*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: August 21, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–21812 Filed 8–25–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.022A]

Office of Postsecondary Education; Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

For FY 2004 the competition for new awards focuses on projects designed to meet the priority we describe in the PRIORITY section of this application notice.

Eligible Applicants: Institutions of higher education.

Applications Available: August 26, 2003.

Deadline for Transmittal of Applications: October 20, 2003.

Estimated Available Funds: The Administration has requested $4,580,000 for Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program new awards for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $15,000–$60,000.

Estimated Average Size of Fellowship Awards: $26,941.

Estimated Number of Awards: 170 fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2004. Students may request funding for 6–12 months.

Page Limit: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student must limit the narrative to the equivalent of no more than 10 pages, and the references to the equivalent of no more than 2 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the bibliography. However, the student must include the complete response to the selection criteria in the application narrative.

We will reject an application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 662.

Priority

This competition focuses on projects designed to meet a priority in the regulations for this program (34 CFR 662.21(d)).

Absolute Priority: A research project that focuses on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico, and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Performance Measures: The effectiveness of the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program will be measured by the improvement in the language proficiency of fellows. All grantees will

be expected to provide documentation of the improved language proficiency of fellows through the Department's Evaluation of Exchange, Language, International and Area Studies (EELIAS) electronic reporting system for the purposes of assessing the effectiveness of individual projects and the program overall.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2004 under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

An applicant who is unable to submit an application through the e-GRANTS system may submit a written request for a waiver of the electronic submission requirement. In the request, the applicant should explain the reason or reasons that prevent the applicant from using the Internet to submit the application. The request should be addressed to: Karla Ver Bryck Block or Sara Starke, U.S. Department of Education, 1990 K St., NW., Suite 6000, Washington, DC 20006–8521. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, an applicant is unable to submit an application electronically, the applicant must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program—CFDA 84.022A is one of the programs included in the pilot project. If you are an applicant under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

Note: In order for institutions to apply electronically, potential project directors must email the following information to *ddra@ed.gov:* first and last name of potential project director, university, and email address. This information must be submitted no later than September 8, 2003.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, except transcripts, including the Application for Federal Education Assistance (ED 424), and all necessary assurances and certifications. Transcripts must be mailed separately.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program at: *http://e-grants.ed.gov.*

Note: An applicant institution of higher education must submit all individual applications in electronic format unless the institution receives a waiver of this requirement. Individuals interested in funding under this program must check with

the applicant institution to see if the institution is participating in e-Application, or has requested a waiver.

FOR FURTHER INFORMATION CONTACT: Karla Ver Bryck Block or Sara Starke, International Education and Graduate Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7632 or via Internet: *ddra@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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You may also view this document in PDF at the following site: *http://www.ed.gov/HEP/iegps/.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: August 21, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–21814 Filed 8–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.017A]

Office of Postsecondary Education; International Research and Studies Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The International Research and Studies Program provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields.

For FY 2004, we encourage applicants to design projects that focus on the invitational priorities in the Priorities section of this application notice.

Eligible Applicants: Public and private agencies, organizations, institutions, and individuals.

Applications Available: August 26, 2003.

Deadline for Transmittal of Applications: November 3, 2003.

Estimated Available Funds: The Administration has requested $2,053,000 for International Research and Studies new awards for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $30,000—$170,000 per year.

Estimated Average Size of Awards: $108,053 per year.

Estimated Number of Awards: 19.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: The application narrative, section C, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 30 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs. Charts, tables, figures, and graphs presented in the application narrative do count toward the page limit.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; or the appendices. However, you must include your complete response to the selection criteria in the application narrative in section C.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, 86, 97, 98, and 99; (b) the regulations in 34 CFR part 655; and (c) the regulations for this program in 34 CFR part 660.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Invitational Priorities: We are particularly interested in applications that meet the following invitational priorities.

Invitational Priority 1

Research, surveys, studies, or development of instructional materials that are nonbiased, factually accurate and solicitous of diverse views, and that serve to enhance international understanding for use at the elementary and secondary education levels, or for use in teacher education programs.

Invitational Priority 2

The development of instructional materials that are nonbiased, factually accurate and solicitous of diverse views on the Middle East, Central Asia, and South Asia or the languages spoken in these regions.

Invitational Priority 3

Studies assessing the outcomes and effectiveness of programs authorized under title VI of the Higher Education Act of 1965, as amended, and related programs supported under section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priorities a competitive or absolute preference over other applications.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999

(Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2004 under the International Research and Studies Program be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

An applicant who is unable to submit an application through the e-GRANTS system may submit a written request for a waiver of the electronic submission requirement. In the request, the applicant should explain the reason or reasons that prevent the applicant from using the Internet to submit the application. The request should be addressed to: Jose Martinez, U.S. Department of Education, 1990 K St., NW., Suite 6000, Washington, DC 20006–8521. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, an applicant is unable to submit an application electronically, the applicant must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The International Research and Studies Program—CFDA 84.017A is one of the programs included in the pilot project. If you are an applicant under the International Research and Studies Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the International Research and Studies Program at: *http://e-grants.ed.gov*.

FOR FURTHER INFORMATION CONTACT: Jose L. Martinez, U.S. Department of Education International Education and Graduate Programs Service, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7635, or via Internet: *jose.martinez@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1125.

Dated: August 21, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–21815 Filed 8–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129C, 84.129E, 84.129F, 84.129Q, 84.129R]

Rehabilitation Training: Rehabilitation Long-Term Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Assistant Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Assistant Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Long-Term Training program.

Applications Available: August 27, 2003.

Deadline for Transmittal of Applications: October 27, 2003.

Deadline for Intergovernmental Review: December 26, 2003.

Estimated Available Funds: The Administration has requested $42,629,000 for the Rehabilitation Training program for FY 2004, of which an estimated $1,100,000 would be allocated for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: This competition is being conducted in FY 2003 for grants that will be awarded using FY 2004 funds.

Estimated Range of Awards: $75,000 to $100,000.

Estimated Average Size of Awards: $100,000.

Estimated Total Number of Awards: 11.

Maximum Number of Awards, Maximum Awards, and Absolute Priorities: The maximum number of awards to be made are listed in parentheses following each priority area. We will reject any application that proposes a budget exceeding the amount listed under *Maximum Award* in any project year.

CFDA number	Priority area (maximum number of awards in parentheses)	Maximum award
84.129C	Rehabilitation Administration (4)	$100,000
84.129E	Rehabilitation Technology (2)	$100,000
84.129F	Vocational Evaluation and Work Adjustment (3)	$100,000
84.129Q	Rehabilitation of Individuals Who Are Deaf or Hard of Hearing (4)	$100,000
84.129R	Job Development and Job Placement Services to Individuals With Disabilities (3)	$100,000

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit part III to the equivalent of no more than 35 pages, using the following standards:

• A ''page'' is 8.5″ x 11,″ on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; part II, the budget section, including the narrative budget justification; part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in part III. You may include brief appendices, but be advised that peer reviewers are not required to review appendix material.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 99. (b) The regulations in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this competition, we use the selection criteria in 34 CFR 385.31 and 386.20. The selection criteria to be used for this competition will be provided in the application package for this competition.

Priorities: This competition focuses on projects designed to meet the priorities in the regulations for this program (34 CFR 386.1). The priority

areas of personnel shortages are listed in the chart published in this notice.

Under 34 CFR 75.105(c)(3) and 34 CFR 386.1, we consider only applications that propose to provide training in the areas of personnel shortages listed in the chart.

Performance Measures: The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all of their grant programs to assess their performance and effectiveness. The Rehabilitation Services Administration (RSA) has established a set of indicators to assess the effectiveness of the Rehabilitation Training program and will use the following indicator for the Rehabilitation Long-Term Training program projects:

- The percentage of graduates fulfilling their payback requirement through acceptable employment.

Each grantee must report annually on this indicator using the electronic grantee reporting system administered by RSA for this purpose.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

The Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Rehabilitation Long-Term Training program (CFDA numbers 84.129C, 84.129E, 84.129F, 84.129Q, and 84.129R) is one of the programs included in the pilot project. If you are an applicant under the Rehabilitation Long-Term Training program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Rehabilitation Long-Term Training program and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under FOR FURTHER INFORMATION CONTACT or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Rehabilitation Long-Term Training program at: *http://e-grants.ed.gov.*

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129C, E, F, Q, or R.

FOR FURTHER INFORMATION CONTACT: Marilyn Fountain, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202–2649. Telephone (202) 205–8294 or via Internet: *Marilyn.Fountain@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person

listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 29 U.S.C. 772.

Dated: August 21, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–21813 Filed 8–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Base Charge and Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of base charge and rates.

SUMMARY: The Deputy Secretary of the Department of Energy (DOE) has approved Rate Schedule BCP–F6, FY 2004 Base Charge and Rates (Rates) for Boulder Canyon Project (BCP) electric service provided by the Western Area Power Administration (Western). The Rates will provide sufficient revenue to pay all annual costs, including interest expense, and investment repayment within the allowable period.

DATES: The Rates will be effective the first day of the first full billing period beginning on or after October 1, 2003. These Rates will stay in effect through September 30, 2004, or until other Rates replace them.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, PO Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of DOE approved the existing Rate Schedule BCP–F6 for BCP electric service on September 18, 2000 (Rate Order No. WAPA–94, 65 FR 60933, October 13, 2000), on an interim basis. Rate Schedule BCP–F6, effective October 1, 2000, through September 30, 2005, allows for an annual recalculation of the rates. On July 31, 2001, the Federal Energy Regulatory Commission (FERC) approved Rate Order No. WAPA–94 on a final basis.

Under Rate Schedule BCP–F6, the existing composite rate, effective on October 1, 2002, was 11.16 mills per kilowatthour (mills/kWh), the base charge was $50,761,729, the energy rate was 5.58 mills/kWh, and the capacity rate was $1.08 per kilowattmonth (kWmonth). The newly calculated Rates for BCP electric service, to be effective October 1, 2003, will result in an overall composite rate of 12.91 mills/kWh. This is an increase of approximately 16 percent when compared with the existing BCP electric service composite rate. The increase is due to an increase in the annual base charge and a decrease in the projected energy sales. The Fiscal Year (FY) 2004 base charge is increasing to $51,719,075. The increase is due mainly to a reduction in visitor service revenues resulting from fewer tours at the Hoover Dam. The FY 2004 energy rate of 6.46 mills/kWh is approximately a 16-percent increase from the existing energy rate of 5.58 mills/kWh. The increase in the energy rate is due to a decrease in the projected energy sales resulting from lake elevations continuing to drop due to poor hydrology in the lower Colorado River basin. The FY 2004 capacity rate of $1.17/kWmonth is approximately an 8-percent increase from the existing $1.08/kWmonth capacity rate. The capacity rate is increasing due to decreased generation ratings resulting from lower lake elevations. Another factor that contributes to the increase in the energy and capacity rates is the increase in the annual base charge.

The following summarizes the steps taken by Western to ensure involvement of all interested parties in determining the Rates:

1. A **Federal Register** (FR) notice was published on February 27, 2003 (68 FR 9078), announcing the proposed rate adjustment process, initiating a public consultation and comment period, announcing public information and public comment forums, and presenting procedures for public participation.

2. On March 7, 2003, a letter was mailed from Western's Desert Southwest Customer Service Region to the BCP Contractors and other interested parties announcing an informal customer meeting, and public information and comment forums. The BCP Contractors consist of Municipalities in Arizona and Nevada, States Agencies from Arizona, Nevada, and Southern California and an Investor Owned Utility from Southern California.

3. Discussion of the proposed Rates was initiated at an informal BCP Contractor meeting held March 19, 2003, in Phoenix, Arizona. At this informal meeting, representatives from Western and the Bureau of Reclamation (Reclamation) explained the basis for estimates used to calculate the Rates. A question and answer session was held.

4. At the public information forum held on April 1, 2003, in Phoenix, Arizona, Western and Reclamation representatives explained the proposed Rates for FY 2004 in greater detail. A question and answer session was held.

5. A public comment forum was held on April 23, 2003, in Phoenix, Arizona, to give the public an opportunity to comment for the record. Four persons representing customers made oral comments.

6. One comment letter was received during the 90-day consultation and comment period. The consultation and comment period ended May 28, 2003. All comments were considered in developing the Rates for FY 2004. Written comments were received from: Irrigation & Electrical Districts Association of Arizona, AZ.

Comments and responses, paraphrased for brevity, are presented below.

Agency Accountability

Comment: The Contractors stressed the importance of accountability, for both Western and the U. S. Bureau of Reclamation, under the implementation agreement processes, and indicated that there appears to be something wrong in the processes. Similarly, concern was expressed over the significant increases

in Reclamation's costs over the last 8 years, particularly the administrative and general expenses increasing by 128 percent since 1996. The Contractors requested a specific breakdown and itemization of the expenses be provided for discussion at the next engineering and operating committee (E&OC) meeting on May 14, 2003. The E&OC is a committee established by the BCP Implementation Agreement.

Response: Western and Reclamation agreed that each agency has an obligation under the implementation agreement to uphold accountability in all the various processes. Both agencies have stated that they are willing to work with the Contractors to alleviate these concerns. This was an agenda item for discussion at the May 2003 E&OC meeting. Also, Reclamation provided the requested detail of the itemized administrative and general costs for discussion at the meeting.

Congressional Authorization

Comment: The Contractors expressed concern that some security costs resulting from activities made necessary after the September 11, 2001, terrorist attack are not being considered as non-reimbursable costs; specifically, $600,000 identified in Reclamation's budget in FY 2003 for Information Technology (IT) Security. The Contractors believe Congress was very specific in deeming such costs non-reimbursable and providing funding to cover the costs.

Response: Reclamation did receive a supplemental appropriation in FY 2003 for IT security related to counterterrorism, of which $3.3 million was earmarked for IT security ($1.8 million for implementation of the Office of Inspector General's audit recommendation including accreditation and certification, training, and background investigations, and $1.5 million for implementation of network security improvements including system conversions). Appropriations for physical security, such as guards and surveillance, equipment, etc., are entirely separate from the appropriations for IT security. The $600,000 identified in Reclamation's budget is considered normal IT security costs. It covers Reclamation's perimeter security system (RECNET) assessment, fire walls and intrusion detection, accreditation and certification, and application conversions. Reclamation believes that Ninety thousand dollars ($90,000) of these funds may qualify as non-reimbursable and therefore are being submitted for consideration for supplemental funding. If the supplemental funding is obtained, the $600,000 will be reduced by $90,000.

Revenue Transfers

Comment: An interested party representative expressed concern that Western was making a unilateral decision of transferring a portion of revenues from the Parker-Davis Project (P–DP) to the BCP without the consent of either the P–DP or BCP customers. The interested party indicated that the customers first needed to see the documentation supporting this determination.

Response: Western has the obligation under the BCP Electric Service Contracts to equitably apportion benefits and appropriate charges among the BCP, other Desert Southwest Projects, and other Federal Projects on the Colorado River. Western recognizes the customers' concerns with the methodology that is currently being applied to transmission losses, spinning reserves and regulation revenues. Western has chartered a team to establish a control area accounting methodology that identifies compensation due to all projects. The expected duration of the project is 12 months with an implementation phase to follow. As Western moves further into the project it will hold a meeting to share information and receive input regarding the accounting methodology.

BCP Electric Service Rates

BCP electric service rates are designed to recover an annual revenue requirement that includes the operation and maintenance expenses, payments to States, visitor services, uprating program, replacements, investment repayment, and interest expense. Western's power repayment study allocates the projected annual revenue requirement for electric service between capacity and energy, 50 percent to capacity and 50 percent to energy.

Procedural Requirements

BCP electric service rates are developed under the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved, were transferred to and vested in the Secretary of Energy.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the FERC. Existing DOE procedures for public participation in electric service rate adjustments are located at 10 CFR part 903, effective September 18, 1985 (50 FR 37835). DOE procedures were followed by Western in developing the rate formula approved by FERC on July 31, 2001, at 96 FERC ¶ 61,171.

The Boulder Canyon Project Implementation Agreement Contract No. 95–PAO–10616 requires Western, prior to October 1 of each rate year, to determine the annual rates for the next fiscal year. The rates for the first rate year and each fifth rate year thereafter, will become effective provisionally upon approval by the Deputy Secretary subject to final approval by the FERC. For all other rate years, the rates will become effective on a final basis upon approval by the Deputy Secretary.

Western will continue to provide the Contractors annual rates by October 1 of each year using the same rate-setting formula. The rates are reviewed annually and adjusted upward or downward to assure sufficient revenues to achieve payment of all costs and financial obligations associated with BCP. Each fiscal year, Western prepares a power repayment study that updates actual revenues and expenses and includes future estimates of annual revenues and expenses for the BCP including interest and capitalized costs.

Western's BCP electric service rate-setting formula set forth in Rate Order No. WAPA–70 was approved on April 19, 1996, in Docket No. EF96–5091–000 at 75 FERC ¶ 62,050, for the period beginning November 1, 1995, and ending September 30, 2000. Rate Order No. WAPA–94 extended the existing rate-setting formula beginning on October 1, 2000, and ending September 30, 2005. The BCP rate-setting formula includes a base charge, an energy rate, and a capacity rate. The rate-setting formula was used to determine the BCP FY 2004 Base Charge and Rates.

Western proposes the FY 2004 base charge of $51,719,075, the energy rate of 6.46 mills/kWh, and the capacity rate of $1.17/kWmonth be approved on a final basis.

Consistent with procedures set forth in 10 CFR part 903, Western held a consultation and comment period. The

notice of the proposed FY 2004 Rates for electric service was published in the **Federal Register** on February 27, 2003.

Following review of Western's proposal, I approve the FY 2004 Rates, on a final basis for BCP electric service, under Rate Schedule BCP–F6, through September 30, 2004.

Dated: August 14, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 03–21776 Filed 8–25–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0036; FRL–7325–2]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of August 20, 2003, EPA announced a Notice of a public meeting scheduled for the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances for September 16—18, 2003, in Washington, DC. There were three chemicals that were inadvertently omitted and seven chemicals that were inadvertently listed. This document is being published to correct the list of chemicals.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice of August 20, 2003 a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0036. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Correction

In FR Doc. 03–21352 published in the **Federal Register** of August 20, 2003 (FRL–7319–2), appearing on page 50135, in the first column, in the **SUMMARY**, beginning with the twelfth line, the list of chemicals should have read as follows:

Acetone cyanohydrin; acetonitrile; acrylic acid; bromine; butane; carbon monoxide; chloroacetic acid; chloroacetonitrile; dimethyl sulfate; disulfur dichloride; fluorine; hydrogen iodide; isobutyronitrile; jet fuel 8; malononitrile; methanol; methyl ethyl ketone; phenol; phosphorus oxychloride; phosphorus trichloride; propane; propionitrile; styrene; sulfur dichloride; vinyl chloride; and xylenes.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: August 21, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 03–21861 Filed 8–22–03; 10:26 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7548–2]

San Fernando Valley—Glendale Operable Units Superfund Site, Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9601 *et seq.*, notice is hereby given that a proposed Prospective Purchaser Agreement associated with the San Fernando Valley Crystal Springs (Area 2) Superfund Site—Glendale Operable Units was executed by the United States Environmental Protection Agency (''EPA'') on June 24, 2003. The proposed Prospective Purchaser Agreement amends a prior Prospective Purchaser Agreement executed by EPA on February 12, 2001. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, against Home Depot U.S.A., Inc. (the ''Purchaser''). The Purchaser plans to acquire two contiguous parcels located within the Glendale Operable Units, 1200 South Flower Street, Burbank, California and 801 Allen Avenue, Glendale, California for the construction of a Home Depot U.S.A. retail operation. The proposed settlement would require

the Purchaser to pay EPA a one-time payment of $10,000.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before September 25, 2003.

AVAILABILITY: The proposed Prospective Purchaser Agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Marie M. Rongone, Senior Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference ''First Amended Home Depot U.S.A. Prospective Purchaser Agreement, San Fernando Valley Superfund Site, Glendale Operable Unit,'' and ''Docket No. 2001–06'' and should be addressed to Marie M. Rongone at the above address.

FOR FURTHER INFORMATION CONTACT: Marie M. Rongone, Senior Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; e-mail: *rongone.marie@epa.gov*; Telephone: (415) 972–3891, Facsimile: (415) 947–3570 or 3571.

Dated: August 12, 2003.

E. Adams,

Acting Director, Superfund Division, EPA, Region IX.

[FR Doc. 03–21782 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meeting

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, August 28, 2003 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: Short Term Insurance Program for Iraq.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only. Attendees that are not employees of the Executive Branch will be required to sign in prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone No. 202–565–3957).

James K. Hess,

Senior Vice President and Chief Financial Officer.

[FR Doc. 03–21988 Filed 8–22–03; 3:38 pm]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, September 2, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personal actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 22, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21967 Filed 8–22–03; 2:35 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–62–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503; or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Racial and Ethnic Approaches to Community Health Information Network (REACH IN)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

REACH IN is a customized internet-based support system that will allow the Racial and Ethnic Approaches to Community Health 2010 (REACH 2010) Program grantees to perform remote data entry and retrieval of data on the grantees' actions, intervention activities, community/systems change, and change among change agents. This support system is also designed to create on-demand graphs and reports of the grantees' actions and accomplishments. This system will be used by grantees to meet the reporting requirements of their cooperative agreements with CDC. The annual burden for this data collection is 84 hours.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
REACH 2010 Grantees Officials	42	2	1

Dated: August 19, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21732 Filed 8–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–63–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503; or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Work and Health Study: Risk Factors for Heart Disease and Depression in the Workplace—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Cardiovascular disease (CVD) and depression represent health problems of staggering proportion for the United States. An estimated 60 million Americans, over half of whom are younger than 65 years of age, currently have some form of CVD, and nearly 20 percent of all Americans will experience at least one episode of major depression during their lifetimes. In economic terms, the total yearly costs of CVD and depression in the United States have been estimated at $327 billion and $43 billion, respectively.

In addition to being common and costly health problems, CVD and depression co-morbidity is frequent, and recent studies have shown increased cardiovascular morbidity and mortality in depressed patients, implicating depression as a potential independent risk factor for CVD. Understanding the causes and etiologic relationships between these two illnesses represents a major challenge for public health researchers.

In addition to traditionally recognized risk factors, occupational factors appear to play a role in the etiology of both CVD and depression. For example, studies of occupational groups have shown markedly different rates of CVD and depression that are too large to be explained by known risk factors alone, and it is generally inferred that chemical, physical and/or work organizational exposures must be involved. While of relatively recent origins, the term ''work organization'' has evolved to serve as a rubric that encompasses diverse workplace exposures (often called job stressors) such as psychological demands, limited job control, work role demands and shift-work. There is considerable evidence that such factors play a role in the etiology of both CVD and depression, but design and sample size limitations of existing studies make it difficult to establish a causal association and make specific public health recommendations.

This proposed study will examine the relationships between specific job stressors, CVD and depression. To overcome the limitations of previous studies, we are proposing a five-year prospective study with a population of 20,000 workers, half of them women. Workers will be identified through 20 large businesses sampled from the four geographic Census regions of the U.S. Different types of businesses will be sampled in order to incorporate diverse types of jobs and work. Specific job stressors, perceived non-work stressors and general risk factors for CVD and depression will be assessed. To ascertain exposures and outcomes, the study will rely on employee medical records, blood samples, and both self-reports and work-site assessments of job conditions. Several instruments to evaluate the work environment will be used, including the NIOSH Generic Job Stress Questionnaire, which assess a variety of job stressors, as well as other relevant aspects of the work environment.

This request is for three years of the five-year proposed data collection with a total of 57,721 burden hours, and an average annualized burden of 28,860 hours.

Data	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
Baseline Interview/Blood Collection Biometrics	21,993	1	75/60
Medical Records for Baseline	4,398	1	30/60
Employer Information	15	1	5
Follow-up Interview 1	17,594	1	30/60
Refusal Questionnaire	4,399	1	5/60
Medical Records for Follow-up 1	3,519	1	30/60
Follow-up Interview 2	14,995	1	30/60
Refusal Questionnaire	2,639	1	5/60
Medical Records for Follow-up 2	2,999	1	30/60
Follow-up Interview 3	12,712	1	30/60
Refusal Questionnaire	2,243	1	5/60
Medical Records for Follow-up 3	2,542	1	30/60

Dated: August 19, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21733 Filed 8–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0361]

Anti-counterfeit Drug Initiative

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is establishing a docket to receive information and comments on the agency's initiative against counterfeit drugs. Many individuals, vendors, trade and professional associations, consumer groups, and other stakeholders have offered to assist FDA. This action is intended to ensure that there is a venue for information and comments to be submitted to the agency regarding the anti-counterfeit initiative.

DATES: The agency encourages interested parties to submit information by November 30, 2003.

ADDRESSES: Submit written comments and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* All comments submitted to the public docket are public information and may be posted to FDA's Web site (*http://www.fda.gov*) for public viewing. Please include the docket number listed in the heading of this document on all correspondence related to this docket.

FOR FURTHER INFORMATION CONTACT: Poppy Kendall, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, *e-mail: pkendall@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Counterfeit drugs pose potentially serious public health and safety concerns. They may contain only inactive ingredients, incorrect ingredients, improper dosages, or even dangerous subpotent or superpotent ingredients. In the United States, drug counterfeiting is a relatively rare event. Although FDA believes domestic counterfeiting is not widespread, the agency has recently seen an increase in counterfeiting activities as well as a more sophisticated ability to introduce finished dosage counterfeits into the otherwise legitimate drug distribution channels. FDA has seen its counterfeit drug investigations increase to over 20 per year since 2000, after averaging only about 5 per year through the late 1990's.

In an effort to protect against the rising occurrence of potentially unsafe counterfeit drugs reaching consumers, on July 16, 2003, FDA announced an initiative to more aggressively protect American consumers from the risks posed by counterfeit drugs. As part of this effort, FDA established an internal task force that will develop recommendations for steps FDA, other government agencies, and the private sector can take to minimize the risks to the public from counterfeit drugs getting into the supply chain. Some of the areas that FDA's task force will explore include the following topics:

- *Technology:* Assess the extent to which new technologies can help assure the authenticity of drugs;
- *Regulatory/Legislative Issues:* Will evaluate potential regulatory and legislative changes that could be made to strengthen the nation's protections against counterfeiting;
- *Public Education:* Recommend ways to educate consumers and health providers on steps they can take to minimize risks associated with counterfeit drugs; will also educate consumers and health professionals about what to look for and what to do if they suspect they have received a counterfeit drug;
- *Industry and Health Professional Issues:* Identify actions industry and health professionals can take to prevent, detect, and respond to counterfeit drugs;

The task force has the following deliverables:

- Interim task force report to be released in September 2003. It will include draft recommendations on which interested persons may comment.
- Public meeting to be held in mid-October 2003. The meeting announcement will be published in a forthcoming **Federal Register** and will pose issues for discussion at the meeting.
- Final task force report to be released in January 2004.

Many individuals, vendors, trade and professional associations, consumer groups, and other stakeholders have offered to assist the agency and provide information that may be helpful in the agency's anti-counterfeit drug efforts. The agency requests that all persons or organizations that would like to provide such information submit it to this docket number.

FDA expects to place submissions it receives on this initiative in the public docket. Therefore, submitters should recognize that information submitted to this docket is public information and can be viewed and accessed by the general public.

Note that, as mentioned previously, the counterfeit task force expects to issue a report with draft recommendations for public comment in September of this year. In addition, the agency expects to hold a public meeting on these issues later this year as well. Comments on the draft report and the issues discussed at the public meeting will sought in future issues of the **Federal Register**.

Dated: August 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21751 Filed 8–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms—0915–0108—Extension

This clearance request is for extension of approval for the notification, reporting and recordkeeping requirements in the HEAL program to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under this OMB number, much of the burden associated with the regulations is cleared under the OMB numbers for the HEAL forms and electronic submissions used to report required information (listed below). The table listed at the end of this notice contains the estimate of burden for the remaining regulations.

Annual Response Burden for the following regulations is cleared by OMB when the reporting forms are cleared:

OMB Approval No. 0915–0034, Lender's Contract Application and Borrower Deferment Forms, and Borrower Loan Status and Loan Transfers/Purchases and Consolidation Tape Specification and Submission

Reporting

42 CFR 60.31(a), Lender annual application

42 CFR 60.38(a), Loan Reassignment

Notification

42 CFR 60.12(c)(1), Borrower deferment

OMB Approval No. 0915–0036, Lender's Application for Insurance Claim

Reporting

42 CFR 60.35(a)(1), Lender due-diligence activities

42 CFR 60.35(a)(2), Lender skip-tracing activities

42 CFR 60.40(a), Lender documentation to litigate a default

42 CFR 60.40(c)(i),(ii), and (iii), Lender default claim

42 CFR 60.40(c)(2), Lender death claim

42 CFR 60.40(c)(3), Lender disability claim

42 CFR 60.40(c)(4), Lender report of student bankruptcy

OMB Approval No. 0915–0043, Promissory Note, Repayment Schedule, Call Report

Notification 42 CFR 60.11(e), Establishment of repayment terms-borrower

42 CFR 60.11(f)(5), Borrower notice of supplemental repayment agreement

42 CFR 60.33(e), Executed note to borrower

42 CFR 60.34(b)(1), Establishment of repayment terms—lender

42 CFR 60.42(b), Lender Quarterly Report on HEAL Loans Outstanding (Call Report)

OMB Approval No. 0915–0204, Physicians Certification of Permanent and Total Disability

Reporting

42 CFR 60.39(b)(2), Holder request to Secretary to determine borrower disability

OMB Approval No. 0915–0227, Federal Health Education Assistance Loan Refinancing Application/Promissory Note

Reporting

42 CFR 60.7, Application for loan

42 CFR 60.18 Consolidation of a HEAL loan

The estimate of burden for the regulatory requirements of this clearance are as follows:

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
REPORTING			
Subpart D: Lender—28 Participating Lenders			
60.32(b) & (c) Application for lender contract		0.00	0
60.40(c)(1)(iv) Bankruptcy Report to the Secretary	78	12 min	15
60.42(d) Audit	8	240 min. (4 hrs.)	32
60.42(e) Evidence of Fraud	0	120 min. (2 hrs.)	0
60.43(b) Evidence of Cause for Administrative Hearing	0	180 min. (3 hrs.)	0
Subtotal	86		47
Subpart E: School—190 Participating Schools			
60.56(c) Biennial Audit	0	0.00	0
60.60(b) Evidence of Cause for Administrative Hearing	0	0.00	0
60.61(b) Evidence of Fraud	0	0.00	0
60.61(d) Bankruptcy Documentation	78	10 min	13
Subtotal	78		13
Total Reporting			60
NOTIFICATION			
Subpart B: Borrower—7,930 Borrowers			
60.0(a)(5) Sale or Transfer of Loan		Burden included in 60.38a	
60.8(b)(3) Status Change	7,852	10 min	1,309

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN—Continued

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
60.61(d)* Bankruptcy	78	10 min	13
Subtotal	7,930		1,322
Subpart D: Lender—28 Participating Lenders			
60.33(g) Denial of Loan	0	14 min	0
60.33(h) Borrower Indebtedness	3,000	1 min	50
60.34(c) Biannual Debt Status	133,178	10 min	22,196
60.35(a)(1) Delinquent Payment Notice to Borrower	34,648	10 min	5,775
60.35(c)(2) Delinquent Notice to Credit Reporting Agency	8,662	10 min	1,443
60.35(e) Final Demand Letter	695	10 min	116
60.37(a) Right to Forbearance	3,000	5 min	250
60.37(c)(3) Reminder of obligation to pay	1,200	10 min	200
60.38(a) Notification to Borrower of Loan Reassignment	7,500	5 min	625
60.40(c)(1)(iv) and (c)(4) Default Notification to Courts	78	25 min	32
Subtotal	191,961		30,687
Subpart E: School—190 Participating Schools			
60.53 Change in Student Status	Burden included with 60.61(a)(7)		
60.54 Notice of Refund Payment	0	25 min	0
60.57 Borrower Identifying Information	73	8 min	10
60.61(a)(1) Entrance Interview	0	35 min	0
60.61(a)(2) Exit Interview	73	50 min	61
60.61(a)(2) Student Departure Notification to Lender	190	35 min	111
60.61(a)(3) Unresolved Discrepancies to Lender	0	12 min	0
60.61(a)(7) Change in Student Address to Lender	73	10 min	12
Subtotal	409		194
Total Notification			32,203
RECORDKEEPING			
Subpart B: Borrower			
60.7(a)(2) Student Signed Stmt.-Gov. Debt Collection Procedures	Burden included in 60.34(b)(2) and 60.61(a)(1)&(2)		
60.7(c)(2) Non-Student signed Stmt.-Gov. Debt Collection	0.00		0.00
Subpart D: Lender—28 Participating Lenders			
60.31(c) Procedures for Servicing & Collecting Loans	28	240 min (4 hrs.)	112
60.33(e) Promissory Note	Burden included in 60.42(a)(2)		
60.34(b)(2) Terms of Repayment Schedules	8,130	5 min	667
60.35(a)(1) Attempts to Collect Delinquent Payment	8,662	5 min	722
60.35(a)(2) Documentation of Skip-tracing	131	10 min	22
60.37(a)(1) Documentation of Borrower's Inability to Pay	2,065	15 min	516
60.37(c) Renewals of Forbearance	2,065	10 min	344
60.37(c)(1) Basis for Belief of Borrower Intent to Default	800	10 min	133
60.40(a) Documentation of Insurance Claims	695	70 min	811
60.42(a)(1) Loan Records	Burden included in 60.42(a)(2)		
60.42(a)(2) Borrower's Payment History	66,589	15 min	16,647
Subtotal	89,165		19,974
Subpart E: School—190 Participating Schools			
60.51(f)(1) Documentation of Needs Analysis Adjustment	Burden included in 60.61(a)(5)		
60.51(f)(2) Documentation of Standard Student Budget Adjustments.	Burden included in 60.61(a)(5)		
60.56(a) Required Retention of HEAL Borrower Records	Burden included in 60.61(a)(5)		
60.56(b) Five year Retention of Student Records			
60.57 Retention of Reports to the Secretary	190	45 min	143
60.61(a)(1) Entrance Interview			
60.61(a)(2) Exit Interview	73	5 min	6
60.61(a)(4) HEAL Check Receipt	0	300 min	0
60.61(a)(5) Complete Records of HEAL Borrowers	90,000	15 min	22,500
60.61(a)(6) Criteria for Student Budgets	190	10 min	32

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN—Continued

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
Subtotal	90,453		22,681
Total Recordkeeping			42,655
Total Annual Burden			74,918

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 16C–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 19, 2003.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–21752 Filed 8–26–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Implementation and Outcomes of the Maternal and Child Health Bureau's National Healthy Start Program—NEW

HRSA's Maternal and Child Health Bureau is planning to conduct a survey to collect information concerning Healthy Start, a community-based initiative, to understand how Healthy Start services are expected to change local health care systems and service delivery and ultimately affect maternal and child health outcomes. The purpose of the survey is to collect consistent and comprehensive information across current grantees about their Healthy Start program, its organizational configuration, community context, and the extent to which the program components address service needs and contribute to grantees meeting their Healthy Start goals. A two-part survey consisting of a mail component followed by a telephone follow-up is proposed. The mail survey will focus on obtaining descriptive and quantitative data that is currently not available. The phone survey will be used to obtain grantee assessments of program achievements, factors that facilitated their achievements, and challenges that they faced.

Data collection will cover information on the five service components (case management, health education, outreach, perinatal depression screening, and interconceptional care), and the four systems-building components (consortium, collaboration with Title V, local health systems action plan, and sustainability plan) that comprise the Healthy Start program. Data gathered from the survey will be used to provide HRSA the information necessary to assess the grantees' achievements of three core Healthy Start program goals: (1) Reduced racial and ethnic disparities in access to and utilization of health services; (2) improved local health care system; and (3) increased consumer or community voice in health care decisions. The survey will provide information that is currently unavailable from the service delivery and performance measure data. Based on the data collected in this survey, the National Evaluator will conduct cross-site analyses.

The estimated burden on respondents is as follows:

Respondents	Number of respondents	Hours per respondent	Total burden hour
Grantees	96	4 (assume mail and phone)	384

The estimated response burden for service providers is as follows:

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 18, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–21753 Filed 8–25–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act and Minority AIDS Initiative (MAI) Consultation Form—New

The purpose of the Ryan White CARE Act is to provide emergency assistance to localities that are disproportionately affected by the human immunodeficiency virus (HIV) epidemic and to make financial assistance available for the development, organization, coordination, and operation of more effective and cost-efficient systems for the delivery of essential services to persons with HIV disease. The CARE Act also provides grants to States, eligible metropolitan areas, community-based programs, and early intervention programs for the delivery of services to individuals and families with HIV infection.

The HRSA's HIV/AIDS Bureau (HAB) administers Titles I, II, III, and IV of the Ryan White CARE Act of 1990, as amended by the Ryan White CARE Act Amendments of 1996 and 2000 (codified under Title XXVI of the Public Health Service Act).

In 1998, President Clinton declared that HIV was a severe and ongoing health crisis among racial/ethnic minority communities. In response to the President's declaration, in fiscal year 1999 the Congressional Black Caucus (CBC) announced funding of a new initiative to address the disproportionate impact of HIV on African-American and Hispanic communities. Since 1999, the initial CBC initiative has been broadened to address the HIV epidemic in other racial and ethnic minority communities. Currently, the HRSA, the Centers for Disease Control and Prevention, the National Institutes of Health, the Office of Public Health and Sciences' Office of Minority Health, the Indian Health Service, and the Substance Abuse and Mental Health Services Administration allocate MAI funds. Direct service providers receiving MAI funds through HAB include organizations whose board of directors and/or direct service employees are racial/ethnic minorities, as well as organizations whose mission is focused on providing care to racial/ethnic minority populations.

The Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds is designed to collect information from (1) service providers receiving MAI funds and (2) service providers funded by the Ryan White CARE Act whose board members or direct service staff are predominantly racial/ethnic minority members. The Fax Consultation Form will address several over-arching questions including: (1) Have the MAI funds increased the number of persons served and the type and availability of services provided in communities of color; (2) have the MAI funds increased the capacity of minority and other CARE Act service providers to provide care and services in communities of color; (3) what has been the impact of MAI funded training, technical assistance (TA), and capacity building of minority and other organizations; and (4) what administrative impact have MAI funds had on CARE Act programs? Information obtained from the Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds will be used to address the over-arching questions, plan new technical assistance and capacity development activities, and inform HAB policies and program management.

The Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds will be transmitted by facsimile to service providers who meet the criteria for completing the form. Responding service providers will return their completed forms by the United States Postal Service, an Internet web-based response form, or by facsimile. The form will be designed to include check box responses and open-ended questions. The form will not require additional data to be collected or analyzed by the responding provider. The form will take no longer than 20 minutes to complete. The form will include questions regarding facilitators and barriers to CARE Act and MAI funding, training and technical assistance needs, ways in which the number of minority service providers engaged in HIV care might be increased, new and expanded activities funded by MAI, extent to which MAI funds have met the needs of racial/ethnic communities, the impact of MAI funds on the administration activities, and methods used to track MAI funds.

The estimated response burden for service providers is as follows:

Estimated number of provider respondents	Estimated responses per provider	Estimated minutes per response	Estimated total minutes burden	Estimated total hour burden
1,500	1	20	30,000	500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number, 202–395–6974.

Dated: August 19, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–21755 Filed 8–25–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

AETC National Evaluation Center Program Guidance Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction.

SUMMARY: In notice document FR Doc 03–19996, Vol. 68, No 151, Wednesday, August 06, 2003, make the correction:

On page 46648 in the first column under *Eligible Applicants* add ''Applications will be accepted from public and nonprofit private entities including schools and academic health sciences centers.''

Dated: August 19, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–21754 Filed 8–26–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Generic Clearance To Collect Medical Outcome and Risk Factor Data From a Cohort of U.S. Radiologic Technologists

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Generic Clearance to Collect Medical Outcome and Risk Factor Data from a Cohort of U.S. Radiologic Technologists. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection (OMB No. 0925–0405 expired 09/30/1999). *Need and Use of Information Collection.* The primary aim of this project is to substantially increase knowledge about the long-term health affects associated with protracted low- to moderate-dose radiation exposures. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's generic approval to conduct occasional surveys of a cohort of U.S. radiologists to ascertain incident cancers, benign conditions associated with high risk of cancer, and selected other health outcomes, as well as demographic, lifestyle, reproductive, employment, and other characteristics that may influence health risks. Researchers at the National Cancer Institute and the University of Minnesota have followed a nationwide cohort of 146,000 radiologists since 1982, of whom 110,000 completed at least one of two prior questionnaire surveys and 17,000 are deceased. This cohort is unique because estimates of cumulative radiation dose to specific organs (*e.g.*, breast) are available and the cohort is largely female, offering a rare opportunity to study effects of low-dose radiation exposure on breast and thyroid cancers, the two most sensitive organ sites for radiation carcinogenesis in women. Primary objectives are to quantify radiation dose-response for: (1) Cancers of the breast, thyroid, other radiogenic sites or histologies, and other cancers; (2) benign breast disease, thyroid nodules, and other benign conditions associated with increased cancer risk; and (3) other selected health outcomes that may be related to radiation exposure (*e.g.*, cardiovascular disease). Findings from this study will address an important gap in the scientific understanding of radiation dose-rate affects, *i.e.*, whether cumulative exposures of the same magnitude have the same health affects when received in single or a few doses over a very short period of time (as in atomic bomb or therapeutic exposures) or in many small doses over a protracted period of time (as in medical or nuclear occupational settings). The first survey will be mailed in 2004 to approximately 100,000 living cohort members who completed at least one prior survey and will collect information on: (1) Medical outcomes (as described above) to assess radiation-related risks; (2) detailed job-specific frequency of performing high-dose procedures (*e.g.*, handling isotopes), use of protective measures (*e.g.*, using lead aprons or standing behind shields), and other work practices (*e.g.*, holding patients for x-rays) to refine the organ dose estimates and associated uncertainty distributions; and (3) behavioral, susceptibility, and residential histories for refining estimates of lifetime ultraviolet (UV) radiation exposure to assess in greater detail the risks of melanoma and non-melanoma skin cancer associated with UV and ionizing radiation exposures, separated and jointly. Subsequent surveys will collect updated information on medical outcomes and risk factors of interest at that time. All surveys will be in optical-read format for computerized data capture. The annual reporting burden is as follows: *Frequency of Response:* On occasion. *Affected Public:* U.S. radiologic technologists who have willingly participated in earlier investigations to quantify the carcinogenic risks of protracted low- to moderate-dose occupational radiation exposures. *Estimated Number of Respondents:* 56,000. *Estimated Number of Responses Per Respondent:* 1. *Average Burden Hours Per Response*: 0.50. *Annual Burden Hours Requested:* 28,200. Total cost to respondents is estimated at $654,804. There are no capital costs, operating costs and/or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection information is necessary for the proper performance of the functioning of the National Cancer Institute, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information contact: Michele M. Doody, Radiation Epidemiology Branch, National Cancer Institute, Executive Plaza South, Room 7040, Bethesda, MD 20892–7238, or call non-toll-free at (301) 594–7203. You

may also e-mail your request to *doodym@exchange.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: August 18, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–21693 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

NICHD Research Partner Satisfaction Surveys; Proposed Collection, Comment Request

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: *Title:* NICHD Research Partner Satisfaction Surveys. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. With this submission, the National Institute of Child Health and Human Development (NICHD), Office of Science Policy, Analysis and Communication (OSPAC), seeks to obtain OMB's generic approval to conduct customer satisfaction surveys surrounding its research programs and activities.

The NICHD was founded in 1963. Its mission is to ensure, through research, the birth of healthy infants and the opportunity for each to reach full potential in adulthood, unimpaired by physical or mental disabilities. The NICHD conducts and supports research on the many factors that protect and enhance the processes of human growth and development. The developmental focus of the NICHD means that its research portfolio is unusually broad. NICHD programs include research on infant mortality, birth defects, learning disorders, developmental disabilities, vaccine development, and demographic and behavioral sciences, among others.

In addition to supporting laboratory research, clinical trials, and epidemiological studies that explore health processes, the NICHD disseminates information that emanates from its research programs to its customers, or those who are partners with the Institute. This includes scientists, practitioners, other health professionals, and the public.

Survey information will augment the NICHD's on-going efforts to evaluate their research funding mechanisms, activities, and programs, as well as the information products that are used to disseminate research findings. Primary objectives are: (1) To identify opportunities and barriers to achieving scientific aims; (2) to learn about emerging scientific opportunities and unmet public health needs; (3) to measure customer satisfaction with information products; and (4) to identify strengths and weaknesses of the NICHD's program operations. The OSPAC will use the survey results to better respond to its customers, including its various partners in research, and to improve the NICHD's research programs and activities. Findings will help to: (1) Formulate strategies to help enhance research opportunities and remove barriers; (2) target the NICHD's research programs and activities to take advantage of emerging scientific opportunities and meet public health needs related to its mission; (3) develop information products tailored to the NICHD audience; and (4) improve program planning, management, and operations. *Frequency of Response:* Annual [As needed on an on-going and concurrent basis]. *Affected Public:* Members of the public, researchers, practitioners, and other health professionals. *Type of Respondents:* Members of the public; eligible grant applicants and actual applicants (both successful and unsuccessful); clinicians and other health professionals; and actual or potential clinical trials participants. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3,954; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* Varies with survey type, see below; and *Estimated Total Annual Burden Hours Requested:* 1113.25. The annualized cost to respondents is estimated at: $16,698.75. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Web-based	3,387	1	0.25	846.75
E-mail	100	1	0.25	25.00
Telephone	214	1	0.50	107.00
Paper	237	1	0.50	118.50
In-person	16	1	1.00	16.00
Total	3,954			1,113.25

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, contact Paul L. Johnson, NIH NICHD Office of Science

Policy, Analysis and Communication (OSPAC), 9000 Rockville Pike, Bldg. 31, Rm. 2A–18, Bethesda, Maryland 20892–2425, or call non-toll-free at 301–402–3213. You may also e-mail your request to *pjohnson@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: August 15, 2003.

April Burton,

Project Clearance Liaison, NICHD, National Institutes of Health.

[FR Doc. 03–21698 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Aggression Prevention Among High-Risk Early Adolescents

Summary: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 30, 2003, pages 23151–23152, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Aggression Prevention Among High-Risk Early Adolescents Study. *Type of Information Collection Request:* New collection. *Need and Use of Information Collection:* This study will assess the efficacy of an in-school, group-mentoring intervention designed to foster academic engagement and prevent aggressive and deviant behavior among early adolescents. The primary objectives of the study are to determine if participation in a weekly group-mentoring program throughout 6th grade significantly impacts adolescents' attitudes and behaviors regarding school engagement and aggression above and beyond educational materials for youth and parents. The findings will provide valuable information concerning: (1) The efficacy of in-school group-mentoring programs for improving youth attitudes, expectations, intent/motivation, and social competence; and (2) the extent to which such improvement increases academic engagement and decreases aggressive and deviant behavior among high-risk youth. *Frequency of Response:* 6 times over three years (*i.e.*, fall and spring of 6th, 7th, and 8th grades). *Affected Public:* For the pilot, incoming 6th graders from an inner city Baltimore middle school and their parents who agree to participate. For the main trial, two successive cohorts of incoming 6th grade students from two inner city Baltimore middle schools and their parents. Additionally, one cohort of 7th and 8th graders will be surveyed in the Fall and Spring of the first school year of the main trial. *Type of Respondents:* Early adolescents and Parents. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1280 early adolescents and 800 parents; *Estimated Number of Responses per Respondent:* 6 for early adolescents who enter study as 6th graders, 2 for youth who enter as 7th or 8th graders, and 4 for parents; *Average Burden Hours Per Response:* 1.0 for youth and 0.5 for parents; and *Estimated Total Annual Burden Hours Requested:* 2,887. The annualized cost to respondents is estimated at: $43,305 (based on $15 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
6th graders	800	6	1.0	1,600
7th graders	160	2	1.0	106.5
8th graders	320	2	1.0	213.5
Parents	800	4	.50	533.5
Total	2080			2453.5

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Bruce Simons-Morton, Chief, Prevention Research Branch, DESPR, NICHD, NIH, 6100 Executive Blvd., Rm 7B13, MSC 7510, Bethesda, MD 20892–7510; (301) 493–5674; email: *mortonb@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: August 15, 2003.

April Burton,

NICHD Project Clearance Liaison, National Institutes of Health.

[FR Doc. 03–21699 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The National Institutes of Health

Submission for OMB Review; Comment Request; Customer/Partner Satisfaction Surveys, the Effectiveness of the National Institute on Drug Abuse's Publications Project

Summary: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the National Institute on Drug Abuse (NIDA), the National Institutes of Heath (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. This proposed information collection was previously published in the **Federal Register** on (June 3, 2003, page 33168) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

Proposed Collection: *Title:* The Effectiveness of NIDA's Publications Project. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This is a request for a three-year generic clearance to study the level of customer satisfaction in relation to public health information publications produced by the Institute. This effort is made according to Executive Order 12862, which directs Federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The primary purpose of the Project is to assess NIDA's effectiveness in developing and disseminating selected public health information publications designed to promote the use of science-based evidence to improve drug abuse and addiction prevention, treatment, and policy. A multi-method approach (survey, in-person interviews, focus groups) will be used to determine the use and usefulness of selected NIDA public health information publications for several of NIDA's key audiences. Measures will include outcomes associated with the following variables: Knowledge/awareness of the publications, receipt of the publications, reading of the publications, use of the publications, perceived utility of the publications, and the impact of the publications on the use of science-based evidence to improve drug abuse and addiction prevention, treatment, and policy. *Frequency of Response:* This project will be conducted annually or biennially. *Affected Public:* Individuals or households; state or local governments; organizations; businesses or educational institutions. *Type of Respondents:* Community coalition leaders, drug abuse treatment and prevention service providers, drug abuse researchers, Native Americans, middle school science and health educators, public health policy makers and public health officials, and the general public. The annual reporting burden is as follows: *Estimated Number of Respondents:* 22,326; *Estimated Number of Responses Per Respondent:* One for six of the seven key audiences and two for one audience. *Average Burden Hours per Response:* .4357. *Estimated Total Annual Burden Hours Requested:* 9,727. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total burden hours
1. Community Coalition Leaders	1,782	2	0.26	909
2. Drug Abuse Treatment and Prevention Service Providers	6,042	1	0.42	2,532
3. Drug Abuse Researchers	6,020	1	0.42	2,504
4. Native Americans and Native American Intermediaries	50	1	1.14	57
5. Middle School Science and Health Educators	3,532	1	0.51	1,784
6. Public Health Policy Makers and Public Health Officials	1,800	1	0.36	645
7. The General Public	3,100	1	0.42	1,296
Total				9,727

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Denise Pintello, Project Officer, Office of Science Policy and Communications, NIDA/NIH/DHHS, 6001 Executive Boulevard, MSC 9591, Bethesda, MD 20892; or call non-toll-free number (301) 443–6071; fax (301) 443–6277; or e-mail your request, including your address to: *dp276v@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: August 18, 2003.

Laura Rosenthal,

Executive Officer, National Institute for Drug Abuse.

[FR Doc. 03–21700 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Protection Against Vertical Transmission of Pathogenic Infections

Drs. Gene Shearer and Maria T. Rugeles (NCI).

DHHS Reference No. E–225–2003/0–US–01 filed 22 May 2003.

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

This invention describes the treatment of pregnant women who are infected with HIV–1 (or other infectious agents that would be harmful to their fetuses and/or newborns) to reduce the risk of vertical transmission of the infectious agents. The treatment could potentially be accomplished by treating the pregnant women with recombinant ribonucleases (RNases), or by immunizing the women with allogeneic leukocytes that could stimulate the production of endogenous RNases. Since alloantigen stimulation of blood leukocytes from healthy individuals results in production of ribonucleases (RNases) that inhibit HIV–1 and HTLV–1 replication, alloimmunization of at risk or infected pregnant females would be protective for their newborns from infection of different pathogens, including HIV–1 and HTLV–1. Thus, this invention may provide a cost effective and a therapeutically effective means of preventing vertical transmission of pathogens, including HIV–1 and HTLV–1.

Inhibition of HIV–1 Replication by the Ribonuclease, Recombinant Angiogenin

Drs. Gene Shearer, Joost J. Oppenheim, Maria T. Rugeles, and Susanna M. Rybak (NCI).

DHHS Reference No. E–327–2002/0-US–01 filed 22 May 2003.

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

This invention describes the inhibition of human immunodeficiency virus-1 (HIV–1) replication by recombinant angiogenin, a ribonuclease (RNase). Ribonucleases have been shown to inhibit HIV–1 replication in chronically-infected cell lines. This invention has demonstrated that angiogenin is a potent inhibitor of HIV–1 replication. For example, angiogenin inhibits HIV–1 replication in primary activated T lymphocyte cultures as well as chronically infected cell lines. Since inhibition of HIV–1 replication in primary activated T lymphocytes would decrease the risk of HIV spreading to other T cells, angiogenin has several advantages over other known ribonucleases that are used to inhibit HIV replication. Furthermore, this invention raised the possibility that angiogenin could be used in lower doses for inhibiting HIV replication and would be less toxic as compared to other ribonucleases. Thus, angiogenin may be an RNase of choice for treating patients with AIDS and this invention would overcome some of the problems involved in current ribonucleolytic HIV treatments.

Dated: August 18, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–21694 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by agencies of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

Container for Drying Biological Samples, Method of Making Such Container, and Method of Using Same

Geoffrey L. Kidd (NEI).

U.S. Patent Application Serial No. 10/238,147 filed 09 Sep 2002 (DHHS Reference No. E–304–2003/0–US–01).

Licensing Contact: Marlene Astor, 301/435–4426, or David Sadowski, 301/435–5525.

Problem Addressed by This Invention: Many materials, such as drugs, growth factors, etc., must be kept sterile and must be aliquotted for storage. Usually, these aliquots are best stored lyophilized. When compared to freezing in solution, lyophilization offers more than twenty-fold longer shelf-lives for these labile compunds. Yet, researchers have never had a way to keep aliquots sterile through the lyophilization process. Consequently, each aliquot has had to be filter-sterilized when reconstituted for use. This process has the disadvantages of consuming: excessive filters, syringes, sterile receptacles, and time; and may result in serious loss of precious sample due to absorption by the filters—especially with small samples. Alternatively, researchers have had to forego lyophilization and store their sterile solutions in the less-stable frozen form.

Solution Offered by This Invention: The multi-well plates of this invention provide venting through a filter element thereby permitting a sterile solution to remain sterile throughout lyophilization, even after the vacuum is released and air reenters the multi-well plate. Thus, a starting solution is simply filter-sterilized while in a relatively large volume, using a single filter and therefore suffering minimal loss and consuming little time. It is then aliquotted into a multi-well plate and lyophilized. The plate may then be transferred directly to the freezer, if

desired. The compound is reconstituted when needed, and may then be used immediately without further filtration.

Potential Applications of This Invention: All researchers worldwide who utilize sterile, labile compounds will have an interest in this product, including governmental, university, institutional, and drug company laboratories. Most notably in need are investigators involved in drug-testing, which is normally done either in cell cultures, laboratory animals, or humans, and which requires sterility of many aliquots of many drugs. Additionally, this product will have a large market relating to basic research utilizing microbial, plant, or animal cell or organ cultures, to which sterile compounds such as growth factors are commonly added. Research in drugs, growth factors, etc., is expanding ever more rapidly, and generally requires a cell culture system in which to study such compounds. Most of these compounds are quite expensive. Loss of potency during storage and loss of material during filtration are widespread problems which may be overcome with this invention. Therefore, there exists a tremendous need and immense market for these multi-well plates.

Dated: August 14, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–21695 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

LMNA Gene and Its Involvement in Hutchinson-Gilford Progeria Syndrome (HGPS) and Arteriosclerosis

B. Maria H. Eriksson and Francis S. Collins (NHGRI). Serial No. 60/419,541 filed 18 Oct 2002 (DHHS Reference No. E–020–2003/0–US–01) and Serial No. 60/463,084 filed 14 Apr 2003 (DHHS Reference No. E–131–2003/0–US–01).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov.*

Hutchinson-Gilford Progeria Syndrome (HGPS) is a very rare progressive childhood disorder characterized by premature aging (progeria). The most common cause of death is from arteriosclerosis and few children affected by HGPS live beyond their teens. The invention identifies point mutations in the LMNA gene, a gene which encodes a nuclear lamin protein, as the cause of HGPS. These mutations activate a cryptic splice site within the LMNA gene which leads to the excision of a portion of an exon and the subsequent generation of a Lamin A protein with an internal deletion of fifty (50) amino acids. The identification of mutations associated with HGPS could lead to breakthroughs in detection, diagnosis, and treatment of HGPS and related or similar conditions, including arteriosclerosis and aging. See also Eriksson, M. et al ''Recurrent de novo point mutations in lamin A cause Hutchinson-Gilford progeria syndrome'' Nature 423, 293–298 (2003).

Synthesis of Proteins by Cell-Free Protein Expression

Deb K. Chatterjee (NCI). DHHS Reference No. E–328–2002/0–US–01 filed 11 Mar 2003.

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov.*

Cell-free protein expression is becoming a valuable tool for rapid and economical production of recombinant proteins. In conventional cell-free protein synthesis systems, the ATP (high energy) supply is accomplished by secondary energy regenerating sources containing high-energy phosphate bonds. The sources include glucose (G), glucose-6-phosphate (G–6P), phosphoenolpyruvate (PEP), acetyl phosphate (AP), creatine phosphate (CP) or pyruvate. However, for some of these systems (G, G–6P and pyruvate) require the addition of exogenous enzymatic cofactors such as NAD/NADH, adding considerable expense to the system. In addition, the conventional systems (PEP, AP or CP) are also mired by unproductive enzymatic degradation of energy sources and unproductive consumption of ATP resulting in lower yields of protein.

The present invention offers a new ATP regeneration system for cell-free protein expression, using one of the early intermediates of the glycolytic pathway as the secondary energy source. The new energy source, costs only a fraction of the conventional substrates, provides chemical energy for protein synthesis without the addition of an exogenous enzymatic cofactor, thereby reducing the costs of the system. Moreover, the present system improves efficiency of protein synthesis by several folds by providing an improved energy regeneration system and protein-folding machinery.

Cycloxygenase Inhibition With Nitroxyl

David A. Wink *et al.* (NCI). Serial No. 60/470,320 filed 13 May 2003 (DHHS Reference No. E–301–2002/0–US–01).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov.*

Inflammation is initiated and maintained by the overproduction of prostaglandins in injured cells. Cyclooxygenase (COX) regulates the production of prostaglandins. As the rate-limiting step for prostaglandin synthesis, the COX pathway is the primary target for anti-inflammatory drugs. Inhibition of COX accounts for the activity of the non-steroidal anti-inflammatory drugs (NSAIDs), such as aspirin, acetaminophen, ibuprofen, naproxen, indomethacin. However, these drugs are nonselective COX inhibitors. While they inhibit the activity of COX–2 in inflammation, they also interfere with the activity of COX–1 in non-inflamed cells. The inhibition of COX–1 produces undesirable side effects, such as gastrointestinal bleeding and renal failure. Therefore, agents that selectively inhibit COX–2 over COX–1 are desirable for the treatment of inflammation. Moreover, COX–2 inhibiting compounds have been reported to be useful in treating a variety of conditions, such as general pain, osteoarthritis, rheumatoid arthritis, menstrual pain associated with primary dysmenorrhea, cancers, Alzheimer's disease and diabetes.

The present invention relates to methods of using nitroxyl to selectively inhibit COX–2 activity. Also disclosed are methods of using nitroxyl to treat conditions that respond favorably to COX–2 inhibition. Nitroxyl-donating compounds include nitroxyl-donating

diazeniumdiolates such as IPA/NO ($Na(CH_3)_2C(H)N(H)N(O)NO$). Other embodiments include methods of screening candidate nitroxyl-donating compounds for COX–2 inhibition.

Nitroxyl Progenitors in the Treatment of Heart Failure

David Wink and Katrina Miranda (NCI). Serial No. 10/226,412 filed 21 Aug 2002 (DHHS Reference No. E–273–2002/0–US–01).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov.*

Congestive Heart Failure affects nearly 5 million Americans and approximately 550,000 new cases are diagnosed each year.

The present invention relates to the administration of nitroxyl donating compounds, such as Angeli's salt for increasing myocardial contractility while concomitantly lowering left ventricular preload in subjects experiencing heart failure. Moreover, administration of the nitroxyl donating compound, isopropylamine, surprisingly exhibits positive inotropic effects in subjects experiencing heart failure that were superior to those caused by Angeli's salt. Additionally, in contrast to the effects observed with nitric oxide donors, administration of a nitroxyl donating compound in combination with a positive inotropic agent does not impair the positive inotropic effect of the positive inotropic agent. Furthermore, nitroxyl donating compounds exert its positive inotropic effect independent of the adrenergic system, increasing contractility even in subjects receiving beta-antagonist therapy.

Vasopressor Peptide Derived From Adrenomedullin and Methods of Its Use

Frank Cuttitta *et al.* (NCI). Serial No. 60/416,291 filed 04 Oct 2002 (DHHS Reference No. E–293–2002/0–US–01).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov.*

Systemic hypertension is the most prevalent cardiovascular disorder in the United States, affecting over 60 million Americans. In spite of increasing public awareness and rapidly expanding array of antihypertensive medications, hypertension remains one of the leading causes of cardiovascular morbidity and mortality. On the other end of the spectrum are hypovolemic shock (often from acute hemorrhage), cardiogenic shock (from arrhythmia or heart failure) and vasodilatory shock (from cerebral trauma, drug intoxication, heat exposure or septic shock accompanying a gram negative bacterial infection). In view of the above, there exists a need for agents that counteract aberrations in blood pressure, including hypertension and hypotension.

This invention discloses compounds that are useful as vasoconstrictors or vasodilators and their methods of use. Specific embodiments include administration of AM (II–22) to reverse vasodilation and administration of an inhibitor of MMP–2 to reverse vasoconstriction.

This research is described, in part, in J. Lopez & A. Martinez, ''Cell and Molecular Biology of the Multifunctional Peptide, Adrenomedullin,'' Int. Rev. Cytol. 2002, 221:1–92.

Foamy Virus Mutant Reverse Transcriptase

Stephen H. Hughes *et al.* (NCI). Serial No. 60/292,994 filed 22 May 2001 (DHHS Reference No. E–152–2001/0–US–01) and PCT/US02/16528 filed 22 May 2002 (DHHS Reference No. E–152–2001/0–PCT–02).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov.*

The present invention provides a recombinant reverse transcriptase (RT) obtained from a mutant Foamy Virus (FV), which has highly active and highly processive reverse transcriptase activity and substantially reduced protease activity. In particular, the FV protease-reverse transcriptase has been mutated to functionally inactivate the protease activity. The FV RT has better polymerase activity than other commercially available products (MLV, AMV, HIV).

The invention discloses the production of the mutant FV RT, vectors and plasmids comprising nucleic acids that encode the FV RT and recombinant host cells. The invention also encompasses kits for the production of cDNA from RNA comprising the FV RT.

This research is described, in part, in Rinke *et al.*, J. Virol. 76:7560, 2002.

Dated: August 14, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–21696 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 meeting of the National Cancer Advisory Board.

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), 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 Cancer Advisory Board, Subcommittee on Planning and Budget.

Closed: September 8, 2003, 7 p.m. to 8:30 p.m.

Agenda: The subcommittee will be establishing a funding policy for scoring large unfunded R01 grants applications.

Place: Bethesda Hyatt Hotel, 1 Metro Place, Bethesda, MD 20892.

Contact Person: Ms. Kathie Reed, Acting Executive Secretary, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892. (301) 496–5515.

Name of Committee: National Cancer Advisory Board.

Open: September 9, 2003, 8:30 a.m. to 4:20 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327. (301) 496–4218.

Name of Committee: National Cancer Advisory Board.

Closed: September 9, 2003, 4:20 p.m. to recess.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327. (301) 496–4218.

Name of Committee: National Cancer Advisory Board.

Open: September 10, 2003, 8:30 a.m. to adjournment.

Agenda: Program reports and presentations; business of the Board.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer

Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327. (301) 496–4218.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93,398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21692 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Institutional Clinical Oncology Research Career Development Program (K12).

Date: October 22, 2003.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 15th and M Streets, NW., Washington, DC 20005.

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21702 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Radiation-Induced Cancer Risks: The New Biology.

Date: October 15–17, 2003.

Time: 6 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Belvedere Hotel, 319 West 48th Street, New York, NY 10036.

Contact Person: Sunghan Yoo, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd, Room 8105, Bethesda, MD 20892, (301) 594–9025, *yoosu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21703 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Spore in Gastrointestinal Cancer.

Date: October 13–14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton La Jolla Torrey Pines, 10950 North Torrey Pines Road, La Jolla, CA 92037.

Contact Person: Brian E. Wojcik, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21704 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of 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 meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings 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 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 Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 24–25, 2003.

Open: September 24, 2003, 8:30 a.m. to 1 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 25, 2003, 9:45 AM to 10:15 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Open: September 25, 2003, 10:15 a.m. to 12 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

Date: September 24–25, 2003.

Open: September 24, 2003, 3 p.m. to 4 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 24, 2003, 4 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 25, 2003, 8 AM 8:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Open: September 25, 2003, 8:30 AM 9:30 AM.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 24–25, 2003.

Open: September 24, 2003, 1 p.m. to 1 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Closed: September 24, 2003, 3:15 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: September 25, 2003, 8:30 AM 9:30 AM.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PHD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD, 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: September 24–25, 2003.

Open: September 24, 2003, 1 p.m. to 5:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: September 25, 2003 8 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PHD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD, 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endrocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21682 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Aging.

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 applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: September 23–24, 2003.

Closed: September 23, 2003, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville, Bethesda, MD 20892.

Open: September 24, 2003, 8 a.m. to Adjournment.

Agenda: Call to Order; and reports from the Task Force on Minority Aging Research and the Working Group on Program.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Hone page *http://www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posed when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21683 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated wit the contract proposals, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''E-Training for Prevention Providers.''

Date: August 27, 2003.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, Bethesda, MD 20892–9547, (301) 435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientists Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21684 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense & Emerging Infectious Disease Research Opportunities.

Date: September 3, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700–B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Hagit S. David, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2155, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–402–4596.

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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21685 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notices of 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 meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings 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 Contract 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 552(b)(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 Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: September 29, 2003.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, D, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, D, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: September 29, 2003.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, F1/F2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 29–30, 2003.

Closed: September 29, 2003, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, A, Bethesda, MD 20892.

Open: September 29, 2003, 1 p.m. to adjournment on September 30.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, A, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 29, 2003.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Reports from the NIAID Director and the Director, Division of Intramural Research.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's Center's home page: *http://www.niaid.nih.gov/vacts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 19, 2003

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21686 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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: NIDCR Special Grants Review Committee, Review of R03s and Ks.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lynn M. King, PHD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21687 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of 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 the following meeting.

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: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–76, Review of R01s.

Date: September 23, 2003.

Time: 9 a.m. to 10:30 a.m.

Agenda: To provide concept review of proposed grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Institute of Dental and Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, 301–451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21688 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–81, Review of R13s.

Date: September 12, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372, *george__hausch@nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–05, Review of R01s.

Date: October 14, 2003.

Time: 10:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Institute of Dental and Craniofacial Research, National Institutes of Health, 45 Center Drive, room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–06, Review of R01s.

Date: October 14, 2003.

Time: 2:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Institute of Dental and Craniofacial Research, National Institutes of Health, 45 Center Drive, room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–03, Review of R25s.

Date: December 3, 2003.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–04, Review of R01s.

Date: December 19, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21689 Filed 8–25–03; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: September 11, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Willco Building, 6000 Executive Boulevard, Rockville, MD 20892. (Telephone conference call.)

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.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. 93.271, 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: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21690 Filed 8–25–03; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, September 17, 2003, 5:30 p.m. to September 18, 2003, 3 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD, 20817 which was published in the **Federal Register** on August 7, 2003, 061511.

There will not be a closed meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, Thursday, September 18. The open session will start at 9 a.m. instead of 9:30 a.m., at the Natcher Bldg., 45 Center Dr., Bethesda, MD. The meeting is partially closed to the public.

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21691 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; 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 Institute of Child Health and Human Development Council.

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 applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: September 22–23, 2003.

Open: September 22, 2003, 8:30 a.m. to Adjournment.

Agenda: (1) A report by the Director, NICHD; (2) a report by the Scientific Director, NICHD; (3) the NICHD Fortieth Anniversary observation; and (4) other business of the Council.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Closed: September 23, 2003, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Contact Person: Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

Information is also available on the Institute's/Center's Home page: *http://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21701 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, 3 Unsolicited P01's.

Date: September 8, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Terrace Room, Chevy Chase, MD 20815.

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NHI/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 3127, Bethesda, MD 20892–7616, 301–402–4598, *clapham@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21706 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: September 12, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, NIAID/NIH, 6700B Rockledge Drive, Rm. 2220, Bethesda, MD 20892, 301–496–2550, *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21707 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; 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 Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

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 applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion or personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 25, 2003.

Open: 8:30 a.m. to 12 p.m.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Division of Extramural Activities, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2463, *kittc@niams.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health (HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21708 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Biology of Bone Regeneration.

Date: September 12, 2003.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and, Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21709 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special emphasis Panel. Microcirculation and Target Organ Damage in Rheumatic and Skin.

Date: September 2–3, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21710 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 for Nursing Research.

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 a 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 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 Advisory Council for Nursing Research.

Date: September 16–17, 2003.

Open: September 16, 2003, 1 p.m. to 5 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: September 17, 2003, 9:00 AM to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Mary Leveck, PhD, Deputy Director, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

Information is also available to the Institute's/Center's home page: *www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21711 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Review of Research Program Project.

Date: September 8, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd, One Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4974.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne T. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21712 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, High Risk Applications.

Date: August 29, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

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. 93.46, Arthritis, Musculoskeletal and Skin diseases Research, National Instiutes of Health HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21713 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin

Diseases Special Emphasis Panel, Biomarkers Review for Co-op Projects.

Date: August 29, 2003.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A Ansari, PhD, Health Science Administrator, National Institute of Arthritis and Musculoskeletel and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and fundying cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21714 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of 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 AIDS Research Advisory Committee, NIAID.

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: AIDS Research Advisory Committee, NIAID.

Date: September 29–30, 2003.

Time: September 29, 2003, 1 p.m. to 5 p.m.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps and/or obstacles to progress.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Time: September 30, 2003, 8:30 a.m. to adjournment.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps and/or obstacles to progress.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21832 Filed 8–25–03; 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, ZRG1 VACC 15: Small Business: Vaccine delivery systems.

Date: August 19, 2003.

Time: 2 P.M. to 4 P.M.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

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, Signaling.

Date: August 20, 2003.

Time: 2 P.M. to 3 P.M.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: 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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21705 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); Notice of a Meeting of the NTP Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors on September 10–11, 2003, in the Rodbell Auditorium, Rall Building at the National Institute of Environmental Health Sciences, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

The NTP Board of Scientific Counselors (''the Board'') is composed of scientists from the public and private sector and provides primary scientific oversight to the NTP.

Agenda

The meeting being held on September 10–11, 2003, begins each day at 8:30 a.m. and is open to the public from 8:30 a.m. to adjournment with attendance limited only by the space available. Persons needing special assistance should contact the Executive Secretary (contact information below) at least

seven business days in advance of the meeting. A draft agenda with a tentative schedule is provided below. Primary agenda topics include: (1) A vision for the NTP that includes its concept and projection of new areas into which toxicology will develop in the next 5–10 years; (2) a presentation on the development of new, publicly accessible, electronic databases for NTP studies; (3) a demonstration of an interactive, web-based, 2-D-imaging system to evaluate the pathological outcomes of NTP studies; and (4) updates on the NTP testing program including the design of studies on radio-frequency radiation from cellular phone devices, collaborations with the National Institute of Occupational Safety and Health, studies on medicinal herbs and dietary supplements and the recommendations of the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) for substances nominated to the NTP for study. There will also be updates on the NTP Board of Scientific Counselors Technical Reports Peer Review Meeting held on May 22, 2003, the status of the 11th Edition of the Report on Carcinogens and the NTP Center for the Evaluation of Risks to Human Reproduction. Time is allotted during the meeting for the public to present comments to the Board and NTP staff on agenda topics.

The agenda and background materials on agenda topics, as available, will be posted on the NTP Web site (*http://ntp-server.niehs.nih.gov, see* What's New) or available upon request to the Executive Secretary (contact information below). Following the meeting, summary minutes will be prepared and available through the NTP web site and upon request to Central Data Management, NIEHS, P.O. Box 12233, MD E1–02, Research Triangle Park, NC 27709; telephone: 919–541–3419, fax: 919–541–3687, and e-mail: *CDM@niehs.nih.gov.*

ICCEC Recommendations for Substances Nominated for Future NTP Studies

Information about substances nominated to the NTP for toxicology and carcinogenesis studies and the ICCEC's recommendations were published in the **Federal Register** on July 16, 2003 (Vol. 68, No. 136, p. 42068–71). This notice is available on the Web (*http://ntp-server.niehs.nih.gov/htdocs/Liason/ICCECFinal02JuneFR.html*) along with supporting documents for each nomination (*http://ntp-server.niehs.nih.gov/htdocs/liason/BkgrSum02June.html*) or by contacting the NTP Executive Secretary (contact information below). This meeting provides an additional opportunity for the public to provide comment on these nominations and study recommendations to the Board and NTP staff. Comments submitted to the NTP in response to the July 2003 **Federal Register** notice are under consideration and do not need to be resubmitted or readdressed.

Public Comment Encouraged

Public input at this meeting is invited and time is set aside for the presentation of public comments on any agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Each organization is allowed one time slot per agenda topic. Persons registering to make oral comments are asked to provide their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any). To facilitate planning for the meeting, persons interested in providing formal oral comments are asked to notify Dr. Barbara Shane, NTP Executive Secretary, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–0530; and e-mail: *shane@niehs.nih.gov* by September 2, 2003. Persons may also submit written comments *in lieu* of making oral comments. Written comments should be sent to the Executive Secretary and must be received by September 2, 2003, to enable review by the Board and NTP staff prior to the meeting. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Individuals will also be able to register to give oral public comments on-site at the meeting. However, if registering on-site and reading from written text, please bring 30 copies of the statement for distribution to the Board and NTP staff and to supplement the record.

Registration

The NTP Board of Scientific Counselors meeting is open to the public. Attendance at this meeting is limited only by the space available. Due to changes in security policies at the NIEHS, individuals who plan to attend are asked to pre-register with the Executive Secretary (contact information above). The names of those registered will be given to the NIEHS Security Office in order to gain access to the campus. Persons attending who have not pre-registered may be asked to provide pertinent information about the meeting, *i.e.*, title or host of meeting before gaining access to the campus. All visitors (whether or not you are pre-registered) will need to be prepared to show 2 forms of identification (ID), *i.e.*, driver's license and one other form of ID, such as company ID, government ID, or university ID.

NTP Board of Scientific Counselors

The Board is a technical advisory body comprised of scientists from the public and private sectors who provide primary scientific oversight to the overall program and its centers. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields, such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and minority and female representation on the Board. Its members are invited to serve overlapping terms of up to four years and meetings are held once or twice annually for the Board and its two standing subcommittees (the Report on Carcinogens Subcommittee and the Technical Reports Review Subcommittee).

Dated: August 12, 2003.

Kenneth Olden,

Director, National Toxicology Program.

Preliminary Agenda: National Toxicology Program (NTP) Board of Scientific Counselors: September 10–11, 2003

National Institute of Environmental Health Sciences, Rodbell Auditorium, Rall Building, 111 T.W. Alexander Drive, Research Triangle Park, NC.

September 10, 2003

8:30 a.m.—Welcome and Opening Comments.
NTP Update.
A Vision for the NTP.
NTP Databases.
11:45 a.m.—Lunch.
1 p.m.—Imaging Technology for Pathological Evaluations.
Research Highlights
- Carbonyl Sulfide;
- Endocrine Disrupting Agents.

NTP Study Updates
- Design of Study on Radio-frequency Radiation Emissions;
- NTP–NIOSH Collaborations;
- Medicinal Herbs and Dietary Supplements.

5 p.m.—Adjourn

September 11, 2003

8:30 a.m.—Welcome and Introductions.
NTP Testing Program Study Nominations.
NTP–USGS Collaboration to Map Mercury Levels in Fish on a National Scale.
NTP Updates.
- Statistical Issues in Phototoxicology Studies;
- Technical Reports Peer Review Meeting on May 22, 2003;
- Report on Carcinogens;
- NTP Center for the Evaluation of Risks to Human Reproduction.

Other Business.
11:30 a.m.—Adjourn.

[FR Doc. 03–21697 Filed 8–25–03; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA #: 93.676]

Office of Refugee Resettlement Grant to Lutheran Immigration and Refugee Service for the Unaccompanied Alien Children's Program

AGENCY: Office of Refugee Resettlement, HHS.

ACTION: Grant award announcement.

SUMMARY: This notice is hereby given that an award is being made to Lutheran Immigration and Refugee Service (LIRS), 700 Light Street, Baltimore, MD, in the amount of $367,575 in FY03 due to urgent and compelling circumstances. The award will be used to assess and develop a capacity plan for unaccompanied alien minors transferred into the custody of the Office of Refugee Resettlement (ORR) from the Department of Homeland Security by reason of their immigration status. The program providing such services shall hereafter be referred to as the Unaccompanied Alien Children's Program (UAC).

The specific goal of the program is to facilitate the provision of family reunification and/or long-term foster care services to unaccompanied alien minors referred to LIRS by ORR and currently held in the legal custody of the ORR. The provisions of services will include child welfare related services, including family reunification and foster care placement, to alien unaccompanied minors who have been approved for such services by the appropriate entities. LIRS has extensive experience in this area drawing from the Unaccompanied Refugee Minors Program. In addition, they have one of the largest affiliate networks, allowing them to easily facilitate capacity development and establish a much needed presence in major apprehension centers.

Per the *Flores* v. *Reno* settlement agreement, no child apprehended by the Department of Homeland Security can remain in a secure detention setting for longer than 72 hours, unless warranted. Given the recent influx of apprehensions along the southwest border and southern border, ORR has the urgent need to assess and develop a capacity plan for the program.

Grant and Cooperative Agreement Program Authority for this activity is contained in the Refugee Education Assistance Act of 1980, Title V, Section 501(c) Pub. L. 94 Stat.1799, 1809–1810, Executive Order 12341, the Immigration and Naturalization Act, and Section 462 of the Homeland Security Act.

The Recipient will:

1. Assess and develop a capacity plan;
2. Identify agencies and sites for reception and assessment centers in major apprehension locations throughout the United States;
3. Develop residential, therapeutic and foster care programs;
4. Assist with developing a long-term care program;
5. Develop a system for family reunification assessment including support systems;
6. Participate in the development of a universal assessment placement plan under the direction of ORR;
7. Coordinate placement plan recommendations; and
8. Develop an assessment training manual of protocols and procedures.

Other services for these minors may be provided if ORR determines in advance that the service is reasonable and necessary for a particular minor.

LIRS will ensure services comply with State child welfare statutes and generally accepted child welfare standards, practices, principles, and procedures, and the *Flores* v. *Reno* settlement agreement. Services offered provide for the safety and security of each child.

After the appropriate reviews, it has been determined that the need to assess and develop a capacity plan is compelling. The project period is July 1, 2003 to September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Theresa Bell, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–4863.

Dated: July 3, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–21784 Filed 8–25–03; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA# 93.676]

Office of Refugee Resettlement Grant to Southwest Initiative Group for the Unaccompanied Alien Children's Program

AGENCY: Office of Refugee Resettlement, HHS.

ACTION: Grant award announcement.

SUMMARY: This notice is hereby given that a urgent grant award is being made to Southwest Initiatives Group, Nixon, TX in the amount of $797,152 in FY03, to provide shelter care and child welfare services to alien minors transferred into the custody of the Office of Refugee Resettlement (ORR) from the Department of Homeland Security by reason of their immigration status. The programs providing such services shall hereafter be referred to as the Unaccompanied Alien Children's Program (UAC).

The specific goal of the program is to provide residential shelter care and other related child welfare services to male and female alien children under 18 years of age who are in the custody of the ORR. The provision of services will include: a structured, safe and productive environment which meets or exceeds respective state guidelines and ORR minimum standards for services designed to serve minors in UAC care and custody. This announcement provides for the delivery of services to a population of at least 16 children. The program is licensed for up to 36 children. This grant is being made to Southwest Initiatives Group due to its strategic location in a major apprehension area, ability to expeditiously meet state licensing and ORR requirements to accommodate the current need for shelter care, emergency influx expansion potential and high quality of care.

Shelter care services will be provided for the interim period beginning when

the minor is placed into the UAC, and ending when the minor is released from federal custody or when a final disposition of the minor's immigration proceedings occurs.

Grant and Cooperative Agreement Program Authority for this activity is contained in the Refugee Education Assistance Act of 1980, Title V, Section 501(c) Pub. L. 94 Stat.1799, 1809–1810, the Immigration and Naturalization Act and Section 462 of the Homeland Security Act.

Per the *Flores* v. *Reno* settlement agreement, no child apprehended by the Department of Homeland Security can remain in a secure detention setting for longer than 72 hours, unless warranted. Given the recent influx of apprehensions along the southwest border, ORR has the urgent need to increase the number of shelter beds to ensure that no child is placed in secure detention unless warranted.

The Recipient will provide assistance and services for each minor including, but not limited to:

1. Family Reunification Services;
2. Initial Program Orientation;
3. Individual Counseling;
4. Group Counseling;
5. Acculturation/Adaptation;
6. Education;
7. Access to Legal Services.

Other services that are necessary and appropriate for these minors may be provided if ORR determines in advance that the service is reasonable and necessary for a particular minor.

The Recipient will be expected to develop and implement an appropriate individualized service plan for the care and maintenance of each minor in accordance with his/her needs as determined in an intake assessment after initial placement. In addition, the Recipient is required to implement and administer a case management system which tracks and monitors each minor's progress to ensure that services are appropriate and to each minor's individual needs.

Services comply with State child welfare statutes and generally accepted child welfare standards, practices, principles, and procedures. Services offered provide for the safety and security of each child. The service will be provided in an age appropriate, culturally acceptable manner that meets the needs of each individual minor.

After the appropriate reviews, it has been determined that the need for additional shelter care beds and services in the southwest United States is compelling. The project period is July 1, 2003 through September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Kenneth Tota, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 205–3590.

Dated: July 31, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–21785 Filed 8–25–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA #: 93.676]

Office of Refugee Resettlement Grant to United States Conference of Catholic Bishops for the Unaccompanied Alien Children's Program

AGENCY: Office of Refugee Resettlement, HHS.

ACTION: Grant Award Announcement.

SUMMARY: This notice is hereby given that an award is being made to The United States Conference of Catholic Bishops (USCCB), 3211 4th Street, NE, Washington, DC, 20017 in the amount of $349,967 in FY03 due to urgent and compelling circumstances. The award will be used to assess and develop a capacity plan for unaccompanied alien minors transferred into the custody of the Office of Refugee Resettlement (ORR) from the Department of Homeland Security by reason of their immigration status. The program providing such services shall hereafter be referred to as the Unaccompanied Alien Children's Program (UAC).

The specific goal of the program is to facilitate the provision of family reunification and/or long-term foster care services to unaccompanied alien minors referred to USCCB by ORR and currently held in the legal custody of the ORR. The provisions of services will include child welfare related services, including family reunification and foster care placement, to alien unaccompanied minors who have been approved for such services by the appropriate entities. USCCB has extensive experience in this area drawing from the Unaccompanied Refugee Minors Program. In addition, they have one of the largest affiliate networks, allowing them to easily facilitate capacity development and establish a much needed presence in major apprehension centers.

Per the *Flores* v. *Reno* settlement agreement, no child apprehended by the Department of Homeland Security can remain in a secure detention setting for longer than 72 hours, unless warranted. Given the recent influx of apprehensions along the southwest border and southern border, ORR has the urgent need to assess and develop a capacity plan for the program.

Grant and Cooperative Agreement Program Authority for this activity is contained in the Refugee Education Assistance Act of 1980, Title V, Section 501(c) Pub. L. 94 Stat.1799, 1809–1810, the Immigration and Naturalization Act, and Section 462 of the Homeland Security Act.

The Recipient will:

1. Assess and develop a capacity plan;

2. Identify agencies and sites for reception and assessment centers in major apprehension locations throughout the United States;

3. Develop residential, therapeutic and foster care programs;

4. Assist with developing a long-term care program;

5. Develop a system for family reunification assessment including support systems;

6. Participate in the development of a universal assessment placement plan under the direction of ORR;

7. Coordinate placement plan recommendations; and

8. Develop an assessment training manual of protocols and procedures

Other services for these minors may be provided if ORR determines in advance that the service is reasonable and necessary for a particular minor.

USCCB will ensure services comply with State child welfare statutes and generally accepted child welfare standards, practices, principles, and procedures, and the *Flores* v. *Reno* settlement agreement. Services offered provide for the safety and security of each child.

After the appropriate reviews, it has been determined that the need to assess and develop a capacity plan is urgent and compelling. The project period is July 1, 2003 to September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Kenneth Tota, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–4858.

Dated: August 20, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–21786 Filed 8–25–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer at 301–443–7978.

National Cross-Site Assessment of the Addiction Technology Transfer Centers Network—(OMB No. 0930–0216, Revision—The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) intends to continue an assessment of its Addiction Technology Transfer Centers (ATTCs). The data collection instruments are being modified, and the methodology will be updated to comply with CSAT's new Government Performance and Results Act (GPRA) requirements. CSAT is requiring all of its programs to use standard GPRA Customer Satisfaction forms for training, technical assistance and meeting events, approved by OMB under OMB control number 0930–0197. In response to these new requirements, the ATTC Network will modify the current information collection tools to be in compliance, while still collecting information needed for the cross-site assessment.

The goal underlying the training and education opportunities provided through the ATTCs is to enhance the competencies of professionals in a variety of disciplines to address the clinical needs of individuals with substance abuse problems using research-based curricula and training materials through both traditional and non-traditional technologies.

The ATTCs disseminate current health services research from the National Institute on Drug Abuse, National Institute on Alcohol Abuse and Alcoholism, National Institute of Mental Health, Agency for Health Care Policy and Research, National Institute of Justice, and other sources and applied knowledge development activities from SAMHSA using innovative technologies by developing and updating state-of-the-art research-based curricula and developing faculty and trainers. Participants in ATTC events are self-identified and participate in either academic courses, continuing education/professional development training events, technical assistance or meetings. Academic courses are offered at all levels. Continuing education/professional development training is designed to meet identified needs of counselors and other professionals who work with individuals with substance abuse problems. A technical assistance is a jointly planned consultation generally involving a series of contacts between the ATTC and an outside organization/institution during which the ATTC provides expertise and gives direction toward resolving a problem or improving conditions. A meeting is an ATTC sponsored or co-sponsored event in which a group of people representing one or more agencies other than the ATTC work cooperatively on a project, problem, and/or a policy.

Both a process and an outcome assessment will be conducted. The process component will describe the training and education needs of pre-service and currently practicing professionals, the types of events that participants receive through the ATTCs, and their satisfaction with services. The outcome component will focus on changes in clinical practice made by participants as a result of knowledge received.

Analysis of this information will assist CSAT in documenting the numbers and types of participants in ATTC events, describing the extent to which participants improve in their clinical competency, and which method is most effective in disseminating knowledge to the various audiences. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

The study design for trainees will include a description of each event, and a pre-post design that collects identical information at initiation of ATTC courses/trainings, at the completion of the course/training, and again after 30 days. For technical assistance and meeting events, there will be a description of each event and demographic information will be collected from participants before the event. In addition, the study will collect satisfaction measures after each event and at 30-day follow-up using the required GPRA forms. Follow-up forms will be sent to a sample of 25% of participants at events. The chart below summarizes the annualized burden for this project.

Respondent type	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Students/Trainees	20,000	3	.25	15,000
ATTC Faculty/Staff				
Faculty/Trainers	200	1	.25	50
ATTC Summary Reports	15	4	2.00	120
Training Participants				
Pre-event Information	20,000	1	.13	2,600
Post-event Information	20,000	1	.16	3,200
Followup Information	5,000	1	.16	800
Meeting and Technical Assistance Participants				
Pre-event information	3,000	1	.08	240
Total	23,215	.....	.....	7,010

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 19, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–21734 Filed 8–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Administration and Financing of Group Homes and Residential Facilities for Persons With Mental Illness—New—The Substance Abuse and Mental Health Services Administration (SAMHSA) will conduct a survey of state health officials to determine what types of residential care programs for persons with mental illness are operated in each State and the District of Columbia. The state health officials will be identified through Web searches of State Mental Health Departments and other relevant agencies on a State-by-State basis.

The survey will contact identified state health officials in all fifty States (and the District of Columbia) and will gather information on the following six survey domains: Facility characteristics (for approximately five different types of group homes); Licensing and certification; Facility programs and treatment services; Seclusion and restraint; Facility monitoring and oversight; and, Financing. The questionnaire will identify and describe the types of residential facilities for persons with mental illness that are licensed, certified, and/or financed by State governments; the target population served by each facility type; the range of services provided in each facility type; provisions for monitoring each facility type, including the use of seclusion and restraints; and, sources of financing for each facility type.

This information collection supports the New Freedom Initiative, one of SAMHSA's current priorities; the New Freedom Initiative is the President's comprehensive plan to reduce barriers to full community integration for people with disabilities. The national survey will provide new information to SAMHSA and to other policymakers regarding the ways in which group homes and other types of residential facilities for adults, adolescents, and children with mental illness are established, regulated, and financed.

The questionnaire will be distributed to identified state health officials in electronic and/or paper formats. State health officials may either return the completed questionnaire via email or regular mail or request a telephone interview. In addition, respondents who do not return a completed paper questionnaire will be contacted and interviewed by telephone.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Number of respondents	Responses per respondent	Hours per response	Total hour burden
240	1	1	240

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 18, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–21735 Filed 8–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Pretesting of Substance Abuse Prevention and Treatment and Mental Health Services Communication Messages—(OMB No. 0930–0196, Reinstatement)—As the Federal agency responsible for developing and disseminating authoritative knowledge about substance abuse prevention, addiction treatment, and mental health services and for mobilizing consumer support and increasing public understanding to overcome the stigma attached to addiction and mental illness, the

Substance Abuse and Mental Health Services Administration (SAMHSA) is responsible for development and dissemination of a wide range of education and information materials for both the general public and the professional communities. This submission is for generic approval and will provide for formative and qualitative evaluation activities to (1) assess audience knowledge, attitudes, behavior and other characteristics for the planning and development of messages, communication strategies and public information programs; and (2) test these messages, strategies and program components in developmental form to assess audience comprehension, reactions and perceptions. Information obtained from testing can then be used to improve materials and strategies while revisions are still affordable and possible. The annual burden associated with these activities is summarized below.

Activity	Number of respondents	Responses per respondent	Hours per response	Total hours
Individual in-depth interviews:				
General public	400	1	.75	300
Service Providers	200	1	.75	150
Focus group interviews:				
General public	3,000	1	1.50	4,500
Service Providers	1,500	1	1.50	2,250
Telephone interviews:				
General public	335	1	.08	27
Service Providers	165	1	.08	13
Self-administered questionnaires:				
General public	2,680	1	.25	670
Service Providers	1,320	1	.25	330
Gatekeeper reviews:				
General public	1,200	1	.50	600
Service Providers	600	1	.50	300
Total	11,400			9,140

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 19, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–21736 Filed 8–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of a Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in September 2003.

The SAMHSA National Advisory Council meeting will be open and will include a report by the SAMHSA Administrator on key policy issues and current program developments. There will also be discussions about SAMHSA's four new standard grant announcements, the President's New Freedom Commission on Mental Health Commission Report, SAMHSA's Strategic Prevention Framework, and advancements in medication treatment. In addition, the meeting will include updates on the President's Access to Recovery Initiative, the 2002 National Survey on Drug Use and Health, and the April 2004 Co-occurring Summit.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained either by accessing the SAMHSA Council Web site, *www.samhsa.gov/council/council* or by communicating with the contact whose name and telephone number is listed below. The transcript for the open session will also be available on the SAMHSA Council Web site.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Tuesday, September 9, 2003, 9 a.m. to 5:15 p.m. (Open).

Place: Embassy Suites Hotel, Chevy Chase Room, 4300 Military Road, NW., Washington, DC 20015.

Contact: Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 12C–05, Rockville, MD 20857, Telephone: (301) 443–7016; FAX: (301) 443–7590 and e-mail: *TVaughn@samhsa.gov.*

Dated: August 19, 2003.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 03–21756 Filed 8–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

Action: 30-day notice of information collection under review; application to preserve residence for naturalization: Form N–470.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 4, 2003, at 68 FR 33510, allowing for a 60-day public comment period. No comments were received by the BCIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September

25, 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 regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Department of Homeland Security Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 currently approved collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–470. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 375 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 375 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Divisions, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to: Ms. Terry O'Malley, Clearance Officer, United States Department of Homeland Security, 7th and D Streets, NW., Washington, DC 20530, (202) 358–3571.

Dated: August 20, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–21727 Filed 8–25–03; 8:45 am]

BILLING CODE 4416–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–59]

Notice of Submission of Proposed Information Collection to OMB: Section 8 Random Digit Dialing Fair Market Rent Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information to be collected is used to determine Section 8 Fair Market Rents (FMRs) in areas not covered by either the AHS or the CPI surveys.

DATES: *Comments Due Date:* September 25, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0142) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained though HUD's Information Collection Budget Tracking System at *http://mf.hud.gov.63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Section 8 Random Digit Dialing Fair Market Rent Surveys.

OMB Approval Number: 2528–0142.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The information is used to determine Section 8 Fair Market Rents (FMRs) in areas not covered by either the AHS or the CPI surveys.

Respondents: Individual or Households.

Frequency of Submission: On occasion.

Reporting Burden: Number of Respondents 894,708: Average response per respondent 0.03; Total annual responses 29,835; Average burden per response 0.63 hrs.

Total Estimated Burden Hours: 18,926.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 20, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–21717 Filed 8–25–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–04]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2003–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale, Multifamily and Healthcare Loan Sale 2003–1 (MHLS 2003–1). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder Information Package (BIP) will be available to qualified bidders on or about August 15, 2003. Bids for the loans must be submitted on the bid date that currently is scheduled for September 16, 2003. HUD anticipates that awards will be made on or before September 18, 2003. Closings are expected to take place between September 22 and September 30, 2003.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement that are acceptable to HUD. Both documents are available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/hsgloan.cfm.* The executed documents must be mailed and faxed to Owusu & Company at 1900 L Street, NW., Suite 300, Washington, DC 20036, Attention MHLS 2003–1 Sale Coordinator, Fax: (202) 223–7293.

FOR FURTHER INFORMATION CONTACT: Myrna Gordon, Deputy Director, Asset Sales Office, Room 6266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2625, extension 3369, or Erin E. Moore, Office of General Counsel, Insured Housing, Multifamily Division, Room 9230; telephone (202) 708–0614, extension 5763. Hearing or speech-impaired individuals may call (202) 708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2003–1 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised of performing and nonperforming mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into separate pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan.

The Bidding Process

The BIP will describe in detail the procedure for bidding in MHLS 2003–1. The BIP also will include a standardized non-negotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan.

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. HUD anticipates that the awards will be made on or before September 18, 2003 (Award Date). Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur between September 22 and September 30, 2003.

These are the essential terms of sale. The Loan Sale Agreement, which is included in the BIP, contains additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence and Inquiries

The due diligence contractor for MHLS 2003–1 is American Express Tax and Business Services, Inc. located at 1101 14th Street, NW., 14th Floor, Washington, DC 20005. For general questions regarding the Bidder Information Package, Loan Sale Agreement, loan information, bid structure, bid evaluation, sale procedures and mortgage loan due diligence, please contact Owusu & Company at (866) 565–0558.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2003–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans. Pursuant to the Multifamily Mortgage Sale Regulations at 24 CFR part 290, the Mortgage Loans will be sold without FHA mortgage insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD is unaware of any Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which very-low income tenants reside who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. These regulations require that, except under certain limited circumstances, HUD-held multifamily mortgage loans must be sold on a competitive basis (24 CFR 290.30). This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to

HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2003–1:

(1) Any employee of FHA or HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred from doing business with FHA or HUD pursuant to Title 24 of the Code of Federal Regulations;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2003–1;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2003–1;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2003–1;

(7) Any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD all 1998 through 2002 audited financial statements for a project securing a Mortgage Loan on or before August 15, 2003; and

(8) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) that is a mortgagor in any of HUD's multifamily housing programs that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before August 15, 2003.

In addition, any entity or individual that served as a loan servicer or performed other services for or on behalf of FHA or HUD at any time during the 2-year period prior to September 1, 2003 with respect to any Mortgage Loan is ineligible to bid on such Mortgage Loan. Also ineligible to bid on any Mortgage Loan are: (a) any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2003–1.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2003–1, including, but not limited to, the identity of any bidder and their bid price or bid percentage for any pool of loans or individual loan within a pool of loans, upon the completion of the sale. Even if HUD elects not to publicly disclose any information relating to MHLS 2003–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2003–1, and does not establish HUD's policy for the sale of other mortgage loans.

Dated: August 20, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–21715 Filed 8–25–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Advisory Committee on Water Information

AGENCY: United States Geological Survey, Interior.

ACTION: Advisory Committee on Water Information meeting notice.

SUMMARY: Notice is hereby given of a meeting of the Advisory Committee on Water Information (ACWI). This meeting of the ACWI is to discuss broad policy-related topics relating to national water initiatives, and to hear reports from ACWI subgroups. The proposed agenda will include a series of discussions concerning various U.S. Government policies and programs related to the development and dissemination of water information.

The ACWI has been established under the authority of the Office of Management and Budget Memorandum M–92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water-information users and professionals to advise the Federal Government of activities and plans that may improve the effectiveness of meeting the Nation's water information needs. More than 30 organizations have been invited by the Secretary of the Interior to name representatives to the ACWI. These include Federal departments, State, local, and tribal government organizations, industry, academia, agriculture, environmental organizations, professional societies, and volunteer groups.

DATES: The formal meeting will convene at 8 a.m., on September 9, 2003, and will adjourn on September 10, 2003, at 5 p.m.

ADDRESSES: Days Hotel and Conference Center, 2200 Centreville Road, Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Toni M. Johnson (Executive Secretary), Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, 417 National Center, Reston, VA 20192. Telephone: 703–648–6810; Fax: 703–648–5644.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Johnson at the above address no later than noon, September 5, 2003. It is requested that 40 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Johnson for distribution at the ACWI Meeting.

Dated: August 21, 2003.

R. Thomas Weimer,

Deputy Assistant Secretary—Water and Science.

[FR Doc. 03–21811 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Gaming Compact Between the State of Arizona and the San Juan Southern Paiute Tribe.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988

(IGRA), Public Law 100–497, 25 U.S.C 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the Tribal-State Compact for Class III gaming between the San Juan Southern Paiute Tribe and the State of Arizona is considered approved. By the terms of IGRA, the Compact is considered approved, but only to the extent the compact is consistent with the provisions of IGRA.

This Compact expands the scope of gaming activities authorized under the Compact, increases wager limits, increases the number of permitted gaming devices, and allows the tribe to enter into gaming device transfer agreements with one or more gaming tribes.

EFFECTIVE DATE: August 26, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 18, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–21805 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–03–1150–PG–24–1A]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting; additional details.

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) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: A meeting is scheduled for September 9–10, 2003, at the Airport Hilton Hotel, Salon A conference room, 5151 Wiley Post Way, Salt Lake City, Utah. The meeting will begin at 8 a.m. on September 9 and conclude at 11 a.m. on September 10.

FOR FURTHER INFORMATION CONTACT: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: A notice was initially published (vol. 68, page number 122, dated 6/25/03) which addressed a follow-up meeting to be scheduled on September 9–10, 2003. This notice is issued to announce additional details of the meeting. A working meeting is scheduled for September 9 to discuss the reports from the raptor, OHV, and San Rafael subgroups; an overview of shrub die-off and sage grouse national/state strategies; and a presentation, along with a discussion, on the Sustainable Working Landscapes (SWL) Initiative.

On September 10, 2003, beginning at 8 a.m. until 10 a.m, the Council encourages and is providing an opportunity for public comments on the SWL initiative. If you are unable to attend the meeting, written comments can be sent to the Bureau of Land Management, c/o Larry Lichthardt, P.O. Box 45144, Salt Lake City, Utah, 84145–0155.

There will also be a public comment period from 10 a.m.–11 a.m. for members of the public to address the Council on non-SWL related issues.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: August 18, 2003.

Sally Wisely,

State Director.

[FR Doc. 03–21796 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet on September 11, 2003. The agenda for the Committee meeting will include a report on the California Bay-Delta Authority actions on Program Plans; a Finance update; staff and subcommittee reports; and discussions on the California Water Plan, Water 2025, Committee priorities for 2003, and implementation of the CALFED Bay-Delta Program with State and Federal officials.

DATES: The meeting will be held Thursday, September 11, 2003, from 9 a.m. to 6 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916)445–5511 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the John E. Moss Federal Building located at 650 Capitol Mall, 5th Floor, Bay-Delta Room, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, California Bay-Delta Authority, at (916) 445–5511, or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide assistance and recommendations to Secretary of the Interior Gale Norton and California Governor Gray Davis on implementation of the CALFED Bay-Delta Program. The Committee will advise on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the CALFED Bay-Delta Web site: *http://calwater.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et.seq.*, the Endangered Species Act, 16 U.S.C. 1531 *et. seq.*, and the Reclamation Act of 1902, 43 U.S.C. 371 *et. seq.*, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, title 34 of Pub. L. 102–575.)

Dated: August 8, 2003.

Allan Oto,

Special Projects Officer, Mid-Pacific Region.

[FR Doc. 03–21737 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. TA–131–26 and TA–2104–8]

U.S.-Bahrain Free Trade Agreement: Advice Concerning the Probable Economic Effect of Duty-Free Imports

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: August 19, 2003.

SUMMARY: Following receipt of a request on August 13, 2003, from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA–131–26 and TA–2104–8, *U.S.-Bahrain Free Trade Agreement: Advice Concerning the Probable Economic Effect of Duty-Free Imports,* under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Laura Polly, Project Leader (202–205–3408; *polly@usitc.gov*), or Queena Fan, Deputy Project Leader (202–205–3055; *qfan@usitc.gov*), Office of Industries, United States International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) *at http://edis.usitc.gov.*

Background

As requested by the USTR pursuant to section 131 of the Trade Act of 1974 (19 U.S.C. 2151), in its report the Commission will provide advice as to the probable economic effect of providing duty-free treatment for imports of products of Bahrain (i) on industries in the United States producing like or directly competitive products, and (ii) on consumers. The import analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which U.S. tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The import advice will be based on the 2003 Harmonized Tariff System nomenclature and 2002 trade data. The advice with respect to the removal of U.S. duties on imports from Bahrain will assume that any known U.S. nontariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. nontariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty.

As also requested, pursuant to section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)), the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of certain agricultural products of Bahrain on (i) industries in the United States producing the product concerned, and (ii) the U.S. economy as a whole.

USTR indicated that the Commission's report will be classified and considered to be an interagency memorandum containing pre-decisional advice and subject to the deliberative process privilege. The Commission expects to provide its report to USTR by December 12, 2003.

Public Hearing

A public hearing in connection with this investigation will be held at the United States International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on September 25, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than 5:15 p.m., September 5, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 11, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 2, 2003. In the event that, as of the close of business on September 5, 2003, no witnesses are scheduled to appear at the hearing, 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 (202–205–1806) after September 5, 2003, for information concerning whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that 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 in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to the USTR. 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 October 2, 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 § 201.8 of the Commission's rules (19 CFR 201.8) (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects

Bahrain, tariffs, and imports.

Issued: August 20, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21757 Filed 8–25–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–497]

In the Matter of Certain Universal Transmitters for Garage Door Openers; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and motion for temporary relief were filed with the U.S. International Trade Commission on July 16, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of The Chamberlain Group, Inc. of Elmhurst, Illinois. A supplement to the complaint was filed on August 8, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain universal transmitters for garage door openers by reason of infringement of claims 1–8 of U.S. Patent No. RE 35,364 and claims 5–62 of U.S. Patent No. RE 37,986, and violation of section 1201(a)(2) of the Digital Millennium Copyright Act, 17 U.S.C. 1201(a)(2). The complaint further alleges that an industry in the United States exists as required by subsections (a)(1)(A) and (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary limited exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of certain universal transmitters for garage door openers that violate section 1201(a)(2) of the Digital Millennium Copyright Act, 17 U.S.C. 1201(a)(2), during the course of the Commission's investigation.

ADDRESSES: The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic document information system (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2606.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2003). The authority for provisional acceptance of the motion for temporary relief is contained in § 210.58, 19 CFR 210.58.

Scope of Investigation: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on August 20, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain universal transmitters for garage door openers by reason of violation of section 1201(a)(2) of the Digital Millennium Copyright Act, 17 U.S.C. ¶1201(a)(2) the threat or effect of which is to destroy or substantially injure an industry in the United States; and

(b) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain universal transmitters for garage door openers by reason of infringement of claims 1–8 of U.S. Patent No. RE 35,364 or claims 5–62 of U.S. Patent No. RE 37,986 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) Pursuant to § 210.58 of the Commission's rules of practice and procedure, 19 CFR 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, is provisionally accepted and referred to the presiding administrative law judge for investigation.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—The Chamberlain Group, Inc., 845 Larch Avenue, Elmhurst, IL 60126–1196.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Skylink Technologies, Inc., 2213 Dunwin Drive, Mississauga, Ontario, Canada L5L 1X1.

Capital Prospect, Ltd., Room 1316B, Veristrong Industrial Center, 36 Au Pui Wan Street, Fo Tan, New Territories, Hong Kong.

Philip Tsui, 2213 Dunwin Drive, Mississauga, Ontario, Canada L5L 1X1.

(c) Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with §§210.13 and 210.59 of the Commission's rules of practice and procedure, 19 CFR 210.13 and 210.59. Pursuant to 19 CFR 201.16(d), 210.13(a), and 210.59, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting the responses to the complaint, motion for temporary relief, and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, the motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: August 20, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21758 Filed 8–25–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–493]

Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') granting the joint motion of complainants to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3041. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 27, 2003, based on a complaint filed by complainants Energizer Holdings, Inc. and Eveready Battery Co., Inc., both of St. Louis, MO, 68 FR 32771 (2003). The complaint as amended alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1–12 of U.S. Patent No. 5,464,709. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The Commission named as respondents 26 companies located in the United States, China, Indonesia, and Japan. *Id.* The ALJ has set September 2, 2004, as the target date for completion of the investigation.

The ALJ issued the subject ID on July 17, 2003. The ID grants the motion of complainants to terminate the investigation as to respondent Changhong Battery Co. on the basis of a consent motion and amend the complaint and notice of investigation to reflect this fact. The ALJ found that Changhong Battery Co. is a division of another respondent in the investigation, Sichuan Changhong Electric Co., Ltd., and therefore Changhong Battery Co. cannot be sued as a separate respondent. Accordingly, the ID amends the notice of investigation and complaint to reflect the fact that Changhong Battery Co. is not a separate respondent.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: August 19, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21729 Filed 8–25–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association; Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of the Canadian Standards Association (CSA) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on August 26, 2003 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while CSA remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of the Canadian Standards Association (CSA) as a Nationally Recognized Testing Laboratory (NRTL). CSA's expansion covers the use of additional test standards. OSHA's current scope of recognition for CSA may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/csa.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgement that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

CSA submitted a request, dated March 27, 2002 (*see* Exhibit 30), to expand its recognition as an NRTL to use 17 additional test standards. The NRTL Program staff determined that nine of these standards could not be included in the expansion because they are not ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c). The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA approves eight test standards for the expansion, which are listed below. Through no fault of CSA, the application was initially delayed in processing.

In connection with the request, OSHA did not perform an on-site review of CSA's NRTL testing facilities. However, NRTL Program assessment staff

reviewed information pertinent to the request and recommended that CSA's recognition be expanded to include the additional test standards listed above (see Exhibit 31).

OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on May 22, 2003 (68 FR 28033). The notice requested submission of any public comment by June 6, 2003. OSHA did not receive any comments pertaining to the application.

The previous notice published by OSHA for CSA's recognition covered a renewal and expansion of recognition, which became effective on July 3, 2001 (66 FR 35271).

You may obtain or review copies of all public documents pertaining to the CSA application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL–2–92, the permanent record of public information on CSA's recognition.

The current address of the testing facilities (sites) that OSHA recognizes for CSA are:

Canadian Standards Association, Etobicoke (Toronto), 178 Rexdale Boulevard, Etobicoke, Ontario, M9W 1R3

CSA International, Pointe-Claire (Montreal), 865 Ellingham Street, Pointe-Claire, Quebec H9R 5E8

CSA International, Richmond (Vancouver), 13799 Commerce Parkway, Richmond, British Columbia V6V 2N9

CSA International, Edmonton, 1707–94th Street, Edmonton, Alberta T6N 1E6

CSA International, Cleveland, 8501 East Pleasant Valley Road, Cleveland, Ohio 44131 (formerly part of the American Gas Association)

CSA International, Irvine, 2805 Barranca Parkway, Irvine, California 92606 (formerly part of the American Gas Association)

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's recommendation, and other pertinent information. Based upon this examination and the recommendation, OSHA finds that the Canadian Standards Association has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of CSA, subject to this limitation and these conditions.

Limitation

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 8 test standards, and OSHA has determined the standards are appropriate, within the meaning of 29 CFR 1910.7(c).

ANSI Z21.19 Refrigerators Using Gas Fuel

ANSI Z21.42 Gas-Fires Illuminating Appliances

ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances

ANSI Z21.54 Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances

ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances

ANSI Z21.58 Outdoor Cooking Gas Appliances

ANSI Z21.74 Portable Refrigerators for Use With HD–5 Propane Gas

ANSI Z21.76 Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases

UL 2017 General Purposes Signaling Devices and Systems

OSHA's recognition of CSA, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require testing and certification.

Conditions

CSA must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

CSA must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and must use these procedures in testing and certifying those products;

OSHA must be allowed access to CSA's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSA must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CSA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

CSA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

CSA will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

CSA will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 15th day of August, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–21763 Filed 8–25–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–88]

MET Laboratories, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of MET Laboratories, Inc. (MET) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on August 26, 2003 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while MET remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Roy Resnick, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW.,

Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of MET Laboratories, Inc., (MET) as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion covers the use of additional test standards. OSHA's current scope of recognition for MET may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/met.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope.

MET submitted a request, dated April 30, 2002 (*see* Exhibit 32), to expand its recognition as an NRTL to use 20 additional test standards. The NRTL Program staff determined that all the standards were ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c). The staff makes similar determinations in processing expansion requests from any NRTL. OSHA NRTL Program staff performed an on-site review of the NRTL in September 2002 and recommended the expansion in a memo dated October 22, 2002 (see Exhibit 33). Through no fault of MET, the application was delayed in processing. MET then submitted an amendment on May 15, 2003 (see Exhibit 32–1), to add one additional test standard to its expansion request. This standard requires the same capabilities as a few of the standards included in the original request and therefore falls within the recommendation of the assessor. As a result, a total of 21 test standards are approved for the expansion.

OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on June 20, 2003 (68 FR 37028). The notice requested submission of any public comments by July 7, 2003. OSHA did not receive any comments pertaining to the application.

The previous notices published by OSHA for MET's recognition covered a renewal and expansion of recognition, which became effective on May 23, 2002 (67 CFR 36260).

You may obtain or review copies of all public documents pertaining to the MET application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL1–88, the permanent record of public information on MET's recognition.

The current address of the MET testing facility that OSHA recognizes for MET is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's recommendation, and other pertinent information. Based upon this examination and the recommendation, OSHA finds that MET Laboratories, Inc., has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of MET, subject to this limitation and these conditions.

Limitation

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 21 test standards, and OSHA has determined the standards are appropriate within the meaning of 29 CFR 1910.7(c).

UL48 Electric Signs
UL183 Manufactured Wiring Systems
UL325 Door, Drapery, Gate, Louver and Window Operator and Systems
UL355 Cord Reels
UL427 Refrigerating Units
UL508C Power Conversion Equipment
UL541 Refrigerated Vending Machines
UL756 Coin and Currency Changers and Actuaters
UL778 Motor-Operated Water Pumps
UL916 Energy Management Equipment
UL961 Electric Hobby and Sports Equipment
UL983 Surveillance Cameras Units
UL1419 Professional Video and Audio Equipment
UL1433 Control Centers for Changing Message Type Electric Signs
UL1564 Industrial Battery Chargers
UL1574 Track Lighting Systems
UL1740 Industrial Robots and Robotic Equipment
UL1838 Low Voltage Landscape Lighting Systems
UL2044 Commercial Closed Circuit Television Equipment
UL2161 Neon Transformers and Power Supplies
UL3044 Surveillance Closed Circuit Television Equipment

Many of the test standards listed above are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (*e.g.*, UL 541) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 541). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of which version appears in the list of test standards found on OSHA's informational web page for the NRTL. Contact ''NSSN'' (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether or not a standard is currently ANSI-approved.

OSHA's recognition of MET, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) that falls within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Conditions

MET Laboratories, Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

MET must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and must use these procedures in testing and certifying those products;

OSHA must be allowed access to MET's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If MET has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

MET must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, MET agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

MET will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

MET will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 15th day of August, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–21762 Filed 8–25–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–096)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, September 9, 2003, 8 a.m. to 5 p.m. and Wednesday, September 10, 2003, 8:30 a.m. to 3 p.m.

ADDRESSES: AMES Research Center, NASA, Moffett Training and Conference Center, Building 3, Corner of Severyns and South Akron Avenues, Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code IC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Information Technology
- Strategic Plan
- Human Capital, Education and Communication
- Project Prometheus—Informational Briefing
- Future Air Transportation Management System
- Overview of AMES Research Center
- Proposed NAC Work Plan Presentation to the Administrator
- Return to Flight

Visitors will be asked to present a valid picture ID. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–21817 Filed 8–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–095)]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Thursday, September 11, 2003, 9 a.m. to 4 p.m., and Friday, September 12, 2003, 9 a.m. to 12 Noon.

ADDRESSES: NASA Headquarters, 300 E. Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Review of Previous Meeting;
- Office of Small and Disadvantaged Business Utilization Update of Activities;
- NAC Meeting Report;
- Overview of Agency-wide initiatives;
- Update of Small Business Program;
- Public Comment;
- Panel Discussion and Review;
- Committee Panel Reports;
- Status of Open Committee Recommendations; and
- New Business.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; employee/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Mr. Lamont Hames via e-mail at *lhames@hq.nasa.gov* or by telephone at 202–358–2088. Attendees will be escorted at all times.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Visitors will be requested to sign a visitor's register.

Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202–358–1600).

June Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–21816 Filed 8–25–03; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following reinstatement, without

change, of a previously approved collection for which approval has expired, to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until September 25, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 518–6669, e-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of this information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0139.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Organization and Operation of Federal Credit Unions.

Description: Federal Credit Unions wishing to pay lending-related incentives to employees must establish written policies.

Respondents: Certain Federal Credit Unions.

Estimated No. of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Response: One.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost: $25,000.

By the National Credit Union Administration Board on August 18, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–21809 Filed 8–25–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until September 25, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 518–6669, e-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0135.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: National Credit Union Administration Agreement for Electronic Funds Transfer Payments.

Description: NCUA needs this information to comply with the Debt Collection Improvement Act which has a provision concerning the use of EFT payments.

Respondents: All Federally Insured Credit Unions.

Estimated No. of Respondents/Recordkeepers: 250.

Estimated Burden Hours Per Response: 15 minutes, (15/60 hr).

Frequency of Response: Annually.

Estimated Total Annual Burden Hours: 62.5 hours.

Estimated Total Annual Cost: $1,350.

By the National Credit Union Administration Board on August 18, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–21810 Filed 8–25–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify Liz Hollis at telephone number (202) 233–2072 no later than August 29. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

DATE AND TIME: Open sessions—September 9, 2003, from 8:30 a.m. to 5:30 p.m. and September 10, 2003, from 8:30 a.m. to 12:15 p.m. Closed session—September 8, 2003, from 4:15 p.m. to 6 p.m.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Liz Hollis, Special Assistant to the Director; National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233–2072; e-mail: *ehollis@nifl.gov.*

SUPPLEMENTARY INFORMATION: The Board is established under section 242 of the Workforce Investment Act of 1998, Pub. L. 105–220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and

Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The National Institute for Literacy Advisory Board meeting on September 8–10, 2003, will focus on future and current program activities, reauthorization of the Workforce Investment Act, and other relevant literacy activities and issues. On September 8, 2003 from 4:15 p.m. to 6 p.m., the meeting will be closed to the public to discuss personnel issues. This discussion relates to the internal personnel rules and practices of the Institute and is likely to disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion may therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: August 20, 2003.

Sandra L. Baxter,

Interim Director.

[FR Doc. 03–21795 Filed 8–25–03; 8:45 am]

BILLING CODE 6055–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 27, 2003, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on August 4, 2003 to: Grant Ballard, Permit No. 2004–007.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–21807 Filed 8–25–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste, Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on September 16, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, September 16, 2003—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to 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. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (e.t.) 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 in the agenda.

Dated: August 19, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–21777 Filed 8–25–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Notice of Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 25, September 1, 8, 15, 22, 29, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 25, 2003

Monday, August 25, 2003

9:30 a.m. Discussion of Investigatory and Enforcement Issues (Closed—Ex. 7 & 5).

Thursday, August 28, 2003.

10:45 a.m. Affirmation Session (Public Meeting) (If needed).

2 p.m. Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9).

Week of September 1, 2003—Tentative

There are no meetings scheduled for the Week of September 1, 2003.

Week of September 8, 2003—Tentative

Wednesday, September 10, 2003

1 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, (301) 415–2308).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

3 p.m. Discussion of Security Issues (Closed—Ex. 1).

Thursday, September 11, 2003

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of September 15, 2003—Tentative

There are no meetings scheduled for the Week of September 15, 2003.

Week of September 22, 2003—Tentative

Wednesday, September 24, 2003

9 a.m. Briefing on Emergency Preparedness Program Status (Public Meeting) (Contact: Eric Weiss, 301–415–3264).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of September 29, 2003—Tentative

There are no meetings scheduled for the Week of September 29, 2003.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: David Louis Gamberoni (301) 415–1651.

* * * * *

SUPPLEMENTARY INFORMATION: By a vote of 3–0 on August 14, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that ''Affirmation of (1) Final Rule: Geological and Seismological Characteristics for the Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations—10 CFR part 72 and (2) Private Fuel Storage (Independent Spent Fuel Storage Installation), Docket No. 72–22–ISFSI, LBP–03–08 (May 22, 2003)'' be held on August 15, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 21, 2003.

D.L. Gamberoni

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–21880 Filed 8–22–03; 11:20 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services,Washington, DC 20549.

Extension:

Rule 17Ad–15, SEC File No. 270–360, OMB Control No. 3235–0409.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ad–15 Signature Guarantees

Rule 17Ad–15 requires approximately 900 transfer agents to establish written standards for the acceptance or rejection of guarantees of securities transfers from eligible guarantor institutions. Transfer agents are required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason for the rejection, identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

There are approximately 900 registered transfer agents. The staff estimates that every transfer agent will spend about 40 hours annually to comply with rule 17Ad–15. The total annual burden for all transfer agents is 36,000 hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance for all transfer agents is $1,080,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Associate Executive Director/Acting CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 19, 2003.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21818 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–1(c) and Form X–17F–1A, SEC File No. 270–29, OMB Control No. 3235–0037.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17f–1(c) and Form X–17F–1A Reporting of missing, lost, stolen, or counterfeit securities.

Rule 17f–1(c) and Form X–17F–1A requires approximately 26,000 entities in the securities industry to report lost, stolen, missing, or counterfeit securities to a central database. Form X–17F–1A facilitates the accurate reporting and precise and immediate data entry into the central database. Reporting to the central database fulfills a statutory requirement that reporting institutions report and inquire about missing, lost, counterfeit, or stolen securities. Reporting to the central database also allows reporting institutions to gain access to the database that stores information for the Lost and Stolen Securities Program.

We estimate that 26,000 reporting institutions will report that securities are either missing, lost, counterfeit, or

stolen annually and that each reporting institution will submit this report 50 times each year. The staff estimates that the average amount of time necessary to comply with rule 17f–1(c) and Form X–17F–1A is five minutes per submission. The total burden is 108,333 hours annually for the entire industry (26,000 times 50 times 5 divided by 60). The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $5,416,666.

Rule 17f–1(c) is a reporting rule and does not specify a retention period. The rule requires an incident-based reporting requirement by the reporting institutions when securities are discovered missing, lost, counterfeit, or stolen. Registering under rule 17f–1(c) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Lost and Stolen Securities Program. Reporting institutions required to register under rule 17f–1(c) will not be kept confidential; however, the Lost and Stolen Securities Program database will be kept confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 19, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21819 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–1(b), SEC File No. 270–28, OMB Control No. 3235–0032.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17f–1(b): Requirements for reporting and inquiry with respect to missing, lost, counterfeit, or stolen securities.

Rule 17f–1(b) requires approximately 26,000 entities in the securities industry to register in the Lost and Stolen Securities Program (''Program''). Registration fulfills a statutory requirement that entities report and inquire about missing, lost, counterfeit, or stolen securities. Registration also allows entities in the securities industry to gain access to a confidential database that stores information for the Program.

We estimate that 1,000 entities will register in the Program annually and that each respondent will register one time. The staff estimates that the average number of hours necessary to comply with the rule 17f–1(b) is one-half hour. The total burden is therefore 500 hours (1,000 times one-half) annually for all respondents. The average cost per hour is approximately $50. Therefore, the total cost of compliance for each respondent is $25,000 (500 times $50).

Rule 17f–1(b) is a reporting rule and does not specify a retention period. The rule requires a one-time registration for reporting institutions. Registering under rule 17f–1(b) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Program. Reporting institutions required to register under rule 17f–1(b) will not be kept confidential; however, the Program database will be kept confidential.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC, 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 19, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21820 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 14f–1, OMB Control No. 3235–0108, SEC File No. 270–127;
Rule 12d1–3, OMB Control No. 3235–0109, SEC File No. 270–116.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for approval.

Rule 14f–1 (OMB Control No. 3235–0108; SEC File No. 270–127) requires issuers to disclose a change in a majority of the directors of the issuer. The information filed under rule 14f–1 must be filed with the Commission and is publicly available. We estimate that it takes 18 burden hours to provide the information required under rule 14f–1 and that the information is filed by 44 respondents for a total of 792 burden hours.

Rule 12d1–3 (OMB Control No. 3235–0109; SEC File No. 270–116) requires a certification that a security has been approved by an exchange for listing and registration pursuant to section 12(d) of the Securities Exchange Act of 1934 to be filed with the Commission. The information required under rule 12d1–3 must be filed with the Commission and is publicly available. We estimate that it takes one-half hour to provide the information required under rule 12d1–3 and that the information is filed by 688 respondents for a total of 344 burden hours.

Written comments are invited on: (a) Whether these proposed collection of information are necessary for the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: August 19, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21821 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48366; File No. SR–EMCC–2003–02]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Modifying the Clearing Fund Calculation

August 19, 2003.

I. Introduction

On May 8, 2003, Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') and on June 2, 2003, and June 5, 2003, amended proposed rule change SR–EMCC–2003–02 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 30, 2003.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

One of the purposes of the proposed rule change is to modify the clearing fund deposit requirement for certain EMCC members. The proposed change adds Addendum I to EMCC's rules. Addendum I establishes $50 million as the clearing fund deposit for members who are Inter-Dealer Brokers (''IDBs'') or whose only business with EMCC is to clear for IDBs. EMCC will continue to calculate the clearing fund requirements for each of these members. To the extent that the calculated amount exceeds the $50 million fixed amount for any day, the difference will be required to be paid by all other EMCC members on a pro-rata basis based on their average clearing fund requirements over the previous 30 calendar day period. However, for the purpose of determining the pro-rata loss obligation of any member whose deposit is fixed at $50 million, the member's calculated clearing fund requirement will continue to be used by EMCC. Similarly, the additional amounts paid by other EMCC members will not be used by EMCC in determining their pro-rata loss obligations.

The function of an IDB is to bring together principals in transactions on a matched anonymous basis while taking no principal risk themselves. If every dealer who interacted with an IDB were a member of EMCC, the IDB or its clearing firm would have to deposit only a minimal clearing fund amount. To the extent that one side of an IDB trade is not with an EMCC member, the clearing fund requirement for the IDB or its clearing firm is based only on one side of the matched transaction. This one sided calculation may create a clearing fund obligation of a significant amount for the IDB or its clearing firm. EMCC believes it is appropriate, given the role of IDBs in providing liquidity to the market place, to establish a fixed clearing fund requirement for such firms or their clearing firms and to have the difference between the fixed amount and the IDB's calculated clearing fund requirement deposited by the other EMCC members. EMCC is concerned that if this requirement is not established IDBs will stop submitting their transactions to EMCC, and as a result, the dealer market will lose the benefits, such as risk management and standardized, electronic processing, currently provided by EMCC.

While EMCC has determined that it is appropriate to set a fixed clearing fund amount of $50 million for such members, it does not want this fixed amount to alter the status quo among members in the event that a pro-rata charge is imposed pursuant to section 11(c) of rule 4 (Clearing Fund, Margin and Loss Allocation). Consequently, the proposed rule change provides that the calculated clearing fund amount and not the fixed clearing fund amount will be used in determining the pro-rata liability of any affected members. Further, any amount that is required to be paid by other members because the IDB's calculated clearing fund amount exceeds the fixed clearing fund amount similarly will not be taken into account when determining pro-rata charges.

A second purpose of the proposed rule change is to modify the time at which EMCC novates transactions and to change the clearing fund formula to eliminate the ''look back'' feature. Currently, EMCC novates transactions at different times depending on whether the trade is received and compared on trade date or thereafter. Since under the current rules EMCC novates transactions received on trade date before EMCC has the opportunity to collect any additional required clearing fund, the clearing fund required of members is the greater of the calculated requirement or the highest requirement over the previous two months. When the ''look back'' feature was adopted, EMCC believed that by ''looking back'' it would have sufficient clearing fund deposits so long as a member's current trades were similar to the trading that occurred over the prior two months. While this methodology provided EMCC with adequate collateral in most cases, EMCC could never be certain it was always fully protected. To remedy this, EMCC has determined to require members to submit trades earlier on trade date, to calculate clearing fund based on these trades, and to collect any additional required clearing fund on trade date. EMCC's rules are being changed to provide that novation of trades will not occur until after all margin requirements are received from both sides of the trade. This will apply to trades included in the afternoon calculation as well as trades covered by the morning calculation. As before, EMCC will do an afternoon and a morning clearing fund calculation, but now payments of required clearing fund will be due after each calculation and not just after the morning calculation. Because EMCC will be collecting margin to cover its exposure on a timely basis, it will no longer need to collect the highest margin calculation over the prior two months. Therefore, the ''look back'' feature of its clearing fund calculation will be eliminated.[3]

Because EMCC will now be collecting clearing fund deposits in the afternoon, there will no longer be an overnight exposure. Accordingly, EMCC is deleting from its rules all references to calculations based on the ''overnight exposure cap.''

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 48081 (June 24, 2003), 68 FR 38733.

[3] EMCC expects that by removing the ''look back'' feature, its members' clearing fund requirements will decrease. This decrease in required clearing fund should help offset any additional clearing fund requirement that members will be required to make under new Addendum I.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[4] The proposed rule change will allocate EMCC's clearing fund requirement in a manner that more appropriately reflects the risks of its members' activities. The proposed rule change will also allow EMCC to use a more accurate calculation and more time to collect members' clearing fund requirements. Accordingly, the proposed rule change should help assure EMCC's ability to safeguard securities and funds.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2003–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21824 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48367; File No. SR–EMCC–2003–03]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Establishing a Temporary Rebate for IDB Members

August 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 6, 2003, Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') and on August 4, 2003, amended the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by EMCC. 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 proposed rule change establishes a temporary reimbursement for Inter-Dealer Broker (''IDB'') members or members whose only use of EMCC is to clear for IDBs of the costs associated with their deposits in excess of $50 million.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission recently approved a proposed rule change filed by EMCC to modify its clearing fund requirements for IDB members or members whose only use of EMCC is to clear for IDBs.[3] That proposed rule change established a fixed amount of $50 million to be deposited by members who are IDBs or whose only use of EMCC is to clear for IDBs. EMCC is concerned that if this modified requirement is not established, the IDBs will no longer submit their transactions to EMCC, and the dealer market will lose the benefits, such as the risk management and standardized, electronic processing, currently provided by EMCC. EMCC has decided to reimburse any such member the costs associated with its deposit requirements in excess of $50 million. The rebate is retroactive to May 1, 2003, and will continue in effect until the modified clearing fund requirement for IDBs is effective.

EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to EMCC because it will permit the equitable allocation of charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have any impact on or impose a 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 relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes fees to be imposed by EMCC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and rule 19b–4(f)(2).[5] 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 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–EMCC–2003–03. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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

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[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 48366 (August 19, 2003) (File No. SR–EMCC–2003–02).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR–EMCC–2003–03 and should be submitted by September 16, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21825 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48374; File No. SR–NASD–2003–129]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Fees for Trading and Compliance Data Available to NASD Member Firms Via NasdaqTrader.com

August 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), 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)(ii) of the Act,[3] and rule 19b–4(f)(2) thereunder[4] as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the fees for trading and compliance data available to NASD member firms via NasdaqTrader.com. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7000. Charges for Services and Equipment

7010. System Services

(a)–(m) No change.

(n) NasdaqTrader.com Trading and Compliance Data Package Fee.

The charge to be paid by an NASD Member Firm for each entitled user receiving Nasdaq Trading and Compliance Data Package via NasdaqTrader.com is *$100* [75] per month (monthly maximum of 25 Historical Research Reports) or *$130* [100] per month (monthly maximum of 100 Historical Research Reports). The Nasdaq Trading and Compliance Data Package includes:

(1) Daily Share Volume Report for a Broker/Dealer (Member Firm's information only).

(2) Monthly Compliance Report Cards (Member Firm's information only).

(3) Monthly Summaries.

(4) Historical Research Reports.

(i) Market Maker Price Movement Report.

(ii) Equity Trade Journal (Member Firm's information only).

The Association may modify the contents of the Nasdaq Trading and Compliance Data Package from time to time based on subscriber interest.

(o)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to modify the fees for trading and compliance data available to NASD member firms via NasdaqTrader.com.

NasdaqTrader.com allows NASD member firms to obtain data regarding their own trading volume in securities in which they report volume as well as information concerning their compliance with NASD rules. Specifically, NASD member firms that subscribe to Nasdaq's Trading and Compliance Data Package (''Data Package'') can obtain the following reports: (1) Daily Share Volume Reports, which provide a member firm's own daily share volume for each security in which the firm reports volume; (2) Monthly Compliance Report Cards, which outline a firm's own compliance with various NASD rules; (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security or type of trading; and (4) Historical Research Reports, which provide a variety of historical trading data such as a market maker's quote updates for a security on a specified date or trades reported through the Automated Confirmation Transaction Service (''ACT'') by a NASD member firm for a selected security and date.

Use of this service is voluntary and NASD member firms have the option of subscribing to two different levels of the Data Package. The ''basic'' level, which has a fee of $75 per month, allows access to a maximum of 25 Historical Research Reports per month. The ''premium'' level, which has a fee of $100 per month, allows access to a maximum of 100 Historical Research Reports per month. These fees have not increased since the launch of the service in December 1998, even though several enhancements have been made since that time. Some of these enhancements include: (1) Various additional types of Monthly Compliance Report Card reports that show such things as compliance with the short sale bid test and ACT reporting; (2) detailed trade data specific to each Monthly Compliance Report Card; and (3) additional types of Historical Research Reports such as SuperMontage Activity Reports and Daily Security Position Data Reports.

In order to help cover the costs associated with the maintenance of the Data Package service as well as the

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

implementation of additional enhancements to the service in the near future, Nasdaq proposes to increase the subscription fee for the service. Specifically, Nasdaq proposes to increase the subscription fee for the ''basic'' level from $75 to $100 per month and increase the fee for the ''premium'' level from $100 to $130 per month. As previously mentioned, this increase in subscription fees will be the first such increase since the launch of the Data Package service in December 1998.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[5] in general, and with section 15A(b)(5) of the Act,[6] in particular, in that it provides 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 NASD operates or controls. Specifically, use of the Data Package service is voluntary and the subscription fees will be imposed on all member firms equally based on the level of service selected. In addition, the increase in fees will help cover the costs associated with maintaining and enhancing the Data Package service.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of rule 19b–4 thereunder,[8] because it establishes or changes a due, fee, or other charge imposed by the Association. 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, 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 Association. All submissions should refer to file number SR–NASD–2003–129 and should be submitted by September 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21823 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48365; File No. SR–NYSE–98–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the New York Stock Exchange, Inc. Relating to Margin Requirements

August 19, 2003.

I. Introduction

On April 28, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and rule 19b–4 thereunder,[2] a proposal to amend NYSE rule 431, ''Margin Requirements.'' The NYSE's proposed rule change was published for comment in the **Federal Register** on August 5, 1998.[3]

The NYSE filed Amendment Nos. 1, 2, and 3 to the proposal on January 5, 1999, November 6, 2002, and May 12, 2003, respectively. In addition, on March 6, 2000, the NYSE filed an Information Memo (''Information Memo'') that sets forth the general requirements for the written risk analysis methodology that members will be required to maintain in connection with good faith securities transactions in exempt accounts. Amendment Nos. 1, 2, and 3, as well as the Information Memo, were published for comment in the **Federal Register** on July 14, 2003.[4]

The Commission received one comment regarding the proposal,[5] as initially published, and the NYSE submitted a response to that comment.[6] As described more fully below, the Commission received two additional comment letters following the publication of the 2003 Release.[7] This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Background

Section 7 of the Exchange Act[8] authorizes the Board of Governors of the Federal Reserve System (''Federal Reserve Board'') to establish requirements for the purchase or carrying of securities on margin.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882.

[4] *See* Securities Exchange Act Release No. 48133 (July 7, 2003), 68 FR 41672 (July 14, 2003) (''2003 Release'').

[5] *See* letter from Paul Saltzman, Senior Vice President and General Counsel, The Bond Market Association (''TBMA'') and Patricia Brigantic, Vice President and Senior Associate General Counsel, TBMA, to Jonathan Katz, Secretary, Commission, dated August 26, 1998 (''TBMA I'').

[6] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 5, 1999. TBMA I supported the proposal but raised questions regarding the definition of ''exempt account'' and the treatment of accounts that currently qualify as exempt but that would not satisfy the proposal's financial threshold for exempt accounts. The NYSE answered the questions raised in TBMA I in its response. TBMA I and the NYSE's response are described more fully in the 2003 notice, *supra* note 4.

[7] *See* letter from H. Lake Wise, Executive Vice President and Chief Legal Officer, Daiwa Securities America Inc., to Jonathan Katz, Secretary, Commission, dated August 4, 2003 (''Daiwa Letter''); and letter from Paul Saltzman, Executive Vice President and General Counsel, TBMA, to Jonathan G. Katz, Secretary, Commission, dated August 8, 2003 (''TBMA II'').

[8] 12 U.S.C. 78(g).

Pursuant to this authority, the Federal Reserve Board promulgated Regulation T,[9] which sets minimum initial margin requirements. Regulation T provides that transactions in non-equity securities are subject to either ''good faith'' margin requirements [10] or the level set by the rules of a self-regulatory organization (''SRO''), whichever is higher.[11] Accordingly, the maintenance margin requirements established by the NYSE or another SRO set the minimum margin levels for non-equity securities.[12]

As described more fully below, the proposal amends NYSE rule 431 to: (1) Lower the customer maintenance margin requirements for certain non-equity securities; and (2) permit good faith margin treatment for certain non-equity securities held in ''exempt accounts,'' as defined in the proposal.

B. Reduced Customer Maintenance Margin for Non-Equity Securities Not Held in Exempt Accounts

With respect to non-equity securities that are not held in exempt accounts, the proposal: (1) Reduces the customer maintenance margin requirement for highly rated foreign sovereign debt [13] from 20% of current market value to 1% to 6% of current market value, depending on the time to maturity; (2) reduces the customer maintenance margin requirement for exempted securities other than U.S. government obligations from 15% of current market value to 7% of current market value; (3) reduces the customer maintenance margin requirement for investment grade non-equity securities [14] from 20% of current market value to 10% of current market value; and (4) establishes a customer maintenance margin requirement of 20% of current market value for all other marginable non-equity securities.[15]

C. Good Faith Margin Treatment for Certain Non-Equity Securities Held in Exempt Accounts

1. Good Faith Margin Treatment

The proposal will permit broker-dealers to effect transactions in ''exempt accounts'' without being required to collect either margin or marked to the market losses [16] on exempted securities, mortgage-related securities,[17] or major foreign sovereign debt securities.[18] However, a broker-dealer must take a capital charge for any uncollected marked to the market losses on exempt account positions in these securities.[19]

For transactions in exempt accounts involving highly rated foreign sovereign debt [20] and investment grade debt,[21] the proposal establishes margin requirements of 0.5% and 3%, respectively.[22] Although a broker-dealer is not required to collect this margin, it must take a capital charge for any uncollected margin and for any uncollected marked to the market losses.[23]

2. Limitation on Capital Charges

The proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses.[24] Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital [25] on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. The broker-dealer also must notify the NYSE that it has reached the 5% or 25% threshold.

3. Definition of Exempt Account

The proposal defines ''exempt account'' to include the accounts of certain regulated entities, including banks, savings and loans, insurance companies, and registered investment companies. In addition, the proposal defines an ''exempt account'' to include any person that has a net worth of at least $40 million and financial assets of at least $45 million and who: (1) Is an issuer of registered securities; (2) is an issuer of securities that provides the Commission with the information required under rule 12g3–2(b) under the Exchange Act;[26] (3) is a person with respect to which there is publicly available certain information required in rule 15c2–11 under the Exchange Act;[27] or (4) makes available to the broker-dealer such current information regarding the person's ownership, business, and financial condition (including a current audited statement of financial condition, statement of income, or comparable financial reports) that the broker-dealer reasonably believes to be accurate, sufficient for the purposes of performing a risk analysis in respect of the person.[28]

4. Written Risk Analysis Methodology

Under the proposal, a broker-dealer must maintain a written risk analysis methodology for managing the credit risk associated with extending good faith margin on securities transactions in exempt accounts.[29] The NYSE has prepared an Information Memo providing guidelines for the risk analysis methodology that it will distribute to members following approval of the proposal. The Information Memo states that a member's written risk analysis methodology should include the following:

- Procedures for obtaining and reviewing the appropriate customer account documentation and the customer financial information necessary to determine exempt account status for the extension of credit under the rule;
- Procedures and guidelines for the determination, review and approval of credit limits to customers and across all customers who qualify as exempt accounts under the rule;
- Procedures and guidelines for monitoring credit risk exposure to the

[9] 12 CFR 220 *et seq.*

[10] Regulation T defines ''good faith'' margin as the amount of margin that a broker-dealer would require in exercising sound credit judgment.

[11] 12 CFR 220.12(b).

[12] *See* NYSE rule 431(c).

[13] The proposal defines ''highly rated foreign sovereign debt securities'' as debt securities issued or guaranteed by the government of a foreign country, its provinces, states or cities, or a supranational entity that are assigned a rating in one of the two top rating categories by at least one nationally recognized statistical rating organization. *See* NYSE rule 431(a)(9).

[14] The proposal defines ''investment grade debt'' as any debt securities assigned a rating in one of the top four rating categories by at least one nationally recognized statistical rating organization. *See* NYSE rule 431(a)(10).

[15] The proposal defines ''other marginable non-equity securities'' to include debt securities not traded on a national securities exchange that meet certain requirements and private pass-through securities not guaranteed by a U.S. government agency that meet certain requirements. *See* NYSE rule 431(a)(16).

[16] Marked to the market losses are unrealized losses on a position in securities resulting from a decline in the position's market value.

[17] The proposal defines ''mortgage related securities'' to mean securities that fall within the definition in section 3(a)(41) of the Exchange Act. *See* NYSE rule 431(a)(12).

[18] The proposal defines ''major foreign sovereign debt securities'' as debt securities issued or guaranteed by the government of a foreign country or supranational entity that are assigned a rating in the top rating category by at least one nationally recognized statistical rating organization. *See* NYSE rule 431(a)(11).

[19] *See* NYSE rule 431(e)(2)(F).

[20] *See supra* note 13.

[21] *See supra* note 14.

[22] *See* NYSE rule 431(e)(2)(G).

[23] *See* NYSE rule 431(e)(2)(G).

[24] *See* NYSE rule 431(e)(2)(H).

[25] Generally, tentative net capital is a broker-dealer's net worth after deducting most illiquid assets but before making haircut deductions.

[26] 17 CFR 240.12g3–2(b).

[27] 17 CFR 240.15c2–11.

[28] *See* NYSE rule 431(a)(13).

[29] *See* NYSE rule 431(e)(2)(H).

organization relating to exempt account customers;

• Procedures and guidelines for the use of stress testing of exempt accounts in order to monitor market risk exposure from exempt accounts individually and in the aggregate; and

• Procedures providing for the regular review and testing of these risk management procedures by an independent unit such as internal audit, risk management, or other comparable group.

III. Summary of Comments

The Commission received two comment letters following the publication of the 2003 Release.[30] One commenter expressed strong support for the proposal.[31] The other commenter limited its remarks to the provisions of the proposal affecting transactions in foreign sovereign debt and expressed support for those provisions.[32] Specifically, this commenter maintained that NYSE rule 431 currently imposes high margin requirements on transactions in foreign sovereign debt, which the commenter believes have resulted in the exclusion of U.S. broker-dealers from significant segments of international bond markets. The commenter believed that the proposal would create more reasonable margin requirements for foreign sovereign debt while protecting U.S. broker-dealers and their customers from undue risk.

IV. Discussion

Section 6(c)(3)(A) of the Exchange Act[33] provides, among other things, that a national securities exchange may condition membership privileges on compliance with the exchange's own financial responsibility rules. Pursuant to this authority, the NYSE is authorized to promulgate rules governing the financial responsibility requirements of its members. In addition, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[34] In particular, as described above, for positions not maintained in exempt accounts, the proposal reduces the customer maintenance margin requirement for certain non-equity securities and establishes a customer maintenance margin requirement of 20% of current market value for other marginable non-equity securities. The Commission believes that these requirements are consistent with the risks of those securities.

The proposal also permits the extension of good faith margin to certain non-equity securities held in exempt accounts. The Commission notes that the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least $40 million and financial assets of at least $45 million about whom certain information is publicly available or who make available to the broker-dealer certain current financial information. The Commission believes that these requirements are important to the broker-dealer's evaluation of the creditworthiness of the exempt account borrower and its ability to make an informed decision regarding an extension of good faith margin to the exempt account.

The Commission also notes that the proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses. Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. In addition, the proposal requires broker-dealers to maintain a written risk analysis methodology for assessing the amount of good faith credit extended to exempt accounts and assures that a broker-dealer has procedures for determining, approving, and monitoring extensions of credit to exempt accounts. The Commission believes that these requirements establish important safeguards to minimize potential risks to a broker-dealer.

Accordingly, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Exchange Act,[35] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[36] that the proposed rule change (SR–NYSE–98–14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21822 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

[30] *See* Daiwa letter and TBMA II, *supra* note 7. As noted above, the Commission received a comment letter from TBMA following the initial publication of the proposal. *See supra* notes 5 and 6. TBMA I and the NYSE's response are described more fully in the 2003 release, *supra* note 4.

[31] *See* TBMA II, *supra* note 7.

[32] *See* Daiwa letter, *supra* note 7.

[33] 15 U.S.C. 78f(c)(3)(A).

[34] In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3535]

Commonwealth of Pennsylvania

Crawford County and the contiguous counties of Erie, Mercer, Venango and Warren in the Commonwealth of Pennsylvania; and Ashtabula and Trumbull Counties in the State of Ohio constitute a disaster area as a result of severe storms and flooding that occurred between July 21 and July 28, 2003. The storms caused serious damage to a number of homes and businesses throughout the county. Applications for loans for physical damage as a result of the disaster may be filed until the close of business on October 14, 2003, and for economic injury until the close of business on May 13, 2004, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.625
Homeowners Without Credit Available Elsewhere	2.812
Businesses With Credit Available Elsewhere	5.906
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.953
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.953

The number assigned to this disaster for physical damage is 353511 for

Pennsylvania; and 353611 for Ohio. The number assigned to this disaster for economic injury is 9W7000 for Pennsylvania; and 9W7100 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 13, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–21798 Filed 8–25–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 00–4(2)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling (AR) 00–4(2)—*Curry* v. *Apfel*, 209 F.3d 117 (2d Cir. 2000).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e), and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security AR 00–4(2).

EFFECTIVE DATE: The rescission of this AR is effective on September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Office of Acquiescence and Litigation Coordination, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1695.

SUPPLEMENTARY INFORMATION: An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), we may rescind an AR as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On September 11, 2000, we published AR 00–4(2) (65 FR 54879) to reflect the holding in *Curry* v. *Apfel*, 209 F.3d 117 (2d Cir. 2000). In *Curry*, the United States Court of Appeals for the Second Circuit held that, at step five of the sequential evaluation process for determining disability, we have the burden of proving that a claimant has the residual functional capacity to perform other work which exists in the national economy.

In this issue of the **Federal Register**, we are publishing final rules that, among other things, amend Social Security Regulations No. 4 and 16 (20 CFR 404.1512(c) and (g), 416.912(c) and (g), 404.1520(g), 416.920(g), 404.1545(a)(3) and (5), 416.945(a)(3) and (5), 404.1560(c) and 416.960(c)) to clarify our rules about the responsibility that you have to provide evidence and the responsibility that we have to develop evidence in connection with your claim of disability. When we decide your case at step five of the sequential evaluation process, we are responsible for providing evidence that demonstrates other work that you can do exists in significant numbers in the national economy. However, we do not have the burden to prove what your residual functional capacity is. The final rules also explain that we use at step five the same residual functional capacity assessment that we used for determining whether you could do your past relevant work at step four of the sequential evaluation process. We explain in the preamble to the final rules that these clarifying regulatory amendments are consistent with the Supreme Court's decision in *Bowen* v. *Yuckert*, 482 U.S. 137, 146 n.5 (1987).

Because these changes in our regulations clarify our policy that was the subject of the *Curry* AR, we are rescinding AR 00–4(2) concurrently with the effective date of the final rules. The final rules and this notice of rescission restore uniformity to our nationwide system of rules, in accordance with our commitment to the goal of administering our programs through uniform national standards.

We will continue to apply this AR to your claim if it is readjudicated under our acquiescence regulations (20 CFR 404.985(b)(2) and 416.1485(b)(2)).

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: May 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–21612 Filed 8–25–03; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 90–3(4)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling (AR) 90–3(4)—*Smith* v. *Bowen*, 837 F.2d 635 (4th Cir. 1987).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e), and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security AR 90–3(4).

EFFECTIVE DATE: The rescission of this AR will be effective September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Office of Acquiescence and Litigation Coordination, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1695.

SUPPLEMENTARY INFORMATION: An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), we may rescind an AR as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On July 16, 1990, we published AR 90–3(4) (55 FR 28949) to reflect the holding in *Smith* v. *Bowen*, 837 F.2d 635 (4th Cir. 1987). In *Smith*, the United States Court of Appeals for the Fourth Circuit held that, under 20 CFR 404.1566(e), we could not rely on a vocational expert's testimony in determining that an individual can do his or her past relevant work at step four of the sequential evaluation process for determining disability.

In this issue of the **Federal Register**, we are publishing final rules, that among other things, amend Social Security Regulations No. 4 and 16 (20 CFR 404.1560(b) and 416.960(b)) to clarify that we may use the services of a vocational expert, vocational specialist or other vocational resources at step four of the sequential evaluation process.

Because the changes in the regulations clarify our policy on using vocational expert evidence at step four that was the subject of the *Smith* AR, we are rescinding AR 90–3(4) concurrently with the effective date of the final rules. The final rules and this notice of rescission restore uniformity to our nationwide system of rules, in accordance with our commitment to the goal of administering our programs through uniform national standards.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004

Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: May 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–21611 Filed 8–25–03; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: TVA will convene a meeting of the Regional Resource Stewardship Council (Regional Council) to obtain views and advice on the topic of TVA's involvement in recreation. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Overview of current TVA role in recreation.

(2) Review of recreation questions to be addressed by the Regional Council.

(3) National perspective from federal recreation providers.

(4) Regional, state, and commercial viewpoints on TVA's role with regard to recreation.

(5) Recreation trends.

(6) Public comments on the topic of TVA's involvement in recreation.

(7) Regional Council discussion on the topic of TVA's involvement in recreation.

The Regional Council will hear opinions and views of citizens by providing a public comment session. The Public Comment session will be held from 9:20 a.m. to 10:20 a.m. EDT on Thursday, September 11, 2003. Citizens who wish to express views and opinions on the topic of TVA involvement in recreation may do so during the Public Comment portion of the agenda. Public Comments participation is available on a first-come, first-served basis. Speakers addressing the Regional Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak are requested to register at the door and are then called on by the Regional Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Wednesday, September 10, 2003, from 8:30 a.m. to 4:30 p.m. and on Thursday, September 11, 2003, from 8 a.m. to 3:30 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held in the auditorium at the Tennessee Valley Authority headquarters, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L Hill, 400 West Summit Hill Drive WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: August 19, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 03–21739 Filed 8–25–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Guidance Material For 14 CFR § 33.28, Reciprocating Engines, Electrical And Electronic Engine Control Systems

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of availability of advisory circular.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of Advisory Circular (AC) Number 33.28–2, Guidance Material For 14 CFR 33.28, Reciprocating Engines, Electrical And Electronic Control Systems.

DATES: The Engine and Propeller Directorate, Aircraft Certification Service, issued AC 33.28–2 on August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Rumizen, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 0183–5299; telephone: (781) 238–7113; fax: (781) 238–7199; e-mail: *mark.rumizen@faa.gov.* The subject AC is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.*

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on July 10, 2002 (67 FR 45780) to announce the availability of the proposed AC and invite interested parties to comment.

Background

Electrical and Electronic Engine Control (EEC) technology was initially applied to turbine engines designed for large transport aircraft applications. Therefore, the information and guidance for showing compliance with § 33.28 provided by the FAA was oriented toward these applications. However, the increasing use of EEC systems in reciprocating piston engines has created a need for guidance specifically for reciprocating engines. This AC provides a means, but not the only means, of compliance with § 33.28 that addresses these issues.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on August 13, 2003.

Marc J. Bouthillier,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–21773 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Release Airport Property at the Brownsville/South Padre Island International Airport, Brownsville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Brownsville/South Padre Island International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 25, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Brown, Director of Aviation, at the following address: City of Brownsville, Department of Aviation, 700 South Minnesota Avenue, Brownsville, Texas 78521–5721.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Clark, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5650, *e-mail: Rodney.Clark@faa.gov, fax:* (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Brownsville/South Padre Island International Airport under the provisions of the AIR 21.

On June 24, 2003, the FAA determined that the request to release property at Brownsville/South Padre Island International Airport, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, 30 days from the posting of this **Federal Register** notice.

The following is a brief overview of the request:

The City of Brownsville requests the release of 1.327 acres of non-aeronautical airport property. The land is part of a War Assets Administration deed of airport property to the City in 1948. The funds generated by the release will be used for upgrading, maintenance, operation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Brownsville/South Padre Island International Airport, telephone number (956) 542–4373.

Issued in Fort Worth, Texas on August 5, 2003.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 03–21772 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Update to Noise Compatibility Program and Request for Review; Austin-Bergstrom International Airport Austin, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed update to the existing noise compatibility program that was submitted for Austin-Bergstrom International Airport under the provisions of title 49, U.S.C. Chapter 475 (hereinafter referred to as ''Title 49'') and 14 CFR Part 150 by City of Austin, Texas. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Austin-Bergstrom International Airport were in compliance with applicable requirements effective on April 29, 2000. The original noise compatibility program was approved on November 7, 2000. The proposed update to the noise compatibility program will be approved or disapproved on or before February 11, 2004.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is August 15, 2003. The public comment period ends October 13, 2003.

FOR FURTHER INFORMATION CONTACT: Nan L. Terry, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193–0652, (817) 222–5607. Comments on the proposed update to the noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed update to the existing noise compatibility program for Austin-Bergstrom International Airport, which will be approved or disapproved on or before February 11, 2004. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps, which meet applicable regulations, and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the way sin which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of 14 CFR Part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

On April 20, 1999, FAA published its approval noise exposure maps for the Austin-Bergstrom International Airport in the **Federal Register**. On May 25, 2000, the FAA published its approval of a final 2004 noise exposure map for the Austin-Bergstrom International Airport in the **Federal Register**. The FAA approved the original noise compatibility program on November 7, 2000 produced during Austin-Bergstrom International Airport, Austin, Texas Part 150 Noise Compatibility Study.

The FAA has formally received an update to the noise compatibility program for Austin-Bergstrom International Airport. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 11, 2004.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed update to the existing program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA 's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137.
Austin-Bergstrom International Airport, City of Austin, Aviation Department, 3600 Presidential Blvd., Austin, Texas 78719.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, August 15, 2003.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 03–21771 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–51]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 15, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 20, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15792.
Petitioner: Northwest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.505(b).
Description of Relief Sought: To permit pilots operating a single Northwest Airlines airplane to be on duty for more than 16 hours during 24 consecutive hours. The proposed exemption will be used in a one-time operation to conduct a part 121 supplemental operation in an attempt to set an around the poles world speed record flight in conjunction with the 100th anniversary of the Wright Brothers first flight at Kitty Hawk.

[FR Doc. 03–21768 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2003, there were five applications approved. This notice also includes information on two applications, one approved in April 2003 and the other approved in May 2003, inadvertently left off the April 2003 and May 2003 notices, respectively. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Kalamazoo, Kalamazoo, Michigan.
Application Number: 03–04–C–00–AZO.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $2,080,000.
Earliest Charge Effective Date: December 1, 2003.
Estimated Charge Expiration Date: May 1, 2007.
Class of Air Carriers Not Required To Collect PFC'S:
(1) Non-scheduled part 135 operators; and (2) air taxi operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Kalamazoo/Battle Creek International Airport.
Brief Description of Projects Approved for Collection and Use:
Terminal design—landside.
Terminal design—gates and bag claim.
Terminal design—security check point.
Terminal design—public terminal area.
Terminal design—PFC financial consulting service—phase I.
Decision Date: April 1, 2003.
For Further Information Contact: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: Mason City Airport Commission, Mason City, Iowa.
Application Number: 03–02–C–00–MCW.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $379,500.

Earliest Charge Effective Date: August 1, 2003.

Estimated Change Expiration Date: August 1, 2009.

Class of Air Carriers Not Required To Collect PFC'S: Nonscheduled part 135 and air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Mason City Municipal Airport.

Brief Description of Projects Approved For Collection and Use:

Runway safety area improvements.

Runway edge drains, phase 2.

Reconstruct terminal and general aviation ramps.

Reconstruct terminal restrooms.

Aircraft passenger lift.

Replace wind cone and install supplemental wind cone.

Airport master plan.

Rehabilitate runway 17/35 (design).

Acquire land in runway protection zones.

PFC consultation services.

Decision Date: May 13, 2003.

For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: County of Okaloosa, Crestview, Florida.

Application Number: 03–02–C–00–VPS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,885,235.

Earliest Charge Effective Date: August 1, 2018.

Estimated Charge Expiration Date: December 1, 2019.

Class of Air Carriers Not Required To Collect PFC'S: Charter operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Okaloosa Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Construct and equip expansion to surface public parking lot.

PFC formulation and annual administrative costs.

Decision Date: July 3, 2003.

For Further Information Contact: Bill Farris, Orlando Airports District Office, (407) 812–6331, extension 25.

Public Agency: Broward County Aviation Department, Fort Lauderdale, Florida.

Application Number: 02–05–C–00–FLL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $91,967,755.

Earliest Charge Effective Date: March 1, 2008.

Estimated Charge Expiration Date: March 1, 2011.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approach class accounts for less than 1 percent of the total annual enplanements at Fort Lauderdale—Hollywood International Airport.

Brief Description of Projects Approved for Collection and Use:

Exit roadways—pre-design.

Concourse A—pre-design.

Concourse A apron—pre-design.

International terminal—federal inspection station—design.

Automated people mover pre-design planning and programming.

Master plan update.

Brief Description of Projects Approved for Collection:

Exit roadways—final design/construction.

Taxiway C—improvements west of runway 13/31.

Taxiway C phase II—design.

Decision Date: July 14, 2003.

For Further Information Contact: Matthew J. Thys, Orlando Airports District Office, (407) 812–6331, extension 21.

Public Agency: City of St. Louis Airport Authority, St. Louis, Missouri.

Application Number: 03–03–C–00–STL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $13,806,955.

Earliest Charge Effective Date: December 1, 2016.

Estimated Charge Expiration Date: June 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Lambert-St. Louis International Airport.

Brief Description of Projects Approved for Collection and Use:

Airport maintenance facility.

Concourse C federal inspection services elevators and stairs.

Brief Description of Project Partially Approved for Collection and Use: C/D connector.

Determination: Partially approved. The portion of this project which is not in a non-revenue producing public-use area related to the movement of passengers, but rather in an area designated for concession use (approximated 30 percent) is not eligible.

Decision Date: July 18, 2003.

For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: Lexington—Fayette Urban County Airport Board, Lexington, Kentucky.

Application Number: 03–05–C–00–LEX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $53,671,204.

Earliest Charge Effective Date: December 1, 2003.

Estimated Charge Expiration Date: March 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air carriers operating under part 135 on a non-scheduled, whole-plane charter basis, that is air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Blue Grass Airport.

Brief Description of Projects Approved for Collection and Use:

Air carrier ramp expansion.

Security upgrades.

Concourse B and C stairwells.

Taxiways A rehabilitation.

Runways 8/26 rehabilitation.

Air carrier ramp rehabilitation.

PFC application development.

PFC program administration.

Brief Description of Projects Approved for Collection:

Runway safety area improvements.

Terminal interior modifications.

Concourse gate addition.

Decision Date: July 29, 2003.

For Further Information Contact: Tommy L. Dupree, Memphis Airports District Office, (901) 544–3495, extension 215.

Public Agency: Helena Regional Airport Authority, Helena, Montana.

Application Number: 03–03–C–00–HLN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,336,432.

Earliest Charge Effective Date: October 1, 2003.

Estimated Charge Expiration Date: June 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Helena Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Disabled passenger access lift acquisition.

Phase I—southside taxilane construction.

Phase II—southside taxilane construction.

Runway 9 perimeter access road.

Terminal building expansion and remodel.

Snow removal equipment acquisition.

Aircraft rescue and firefighting equipment acquisition.

Brief Description of Project Partially Approved for Collection and Use: Loop road and parking lot improvements.

Determination: The total project cost, and thus the portion to be paid by PFC revenue, was reduced after the application was submitted and before the FAA ruled on the decision.

Decision Date: July 29, 2003.

For Further Information Contact: David S. Stelling, Helena Airports District Office, (406) 449–5271.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
98–03–C–03–DSM, Des Moines, IA	05/08/03	$7,899,744	$8,782,783	05/01/04	05/01/04
03–06–C–01–GPT, Gulfport, MS	07/02/03	3,922,709	5,976,506	09/01/12	03/01/17
03–05–C–01–BUR, Burbank, CA	07/10/03	17,509,405	20,135,816	11/01/09	03/01/10
92–01–C–03–MGW, Morgantown, WV	07/14/03	63,044	54,022	01/01/94	09/01/93
95–02–C–06–STL, St. Louis, MO	07/17/03	91,640,971	75,131,773	11/01/97	07/01/97
97–03–U–04–STL, St. Louis, MO	07/17/03	NA	NA	11/01/97	07/01/97
01–07–C–01–STL, St. Louis, MO	07/17/03	99,103,000	81,330,000	03/01/15	12/01/16
*03–04–C–01–JAN, Jackson, MS	07/22/03	5,101,722	5,101,722	06/01/10	01/01/08
99–01–C–02–AEX, Alexandria, LA	07/31/03	5,378,352	10,284,927	11/01/20	12/01/22

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Jackson, MS, this change is effective on January 1, 2006.

Issued in Washington, DC, on August 19, 2003.

David S. Stelling,

Acting Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 03–21774 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–3298 and FMCSA–98–3299]

Programmatic Environmental Impact Statement and General Conformity Evaluation for Proposed North American Free Trade Agreement Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of intent.

SUMMARY: The FMCSA is issuing this notice to advise the public a Programmatic Environmental Impact Statement (PEIS) will be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) and a General Conformity Evaluation will be made pursuant to the Clean Air Act (CAA) before promulgation of the FMCSA's proposed regulations regarding (1) the application process for Mexico-domiciled motor carriers desiring to operate beyond the U.S.-Mexico border commercial zones and (2) the safety monitoring system applicable to all Mexico-domiciled motor carriers.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Rombro, Analysis Division, Office of Information Management, (202) 366–1861, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: The FMCSA is responsible for ensuring the safe operation of commercial motor vehicles within the United States. In carrying out these responsibilities, the FMCSA proposed regulations in May 2001 prescribing procedures for applications and safety monitoring for Mexico-domiciled carriers seeking authority to operate within the United States beyond the border commercial zones pursuant to the North American Free Trade Agreement and the anticipated modification by the President of the statutory moratorium on the grant of operating authority to these carriers. The proposed rules are commonly referred to as the ''Application'' and ''Safety Monitoring'' rules.

The FMCSA conducted a Programmatic Environmental Assessment (PEA) for the Application and Safety Monitoring rules. Based on the PEA, FMCSA concluded a PEIS was not required for these rules because the rules did not significantly affect the quality of the human environment. The FMCSA issued interim final Application and Safety Monitoring rules on March 7, 2002 (*see* 67 FR 12702 and 67 FR 12758). The FMCSA placed the PEA and Finding of No Significant Impact in the respective dockets.

On March 19, 2002, the FMCSA issued an interim final rule establishing certification standards for motor carrier safety auditors, investigators and inspectors (67 FR 12776). This rule (commonly referred to as the ''Certification'' rule) applied to all safety audits, inspections and reviews within the FMCSA's jurisdiction, not just those involving Mexico-domiciled carriers. Congress mandated this rule as part of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31148). However, Congress, as part of the Department of Transportation Appropriations Act for fiscal year 2002, also made issuance of the Certification rule one of several conditions that had to be met before FMCSA could expend appropriated funds to process applications filed by

Mexico-domiciled carriers seeking authority to operate in the United States beyond the border commercial zones. The FMCSA determined the Certification rule was not subject to environmental analysis due to a categorical exclusion.

A group of labor, industry, and environmental organizations sought review of the regulations in the United States Court of Appeals for the Ninth Circuit, alleging FMCSA had violated NEPA and the CAA. The Ninth Circuit ruled a PEIS and General Conformity Evaluation under the CAA were required. The Court also determined the Certification rule did not fall within any of the existing DOT categorical exclusions and therefore, the court held DOT acted arbitrarily and capriciously by failing to conduct any environmental analysis.

In light of the Ninth Circuit's opinion, the FMCSA intends to prepare a PEIS pursuant to NEPA and perform a General Conformity Evaluation pursuant to the CAA for the Application and Safety Monitoring rules. The PEIS will be developed pursuant to the Council on Environmental Quality (CEQ) regulations, 40 CFR 1500 *et seq.*, and DOT Order 5610.1C, which supplements the CEQ regulations by applying them to DOT programs. The General Conformity Evaluation will be conducted pursuant to the U.S. Environmental Protection Agency's general conformity regulations, 40 CFR parts 51 and 93.

The FMCSA is currently preparing an Environmental Assessment (EA) for the Certification rule. Should the EA determine an EIS is required for the Certification rule, a supplemental Notice of Intent will be issued.

A letter describing the proposed regulations and soliciting comments will be sent to all appropriate Federal, State, local, and tribal agencies, as well as to private organizations and individuals who have expressed an interest in this matter. Interagency and public scoping meetings will be scheduled in the near future. Public notice will be given, providing the time and place of the meetings.

To ensure the full range of issues related to these proposed regulations are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed regulations and the PEIS should be directed to the FMCSA at the above address.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, and Number 20.218 National Motor Carrier Safety (MCSAP). The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 20, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–21743 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than October 27, 2003.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number _____.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Steward at *debra.steward@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Inspection Brake System Safety Standards For Freight and Other Non-Passenger Trains and Equipment (Power Brakes and Drawbars).

OMB Control Number: 2130–0008.

Abstract: Section 7 of the Rail Safety Enforcement and Review Act of 1992, Public Law No. 102–365, amended Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421, 431 *et seq.*), empowered the Secretary of Transportation to conduct a review of the Department's rules with respect to railroad power brakes and, where applicable, prescribe standards regarding dynamic brake equipment. In keeping with the Secretary's mandate and the authority delegated from him to the FRA Administrator, FRA recently published a comprehensive regulatory revision of the then current requirements related to the inspection, testing, and maintenance of the brake equipment used in freight car operations. The Final Rule focused solely on freight and other non-passenger trains, and codified and solidified the maintenance requirements related to the power brake system and its components. The collection of information is used by FRA to monitor and enforce safety requirements related to power brakes on freight cars. The collection of information is also used by locomotive engineers and road crews to verify that the terminal air brake test has been performed in a satisfactory manner.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 545 railroads.

Frequency of Submission: On occasion.

Affected Public: Businesses.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
229.27—Annual Tests	20,000 locomotives	18,000 tests	15 minutes	4,500	$166,500
232.1—Scope—Requests For Earlier Application of Requirements in Subparts A–C, F.	545 railroads	4 requests	1 hour	4	224
232.3—Applicability—Cars Not Used in Service.	545 railroads	8 cards	10 minutes	1	35
232.7—Waivers	545 railroads	20 petitions	40 hours	800	28,000
232.11—Penalties	545 railroads	1 false record	10 minutes	.20	7
232.15—Movement of Defective Equipment.	1,620,000 cars/locomotives.	128,400 tags	2.5 minutes	5,350	197,950
—Notice of Defective Car/Locomotive and Restrictions.	1,620,000 cars/locomotives.	25,000 notices	3 minutes	1,060	46,250
232.17—Special Approval Procedure.	545 railroads	4 petitions	100 hours	400	22,400
Petitions For Special Approval of Pre-Revenue Service Acceptance Testing Plan.	545 railroads	2 petitions	100 hours	200	11,200
—Copies of Petitions For Special Approval Procedure.	545 railroads	4 petitions	40 hours	160	5,600
—Statements of Interest	Public/railroads	14 statements	8 hours	112	3,920
—Comments on Special Approval Procedure Petition.	Public/railroads	13 comments	4 hours	52	1,820
232.103—General Requirements For All Train Brakes.	370,000 cars	66,660 stickers	10 minutes	11,110	230,644
232.105—General Requirements For Locomotives.	20,000 locomotives	20,000 forms	5 minutes	1,667	61,679
232.107—Air Source Requirements—Plans To Monitor All Air Yard Sources: First Year.	545 railroads	50 plans	40	2,000	38,080
—Subsequent Years	25 new railroads	1 plan	40 hours	40	2,240
—Amendments to Plan	50 existing plans	10 amendments	20 hours	200	11,200
—Record Keeping	50 existing plans	1,150 records	20 hours	23,000	805,000
—Written Operating Procedures/Plans.	545 railroads	37 plans	20 hours	740	41,440
232.109—Dynamic Brake Requirements—Records.	545 railroads	1,656,000 records	4 minutes	110,400	3,864,000
—Repair of Inoperative Dynamic Brakes.	20,000 locomotives	6,358 records	4 minutes	424	14,840
—Locomotives with Inoperative Dynamic Brakes—Tag.	20,000 locomotives	6,358 tags	30 seconds	53	1,961
—Deactivated Dynamic Brakes—Markings.	8,000 locomotives	2,800 markings	5 minutes	233	8,621
—Subsequent Years—Markings.	8,000 locomotives	20 markings	5 minutes	2	74
—Written Operating Rules—Safe Train Handling.	545 railroads	100 oper. rules	4 hours	400	22,400

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Subsequent Years—Safe Train Handling Procedures.	5 new railroads	5 oper. rules	4 hours	20	1,120
—Amendments	545 railroads	15 amendments	1 hour	15	525
—Over Speed Top Rules	545 railroads	182 rules	1 hour	182	10,192
—Requests to Increase 5 MPH Overs Speed Restriction.	545 railroads	5 requests	20.5 hours	103	3,605
—Locomotive Engineer Certification Programs/ PBrake.	545 railroads	100 amendments	16 hours	1,600	89,600
—Subsequent Years	5 new railroads	5 amendments	16 hours	80	4,480
232.111—Train Information Handling—Procedures.	545 railroads	182 procedures	50 hours	9,100	509,600
—Subsequent Years	10 new railroads	10 procedures	40 hours	400	22,400
—Amendments	100 railroads	33 amendments	20 hours	660	23,100
—Reports to Train Crews	545 railroads	2,112,000 rpts	10 minutes	352,000	13,024,000
232.203—Training Requirements: Training Programs.	545 railroads	100 programs	100 hours	10,000	560,000
—Subsequent Years	15 railroads	1 program	100 hours	100	5,600
—Amendments to Written Program.	545 railroads	182 amendments	8 hours	1,456	50,960
—Training Records	545 railroads	67,000 records	8 minutes	8,933	312,655
—Training Notifications	545 railroads	67,000 notices	3 minutes	3,350	117,250
—Validation/Assessment Plans.	545 railroads	545 copies	40 hours/1 minute	49	2,375
Amendments to Validation/ Assessment Plans.	545 railroads	50 amendments	20 hours	1,000	35,000
232.205—Class I Brake Test—Initial Terminal Insp.	545 railroads	1,656,000 notices	45 seconds	20,700	931,500
232.207—Class I A Brake Tests: 1000 Mile Insp.	545 railroads	8 designations	30 minutes	4	140
—Subsequent Years	545 railroads	1 designation	1 hour	1	35
—Amendments	545 railroads	5 amendments	1 hour	5	175
232.209—Class II Brake Tests—Intermediate Insp.	545 railroads	1,600,000	3 seconds	1,333	59,985
232.213—Extended Haul Trains—Designations.	84,000 train movements.	100 designations	15 minutes	25	875
—Records	84,000 train movements.	25,200 records	20 minutes	8,400	294,000
232.303—General Requirements—Track Brake Test.	1,600,000 freight cars.	5,600 tags	5 minutes	467	17,279
—Location of Last Track Brake Test/Single Car Test.	1,600,000 freight cars.	320,000 stenciling	5 minutes	26,667	986,679
232.305—Single Car Tests	1,600,000 freight cars.	320,000 tests/rcds	45 minutes	240,000	8,400,000
232.309—Equipment and Devices—Tests/Calibrations.	640 shops	5,000 tests	30 minutes	2,500	92,500
232.403—Design Standards For One-way EOT Devices—Unique Code.	245 railroads	12 requests	5 minutes	1	35
232.407—Operations Requiring 2-Way EOTs.	245 railroads	50,000 30 commun	30 seconds	417	18,765
232.409—Inspection and Testing of 2-Way EOTs.	245 railroads	450,000 commun	30 seconds	3,750	138,750
—Testing Telemetry Equipment.	245 railroads	32,708 markings	60 seconds	545	20,165
232.503—Process to Introduce New Brake System Technology—Special Approval.	545 railroads	1 request/letter	60 minutes	1	56
—Pre-Revenue Service Demonstration.	545 railroads	1 request	3 hours	3	168
232.505—Pre-Revenue Service Acceptance Testing Plan: Maintenance Procedure—1st Year.	545 railroads	1 procedure	160 hours	160	8,920
—Subsequent Years	545 railroads	1 procedure	160 hours	160	8,920
—Amendments	545 railroads	1 amendment	40 hours	40	1,400
—Design Descriptions—Petitions.	545 railroads	1 petition	67 hours	67	3,752

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Results Pre-Revenue Service Acceptance Testing.	545 railroads	1 report	13 hours	13	455
—Description of Brake Systems Technologies Previously Used in Revenue Service.	545 railroads	5 descriptions	40 hours	200	7,000

Total Responses: 8,643,075.

Total Estimated Total Annual Burden: 857,415 hours.

Status: Regular Review.

Title: Regional Inspection Point Listing Forms.

OMB Control Number: 2130–0551.

Abstract: Through a direct comparison of inspection data with accident/incident data, the collection of information aims to develop a profile county-by-county of what there is to inspect, and how much inspection activity was done by Federal and State railroad inspectors each year nationwide. The information collected will produce ''snapshots'' which will allow FRA to determine where the gaps are in inspection territories so that it can focus inspection resources where they will do the most good. As a result of the collection of information, FRA will be better able to equalize inspector workloads, and will be better able to make informed hiring decisions regarding the most effective placement of new inspectors. More targeted inspections will permit FRA to maximize its limited resources, and will serve to enhance overall safety on the nation's rail system.

Form Number(s): FRA F 6180.106(a)–(e).

Affected Public: Businesses.

Respondent Universe: 545 railroads.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden	Total annual burden cost
FRA 6180.106(a)	20 inspectors	280 records	5 (in minutes)	23	$736
FRA 6180.106(b)	35 inspectors	315 records	5 (in minutes)	26	832
FRA 6180.106(c)	30 inspectors	300 records	5 (in minutes)	25	800
FRA 6180.106(d)	12 inspectors	108 records	5 (in minutes)	9	288
FRA 6180.106(e)	40 inspectors	360 records	5 (in minutes)	30	960

Total Responses: 1,363.

Total Estimated Total Annual Burden: 113 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on August 19, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–21765 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 18, 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, Pub. L. 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 25, 2003, to be assured of consideration.

Departmental Offices/Office of Financial Institutions Policy

OMB Number: 1505–0190.

Form Number: None.

Type of Review: Extension.

Title: Terrorism Risk Insurance Program Rebuttal of Controlling Influence Submissions.

Description: 31 CFR 50.8 specifies a rebuttal procedure that requires a written submission by a insurer that seeks to rebut a regulatory presumption of ''controlling influence'' over another insurer under the Terrorism Risk Insurance Program, to provide Treasury with necessary information to make a determination.

Respondents: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 40 hours.

Frequency of Response: Other (one time).

Estimated Total Reporting Burden: 400 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–21801 Filed 8–25–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 18, 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 22, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0087.

Form Number: 1040–ES, 1040–ES (NR), and 1040–ES(Espanol).

Type of Review: Extension.

Title: Form 1040–ES: Estimated Tax for Individuals;

Form 1040–ES (NR): U.S. Estimated Tax for Nonresident Alien Individuals;

Form 1040–ES (Espanol): Contribuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre El Empleo de Empleados Domesticos—Puerto Rico.

Description: Form 1040–ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax due is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if estimated tax has been properly computed and timely paid.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 14,563,250.

Estimated Burden Hours Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law	Prepearing the worksheets and payment vouchers	Copying, assembling, and sending the payment voucher to the IRS
1040–ES	52 min.	28 min.	48 min.	10 min.
1040–ES (NR)	39 min.	18 min.	49 min.	10 min.
1040–ES (Espanol)	6 min.	17 min.	30 min.	10 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 94,591,282 hours.

OMB Number: 1545–0175.

Form Number: IRS Form 4626.

Type of Review: Revision.

Title: Alternative Minimum Tax—Corporations.

Description: Form 4626 is used by corporations to calculate their alternative minimum tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 60,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	17 hr., 13 min.
Learning about the law or the form.	12 hr., 36 min.
Preparing and sending the form to the IRS.	13 hr., 27 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,596,800 hours.

OMB Number: 1545–0938.

Form Number: IRS Form 1120–IC–DISC and Schedules.

Type of Review: Extension.

Title: 1120–IC–DISC: Interest Charge Domestic International Sales Corporation Return;

Schedule K (Form 1120–IC–DISC): Shareholder's Statement of IC–DISC Distributions; and

Schedule P (Form 1120–IC–DISC): Intercompany Transfer Price or Commission.

Description: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed, but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers, etc.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,200.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120–IC–DISC	94 hr., 56 min.	20 hr., 0 min.	30 hr., 48 min.	2 hr., 24 min.
Schedule K	4 hr., 4 min.	18 min.	22 min.	
Schedule P	12 hr., 40 min.	1 hr., 29 min.	1 hr., 48 min.	

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 229,676 hours.

OMB Number: 1545–0976.

Form Number: IRS Form 990–W.

Type of Review: Extension.

Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

Description: Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated tax liability on unrelated business income and on investment income for private

foundations and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed.

Respondents: Not-for-profit institutions, Business of other for-profit.

Estimated Number of Respondents/ Recordkeepers: 27,265.

Estimated Burden Hours Respondent/ Recordkeeper:

Form	Record-keeping	Learn-ing about the law or the form	Pre-paring the form
Form 990–W	10 hr., 2 min..	1 hr., 40 min..	1 hr., 55 min.
Form 990–W, Schedule A (Pt. I).	11 hr., 14 min..	42 min.	54 min.
Form 990–W, Schedule A (Pt. II).	23 hr., 26 min..	12 min.	35 min.
Form 990–W, Schedule A (Pt. III).	4 hr., 32 min..	.....	4 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 387,392 hours.

OMB Number: 1545–0991.

Form Number: IRS Form 8633.

Type of Review: Extension.

Title: Application to Participate in the IRS e-file Program.

Description: Form 8633 is used by tax preparers, electronic return collectors, software firms, service bureaus and electronic transmitters, as an application to participate in the electronic filing program covering individual income tax returns.

Respondents: Business of other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Respondent: 1 hour.

Estimated Total Reporting Burden: 50,000 hours.

OMB Number: 1545–1561.

Form Number: IRS Form 8853.

Type of Review: Extension.

Title: Archer MSAs and Long-Term Care Insurance Contracts.

Description: This form is used by individuals to report general information about their medical savings accounts (MSAs), to figure their MSA deductions, and to figure their taxable distributions from MSAs. The form is also used to report taxable payments from long-term care (LTC) contracts.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 56,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	1 hr., 31 min.
Learning about the law or the form.	34 min.
Preparing the form	1 hr., 42 min.
Copying, assembling, and sending the form to the IRS.	46 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 100,795 hours.

OMB Number: 1545–1690.

Notice Number: Notice 2000–28.

Type of Review: Extension.

Title: Coal Exports.

Description: Notice 2000–28 provides guidance relating to the coal excise tax imposed by section 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a nontaxable sale of coal for export or for obtaining a credit or refund when tax has been with respect to a nontaxable sale of coal for export.

Respondents: Business of other for-profit.

Estimated Number of Respondents/ Recordkeeper: 400.

Estimated Burden Hours Respondent/ Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 400 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.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–21802 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 19, 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 25, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1699.

Regulation Project Number: REG–103805–99 Final.

Type of Review: Extension.

Title: Agent for Consolidated Group.

Description: The information needed in order for a terminating common parent of a consolidated group to designate a substitute agent for the group and receive approval of the Commissioner, or for a default substitute agent to notify the Commissioner that it is the default substitute agent, pursuant to Treasury Regulation § 1.1502–77(d). The Commissioner will use the information to determine whether to approve the designation of the substitute agent (if approval is required) and to change the IRS's records to reflect the information about the substitute agent.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Respondent: 2 hours.

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.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–21803 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, September 19, 2003 from 11 a.m. EDT to 12:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

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 Area 3 Taxpayer Advocacy Panel will be held Friday, September 19, 2003, from 11 a.m. EST to 12:30 p.m. EST via a telephone conference call. 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 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979. The agenda will include various IRS issues.

Dated: August 19, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21828 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, September 19, 2003 from 1 p.m. e.d.t. to 2 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227 or 954–423–7977.

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 Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, September 19, 2003, from 1 p.m. e.d.t. to 2 p.m. e.d.t. via a telephone conference call. 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 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977. The agenda will include the following: Various IRS issues.

Dated: August 20, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21829 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted in Las Vegas, Nevada. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 18, 2003, and Friday, September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber 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 Area 6 Committee of the Taxpayer Advocacy Panel will be held Thursday, September 18, 2003, from 8 a.m. to 4 p.m. and Friday, September 19, 2003, from 8 a.m. to 12 p.m. Thursday's meeting will be held in conjunction with IRS's Tax Forum at the Rio Hotel in Seminar Room 4. Friday's meeting will be held at the Coyote Café at the MGM Grand Hotel. The public is invited to make oral comments on Thursday, September 18, from 2 p.m. to 4 p.m. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited time and space, notification of intent to participate in the public forum part of the meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: August 20, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21830 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Systems of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed alterations to seven Internal Revenue Service Privacy Act systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Department of the Treasury, Internal Revenue Service, is proposing to add a routine use to seven of its existing systems of records.

DATES: Comments must be received no later than September 25, 2003. The alteration to the systems of records will be effective October 6, 2003, unless the IRS receives comments, which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison & Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for public inspection and copying in the Internal Revenue Service Freedom of Information Reading Room, 1111 Constitution Avenue, NW.,

Room 1621, Washington, DC 20224, telephone number (202) 622–5164, (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Greg Rehak, Management Controls Coordinator, Agency-Wide Shared Services, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3702 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Internal Revenue Service (IRS) is adding a routine use to the following systems of records: Treasury/IRS 36.001-Appeals, Grievances and Complaints Records; Treasury/IRS 36.002-Employee Activity Records; Treasury/IRS 36.003-General Personnel and Payroll Records; Treasury/IRS 36.005-Medical Records; Treasury/IRS 36.008-Recruiting, Examining and Placement Records; Treasury/IRS 36.009-Retirement, Life Insurance and Health Benefits Records, and Treasury/IRS 38.001-General Training Records.

In keeping with the Government's policy to rely on commercial sources to supply products and services the Government needs, the IRS on occasion retains the services of contractors to perform routine functions relating to personnel administration. The disclosure of information maintained in IRS' systems of records may be required in order for the contractor to perform the services for which it has been hired. If a disclosure is necessary, the contractor to which the disclosure is made will be subject to the same limitations applicable to IRS officers and employees under the Privacy Act.

In addition, the IRS will be following OMB Guidelines under which government agencies have been directed to become more efficient while sustaining service to customers by using competitive sourcing.

The system notices were last published in their entirety in the **Federal Register**, December 10, 2001 (Volume 66, Number 237) pp. 63819–63835.

The report of altered systems of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

For reasons set forth above, IRS proposes to alter seven systems of records as follows:

TREASURY/IRS 36.001

SYSTEM NAME:

Appeals Grievances and Complaint Files-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period ''.'' at the end of routine use 10 is replaced with a semicolon '';'', and the following routine use is added at the end thereof:

''(11) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.''

* * * * *

Treasury/IRS 36.002

SYSTEM NAME:

Employee Activity Records-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period ''.'' at the end of routine use 5 is replaced with a semicolon '';'', and the following routine use is added at the end thereof:

''(6) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.''

* * * * *

Treasury/IRS 36.003

SYSTEM NAME:

General Personnel and Payroll Records-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period ''.'' at the end of routine use 22 is replaced with a semicolon '';'', and the following routine use is added at the end thereof:

''(23) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.''

* * * * *

Treasury/IRS 36.005

SYSTEM NAME:

Medical Records-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period ''.'' at the end of routine use 15 is replaced with a semicolon '';'', and the following routine use is added at the end thereof:

''(16) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.''

* * * * *

Treasury/IRS 36.008

SYSTEM NAME:

Recruiting, Examining and Placement Records-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period ''.'' at the end of routine use 12 is replaced with a semicolon '';'', and the following routine use is added at the end thereof:

''(13) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.''

* * * * *

Treasury/IRS 36.009

SYSTEM NAME:

Retirement, Life Insurance and Health Benefits Records System-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period ''.'' at the end of routine use 14 is replaced with a semicolon '';'', and the following routine use is added at the end thereof:

''(15) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.''

* * * * *

Treasury/IRS 38.001

SYSTEM NAME:

General Training Records-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period ''.'' at the end of routine use 3 is replaced with a semicolon '';'', and the following routine use is added at the end thereof:

''(4) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.''

* * * * *

Dated: August 19, 2003.

W. Earl Wright Jr.,

Acting Chief Management and Administrative Programs Officer.

[FR Doc. 03–21800 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet September 16–18, 2003, from 8:30 a.m. to 5 p.m. each day. The meeting will be held at the Marriott Residence Inn, 1199 Vermont Avenue, NW., Washington Conference Room, Washington, DC 20005. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the need of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by the VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On September 16, the agenda will include briefings and updates on legislative issues affecting women veterans, the Women Veterans Health Program and the National Survey of Veterans. On September 17, the Committee will be briefed on issues regarding burial for women veterans, Committee membership requirements, and compensation and pension benefits. On September 18, the Committee will be briefed on veterans' health issues, Capital Asset Realignment for Enhanced Services (CARES), the VA Homeless Program and related issues that the Committee members may choose to introduce.

Any member of the public wishing to attend should contact Ms. Desiree Long, at the Department of Veterans Affairs, Center for Women Veterans (OOW), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Long may be contacted either by phone at (202) 273–6193, fax at (202) 273–7092, or e-mail at *OOW@mail.va.gov.* Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: August 13, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–21797 Filed 8–25–03; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
August 26, 2003

Part II

Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, or Age in Programs or Activities Receiving Federal Financial Assistance; Final Rule

Department of Agriculture
Nuclear Regulatory Commission
Department of Energy
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Tennessee Valley Authority
Department of State
Agency for International Development
Department of Justice
Department of Labor
Department of Veterans Affairs
Environmental Protection Agency
General Services Administration
Department of the Interior
Department of Homeland Security
Federal Emergency Management Agency
National Science Foundation
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
Institute of Museum and Library Services
Corporation for National and Community Service
Department of Transportation

DEPARTMENT OF AGRICULTURE

7 CFR Parts 15, 15b

RIN 0566–AB78

NUCLEAR REGULATORY COMMISSION

10 CFR Part 4

RIN 3130–AG65

DEPARTMENT OF ENERGY

10 CFR Part 1040

RIN 1901–AA86

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 112, 117

RIN 3245–AE59

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1250, 1251, 1252

RIN 2700–AC41

DEPARTMENT OF COMMERCE

15 CFR Parts 8, 8b, 20

RIN 0690–AA30

TENNESSEE VALLEY AUTHORITY

18 CFR Parts 1302, 1307, 1309

RIN 3316–AA20

DEPARTMENT OF STATE

22 CFR Parts 141, 142, 143

RIN 1400–AB17

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Parts 209, 217, 218

RIN 0412–AA45

DEPARTMENT OF JUSTICE

28 CFR Part 42

RIN 1190–AA49

DEPARTMENT OF LABOR

29 CFR Parts 31, 32

RIN 1291–AA31

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 18

RIN 2900–AK13

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 7

RIN 2020–AA43

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6, 101–8

RIN 3090–AH33

DEPARTMENT OF THE INTERIOR

43 CFR Part 17

RIN 1090–AA77

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 7

RIN 1660–AA12

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 605, 611, 617

RIN 3145–AA38

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Parts 1110, 1151, 1156

RIN 3135–AA17

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Parts 1110, 1170

RIN 3136–AA24

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

45 CFR Part 1110

RIN 3137–AA11

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1203, 1232

RIN 3045–AA29

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 21, 27

RIN 2105–AC96

Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance; Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

AGENCIES: Department of Agriculture; Nuclear Regulatory Commission; Department of Energy; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Tennessee Valley Authority; Department of State; Agency for International Development; Department of Justice; Department of Labor; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security; National Science Foundation; National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services, National Foundation on the Arts and the Humanities; Corporation for National and Community Service; Department of Transportation (collectively, ''the Agencies'').

ACTION: Joint final rule.

SUMMARY: The Agencies amend their regulations implementing Title VI of the Civil Rights Act of 1964 (''Title VI''), section 504 of the Rehabilitation Act of 1972 (''section 504''), and the Age Discrimination Act of 1975 (''Age Discrimination Act''). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive federal financial assistance. In 1988, the Civil Rights Restoration Act (''CRRA'') added definitions of ''program or activity'' and ''program'' to Title VI and added a definition of ''program or activity'' to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. These amendments incorporate the CRRA's definitions of ''program or activity'' and ''program'' into Title VI, section 504,

and Age Discrimination Act regulations of the Agencies, and promote consistent and adequate enforcement of these statutes by the Agencies.[1]

DATES: Effective September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, (202) 307–2222 voice, (202) 307–2678 TTY, (202) 307–0595 fax.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Overview

On December 6, 2000, the Agencies published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 76460) proposing to amend the regulations governing nondiscrimination on the basis of race, color, national origin, handicap, and age to conform with the Civil Rights Restoration Act of 1987, Pub. L. 100–259 (''CRRA'').

The Agencies are amending their civil rights regulations to conform to provisions of the CRRA regarding the scope of coverage under civil rights statutes they administer. These statutes include Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.* (''Title VI''); section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (''section 504''); and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.* (''Age Discrimination Act''). Title VI prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive federal financial assistance; section 504 prohibits discrimination on the basis of disability in all programs or activities that receive federal financial assistance; and the Age Discrimination Act prohibits discrimination on the basis of age in all programs or activities that receive federal financial assistance. (Note that the CRRA does not affect coverage under federal employment nondiscrimination statutes, such as Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act, and the Age Discrimination in Employment Act.)

Background Information

The principal conforming change amends each of these regulations to add a definition of ''program or activity'' or ''program'' that reflects the statutory definition of ''program or activity'' or ''program'' enacted as part of the CRRA. We believe that adding this statutory definition to the regulatory language is the best way to avoid confusion on the part of beneficiaries, recipients, government entities, and other interested parties about the scope of civil rights coverage. These amendments also conform to a final rule under Title IX of the Education Amendments of 1972, as amended, to establish common regulations for 21 federal agencies published on August 30, 2000, 65 FR 52857. That common rule incorporated the statutory definitions of ''program or activity'' and ''program'' enacted as part of the CRRA.

When originally issued and implemented, the Agencies' civil rights regulations were interpreted by the Agencies to mean that acceptance of federal assistance by a recipient resulted in broad coverage of an entity. The Supreme Court, however, interpreted ''program or activity'' in restrictive terms. *Grove City College* v. *Bell*, 465 U.S. 555, 570–74 (1984). The Court concluded in *Grove City College* that federal student financial assistance provided to a college established jurisdiction under Title IX only over the college's financial aid program, not the entire college. Since Title IX was patterned after Title VI, this interpretation significantly narrowed the prohibitions of Title VI and two other statutes based on it: the Age Discrimination Act and section 504. *See* S. Rep. No. 100–64, at 2–3, 11–16, *reprinted in* 1988 U.S.C.C.A.N. at 3–5, 13–18. Following the Supreme Court's decision in *Grove City*, the Agencies changed their interpretation, but not the language, of the governing regulations to be consistent with the Court's restrictive, program-specific definition of ''program or activity.''

In 1988, Congress enacted the CRRA to restore the prior consistent and long-standing executive branch interpretation and ''broad, institution-wide application'' of those laws as previously administered. *See* S. Rep. No. 100–64, at 4, *reprinted in* 1988 U.S.C.C.A.N. at 6. Congress enacted the CRRA in order to remedy what it perceived to be a serious narrowing by the Supreme Court of a longstanding administrative interpretation of the coverage of these laws. At that time, the Agencies reinstated their broad interpretation to be consistent with the CRRA, again without changing the language of the regulations. To the extent there was any inconsistency between the language of the regulations and the language of the CRRA, it was and remains the Agencies' interpretation that the CRRA superseded the regulations and, therefore, the regulations must be read in conformity with the CRRA. This interpretation was consistent with the understanding of Congress as expressed in the legislative history of the CRRA that the statutory definition of ''program or activity'' would take effect immediately without the need for federal agencies to amend their existing regulations. S. Rep. No. 100–64, at 32, *reprinted in* 1988 U.S.C.C.A.N. at 34.

These regulatory amendments are designed to address an issue recently raised by the Third Circuit Court of Appeals in *Cureton* v. *NCAA,* 198 F.3d 107 (3d Cir. 1999). The Third Circuit determined that, because the Departments of Health and Human Services and Education did not amend their Title VI regulations after the enactment of the CRRA, application of the Departments' Title VI regulations to disparate impact discrimination claims is ''program specific'' (*i.e.*, limited to the particular program receiving federal financial assistance), rather than institution-wide (*i.e.*, applicable to all of the operations of the institution regardless of the use of the federal funds). *See id.* at 114–16. As noted above, however, the Agencies have, since the passage of the CRRA, consistently interpreted the coverage of their Title VI regulations to reach those programs that fall within the broad statutory definition of ''program or activity.'' The *Cureton* decision thwarts clearly expressed congressional intent by giving continued effect to a judicial interpretation that Congress intended to override. In any event, the regulatory changes address the concerns raised by the Third Circuit in that the regulations would track the CRRA's statutory language and apply to both disparate impact and disparate treatment forms of discrimination. (''Disparate treatment,'' *i.e.*, intentional discrimination, refers to policies or practices that treat individuals differently based on their

[1] Since the publication of the Notice of Proposed Rulemaking (NPRM), the Federal Emergency Management Agency (FEMA) has become a component of the Department of Homeland Security (DHS). DHS published its Interim Final Rules for Title VI, Section 504, and Title IX of the Education Amendments of 1972 in the **Federal Register** on March 6, 2003. 68 FR 10904 (to be codified at 6 CFR part 21). Those rules reflect the Civil Rights Restoration Act's broadened definitions of ''program'' ''Program or activity.'' FEMA is continuing as part of this rulemaking because the DHS regulations provide that ''[t]he provisions published by this part shall be effective for all components of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component already has existing title VI regulations.'' 6 CFR 21.1. Similar language is included in DHS' Title XI and section 504 regulations.

race, color, national origin, disability, or age, as applicable. Discrimination that involves such disparate treatment is barred by the civil rights statutes and regulations. ''Disparate impact'' refers to criteria or methods of administration that have a significant adverse effect on individuals based on race, color, national origin, disability, or age, as applicable. Such criteria or practices constitute impermissible discrimination if there is no substantial legitimate justification for those criteria or practices. However, even where such a justification exists, if there is an equally effective but less discriminatory alternative, that alternative must be adopted.)

Pursuant to Executive Order 12250 (''Leadership and Coordination of Nondiscrimination Laws''), the Department of Justice (''DOJ'') requested that the Agencies jointly issue amendments to their regulations implementing Title VI, Section 504, and the Age Discrimination Act to incorporate the CRRA definitions of ''program'' and ''program or activity.'' The two federal agencies implicated in the *Cureton* decision—the Department of Education (''ED'') and the Department of Health and Human Services (''HHS'')—are promulgating separate rules to incorporate the CRRA's expanded definition of ''program or activity'' and ''program'' in their regulations. ED published its NPRM on May 5, 2000, 65 FR 26464, and published its final rule on November 13, 2000, 65 FR 68050. HHS published its NPRM on October 26, 2000, 65 FR 64194, and plans to publish its final rule soon. DOJ participated in and coordinated the promulgation of amendments to 22 other agencies' Title VI, Section 504, and Age Discrimination Act regulations. 65 FR 76460. Again, while DOJ views these modifications to be merely technical in nature, public comments were invited on these modifications.

These changes are summarized in the sections below.

Definition of ''Program or Activity'' and ''Program''

The statutory definition, which is now incorporated into the regulations, addresses the scope of coverage for four broad categories of recipients: (1) State or local governmental entities; (2) colleges, universities, other postsecondary educational institutions, public systems of higher education, local educational agencies, systems of vocational education, and other school systems; (3) private entities, such as corporations, partnerships, and sole proprietorships; and (4) entities that are a combination of any of those groups. *See* 42 U.S.C. 2000d–4a.

Under the first part of the definition, when State and local governmental entities receive financial assistance from a federal agency, the ''program or activity'' or ''program'' in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the federal assistance is extended. If, for example, a State or local agency receives federal assistance for one of many functions of the agency, all of the operations of the entire agency are subject to the nondiscrimination provisions of these regulations. In addition, ''program or activity'' or ''program'' also includes all of the operations of the entity of a State or local government that distributes the federal assistance to another State or local governmental agency or department and all of the operations of the State or local governmental entity to which the financial assistance is extended. *See* 42 U.S.C. 2000d–4a(1); S. Rep. No. 100–64, at 16, *reprinted in* 1988 U.S.C.C.A.N. at 18.

Under the second portion of the definition of ''program or activity,'' when covered educational institutions receive federal financial assistance, all of their operations are subject to the nondiscrimination requirements of the funding agency's regulations. *See* 42 U.S.C. 2000d–4a(2).

Under the third part of the definition, the degree of coverage of private entities, such as private corporations and partnerships, will vary depending on how the funding is provided, the principal purpose or objective of the entity, or how the entity is structured (*e.g.*, physically separate offices or plants). Each of the operations of private businesses that are principally engaged in education, health care, housing, social services, or parks and recreation is considered a ''program or activity'' for purposes of these regulations. *See* 42 U.S.C. 2000d–4a(3)(A)(ii). S. Rep. No. 100–64 provides numerous other examples of the scope of coverage with regard to each category of recipient, and readers are referred to this material. S. Rep. No. 100–64, at 16–20, *reprinted in* 1988 U.S.C.C.A.N. at 19–21. In addition, if federal financial assistance is extended to a private entity ''as a whole'' and the private entity is not principally engaged in the business of education, health care, housing, social services, or parks and recreation, all of the private entity's operations at all of its locations would be covered. If the private entity receives general assistance, that is, assistance that is not designated for a particular purpose, that would be considered federal financial assistance to the private entity ''as a whole.'' In other instances where financial assistance is extended directly to a geographically separate facility of an entity described in the third part of this definition, then coverage would be limited to the geographically separate facility that receives the assistance. *See* 42 U.S.C. 2000d–4a(3).

Under the fourth part of the definition, if an entity of a type not already covered by one of the first three parts of the definition is established by two or more of the entities listed under the first three parts of the definition, then all of the operations of that new entity are covered. *See* 42 U.S.C. 2000d–4a(4).

The amendments incorporate the CRRA definition of ''program or activity'' and ''program'' into the agencies' regulations. When Congress amended Title VI in the CRRA, it added definitions of both ''program or activity'' and ''program'' to the statute. Therefore, we are amending each agency's Title VI regulations to incorporate the definition of both ''program or activity'' and ''program.'' However, when Congress amended section 504 and the Age Discrimination Act in the CRRA, it added a definition of the term ''program or activity,'' but did not add a similar definition of the term ''program.'' Thus, we are amending the agencies' section 504 and Age Discrimination Act regulations to incorporate a new definition of ''program or activity'' only.

As explained below, in order to conform with the CRRA definitions of ''program or activity'' and ''program,'' the regulatory changes also modify or delete some existing sections of the Agencies' regulations that have become superfluous or incorrect following enactment of the CRRA. These regulatory changes do not change the requirements of the existing regulations.

It is important to note that the changes do not in any way alter the requirement of the CRRA that a fund termination be limited to the particular programs ''or part[s] thereof'' that discriminate, or, as appropriate, to all of the programs that are infected by the discriminatory practices. *See* S. Rep. No. 100–64, at 20, *reprinted in* 1988 U.S.C.C.A.N. at 22 (''The [CRRA] defines 'program' in the same manner as 'program or activity,' and leaves intact the 'or part thereof' pinpointing language.'').

Assurances

Several agencies' Title VI regulations included an assurance requirement that has created confusion with regard to the scope of ''program or activity'' under

these regulations. In general, these assurances, which are legal agreements between the government and recipients of federal financial assistance, are designed to ensure that recipients of federal financial assistance comply with nondiscrimination laws and do not discriminate in their programs or activities. However, some agencies had assurance provisions that were confusing in light of the CRRA because they incorrectly stated that, in some circumstances, certain parts of a program will not be covered by civil rights laws. For example, DOJ's assurance provision, which is very similar to the corresponding assurance requirements in other agencies' Title VI regulations, provided in part: ''[t]he assurance * * * shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the practices in designated parts or programs of the institution * * * will in no way affect its practices in the program of the institution * * * for which Federal financial assistance is sought. * * *'' 28 CFR 42.105(c)(2). In order to avoid any further confusion, the regulatory changes delete the above provision and similar provisions in the regulations of other agencies that incorrectly suggest that some parts of a program will not be covered under certain circumstances. These changes ensure that agency regulations reflect the broad scope of coverage of a program or activity that was contemplated by the CRRA.

Several federal agencies' Title VI regulations provided illustrative examples or applications that referred to the waiver language contained in the assurance provision. Because the waiver language in relevant assurance provisions has been deleted, similar language and references in illustrative applications and examples also have been deleted. These deletions do not affect the reach of the statutes or regulations.

Other References to ''Program'' and ''Program or Activity''

In addition, we deleted references to ''program'' and ''program or activity'' in the regulations that did not conform to the broadened CRRA definition of ''program'' and ''program or activity.'' For example, in some instances, we substituted ''Federal financial assistance'' for ''program'' or ''program or activity'' where the phrase referred to federal financial assistance. In other instances, we substituted the phrase ''aid, benefit, or service'' if that was the intended meaning. We made revisions when the terms ''program'' and ''program or activity'' were used too narrowly, *i.e.*, when they were used to indicate only a specific portion of a program that directly receives assistance. The nomenclature tables, which are charts designed to provide an easy method for viewing the words to be removed or replaced, show these conforming changes for each agency. In some instances, we changed the phrase ''program and activity'' to ''program or activity'' to conform the regulations to the term as defined in the CRRA. We did not modify the term ''activity'' when it appears separately from the phrase ''program or activity'' and is used in a manner unrelated to the CRRA phrase ''program or activity.''

In promulgating its final regulations, the Department of Education (''ED'') used the plural terms ''programs'' and ''programs or activities'' to refer generally to multiple programs or activities operated by multiple recipients. In all other instances, however, ED used the singular terms ''program'' or ''program or activity.'' ED explained that it had decided to use the singular terms in all such instances to reflect the fact that virtually all of ED's recipients, such as institutions of higher education, have only one ''program'' or ''program or activity'' encompassing all of the recipient's operations. Noting that the singular also can be interpreted to encompass the plural, ED further explained that the use of the singular was appropriate even for those cases in which ED might fund a recipient that operates more than one program or activity (such as when an individual recipient corporation has multiple plants each of which is a separate program or activity). Given the greater range of recipient entities funded by the multiple agencies participating in this joint final rule and the likelihood that most of these agencies fund recipients that may operate more than one program or activity, the participating agencies have not endeavored to make any changes to these regulations solely related to the use of the singular or plural forms of these terms. As such, the regulations of these agencies may differ from ED's regulations in terms of the use of the singular or plural form of ''program'' or ''program or activity,'' but such differences should not be interpreted to imply any legal difference in the intended scope of coverage.

Although we have generally deleted all references to ''program'' and ''program or activity'' where such references do not conform to the CRRA, we have not done so when the regulation is merely copying statutory language. For example, the regulations for some agencies contain a compliance provision that requires the agency to report any order for fund termination to the congressional committee with jurisdiction over the ''program'' involved. In this case, the term ''program'' clearly refers to Federal financial assistance, but we did not replace the word because the copied statutory language itself uses the term ''program.''

In other instances in which the term ''program'' is used in a manner inconsistent with the CRRA, we capitalized the word in order to distinguish it from the term defined by the CRRA. For example, we capitalized certain terms of art (*e.g.*, ''Historic Preservation Program,'' ''Individualized Education Program'') or names of types of federal financial assistance (*e.g.*, ''School Lunch Program'') to avoid confusion.

Other Conforming Changes

Other changes include modifications to some agencies' definition of ''recipient.'' A few agencies defined this term to include an entity that ''benefits from'' Federal financial assistance. Likewise, many agencies' section 504 and Age Discrimination Act regulations used the phrase ''receives or benefits from Federal financial assistance.'' The phrase ''or benefits from'' in this context has been deleted as it is superfluous in light of the CRRA.

Because the changes are limited to those that are related to the CRRA definition of ''program'' and ''program or activity,'' we did not make additional technical corrections unless the provision was already subject to a CRRA-related change. Likewise, we did not make other technical corrections to outdated agency or office names, with one notable exception. Since the regulations for the Department of Energy require that age discrimination complaints be filed with a specific office, we have updated the regulations to reflect the new name of that office, thereby reducing confusion for individual complainants.

Although we are not amending the content of the Agencies' appendices, the headings and introductory text describing the content are amended to conform with the CRRA. Additional conforming changes to the body of the various agency appendices will be published in the **Federal Register** in a separate document at a later date.

Coordination With the Department of Education

The Department of Education (''ED'')—one of two agencies that were implicated in the *Cureton* decision and that have decided to promulgate

separate rules to incorporate the CRRA's expanded definition of ''program or activity'' in their regulations—published its proposed rule on May 5, 2000, at 65 FR 26464, and its final rule on November 13, 2000, at 65 FR 68050. Among other modifications, ED's amendments contain several conforming changes to the following three subparts of its Section 504 regulations: (1) Preschool, Elementary, and Secondary Education; (2) Postsecondary Education; and (3) Health, Welfare, and Social Services.

Eight other Federal agencies have Section 504 regulations containing sections similar to all or a portion of the provisions in the above three subparts. Because we believe that it is particularly important to maintain consistency among Federal agencies with respect to these subparts, we have, with a few minor exceptions, followed ED's lead when amending these sections for the other eight agencies—Department of Agriculture, Department of Commerce, Department of Interior, Department of State, Department of Veterans Affairs, Agency for International Development, National Endowment for the Humanities, and National Science Foundation—that have similar regulations.

Coordination With the Department of Health and Human Services

The other agency implicated in the *Cureton* decision is the Department of Health and Human Services (HHS). Like ED, HHS promulgated its own separate NPRM, which was published on October 26, 2000 at 65 FR 64194. We coordinated with HHS, as we did with ED, to avoid any inconsistencies between this joint rule and those agencies' separate rules.

Differences Among Agencies

Some agencies lack regulations implementing section 504 or the Age Discrimination Act. In accordance with the limited scope of this regulation, we are not adding section 504 or Age Discrimination Act sections to agencies that lack such regulations. Outlined below are the agencies that do not have such implementing regulations, as well as agencies that have comprehensive rules implementing several statutes in one set of regulations or that follow the regulations of another Federal agency.

Agencies that do not have regulations implementing the Age Discrimination Act and, therefore, are amending only their regulations implementing Title VI and section 504 are: the Department of Agriculture, the Department of Labor, the Department of Defense, the Environmental Protection Agency, and the Department of Transportation. The Federal Emergency Management Agency (''FEMA'') does not have regulations applying section 504 to recipients of Federal financial assistance but, instead, operates in accordance with section 504 regulations developed by HHS. Therefore, FEMA is amending only its regulations implementing Title VI and the Age Discrimination Act. Likewise, the Small Business Administration does not have regulations applying section 504 to recipients of federal financial assistance and, therefore, is amending only its Title VI and Age Discrimination Act regulations.

In addition, the Corporation for National and Community Service (''the Corporation'') lacks regulations applying the Age Discrimination Act, Title VI, and section 504 to recipients of Federal financial assistance. Instead, the Corporation, which is the successor of ACTION, operates in accordance with Title VI and section 504 regulations promulgated by ACTION and is amending only those regulations. Similarly, the National Endowment for the Arts, the National Endowment for the Humanities (''NEH''), and the Institute of Museum and Library Services (''IMLS''), which together constitute the National Foundation on the Arts and the Humanities (''NFAH''), operate in accordance with Title VI regulations developed jointly by these three agencies and thus are amending their Title VI regulations jointly. However, NEA is separately amending its section 504 and Age Discrimination Act regulations, while NEH, which lacks an Age Discrimination Act regulation, is amending its section 504 regulation only. IMLS, which operates in accordance with NEH's section 504 regulations and does not have regulations implementing the Age Discrimination Act, is not issuing any separate amendments.

Analysis of Comments and Changes

In the NPRM, we invited comments on the proposed regulations. We received two comments. The first commenter wrote in support of the NPRM, stating that Title VI, section 504, and the Age Discrimination Act needed to be strengthened and be made uniform by adding the definitions of ''program or activity.'' The commenter also stated that the amendments would result in consistent and adequate enforcement of Title VI, section 504, and the Age Discrimination Act, and commended the Department of Justice and its ''sister Federal agencies'' for amending the regulations.

The second commenter advanced the view that the Agencies should not amend the regulations at this time because the commenter believed an amendment would be untimely due to a case then-pending before the United States Supreme Court (*Alexander* v. *Sandoval,* 532 U.S. 275 (2001)). *Sandoval* did not, however, address the focus of this rulemaking—revising the regulations to conform them to the added definition of ''program or activity'' or ''program.'' Instead, *Sandoval* addressed a different issue—whether there is an implied private right of action to enforce disparate-impact regulations promulgated under Section 602 of Title VI and concluded that there was not such a right. The Agencies have decided to proceed with the amendment of their regulations because we believe it is important to conform the regulations to the civil rights statutes as amended by the CRRA. We are, however, mindful of the Supreme Court's statements in *Sandoval* that call the validity of the Title VI disparate-impact regulations into question.[2]

In addition, in consultation with the Department of Justice, the Agencies have reviewed the regulations since publication of the NPRM and have made minor editorial and technical changes.

Applicable Executive Orders and Regulatory Certifications

Executive Order 12067

These conforming changes have been reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

Executive Order 12250

These conforming changes to the Title VI and section 504 regulations have been reviewed and approved by the Attorney General pursuant to Executive Order 12250.

Executive Order 12866

These regulations have been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', Section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, Section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget. Under the terms of the

[2] *See Sandoval,* 532 U.S. at 286 & 286 n. 6 (''[W]e assume for purposes of this decision that § 602 confers the authority to promulgate disparate-impact regulations''; ''[w]e cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' § 601 * * * when § 601 permits the very behavior that the regulations forbid.'').

order we have assessed the potential costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that there probably will be no cost impacts because these final regulations merely clarify longstanding policy of the Agencies and do not change the Agencies' practices in addressing issues of discrimination.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the joint NPRM (65 FR 76460).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975 and the Department of Health and Human Services' (''HHS'') general, government-wide implementing regulations give the Secretary of HHS the authority to review changes to the Age Discrimination Act regulations of federal agencies. This authority has been delegated to the Office for Civil Rights (''OCR''), which has reviewed and approved these conforming changes.

Small Business Regulatory Enforcement Fairness Act of 1996

It has been determined that this rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

All recipients of federal funding have been bound by these standards of liability since the passage of the CRRA, when the Agencies reinstated their broad interpretation of the terms ''program or activity'' and ''program'' and applied these regulations on an institution-wide basis without changing the language of the regulations. The joint rule merely makes the regulations track the statutory language of the CRRA, both for disparate impact and disparate treatment forms of discrimination. These regulations implement statutory amendments and longstanding agency policy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandate Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (1995), requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian tribal governments or the private sector. See 2 U.S.C. 1532.

These amendments make technical changes to existing regulations that enforce statutory prohibitions on discrimination on the basis of race, color, national origin, age, or disability. Therefore, these amendments 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 they will not significantly or uniquely affect small governments. The participating agencies certify that no actions were deemed necessary under the Unfunded Mandate Reform Act of 1995.

Regulatory Flexibility Act

The Agencies, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), have reviewed these regulations and certify that these regulations will not have a significant economic impact on a substantial number of small entities, in large part because these regulations do not impose any new substantive obligations on ederal funding recipients. All recipients of Federal funding have been bound by these standards of liability since the passage of the CRRA, when the Agencies reinstated their broad interpretation of the terms ''program or activity'' and ''program'' and applied these regulations on an institution-wide basis without changing the language of the regulations. The joint rule merely makes the regulations track the statutory language of the CRRA, both for disparate impact and disparate treatment forms of discrimination. These regulations implement statutory amendments and longstanding agency policy.

Paperwork Reduction Act

The Agencies certify that this rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

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. The rule does not subject federal funding recipients to new obligations. The regulations amend and clarify existing regulations that are required by statute pursuant to Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Therefore, in accordance with section 6 of Executive Order 13132, the Agencies have determined that these amendments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects

7 CFR Part 15

Aged, Civil rights, Religious discrimination, Sex discrimination.

7 CFR Part 15b

Civil rights, Equal employment opportunity, Grant programs—education, Individuals with disabilities.

10 CFR Part 4

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 1040

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Individuals with disabilities, Sex discrimination.

13 CFR Part 112

Civil rights, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 117

Aged, Civil rights, Reporting and recordkeeping requirements.

14 CFR Part 1250

Civil rights.

14 CFR Part 1251

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

14 CFR Part 1252

Aged, Civil rights.

15 CFR Part 8

Civil rights.

15 CFR Part 8b

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements.

15 CFR Part 20

Administrative practice and procedure, Aged, Civil rights.

18 CFR Part 1302

Civil rights, Reporting and recordkeeping requirements.

18 CFR Part 1307

Administrative practice and procedure, Civil rights, Individuals with disabilities.

18 CFR Part 1309

Aged, Civil rights.

22 CFR Part 141

Civil rights.

22 CFR Part 142

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

22 CFR Part 143

Aged, Civil rights.

22 CFR Part 209

Civil rights.

22 CFR Part 217

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

22 CFR Part 218

Aged, Civil rights.

28 CFR Part 42

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Grant programs, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

29 CFR Part 31

Civil rights, Reporting and recordkeeping requirements.

29 CFR Part 32

Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements.

38 CFR Part 18

Aged, Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Veterans.

40 CFR Part 7

Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

41 CFR Part 101–6

Civil rights, Government property management.

41 CFR Part 101–8

Administrative practice and procedure, Civil rights, Government property management, Individuals with disabilities, Reporting and recordkeeping requirements.

43 CFR Part 17

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

44 CFR Part 7

Administrative practice and procedure, Aged, Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 605

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

45 CFR Part 611

Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 617

Administrative practice and procedure, Aged, Civil rights.

45 CFR Part 1110

Civil rights.

45 CFR Part 1151

Civil rights, Equal employment opportunity, Individuals with disabilities.

45 CFR Part 1156

Administrative practice and procedure, Aged, Civil rights, Grant programs, Investigations, Reporting and recordkeeping requirements.

45 CFR Part 1170

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

45 CFR Part 1203

Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 1232

Civil rights, Grant programs—social programs, Individuals with disabilities.

49 CFR Part 21

Civil rights, Reporting and recordkeeping requriements.

49 CFR Part 27

Administrative practice and procedure, Airports, Civil rights, Highways and roads, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements.

Adoption of Joint Rule

■ The agency adoptions of this joint rule are set forth below:

DEPARTMENT OF AGRICULTURE

7 CFR Subtitle A

RIN 0566–AB78

Authority and Issuance

■ For the reasons set forth in the joint preamble, USDA amends 7 CFR subtitle A, parts 15 and 15b as set forth below:

PART 15—NONDISCRIMINATION

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 301; 29 U.S.C. 794.

■ 2. Section 15.2 is amended by revising paragraph (k) to read as follows:

§ 15.2 Definitions.

* * * * *

(k) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

* * * * *

■ 3. In § 15.3, the headings for paragraphs (d)(1) through (d)(10) are revised to read as follows:

§ 15.3 Discrimination prohibited.

* * * * *

(d) * * *

(1) *Cooperative Agricultural Extension Program.* * * *

(2) *Rural Electrification and Rural Telephone Programs.* * * *

(3) *Direct Distribution Program.* * * *

(4) *National School Lunch Program.* * * *

(5) *Food Stamp Program.* * * *

(6) *Special Milk Program for Children.* * * *

(7) *Price Support Programs carried out through producer associations or cooperatives or through persons who are required to provide specified benefits to producers.* * * *

(8) *Forest Service Programs.* * * *

(9) *Farmers Home Administration Programs.* * * *

(10) *Cooperative State Research Programs.* * * *

■ 4. Section 15.4 is amended by revising paragraph (c) to read as follows:

§ 15.4 Assurances required.

* * * * *

(c) *Assurances from institutions.* The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

5. Amend the appendix to subpart A of part 15 as follows:

a. In the heading, by removing the words ''USDA-Assisted Programs'' and adding, in their place, the words ''Federal Financial Assistance From USDA'';

b. In the introductory text, by removing the word ''Programs'' and adding, in its place, the words ''The types of Federal financial assistance''; and by removing the words ''in which Federal financial assistance is rendered''; and

c. In the chart, by removing the column heading ''Program'' and adding, in its place, the column heading ''Type of Federal Financial Assistance''.

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column, and add the text shown in the right column:

Section	Remove	Add
15.1(b)(3)	under any such program	
15.2(e)	for any program	
15.2(e)	under any such program	
15.2(f)	for the purpose of carrying out a program	
15.3(b)(3)	activities or programs	programs or activities
15.3(d), introductory text, first sentence	programs and activities	types of Federal financial assistance
15.3(d), introductory text, third sentence	program	type of Federal financial assistance
15.3(d), introductory text, third sentence	it	a program
15.3(d), introductory text, last sentence	listed program	listed type of Federal financial assistance
15.3(d)(1)(ii)	activity of	activity funded by
15.3(d)(3)(i)	direct distribution program	Direct Distribution Program
15.3(d)(3)(iii)	program	Program
15.3(d)(4)(i)	program	Program
15.3(d)(4)(ii)	program	Program
15.3(d)(5)(i)	program	Program
15.3(d)(6)(i)	program	Program
15.3(d)(6)(iv)	program	Program
15.3(d)(7)(v)	price support program	Price Support Program
15.3(d)(10)(ii)	cooperative research program	Cooperative Research Program
15.4(a)(1), first sentence	to carry out a program	
15.4(a)(1), first sentence	except a program	except an application
15.4(b)	to carry out its program for or activity involving	
15.5(a), second sentence	programs	Federal financial assistance
15.5(a), second sentence	program	
15.5(b), second sentence	of any program under	in
15.5(d)	program under	program for Federal statutes, authorities, or other means by which Federal financial assistance is extended and
15.9(e), first sentence	programs	
15.10(f)	under the program involved	to which this regulation applies
15.10(f)	assistance will	assistance to which this regulation applies will
15.10(f)	under such program	
15.12(a), introductory text, first sentence	under such program	

PART 15b—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 7. The heading for part 15b is revised to read as set forth above.

■ 8. The authority citation for part 15b continues to read as follows:

Authority: 29 U.S.C. 794.

■ 9. Section 15b.3 is amended by revising paragraph (p) and adding a new paragraph (s) to read as follows:

§ 15b.3 Definitions.

* * * * *

(p) For purposes of § 15b.18(d), *Historic Preservation Programs* are those that receive Federal financial assistance that has preservation of historic properties as a primary purpose.

* * * * *

(s) *Program or activity* means all of the operations of any entity described in paragraphs (s)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (s)(1), (2), or (3) of this section.

§ 15b.4 [Amended]

■ 10. In § 15b.4, the heading of paragraph (c) is amended by removing the word ''Programs'' and adding, in its place, the words ''Aid, benefits, or services''.

■ 11. The heading for subpart C is revised to read as follows:

Subpart C—Accessibility

■ 12. Section 15b.18 is amended by revising the heading and first sentence of paragraph (a), the heading of paragraph (e), and the first sentence of paragraph (e)(1) introductory text to read as follows:

§ 15b.18 Existing facilities.

(a) *Accessibility.* A recipient shall operate each assisted program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by qualified handicapped persons. * * *

* * * * *

(e) *Historic Preservation Programs; application for waiver of accessibility requirements.* (1) A recipient shall operate each assisted program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

§ 15b.27 [Amended]

■ 13. Section 15b.27 is amended by removing from the heading of paragraph (b) the words ''Program delivery'' and adding, in their place, the word ''Delivery'', and by removing from the heading of paragraph (c) the words ''Program materials'' and adding, in their place, the word ''Materials''.

§ 15b.28 [Amended]

■ 14. The heading for § 15b.28 is amended by removing the word ''programs''.

■ 15. The heading for subpart F is revised to read as follows:

Subpart F—Other Aid, Benefits, or Services

Appendix A to Part 15b [Amended]

■ 16. Amend appendix A to part 15b as follows:

■ a. In the heading, by removing the words ''USDA-Assisted Programs'' and adding, in their place, the words ''Federal Financial Assistance From USDA'';

■ b. In the introductory text, by removing the word ''Programs'' and adding, in its place, the words ''The types of Federal financial assistance''; and by removing the words ''in which Federal financial assistance is rendered''; and

■ c. In the chart, by removing the column heading ''Program'' and adding, in its place, the column heading ''Type of Federal Financial Assistance''.

■ 17. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
15b.2, first sentence	programs and activities	programs or activities
15b.2, last sentence	tailored to specific programs	more specifically tailored
15b.4(b)(1)(v)	program	program or activity
15b.4(b)(3)	programs or activities	aid, benefits, or services
15b.4(b)(4)(ii)	program	program or activity
15b.4(b)(5)(i)	or benefits from	
15b.4(b)(6)	or benefiting from	
15b.4(c)	the benefits of a program	aid, benefits, or services
15b.4(c)	from a program	from aid, benefits, or services
15b.5(a), first sentence	for a program or activity	
15b.5(a), first sentence	the program will	the program or activity will
15b.7(a), second sentence	programs and activities	programs or activities
15b.8(a)(3)(i)	program	program or activity
15b.8(a)(3)(ii)	program	program or activity
15b.8(a)(3)(iii)	program	program or activity
15b.10	programs	programs or activities
15b.11	programs and activities	programs or activities

Section	Remove	Add
15b.12(a)(3), last sentence	apprenticeship programs	apprenticeships
15b.12(b)(8)	social	those that are social
15b.12(b)(8)	programs	
15b.13(a)	program	program or activity
15b.13(c), introductory text	programs	programs or activities
15b.13(c)(1)	program	program or activity
15b.16	programs and activities	programs or activities
15b.18(b), last sentence	offer programs and activities to	serve
15b.18(b), last sentence	to obtain the full benefits of the program	
15b.18(d)	program accessibility	accessibility
15b.18(d)	the program	the program or activity
15b.18(e)(1), introductory text, last sentence	program	
15b.18(e)(1)(iv), first sentence	program	
15b.18(e)(1)(iv), last sentence	historic preservation program	Historic Preservation Program
15b.18(e)(1)(iv), first sentence	program accessibility	accessibility
15b.18(e)(2), introductory text, first sentence	program	
15b.18(e)(2), introductory text, last sentence	program	
15b.18(e)(2)(iii)	program	program or activity
15b.18(g)(3)	program accessibility	ccessibility under paragraph (a) of this section
15b.20	programs and activities	programs or activities
15b.21, introductory text	program	program or activity
15b.22(a)	program	program or activity
15b.22(b)(2)	individualized education program	Individualized Education Program
15b.22(b)(3), first sentence	in	
15b.22(b)(3), first sentence	to a program	for aid, benefits, or services
15b.22(b)(3), first sentence	the one	those
15b.22(b)(3), first sentence	operates	operates or provides
15b.22(c)(1), second sentence	to a program	for aid, benefits, or services
15b.22(c)(1), second sentence	operated	operated or provided
15b.22(c)(1), second sentence	the program	aid, benefits, or services
15b.22(c)(2)	person in	person
15b.22(c)(2)	to a program	for aid, benefits, or services
15b.22(c)(2)	not operated	not operated or provided
15b.22(c)(2)	the program	aid, benefits, or services
15b.22(c)(3)	placement in	
15b.22(c)(3)	program	placement
15b.22(c)(4), last sentence	such a program	a free appropriate education
15b.24(a)	program shall	program or activity shall
15b.24(a)	a regular or special education program	regular or special education
15b.25, first sentence	operates a	provides
15b.25, first sentence	education program	education
15b.26(c)(1), first sentence	programs and activities	aid, benefits, or services
15b.26(c)(1), last sentence	in these activities	
15b.27(a), first sentence	operates an	provides
15b.27(a), first sentence	program or activity receiving assistance from this Department	
15b.27(a), first sentence	from the program or activity	
15b.27(a), last sentence	under the program or activity	
15b.27(b)(1), first sentence	program services	aid, benefits, or services
15b.27(b)(2), first sentence	program services	aid, benefits, or services
15b.27(b)(2), second sentence	program benefits	aid, benefits, or services
15b.27(b)(3), first sentence	program services	aid, benefits, or services
15b.27(b)(3), second sentence	program benefits	aid, benefits, or services
15b.27(c), first sentence	program	
15b.28(a), first sentence	operates a	provides
15b.28(a), first sentence	program receiving assistance from this Department	
15b.28(a), first sentence	from such program	
15b.29	programs and activities	programs or activities
15b.31(a)	program or activity	aid, benefits, or services
15b.31(d)	programs and activities	programs or activities
15b.32(a), second sentence	program or	
15b.32(c)	in its program	
15b.32(d)(1)	under the education program or activity operated by the recipient	
15b.35(a)(1), first sentence	programs and activities	aid, benefits, or services
15b.36	programs and activities	aid, benefits, or services
15b.39, first sentence	activity for	activity that provides aid, benefits, or services for
15b.39, first sentence	program, or activity	program or activity
15b.40(a), first sentence	operate	provide
15b.40(a), first sentence	service programs assisted by this Department	services
15b.41(a)	a multi-family rental housing program	multi-family rental housing
15b.41(b)(2)	program	

Section	Remove	Add
15b.41(c), first sentence	program	
15b.41(c), last sentence	program	

Dated: May 1, 2001.

David Winningham,

Acting Director, Office of Civil Rights, Department of Agriculture.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

RIN 3130–AG65

Authority and Issuance

■ For the reasons set forth in the joint preamble, NRC amends 10 CFR chapter I, part 4 as set forth below:

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE COMMISSION

■ 1. The heading for part 4 is revised as set forth above.

■ 2. The authority citation for part 4 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under secs. 602–605, Pub. L. 88–352, 78 Stat. 252, 253 (42 U.S.C. 2000d–2000d–7); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891).

Subpart B also issued under sec. 504, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 706); sec. 119, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 794); sec. 122, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 706(6)).

Subpart C also issued under Title III of Pub. L. 94–135, 89 Stat. 728, as amended (42 U.S.C. 6101).

Subpart E also issued under 29 U.S.C. 794.

■ 3. Section 4.4 is amended by revising paragraph (g) to read as follows:

§ 4.4 Definitions.

* * * * *

(g) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

■ 4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.3, introductory text, second sentence	programs	types of Federal financial assistance
4.3, introductory text, third sentence	under any program or activity	
4.3, introductory text, fourth sentence	a program	a type of Federal financial assistance
4.3, introductory text, fourth sentence	the program	a program or activity
4.4(f)	for the purpose of carrying out a program	
4.4(h)	for any program	
4.4(h)	under any such program	

Subpart A—Regulations Implementing Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974

■ 5. The heading of § 4.22 is revised to read as follows:

§ 4.22 Continuing Federal financial assistance.

* * * * *

■ 6. Section 4.24 is amended by revising paragraph (b) to read as follows:

§ 4.24 Assurances from institutions.

* * * * *

(b) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

■ 7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.12(a), introductory text	under any program	
4.13(a), first sentence	a program of	the
4.13(a), first sentence	assistance	assistance to a program
4.13(a), second sentence	such programs	such Federal financial assistance
4.13(a), second sentence	fellowship programs	fellowships

Section	Remove	Add
4.21(a), first sentence	under a program	
4.21(a), first sentence	except a program	except an application
4.21(a), fifth sentence	for each program	
4.21(a), fifth sentence	in the program	
4.21(b), third sentence	program	statute
4.22	to carry out a program involving	for
4.32(b)	of any program under	in
4.34	program under which	program for which
4.51(a)(4)	under the program involved	
4.64, first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
4.64, last sentence	programs subject to this subpart are	this regulation is
4.74, first sentence	under the program involved	to which this regulation applies
4.74, first sentence	assistance will	assistance to which this regulation applies will
4.74, first sentence	under such program	
4.91, introductory text, first sentence	under such program	

Subpart B—Regulations Implementing Section 504 of the Rehabilitation Act of 1973, as Amended

■ 8. The heading of § 4.126 is revised to read as follows:

§ 4.126 General requirement concerning accessibility.

* * * * *

■ 9. Section 4.127 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 4.127 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 10. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.121(a)	or benefits from	
4.121(b)(1)(v)	program	program or activity
4.121(b)(2)	programs or activities	aid, benefits, or services
4.121(b)(3)(ii)	program	program or activity
4.121(b)(4)(i)	or benefits from	
4.121(c)	the benefits of a program	aid, benefits, or services
4.121(c)	a program	aid, benefits, or services
4.121(d)	programs and activities	programs or activities
4.122(a)	or benefits from	
4.122(c)(8)	social	those that are social
4.122(c)(8)	programs	
4.122(d), last sentence	apprenticeship programs	apprenticeships
4.123(a)	program	program or activity
4.123(c), introductory text	program	program or activity
4.123(c)(1)	program	program or activity
4.126	or benefits from	
4.127(b), last sentence	offer programs and activities to	serve
4.127(d)(3)	program accessibility	accessibility under paragraph (a) of this section
4.231(a), first sentence	for a program or activity	
4.231(a), first sentence	the program	the program or activity
4.231(c)(3)(i)	program	program or activity
4.231(c)(3)(ii)	program	program or activity
4.232(a), second sentence	programs and activities	programs or activities

Subpart C—Regulations Implementing the Age Discrimination Act of 1975, as Amended

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.313, introductory text, first sentence	program of activity	program or activity
4.321, first sentence	programs and activities	programs or activities
4.321, second sentence	programs and activities	programs or activities
4.334(a)(2), last sentence	program	

Section	Remove	Add
4.336(c)(2), first sentence	Federal	
4.338(c)	program	program or activity
4.339(b)(2)	program or activity	Federal financial assistance
4.341(b)	programs	programs or activities
4.341(c)	programs	programs or activities
4.341(d)	programs	programs or activities

Dated: April 30, 2001.

William D. Travers,

Executive Director for Operations, Nuclear Regulatory Commission.

DEPARTMENT OF ENERGY

10 CFR Chapter X

RIN 1901–AA86

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOE amends 10 CFR chapter X, part 1040 as set forth below:

PART 1040—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

■ 1. The heading for part 1040 is revised to read as set forth above.

■ 2. The authority citation for part 1040 is revised to read as follows:

Authority: 20 U.S.C. 1681–1686; 29 U.S.C. 794; 42 U.S.C. 2000d to 2000d–7, 3601–3631, 5891, 6101–6107, 7101 *et seq.*

Subpart A—General Provisions

■ 3. Section 1040.3 is amended by revising paragraph (u) to read as follows:

§ 1040.3 Definitions—General.

* * * * *

(u) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (u)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (u)(1), (2), or (3) of this section.

* * * * *

■ 4. Section 1040.4 is amended by revising paragraph (d) and the heading of paragraph (f) to read as follows:

§ 1040.4 Assurances required and preaward review.

* * * * *

(d) *Assurances from government agencies.* In the case of any application from any department, agency or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section is to extend to any other department, agency, or office of the same governmental unit.

* * * * *

(f) *Continuing Federal financial assistance.* * * *

* * * * *

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.1, first sentence	the program or activity	the Federal financial assistance
1040.1, first sentence	program services	services
1040.2(a), second sentence	Programs	Types of Federal financial assistance
1040.2(a), fourth sentence	under any program or activity	
1040.2(a), last sentence	a program	a type of Federal financial assistance
1040.2(a), last sentence	the program	that a program or activity
1040.3(a)	program	aid, benefit, service
1040.3(t)	for the purpose of carrying out a program	
1040.4(a), first sentence	for a program or activity	
1040.4(f), introductory text	administering a program which receives	applying for
1040.4(f)(1)	program	program or activity
1040.5(b), first sentence	or programs	or activity
1040.5(b), second sentence	programs	programs or activities
1040.5(b), last sentence	broadcast program	broadcast
1040.5(b), last sentence	the program	the program or activity
1040.5(b), last sentence	opportunity program	opportunity program or activity
1040.5(c), first sentence	program	program or activity
1040.6(a) second sentence	programs and activities	programs or activities
1040.7(b)	a program that will	to

Subpart B—Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974, as Amended; and Section 401 of the Energy Reorganization Act of 1974

■ 6. Section 1040.13 is amended by revising paragraph (e) to read as follows:

§ 1040.13 Discrimination prohibited.

* * * * *

(e) For the purpose of this section, the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance include all portions of the recipient's program or activity, including facilities, equipment, or property provided with the aid of Federal financial assistance.

* * * * *

■ 7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.11(b), first sentence	administering	administering or
1040.11(b), first sentence	or substantially benefiting from	
1040.12(b), first sentence	programs and activities	programs or activities
1040.13(b), introductory text	under any program	
1040.13(c)	program objectives	objectives of the program
1040.13(g), first sentence	from programs	from benefits
1040.13(g), last sentence	the benefits of a program	benefits
1040.13(g), last sentence	programs funded	Federal financial assistance provided
1040.14(a)(1), introductory text, first sentence	mobility programs	mobility projects

Subpart D—Nondiscrimination on the Basis of Handicap—Section 504 of the Rehabilitation Act of 1973, as Amended

§ 1040.63 [Amended]

■ 8. In § 1040.63, the heading of paragraph (c) is amended by removing the word ''Programs,'' and adding, in its place, the words ''Aid, benefits, or services''.

■ 9. The undesignated center heading immediately preceding § 1040.71 is amended by removing the word ''Program''.

■ 10. Section 1040.72 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 1040.72 Existing facilities.

(a) *Accessibility.* A recipient shall operate any program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible and usable by handicapped persons. * * *

* * * * *

■ 11. Section 1040.74 is amended by revising the section heading, the heading of paragraph (a), the first sentence of paragraph (a) introductory text and the headings of paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 1040.74 Accessibility in historic properties.

(a) *Methods to accomplish accessibility.* Recipients shall operate each program or activity involving historic properties so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

(1) *Methods to accomplish accessibility without building alterations or structural changes.* * * *

(2) *Methods to accomplish accessibility resulting in building alterations.* * * *

(3) *Methods to accomplish accessibility resulting in structural changes.* * * *

* * * * *

■ 12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.61(b)	or benefits from	
1040.63(a)	or benefits from	
1040.63(b)(1)(v)	program	program or activity
1040.63(b)(3)	programs or activities	aid, benefits, or services
1040.63(b)(4)(ii)	program	program or activity
1040.63(b)(6)	or benefiting from	
1040.63(c)	the benefits of a program	aid, benefits, or services
1040.63(c)	from a program	from aid, benefits, or services
1040.63(d)	programs of activities	programs or activities
1040.64(c), first sentence	under any program to which	under any program or activity to which
1040.64(c), first sentence	assistance under any program for	assistance for
1040.66(a)(3), last sentence	apprenticeship programs	apprenticeships
1040.66(b)(8)	social	those that are social
1040.66(b)(8)	programs	
1040.67(a)	program	program or activity
1040.67(c), introductory text	program	program or activity
1040.67(c)(1)	program	program or activity
1040.72(b), last sentence	offer programs and activities to	serve
1040.72(d)(3)	program accessibility	accessibility under § 1040.72(a)
1040.74(a), introductory text, second sentence	program	
1040.74(a), introductory text, last sentence	program	
1040.74(a)(1)(i)	programs	aid, benefits, or services
1040.74(a)(1)(iii)	programs or activities	aid, benefits, or services
1040.74(a)(1)(iv)	programs	aid, benefits, or services
1040.74(a)(2), first sentence	program	
1040.74(a)(2), first sentence	Program	
1040.74(a)(3), first sentence	program	

Section	Remove	Add
1040.74(a)(3), first sentence	Program	

Subpart E—Nondiscrimination on the Basis of Age—Age Discrimination Act of 1975, as Amended

■ 13. The authority citation for subpart E is revised to read as follows:

Authority: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45 CFR part 90.

Appendix A to Subpart E to Part 1040 [Amended]

■ 14. Appendix A to subpart E to part 1040 is amended by removing the words ''or program'' from the sixth column heading.

■ 15. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.81, last sentence	programs and activities	programs or activities
1040.82(a)	or benefits from	
1040.83(i)	programs and activities	programs or activities
1040.88(a)	Office of Equal Opportunity (OEO)	Office of Civil Rights and Diversity
1040.88(c)	program	program or activity
1040.89–1, first sentence	program and activities	programs or activities
1040.89–5(a), third sentence	Office of Equal Opportunity (OEO)	Office of Civil Rights and Diversity
1040.89–5(a), last sentence	OEO	Office of Civil Rights and Diversity
1040.89–5(b), introductory text	OEO	Office of Civil Rights and Diversity
1040.89–5(c), first sentence	OEO	Office of Civil Rights and Diversity
1040.89–6(b), second sentence	OEO	Office of Civil Rights and Diversity
1040.89–6(c), second sentence	OEO	Office of Civil Rights and Diversity
1040.89–6(e)	OEO	Office of Civil Rights and Diversity
1040.89–7(a)(1)	OEO	Office of Civil Rights and Diversity
1040.89–7(a)(3)	OEO	Office of Civil Rights and Diversity
1040.89–7(b), first sentence	OEO	Office of Civil Rights and Diversity
1040.89–9(a), introductory text	Programs	Programs or Activities
1040.89–9(a)(1), first sentence	under the program or activity involved where	for a program activity in which
1040.89–9(c)(1)	OEO	Office of Civil Rights and Diversity
1040.89–9(c)(2), first sentence	Federal	
1040.89–11	OEO	Office of Civil Rights and Diversity
1040.89–12(b)(2)	program or activity	Federal financial assistance
1040.89–13(b), introductory text	OEO	Office of Civil Rights and Diversity

Dated: May 29, 2001.

Spencer Abraham,

Secretary, Department of Energy.

SMALL BUSINESS ADMINISTRATION

13 CFR Chapter I

RIN 3245–AE59

Authority and Issuance

■ For the reasons set forth in the joint preamble, SBA amends 13 CFR chapter I, parts 112 and 117 as set forth below:

PART 112—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 112 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1).

■ 2. Section 112.2 is amended by adding paragraph (e) to read as follows:

§ 112.2 Application of this part.

* * * * *

(e) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1),(2), or (3) of this section.

Appendix A to Part 112 [Amended]

■ 3. The chart in appendix A to part 112 is amended by removing the heading ''Name of program'' and adding, in its place, the heading ''Name of Federal financial assistance'; by removing the heading ''Financial Programs'' and adding, in its place, the heading ''Federal Financial Assistance Involving Grants of Funds''; and by removing the heading ''Nonfinancial Programs'' and adding, in its place, the heading ''Other Federal Financial Assistance''.

■ 4. The note immediately following appendix A to part 112 is amended by removing the word ''programs'' and adding, in its place, the words ''types of Federal financial assistance''.

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
112.2(a)	assistance under programs	Federal financial assistance
112.3(b)(3), first sentence	the program	a program
112.8, last sentence	for each program	
112.8, last sentence	in the program	

PART 117—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES OF SBA—EFFECTUATION OF THE AGE DISCRIMINATION ACT OF 1975, AS AMENDED

■ 6. The heading for part 117 is revised to read as set forth above.

■ 7. The authority citation for part 117 continues to read as follows:

Authority: Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*

■ 8. Section 117.2 is amended by revising paragraph (a) to read as follows:

§ 117.2 Application of this part.

(a) This part applies to all recipients of Federal financial assistance administered by the Small Business Administration, whether or not the specific type of Federal financial assistance administered is listed in appendix A.

* * * * *

■ 9. Section 117.3 is amended by redesignating paragraphs (j) through (m) as paragraphs (k) through (n), and adding a new paragraph (j) to read as follows:

§ 117.3 Definitions.

* * * * *

(j) The term *program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.

* * * * *

Appendix A to Part 117 [Amended]

■ 10. The chart in appendix A to part 117 is amended by removing the words ''Name of program'' and adding, in their place, the words ''Type of Federal financial assistance''.

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
117.1	programs	programs or activities
117.3(j), first sentence	under any program	
117.4(b)(2)	programs	programs or activities
117.5(b), first sentence	in a program	
117.6(b)	business or program	program or activity
117.6(c)	program	program or activity
117.7, first sentence	under any program	
117.7, last sentence	for each program,	
117.7, last sentence	in the program	
117.8(a), first sentence	programs and activities	programs or activities
117.8(c)	its program beneficiaries	the beneficiaries of its programs or activities
117.15(a)(3), first sentence	program	
117.17(f)	under the programs involved	to which this regulation applies
117.17(f)	assistance will	assistance to which this regulation applies will
117.17(f)	under such program	
117.19(a)(9)	program	program or activity
117.20, first sentence	programs	programs or activities

Dated: October 10, 2002.

Hector V. Barreto,

Administrator, Small Business Administration.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Chapter V

RIN 2700–AC41

Authority and Issuance

■ For the reasons set forth in the joint preamble, NASA amends 14 CFR chapter V, parts 1250, 1251, and 1252 as set forth below:

PART 1250—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF NASA— EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 1250 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252, 42 U.S.C. 2000d–1; and the laws listed in appendix A to this part.

■ 2. Section 1250.102 is amended by revising paragraph (h) to read as follows:

§ 1250.102 Definitions.

* * * * *

(h) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 1250.103–4 is amended by revising paragraph (b) to read as follows:

§ 1250.103–4 Illustrative applications.

* * * * *

(b) In a research or training grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited and the prohibition extends to the entire university.

* * * * *

■ 4. Section 1250.103–5 is amended by revising the heading to read as follows:

§ 1250.103–5 Special benefits.

* * * * *

■ 5–6. Section 1250.104 is amended by revising paragraph (c)(2) and by removing paragraph (d)(2) and the paragraph designation (d)(1), to read as follows:

§ 1250.104 Assurances.

* * * * *

(c) * * *

(2) The assurances from such an applicant shall be applicable to the entire organization of the applicant.

* * * * *

■ 7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1250.101(a)(1), first sentence	federally-assisted programs and activities	types of Federal financial assistance
1250.101(a)(1), second sentence	program or activity	type of Federal assistance
1250.101(a)(1), second sentence	such program	a program
1250.101(a)(1), last sentence	programs	types of Federal financial assistance
1250.101(a)(2)	under any such program	
1250.101(b)(2)	extended under any such program	extended
1250.101(b)(3)	beneficiary under any such program	beneficiary
1250.101(b)(5)	programs	types of Federal financial assistance
1250.101(b)(6)	programs	types of Federal financial assistance
1250.102(f)	for the purpose of carrying out a program	
1250.102(i)	for any program	
1250.102(i)	under any such program	
1250.103–2(a), introductory text	under any program	
1250.103–3(b)	programs	types of Federal financial assistance
1250.103–4(a)	programs	services
1250.103–5	the benefits of a program	benefits
1250.104(a), first sentence	to carry out a program	
1250.104(e), second sentence	under a program of	with
1250.104(e), last sentence	program	statute
1250.105(b), last sentence	of any program under	in
1250.105(d)	program under	program for
1250.108(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1250.109(f)	under the program involved	to which this regulation applies
1250.109(f)	assistance will	assistance to which this regulation applies will
1250.109(f)	under such program	
1250.111(a), first sentence	under such program	

PART 1251—NONDISCRIMINATION ON BASIS OF HANDICAP

■ 8. The authority citation for part 1251 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 9. Section 1251.102 is amended by adding paragraph (k) to read as follows:

§ 1251.102 Definitions.

* * * * *

(k) *Program or activity* means all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k) (1), (2), or (3) of this section.

§ 1251.103 [Amended]

■ 10. In § 1251.103, the heading of paragraph (c) is amended by removing the word ''Programs'' and adding, in its place, the words ''Aid, benefits, or services''.

■ 11. The heading of subpart 1251.3 of part 1251 is revised to read as follows:

Subpart 1251.3—Accessibility

■ 12. In § 1251.301, the heading and first sentence of paragraph (a) are revised to read as follows:

§ 1251.301 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which his part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

■ 13. In the table below, for each section indicated in the left column, remove the text shown in the middle column, and add the text shown in the right column:

Section	Remove	Add
1251.101	or benefits from	
1251.103(a)	or benefits from	
1251.103(b)(1)(v)	program	program or activity
1251.103(b)(3)	program	program or activity
1251.103(b)(3)	or benefiting from	
1251.103(b)(4)	programs or activities	aid, benefits, or services
1251.103(b)(5)(ii)	program	program or activity
1251.103(b)(6)(i)	or benefits from	
1251.103(b)(7)	or benefiting from	
1251.103(c)	the benefits of a program	aid, benefits, or services
1251.103(c)	from a program	from aid, benefits, or services
1251.104(a), first sentence	for a program or activity	
1251.104(a), first sentence	the program	the program or activity
1251.105(a)(3)(i)	program	program or activity
1251.105(a)(3)(ii)	program	program or activity
1251.105(a)(3)(iii)	program	program or activity
1251.107(a), second sentence	programs and activities programs or activities	
1251.200(a)(2)	programs	programs or activities
1251.200(a)(4), last sentence	apprenticeship programs apprenticeships	
1251.200(b)(8)	social	those that are social
1251.200(b)(8)	programs	
1251.200(d), last sentence	apprenticeship programs apprenticeships	
1251.201(a)	program	program or activity
1251.201(c), introductory text	program	program or activity
1251.201(c)(1)	program	program or activity
1251.301(b), last sentence	offer programs and activities to	serve
1251.301(d)(3)	program accessibility	accessibility under paragraph (a) of this section

PART 1252—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 14. The heading for part 1252 is revised to read as set forth above.

■ 15. The authority citation for part 1252 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.* (45 CFR part 90).

■ 16. Section 1252.102 is amended by revising the heading to read as follows:

§ 1252.102 To what programs or activities do these regulations apply?

* * * * *

■ 17. Section 1252.103 is amended by adding paragraph (n) to read as follows:

§ 1252.103 Definitions.

* * * * *

(n) *Program or activity* means all of the operations of any entity described in paragraphs (n)(1) through (4) of this

section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (n)(1), (2), or (3) of this section.

■ 18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1252.100, last sentence	programs and activities	programs or activities
1252.102(a)	or benefits from	
1252.203	program	program or activity
1252.300	programs and activities	programs or activities
1252.403(a)(2), last sentence	program	
1252.405(b), first sentence	program activity	program or activity
1252.405(c)(2), first sentence	Federal	
1252.409(b)(2)	program or activity	Federal financial assistance

Dated: September 10, 2002.

Sean O'Keefe,

Administrator, National Aeronautics and Space Administration.

DEPARTMENT OF COMMERCE

15 CFR Subtitle A

RIN 0690–AA30

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOC amends 15 CFR subtitle A, parts 8, 8b, and 20 as set forth below:

PART 8—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF COMMERCE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 8 continues to read as follows:

Authority: Sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d–1).

■ 2. Section 8.3 is amended by revising paragraph (g) to read as follows:

§ 8.3 Definitions.

* * * * *

(g) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 8.5 is amended by revising paragraph (b)(10) to read as follows:

§ 8.5 Nondiscrimination clause.

* * * * *

(b) * * *

(10) In the case where any assurances are required from an academic, a medical care, detention or correctional, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility.

* * * * *

■ 4. Section 8.6 is amended by revising the heading of paragraph (a) to read as follows:

§ 8.6 Applicability of this part to Department assisted programs.

* * * * *

(a) *Assistance to support economic development.* * * *

* * * * *

Appendix A to Part 8 [Amended]

■ 5. The heading for appendix A to part 8 is amended by removing the word ''Programs'' and adding, in its place, the words ''Federal Financial Assistance''.

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
8.2(a), first sentence	federally assisted programs	types of Federal financial assistance
8.2(a), last sentence	under any such program	
8.2(b)(2)	under any such program	
8.2(b), second sentence	a program	a type of Federal financial assistance
8.2(b), second sentence	such program	a program
8.2(b), last sentence	programs	types of Federal financial assistance
8.3(i), first sentence	for or in connection with any program	
8.3(i), last sentence	under any program	
8.3(j)	for the purpose of carrying out a program	
8.4(b)(1), introductory text	under any program to which this part applies	
8.4(b)(1)(vii)	when a program is applicable thereto	
8.4(b)(2)	under any program	
8.4(b)(2)	such program, or the class of persons to whom	program, or the class of persons to whom
8.4(c)(1), third sentence	program	plan
8.5(a), first sentence	to carry out a program	
8.5(b)(3)	That in a program involving	When
8.5(b)(3)	assistance,	assistance is involved,
8.5(b)(5), third sentence	program	statute
8.6, introductory text, second sentence	program	type of Federal financial assistance
8.6(b), second sentence	student training programs	instances of student training
8.7(b), last sentence	of any program under	in
8.7(d)	program under which	program for which
8.12(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
8.13(f)	under the program involved	to which this regulation applies
8.13(f)	assistance will	assistance to which this regulation applies will
8.13(f)	under such program	
8.15(a), introductory text, first sentence	under such program	

PART 8b—PROHIBITION OF DISCRIMINATION AGAINST THE HANDICAPPED IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES OF THE DEPARTMENT OF COMMERCE

■ 7. The heading for part 8b continues to read as set forth above.

■ 8. The authority citation for part 8b continues to read as follows:

Authority: 29 U.S.C. 794.

■ 9. Section 8b.3 is amended by redesignating paragraphs (h) through (l) as paragraphs (i) through (m), respectively; and adding a new paragraph (h) to read as follows:

§ 8b.3 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

■ 10. Section 8b.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 8b.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

* * * * *

Subpart C of Part 8b—[Amended]

■ 11. The heading for subpart C of part 8b is amended by removing the word ''Program.''

■ 12. Section 8b.17 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 8b.17 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped individuals. * * *

* * * * *

■ 12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
8b.1, first sentence	or benefiting from	
8b.1, last sentence	programs and activities	programs or activities
8b.1, last sentence	or benefiting from	
8b.2, first sentence	program	program or activity
8b.2, first sentence	or benefiting from	
8b.2, last sentence	program	program or activity
8b.4 (a)	or benefits from	
8b.4(b)(1)(v)	program	program or activity
8b.4(b)(3)	programs or activities	aid, benefits, or services
8b.4(b)(4)(ii)	program	program or activity
8b.4(b)(5)(i)	or benefits from	
8b.4(b)(6)	or benefiting from	
8b.4(b)(7)(i)	under programs of Federal financial assistance	
8b.4(c)	the benefits of a program	aid, benefits, or services
8b.4(c)	from a program	from aid, benefits, or services
8b.4(d)	programs and activities	programs or activities
8b.5(a), first sentence	for a program or activity	
8b.5(a), first sentence	the program	the program or activity
8b.5(b)(3)	program	program or activity
8b.5(d)	a program	the objectives of Federal financial assistance
8b.5(d)	programs and activities	programs or activities
8b.6(a)(3)(i)	program	program or activity
8b.6(a)(3)(ii)	program	program or activity
8b.8(a), second sentence	programs and activities	programs or activities
8b.10(a)	programs	programs or activities
8b.11(a)(1)	or benefits from	
8b.11(a)(3), last sentence	apprenticeship programs	apprenticeships
8b.12(a)	program	program or activity
8b.12(b)(1)	program	program or activity
8b.12(c), introductory text	program	program or activity
8b.12(c)(1)	program	program or activity
8b.12(e)	program	program or activity
8b.17(a), third sentence	program	aid, benefit, or service
8b.17(a), last sentence	Program accessibility	Accessibility
8b.17(a), last sentence	program	aid, benefit, or service
8b.17(b), last sentence	offer programs and activities to	serve
8b.17(e)(3)	program accessibility	accessibility under § 8b.17(a)
8b.19	programs and activities	programs or activities
8b.19	or benefit from	
8b.21(a)	program or activity	aid, benefits, or services
8b.21(d)	programs and activities	program or activity
8b.22(a), second sentence	program of	
8b.22(c)	in its program	
8b.22(d)(1), first sentence	under the education program or activity operated by the recipient	
8b.25(a)(1), first sentence	programs and activities	aid, benefits, or services

PART 20—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 15. The authority citation for part 20 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. sec. 6101 *et seq.* and the government-wide regulations implementing the Act, 45 CFR part 90.

■ 16. The heading of § 20.2 is revised to read as follows:

§ 20.2 Programs or activities to which these regulations apply.

* * * * *

■ 17. Section 20.3 is amended by redesignating paragraphs (j) through (n) as paragraphs (k) through (o), respectively; and adding a new paragraph (j) to read as follows:

§ 20.3 Definitions.

* * * * *

(j) *Program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial

assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (j)(1),(2), or (3) of this section.

* * * * *

■ 18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
20.1, last sentence	programs and activities	programs or activities
20.2(a)	or benefits from	
20.4(d)	program	program or activity
20.7, introductory text	programs and activities	programs or activities
20.7(a), first sentence	program	program or activity
20.13(a)(2), last sentence	program	
20.15(a)(1), last sentence	program	program or activity
20.15(b)	program and activity	program or activity
20.15(c)(2), first sentence	Federal	
20.18(b)(2)	program or activity	Federal financial assistance

Dated: May 17, 2001.

Suzan J. Aramaki,

Director, Office of Civil Rights, Department of Commerce.

TENNESSEE VALLEY AUTHORITY

18 CFR Chapter XIII

RIN 3316–AA20

Authority and Issuance

■ For the reasons set forth in the joint preamble, TVA amends 18 CFR chapter XIII, parts 1302, 1307, and 1309 as set forth below:

PART 1302—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF TVA— EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 1302 continues to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933), as amended, 16 U.S.C. 831–831dd, and sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d–1.

■ 2. Section 1302.3 is amended by adding a new paragraph (e) to read as follows:

§ 1302.3 Definitions.

* * * * *

(e) *Program or activity* and *program* refer to all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

■ 3. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1302.2, introductory text, first sentence	program in which	program for which
1302.2, introductory text, second sentence	programs	types of Federal financial assistance
1302.2(b)	under any such program	
1302.2(c)	under any such program	
1302.2, concluding text, first sentence	a program	a type of Federal financial assistance
1302.2, concluding text, first sentence	such program	a program
1302.2, concluding text, last sentence	programs	types of Federal financial assistance
1302.4(b)(1), introductory text	under any program or activity	
1302.5(a), last sentence	in the program	
1302.5(b), first sentence	through a program of	with
1302.5(b), second sentence	under a program of	with
1302.5(b), third sentence	program	statute
1302.6(b), last sentence	of any program under	in
1302.6(d)	program under which	program for which
1302.7(b)(3)(ii)	program	programs
1302.7(c)(3)(ii)(B)	program	programs
1302.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and

Section	Remove	Add
1302.10(f)	under the program involved	to which this regulation applies
1302.10(f)	assistance will	assistance to which this regulation applies will
1302.10(f)	under such program	
1302.12(a), introductory text, first sentence	under such program	

PART 1307—NONDISCRIMINATION WITH RESPECT TO HANDICAP

■ 4. The authority citation for part 1307 continues to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831–831dd (1976) and sec. 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended, 29 U.S.C. 794 (1976; Supp. II 1978).

■ 5. Section 1307.1 is amended by adding paragraph (k) to read as follows:

§ 1307.1 Definitions.

* * * * *

(k) *Program or activity* means all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

■ 6. The heading of § 1307.4 is revised to read as follows:

§ 1307.4 Discrimination prohibited.

* * * * *

■ 7. Section 1307.6 is amended by revising the section heading and the first sentence of paragraph (b)(1) to read as follows:

§ 1307.6 Accessibility.

* * * * *

(b) * * *

(1) Each program or activity subject to this part shall be operated so that when each part is viewed in its entirety it is readily accessible to and usable by qualified handicapped persons. * * * * * * * * *

■ 8. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1307.3, first sentence	program in which	program or activity for which
1307.3, first sentence	under any program	
1307.3, first sentence	under any such program	
1307.4(b)(1), introductory text	under any program	
1307.4(b)(1)(i)	program	program or activity
1307.4(b)(1)(ii)	program	program or activity
1307.4(b)(1)(iii)	program	program or activity
1307.4(b)(1)(iv)	program	program or activity
1307.4(b)(1)(v)	program	program or activity
1307.4(b)(1)(vi)	program	program or activity
1307.4(b)(1)(vii)	program	program or activity
1307.4(b)(2)	program	program or activity
1307.4(b)(2)	activities	aid, benefits, or services
1307.4(b)(3)(ii)	program	program or activity
1307.4(b)(4)	program,	program or activity,
1307.4(b)(4)(i)	program	program or activity
1307.4(c)	the benefits of a program	aid, benefits, or services
1307.4(c)	from a program	from aid, benefits, or services
1307.4(d), first sentence	programs and activities	programs or activities
1307.4(d), last sentence	programs	aid, benefits, or services
1307.5(c)(8)	social	those that are social
1307.5(c)(8)	programs	
1307.5(d)	apprenticeship programs	apprenticeships
1307.5(e)(2)(i)	programs	programs or activities
1307.6(a)	program	program or activity
1307.6(b)(1), third sentence	program	
1307.6(b)(1), last sentence	programs or activities	aid, benefits, or services
1307.6(b)(2), introductory text, second sentence	make covered programs or activities in existing facilities recipient accessible	comply with paragraph (b)(1) of this section
1307.6(c), second sentence	program	
1307.6(c), fourth sentence	program	
1307.6(d)(1)	program	program or activity
1307.7(a), last sentence	in the program	

Section	Remove	Add
1307.7(b), first sentence	through a program of	with
1307.7(b), second sentence	under a program of	with
1307.7(b), third sentence	program	statute
1307.8(b), last sentence	of any program under in	
1307.8(d)	program under which	program or activity for which
1307.10(c), last sentence	program	program or activity
1307.11(e) first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1307.12(f)	under the program involved	to which this regulation applies
1307.12(f)	assistance will	assistance to which this regulation applies will
1307.12(f)	under such program	
1307.13(a)(2)	program	program or activity
1307.13(b), first sentence	programs	programs or activities

PART 1309—NONDISCRIMINATION WITH RESPECT TO AGE

■ 9. The authority citation for part 1309 continues to read as follows:

Authority: TVA Act of 1933, 48 Stat. 58 (1933), as amended, 16 U.S.C. 831–831dd (1976), and sec. 304 of the Age Discrimination Act of 1975, 89 Stat. 729 (1975), as amended, 42 U.S.C. 6103 (1976).

■ 10. Section 1309.1 is amended by redesignating paragraphs (h) through (l) as paragraphs (i) through (m), and adding paragraph (h) to read as follows:

§ 1309.1 What are the defined terms in this part and what do they mean?

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

■ 11. The heading for § 1309.4 is revised to read as follows:

§ 1309.4 What programs or activities are covered by the Act and this part?

* * * * *

■ 12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1309.2, last sentence	programs and activities	programs or activities
1309.9(a), last sentence	in the program	
1309.9(b), second sentence	under a program of	with
1309.9(b), third sentence	program	statute
1309.10(a), first sentence	programs and activities	programs or activities
1309.12(a), last sentence	of any program under	in
1309.12(c)	program under which	program or activity for which
1309.14(a), third sentence	program	
1309.14(d)(2), last sentence	program	
1309.15(b), first sentence	programm	program
1309.15(c)(2), first sentence	the TVA program	the program
1309.16, last sentence	program or activity	Federal financial assistance
1309.17(e), first sentence	programs	Federal statutes, authorities, of other means by which Federal financial assistance is extended and
1309.17(f)(3)	under the program involved	to which this regulation applies
1309.17(f)(3)	assistance will	assistance to which this regulations applies will
1309.17(f)(3)	under such program	
1309.18(c) program	program or activity	

Dated: May 29, 2001.

Steven R. Ayers,

General Manager, Contracts/Supplier & Diverse Business Relations, Tennessee Valley Authority.

DEPARTMENT OF STATE

22 CFR Chapter I

RIN 1400–AB17

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Department of State amends 22 CFR chapter I, parts 141 through 143 as set forth below:

PART 141—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF STATE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 141 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252, sec. 4, 63 Stat. 111, as amended; 42 U.S.C. 2000d–1, 22 U.S.C. 2658.

■ 2. Section 141.3 is amended by revising the heading of paragraph (c) to read as follows:

§ 141.3 Discrimination prohibited.

* * * * *

(c) Special benefits. * * *

* * * * *

■ 3. Section 141.4 is amended by revising paragraph (b)(2) to read as follows:

§ 141.4 Assurances required.

* * * * *

(b) * * *

(2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

■ 4. Section 141.12 is amended by revising paragraph (f) to read as follows:

§ 141.12 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

Appendix A to Part 141 [Amended]

■ 5. The heading for appendix A to part 141 is amended by removing the words ''Grants and Activities'' and adding, in their place, the words ''Federal Financial Assistance''.

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
141.2, first sentence	federally-assisted programs and activities	types of Federal financial assistance
141.2, second sentence	under any such program	
141.2(b)	under any such program	
141.2(c)	under any such program	
141.2, penultimate sentence	program or activity	type of Federal financial assistance
141.2, penultimate sentence	such program	a program
141.3(b)(1), introductory text	under any program	
141.3(c)	the benefits of a program	benefits
141.4(a)(1), first sentence	to carry out a program	
141.4(a)(2), third sentence	a program of	
141.4(a)(3), first sentence	for each program,	
141.4(a)(3), first sentence	in the program	
141.4(b)(1)	a student loan program	student loans
141.5(b), last sentence	of any program under	in
141.5(d)	program under which	program for which
141.8(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
141.9(f)	under the program involved	to which this regulation applies
141.9(f)	assistance will	assistance to which this regulation applies will
141.9(f)	under such program	
141.12(c)	the program extending	
141.12(g)	for any program,	
141.12(g)	under any such program	
141.12(h)	for the purpose of carrying out a program	

PART 142—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 7. The heading for part 142 is revised to read as set forth above.

■ 8. The authority citation for part 142 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 9. Section 142.3 is amended by adding paragraph (m) to read as follows:

§ 142.3 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

■ 10. Section 142.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 142.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

* * * * *

■ 11. The heading for subpart C is revised to read as follows:

Subpart C—Accessibility

■ 12. Section 142.16 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 142.16 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

Appendix to Part 142 [Amended]

■ 13. The heading for appendix A to part 142 is amended by removing the words ''Grants and Activities'' and adding, in their place, the words ''Federal Financial Assistance''.

■ 14. The introductory text for appendix A to part 142 is amended by removing the words ''Programs of'' and adding, in their place, the words ''Types of Federal''.

■ 15. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
142.2, introductory text, first sentence	all programs	all programs or activities
142.2, introductory text, first sentence	federally-assisted programs and activities	types of Federal financial assistance
142.2, introductory text, second sentence	under any such program	
142.2(b)	under any such program	
142.2(c)	under any such program	
142.2(d), last sentence	program	Federal financial assistance
142.4(a)	or benefits from	
142.4(b)(1)(v)	recipients program	recipient's program or activity
142.4(b)(3)	programs or activities	aid, benefits, or services
142.4(b)(4)(ii)	program	program or activity
142.4(b)(5)(i)	or benefits from	
142.4(b)(6)	or benefiting from	
142.4(c)	the benefits or a program	aid, benefits, or services
142.4(d)	programs and activities	programs or activities
142.4(e)	programs and activities	programs or activities
142.5(a), first sentence	for a program or activity	
142.5(a), first sentence	program will	program or activity will
142.6(a)(3)(i)	program	program or activity
142.6(a)(3)(ii)	program	program or activity
142.8(a), second sentence	programs and activities	programs or activities
142.11(a)(3), last sentence	apprenticeship programs	apprenticeships
142.11(b)(8)	social	those that are social
142.11(b)(8)	programs	
142.12(a)	program	program or activity
142.12(c), introductory text	program	program or activity
142.12(c)(1)	program	program or activity
142.16(b), last sentence	offer programs and activities to	serve
142.16(d)(3)	program accessibility	accessibility under paragraph (a) of this section
142.41	programs and activities	programs or activities
142.41	or benefit from	
142.43(a)	program or activity	aid, benefits, or services
142.43(b)	programs activities	programs or activities
142.43(d)	programs and activities	programs or activities

Section	Remove	Add
142.44(a), second sentence	program of	
142.44(c)	in its program	
142.44(d)(1)	under the education program or activity operated by the recipient	
142.47(a)(1), first sentence	programs and activities	aid, benefits, or services
142.61	programs and activities	programs or activities
142.61	or benefit from	

PART 143—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 16. The authority citation for part 143 is revised to read as follows:

Authority: Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 *et seq.*); 22 U.S.C. 2658; 45 CFR part 90.

■ 17. The heading of § 143.2 is revised to read as follows:

§ 143.2 To what programs or activities do these regulations apply?

* * * * *

■ 18. Section 143.3 is amended by redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) and adding a new paragraph (b)(2) to read as follows:

§ 143.3 Definitions.

* * * * *

(b) * * *

(2) *Program or activity* means all of the operations of any entity described in paragraphs (b)(2)(i) and (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity which is established by two or more of the entities described in paragraph (b)(2)(i), (ii), or (iii) of this section.

* * * * *

Appendix A to Part 143 [Amended]

■ 19. The heading for appendix A to part 143 is amended by removing the word ''Programs'' and adding, in its place, the words ''Federal Financial Assistance''.

■ 20. The undesignated center heading in appendix A to part 143 is amended by removing the words ''Programs of'' and adding, in their place, the words ''Types of Federal''.

Appendix B to Part 143 [Amended]

■ 21. The heading for appendix B to part 143 is amended by removing the word ''Programs'' and adding, in its place, the words ''Federal Financial Assistance''.

■ 22. The undesignated center heading in appendix B to part 143 is amended by removing the words ''Programs of'' and adding, in their place, the words ''Types of Federal''.

Appendix C to Part 143 [Amended]

■ 23. The heading for appendix C to part 143 is amended by removing the word ''Programs'' and adding, in its place, the words ''Federal Financial Assistance''.

■ 24. The undesignated center heading in appendix C to part 143 is amended by removing the words ''Program of'' and adding, in their place, the words ''Types of Federal''.

■ 25. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
143.1, last sentence	programs and activities	programs or activities
143.2	or benefits from	
143.21	programs and activities	programs or activities
143.34(a)(2), last sentence	program	
143.36(c)(2), first sentence	Federal	
143.39(b)(2)	program or activity	Federal financial assistance

Dated: May 18, 2001.

Grant S. Green, Jr.,

Under Secretary for Management.

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Chapter II

RIN 0412–AA45

Authority and Issuance

■ For the reasons set forth in the joint preamble, AID amends 22 CFR chapter II, parts 209, 217, and 218, as set forth below:

PART 209-NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 209 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252, and sec. 621, Foreign Assistance Act of 1961, 75 Stat. 445; 22 U.S.C. 2402.

■ 2. Section 209.3 is amended by revising paragraph (g) to read as follows:

§ 209.3 Definitions.

* * * * *

(g) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1) (i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3) (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 209.5 is amended by revising paragraph (b)(2) to read as follows:

§ 209.5 Assurance required.

* * * * *

(b) * * *

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

■ 4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
209.2, first sentence	federally-assisted programs and activities	types of Federal financial assistance
209.2, second sentence	under any such program	
209.2(b)	under any such program	
209.2(c)	under any such program	
209.2, last sentence	program	Federal financial assistance
209.3(f)	for the purpose of carrying out a program	
209.3(h)	for any program,	
209.3(h)	under any such program	
209.4(b)(1), introductory text	under any program	
209.5(a)(1), first sentence	to carry out a program	
209.5(a)(1), first sentence	except a program	except an application
209.5(a)(1), fifth sentence	for each program	
209.5(a)(1), fifth sentence	in the program	
209.5(a)(2), first sentence	through a program of	with
209.5(a)(2), second sentence	under a program of	with
209.5(a)(2), third sentence	program	statute
209.5(b)(1)	for a student assistance program	for student assistance
209.6(b), last sentence	of any program under	in
209.6(d)	under	for
209.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
209.10(e)	under the program involved	to which this regulation applies
209.10(e)	assistance will	assistance to which this regulation applies will
209.10(e)	under such program	
209.12(a), first sentence	under such program	
209.13	programs	Federal financial assistance

PART 217—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 5. The heading for part 217 is revised to read as set forth above.

■ 6. The authority citation for part 217 continues to read as follows:

Authority: 29 U.S.C. 794, unless otherwise noted.

■ 7. Section 217.3 is amended by adding a new paragraph (l) to read as follows:

§ 217.3 Definitions.

* * * * *

(1) *Program or activity* means all of the operations of any entity described in paragraphs (l)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (l)(1), (2), or (3) of this section.

■ 8. Section 217.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 217.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

Subpart C of Part 217—[Amended]

■ 9. The heading for subpart C is amended by removing the word ''Program''.

■ 10. Section 217.22 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 217.22 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
217.2, first sentence	programs carried	programs or activities carried
217.2, first sentence	federally-assisted programs and activities	types of Federal financial assistance
217.2, second sentence	under any such program	
217.2(b)	under any such program	
217.2(c)	under any such program	
217.2, last sentence	program	Federal financial assistance
217.4(a)	or benefits from	
217.4(b)(1)(v)	program	program or activity
217.4(b)(3)	programs or activities	aid, benefits, or service
217.4(b)(4)(ii)	program	program or activity
217.4(b)(5)(i)	or benefits from	
217.4(b)(6)	or benefiting from	
217.4(c)	the benefits of a program	aid, benefits, or services
217.4(c)	from a program	from aid, benefits, or services
217.5(a), first sentence	for a program or activity	
217.5(a), first sentence	the program	the program or activity
217.6(a)(3)(i)	program	program or activity
217.6(a)(3)(ii)	program	program or activity
217.6(a)(3)(iii)	program	program or activity
217.8(a), second sentence	programs and activities	programs or activities
217.11(a)(3), last sentence	apprenticeship programs	apprenticeships
217.11(b)(8)	social	those that are social or recreational
217.11(b)(8)	programs	
217.12(a)	program	program or activity
217.12(c), introductory text	program	program or activity
217.12(c)(1)	program	program or activity
217.14(b)	programs	program
217.22(b), last sentence	offer programs and activities to	serve
217.22(d)(3)	program accessibility	accessibility under § 217.22(a)
217.41	programs and activities	programs or activities
217.41	or benefit from	
217.43(a)	program or activity	aid, benefits, or services
217.43(d)	programs and activities	program or activity
217.44(a), second sentence	program of	
217.44(c)	in its program	
217.44(d)(1)	under the education program or activity operated by the recipient	
217.47(a)(1), first sentence	programs and activities	aid, benefits, or services

PART 218—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 12. The authority citation for part 218 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR part 90; 22 U.S.C. 2658, unless otherwise noted.

■ 13. The heading for § 218.02 is revised to read as follows:

§ 218.02 To what programs or activities do these regulations apply?

* * * * *

■ 14. Section 218.03 is amended by adding paragraph (b)(4) to read as follows:

§ 218.03 Definitions.

* * * * *

(b) * * *

(4) *Program or activity* means all of the operations of any entity described in paragraphs (b)(4)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity which is established by two or more of the entities described in paragraph (b)(4)(i), (ii), or (iii) of this section.

Appendices A, B, and C to Part 218 [Amended]

■ 15. The headings for appendices A, B, and C to part 218 are amended by removing the words ''Affected Programs'' and adding, in their place, the words ''Types of Federal Financial Assistance''.

■ 16. The undesignated center headings immediately following the headings for appendices A and B to part 218 are amended by removing the words ''Programs of'' and adding, in their place, the word ''Federal''.

■ 17. The undesignated center heading immediately following the heading for appendix C to part 218 is amended by removing the words ''Program of'' and adding, in their place, the word ''Federal''.

■ 18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
218.01, last sentence	programs and activities	programs or activities
218.02	or benefits from	
218.21	programs and activities	program or activities
218.34(a)(2), last sentence	program	
218.36(c)(2)	Federal	
218.39(b)(2)	program or activity	Federal financial assistance

Dated: May 1, 2001.

Jessalyn L. Pendarvis,

Director, Office of Equal Opportunity Programs, Agency for International Development.

DEPARTMENT OF JUSTICE

28 CFR Chapter I

[A.G. Order No. 2679–2003]

RIN 1190–AA49

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOJ amends 28 CFR chapter I, part 42 as set forth below:

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964 [1]

■ 1. The authority citation for subpart C is revised to read as follows:

Authority: 42 U.S.C. 2000d–2000d–7; E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298.

■ 2. Section 42.102 is amended by revising paragraph (d) to read as follows:

§ 42.102 Definitions.

* * * * *

(d) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (d)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

[1] *See also* 28 CFR 50.3. Guidelines for enforcement of Title VI, Civil Rights Act.

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (d)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 42.104 is amended by revising paragraph (b)(4) to read as follows:

§ 42.104 Discrimination prohibited.

* * * * *

(b) * * *

(4) For the purposes of this section the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include all portions of the recipient's program or activity, including facilities, equipment, or property provided with the aid of Federal financial assistance.

* * * * *

■ 4. Section 42.105 is amended by revising paragraph (b), paragraph (c)(2), and the heading of paragraph (d) to read as follows:

§ 42.105 Assurance required.

* * * * *

(b) *Assurances from government agencies.* In the case of any application from any department, agency, or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of such other department, agency, or office will substantially affect the project for which Federal financial assistance is requested.

(c) * * *

(2) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility.

(d) *Continuing Federal financial assistance.* * * *

* * * * *

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
42.102(f)	for any program,	
42.102(f)	under any such program	
42.102(g)	for the purpose of carrying out a program	
42.103, introductory text, second sentence	under any such program	
42.104(b)(1), introductory text	under any program	
42.105(a)(1), first sentence	to carry out a program	
42.105(a)(1), fourth sentence	for each program	
42.105(a)(1), fourth sentence	in the program	
42.105(a)(2), first sentence	through a program of	with
42.105(a)(2), second sentence	under a program of	with
42.105(a)(2), last sentence	program	statute
42.105(d), introductory text	administering a program which receives	applying for
42.106(b), last sentence	of any program under	in
42.106(d)	program under which	program for which
42.109(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
42.110(f)	under the program involved	to which this regulation applies
42.110(f)	assistance will	assistance to which this regulation applies will
42.110(f)	under such program	

■ 6. The heading for subpart G is revised to read as follows:

Subpart G—Nondiscrimination Based on Handicap in Federally Assisted Programs or Activities—Implementation of Section 504 of the Rehabilitation Act of 1973

■ 7. The authority citation for subpart G continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 29 U.S.C. 706, 794; E.O. 12250.

§ 42.520 [Amended]

■ 8. The undesignated center heading immediately preceding § 42.520 is amended by removing the word ''Program.''

■ 9. Section 42.521 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 42.521 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 10. Section 42.540 is amended by revising paragraph (h) to read as follows:

§ 42.540 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h) (1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

Appendix A to Subpart G of Part 42 [Amended]

■ 11. The Note in appendix A to subpart G is amended by removing the word ''program'' and adding, in its place, the words ''program or activity.''

■ 12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
42.501	program	program or activity
42.502, first sentence	program	program or activity
42.502, first sentence	or benefiting from	
42.502, last sentence	program	program or activity
42.503(a)	program	program or activity
42.503(a)	or benefiting from	
42.503(b)(1), introductory text	program	program or activity
42.503(b)(1)(i)	program	program or activity
42.503(b)(1)(ii)	program	program or activity
42.503(b)(1)(iv)	program	program or activity
42.503(b)(1)(vi)	program	program or activity
42.503(b)(2)	program	program or activity
42.503(b)(2)	program	aid, benefits, or services
42.503(b)(3)	program	program or activity
42.503(b)(4)	program	program or activity
42.503(b)(5)	a program	aid, benefits, or services
42.503(b)(5)	any program	any program or activity
42.503(b)(6)	program	entity
42.503(c)	programs	aid, benefits, or services
42.503(d)	programs	programs or activities
42.503(f), first sentence	program	program or activity
42.504(a), first sentence	program	program or activity
42.504(a), second sentence	for each of its assistance programs	
42.504(a), second sentence	program	program or activity
42.504(b)	program	program or activity
42.505(a), last sentence	program	program or activity
42.505(b)	program	program or activity
42.505(f)(1), second sentence	programs	programs or activities
42.510(a)(1)	program	program or activity
42.510(a)(1)	or benefiting from	
42.510(a)(2)	program	program or activity
42.510(a)(3), last sentence	apprenticeship programs	apprenticeships
42.510(b)(7)	social	those that are social
42.510(b)(7)	programs	
42.511(a)	program	program or activity
42.511(c), introductory text	program	program or activity
42.511(c)(1)	program	program or activity
42.520	program	program or activity
42.521(b), first sentence	in making its program accessible to its program accessible	in making its program or activity accessible
42.521(b), last sentence	offer programs to	serve
42.521(b), last sentence	to obtain the full benefits of the program	
42.521(d)(1)	program	program or activity
42.521(d)(3)	program accessibility	accessibility under § 42.521(a)
42.530(a), first sentence	programs	programs or activities
42.530(b)	programs	programs or activities
42.530(c)	programs	programs or activities
42.540(i), first sentence	programs	programs or activities

■ 13. The heading for subpart I is revised to read as follows:

Subpart I—Nondiscrimination on the Basis of Age in Federally Assisted Programs or Activities; Implementation of the Age Discrimination Act of 1975

■ 14. The authority citation for subpart I continues to read as follows:

Authority: 42 U.S.C. 6103(a)(4); 45 CFR part 90.

■ 15. Section 42.702 is amended by revising the definition of ''Program or activity'' to read as follows:

§ 42.702 Definitions.

* * * * *

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

■ 16. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
42.701(b)	programs	programs or activities
42.710(b), last sentence	program	program or activity
42.712(a)(2)	program	program or activity
42.712(b)(2)	program	program or activity
42.712(c)	program	program or activity
42.713(b), last sentence	program	program or activity
42.714	program	program or activity
42.720, first sentence	program	program or activity
42.724(b)	program	program or activity
42.725	programs and activities	programs or activities
42.733(b)(1)(i)(A)	program	program or activity
42.733(b)(2), last sentence	programs	programs or activities
42.733(b)(3), last sentence	program	program or activity

Dated: July 1, 2003.

John Ashcroft,

Attorney General.

DEPARTMENT OF LABOR

29 CFR Subtitle A

RIN 1291–AA31

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOL amends 29 CFR subtitle A, parts 31 and 32 as set forth below:

PART 31—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF LABOR—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 31 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 501, 29 U.S.C. 49k, 5 U.S.C. 301.

■ 2. Section 31.2 is amended by revising paragraph (g) to read as follows:

§ 31.2 Definitions.

* * * * *

(g) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*A*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*B*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 31.3 is amended by revising the heading of paragraph (d)(1) to read as follows:

§ 31.3 General standards.

* * * * *

(d) * * *

(1) *Employment service.* * * *

* * * * *

■ 4. Section 31.6 is amended by revising the heading of paragraph (b) to read as follows:

§ 31.6 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
31.2(f)	for the purpose of carrying out a program	
31.2(h)	for any program,	
31.2(h)	under any such program	
31.3(b)(1), introductory text	under any program	
31.3(d), introductory text, first sentence	programs and activities	types of Federal financial assistance
31.3(d), introductory text third sentence	particular program	particular type of Federal financial assistance
31.3(d), introductory text, last sentence	listed program	listed type of Federal financial assistance
31.3(d), introductory text, last sentence	that program that	assistance
31.3(d), introductory text, last sentence	other programs or activities	programs or activities receiving other types of Federal financial assistance
31.5(b), last sentence	of any program under	in
31.5(d)	under	for
31.6(a)(1), first sentence	to carry out a program	
31.6(a)(1), first sentence	to carry out such program	
31.6(a)(1), first sentence	except a program	except an application
31.6(a)(1), second sentence	Every program	Every award
31.6(a)(1), sixth sentence	for each program	
31.6(a)(1), sixth sentence	in this program	
31.6(a)(2), second sentence	under a program of	with
31.6(a)(2), third sentence	program under	statute under
31.6(b), introductory text	to carry out a program involving	for
31.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
31.10(e)	under the program involved	to which this regulation applies
31.10(e)	assistance will	assistance to which this regulation applies will
31.10(e)	under such program	
31.12(a),	first sentence under such program	

PART 32—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 6. The heading for part 32 is revised to read as set forth above.

■ 7. The authority citation for part 32 continues to read as follows:

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); secs. 119 and 122 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955; Executive Order 11914, 41 FR 17871.

■ 8. Section 32.2 is amended by revising paragraph (a) to read as follows:

§ 32.2 Application.

(a) This part applies to each recipient of Federal financial assistance from the Department of Labor, and to every program or activity that receives such assistance.

* * * * *

■ 9. Section 32.3 is amended by adding, in alphabetical order, a definition of *Program or activity* to read as follows:

§ 32.3 Definitions.

* * * * *

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

■ 10. Section 32.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 32.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, services, or training limited by Federal law.* * * *

* * * * *

■ 11. Section 32.5 is amended by revising paragraph (d) to read as follows:

§ 32.5 Assurances required.

* * * * *

(d) *Interagency agreements.* Where funds are granted by the Department to another Federal agency, and where the grant obligates the recipient agency to comply with the rules and regulations of the Department applicable to that grant the provisions of this part shall apply to programs or activities operated with such funds.

■ 12. The heading for subpart B is revised to read as follows:

Subpart B—Employment Practices and Employment Related Training Participation

■ 13. The heading for subpart C is revised to read as follows:

Subpart C—Accessibility

■ 14. Section 32.27 is amended by revising the section heading and the first sentence of paragraph (a) to read as follows:

§ 32.27 Accessibility.

(a) *Purpose.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped individuals. * * *

* * * * *

■ 15. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
32.1	or benefiting from	
32.1, last sentence	programs and activities	programs or activities
32.3, definition of Facility	program	program or activity
32.3, definition of Qualified handicapped individual, paragraph (b).	program	program or activity
32.3, definition of Qualified handicapped individual, paragraph (c).	programs	
32.3, definition of Qualified handicapped individual, paragraph (c).	in the program	in the program or activity
32.3, definition of Reasonable accommodation, introductory text, first sentence.	training program	training
32.3, definition of Reasonable accommodation, introductory text, first sentence.	an employment	employment
32.3, definition of Reasonable accommodation, introductory text, first sentence.	recipient's program	recipient's program or activity
32.3, definition of Reasonable accommodation paragraph (a).	where the program	where the program or activity
32.4(a)	or benefits from	
32.4(b)(1)(v)	program	program or activity
32.4(b)(2)	services and training	services or training
32.4(b)(3)	programs or activities	aid, benefits, services, or training
32.4(b)(4)(ii)	program	program or activity
32.4(b)(5)(i)	or benefits from	
32.4(b)(6)	or benefiting from	
32.4(b)(7)(i), first sentence	under programs of	receiving
32.4(b)(7)(i), second sentence	programs of employment	employment
32.4(c)	the benefits of a program	aid, benefits, program services, or training
32.4(c)	individuals from a program	individuals from aid, benefits, services, or training
32.4(d)	programs and activities	programs or activities
32.5(a), first sentence	for a program or activity	
32.5(a), first sentence	program will	program or activity will
32.5(b)(3)	program	program or activity
32.6(a)(3)(i)	program	program or activity
32.6(a)(3)(ii)	program	program or activity
32.8(a), second sentence	programs and activities	programs or activities
32.10(a)	programs	programs or activities
32.12(a)(1), last sentence	programs	under programs or activities
32.12(a)(3), last sentence	apprenticeship programs	apprenticeships
32.12(b)(8)	social	those that are social
32.12(b)(8)	programs	
32.13(a)	program	program or activity
32.13(b), introductory text	program	program or activity
32.13(b)(1)	program	program or activity
32.13(b)(2)	training program	training
32.13(d)	program	program or activity
32.15(c)(1), second sentence	training programs	training
32.17(a), last sentence	programs of	programs or activities receiving
32.27(a), third sentence	particular program	particular aid, benefit, service, or training
32.27(a), third sentence	program must	aid, benefit, service, or training must
32.27(a), fourth sentence	program accessibility	Accessibility
32.27(a), fourth sentence	program accessible	program or activity accessible
32.27(b)(1)	including	including those involving
32.27(b)(1)	when	when each part is
32.27(b)(2), second sentence	programs	
32.27(c), last sentence	offer programs and activities to	serve
32.27(e)(3)	program accessibility	accessibility under § 32.27(a)
32.44(b), second sentence	programs	programs or activities
32.44(b), last sentence	of any program under	in
32.46(c)(2), last sentence	program	program or activity

Section	Remove	Add
32.47(c)	programs	programs or activities

Dated: July 24, 2001.

Elaine L. Chao,

Secretary, Department of Labor.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Chapter I

RIN 2900–AK13

Authority and Issuance

■ For the reasons set forth in the joint preamble, VA amends 38 CFR chapter I, part 18 as set forth below:

PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subpart A—General

■ 1. The authority citation for subpart A continues to read as follows:

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d–1) and the laws referred to in Appendix A.

■ 2. Section 18.4 is amended by revising the heading of paragraph (b) and paragraph (d) to read as follows:

§ 18.4 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

* * * * *

(d) *Extent of application to institution or facility.* In the case where any assurances are required from an academic, a medical care, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility.

■ 3. Section 18.13 is amended by revising paragraph (f) to read as follows:

§ 18.13 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

■ 4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
18.2, first sentence	the federally assisted programs and activities	the types of Federal financial assistance
18.2, second sentence	under any such program	
18.2(b)	under any such program	
18.2(c)	under any such program	
18.2, penultimate sentence	program or activity	type of Federal financial assistance
18.2, penultimate sentence	such program	a program
18.2, last sentence	programs	types of Federal financial assistance
18.3(b)(1), introductory text	under any program	
18.4(a)(1), first sentence	to carry out a program	
18.4(a)(1), first sentence	except a program	except an application
18.4(a)(1), second sentence	program	award
18.4(a)(1), sixth sentence	for each program,	
18.4(a)(1), sixth sentence	in the program	
18.4(b), introductory text, first sentence	to carry out a program involving	for
18.4(b), introductory text, first sentence	programs	types of Federal financial assistance
18.4(b), concluding text	under a continuing program	
18.6(b), second sentence	of any program under	in
18.6(d)	program under	program for
18.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
18.10(f)	under the program involved	to which this regulation applies
18.10(f)	assistance will	assistance to which this regulation applies will
18.10(f)	under such program	
18.12(a), first sentence	under such program	
18.13(h)	for any program,	

Section	Remove	Add
18.13(h)	under any such program	

■ 5. The heading for subpart D is revised to read as follows:

Subpart D—Nondiscrimination on the Basis of Handicap

■ 6. The authority citation for subpart D is revised to read as follows:

Authority: 29 U.S.C. 706, 794.

■ 7. Section 18.403 is amended by adding paragraph (m) to read as follows:

§ 18.403 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

§ 18.404 [Amended]

■ 8. In § 18.404, the heading of paragraph (c) is amended by removing the word ''Programs'' and adding, in its place, the words ''Aid, benefits, or services''.

■ 9. Section 18.405 is amended by revising paragraph (c) to read as follows:

§ 18.405 Assurances required.

* * * * *

(c) *Extent of application to institution or facility.* An assurance shall apply to the entire institution or facility.

* * * * *

§ 18.421 [Amended]

■ 10. The undesignated center heading before § 18.421 is amended by removing the word ''Program''.

■ 11. In § 18.422, the heading and first sentence of paragraph (a) are revised to read as follows:

§ 18.422 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

■ 12. The heading of § 18.438 is revised to read as follows:

§ 18.438 Adult education.

* * * * *

■ 13. The heading of § 18.439 is revised to read as follows:

§ 18.439 Private education.

* * * * *

■ 14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
18.402	or benefits from	
18.403(h)(1)	a program of	
18.404(a)	or benefits from	
18.404(b)(1)(v)	program	program or activity
18.404(b)(3)	programs or activities	aid, benefits, or services
18.404(b)(4)(ii)	program	program or activity
18.404(b)(5)(i)	or benefits from	
18.404(b)(6)	or benefiting from	
18.404(c)	a program	aid, benefits, or services
18.405(a)	for a program or activity	
18.405(a)	the program	the program or activity
18.406(a)(3)(i)	program	program or activity
18.406(a)(3)(ii)	program	program or activity
18.406(a)(3)(iii)	program	program or activity
18.408(a), second sentence	programs and activities	programs or activities
18.411(a)(3), last sentence	apprenticeship programs	apprenticeships
18.411(b)(8)	social	those that are social
18.411(b)(8)	programs	
18.412(a)	program	program or activity
18.412(c), introductory text	program	program or activity
18.412(c)(1)	program	program or activity
18.422(b), last sentence	offer programs and activities to	serve
18.422(c), last sentence	programs	programs or activities
18.422(e)(3)	program accessibility	accessibility under paragraph (a) of this section
18.431	programs and activities	programs or activities
18.431	or benefit from	
18.433(b)(2)	individualized education program	Individualized Education Program

Section	Remove	Add
18.433(b)(3), first sentence	in	
18.433(b)(3), first sentence	to a program	for aid, benefits, or services
18.433(b)(3), first sentence	the one	those
18.433(b)(3), first sentence	operates	operates or provides
18.433(c)(1), second sentence	in	
18.433(c)(1), second sentence	to a program	for aid, benefits, or services
18.433(c)(1), second sentence	operated	operated or provided
18.433(c)(1), second sentence	the program	the aid, benefits, or services
18.433(c)(2)	in	
18.433(c)(2)	to a program	for aid, benefits, or services
18.433(c)(2)	operated	operated or provided
18.433(c)(2)	the program	the aid, benefits, or services
18.433(c)(4), last sentence	such a program	a free appropriate public education
18.435(a)	education program	education program or activity
18.435(a)	in a regular or special program	in regular or program special education
18.435(b), introductory text	programs and activities	programs or activities
18.435(b), introductory text	or benefit from	
18.437(a)(1)	or benefit from	
18.437(b)	or benefit from	
18.437(c)(1), first sentence	programs and activities	aid, benefits, or services
18.437(c)(1), first sentence	or benefits from	
18.437(c)(1), last sentence	in these activities	
18.438, first sentence	operates an	provides
18.438, first sentence	program or activity	
18.438, first sentence	from the program or activity	
18.438, last sentence	under the program or activity	
18.439(a)	operates a	provides
18.439(a)	education program	education
18.439(a)	from that program	
18.439(a)	the recipient's program	that recipient's program or activity
18.439(c)	operates	provides
18.439(c)	programs shall operate those programs	shall do so
18.441	programs and activities	programs or activities
18.441	or benefit from	
18.443(a)	program or activity	aid, benefits, or services
18.443(d)	programs and activities	program or activity
18.444(a), last sentence	program of	
18.444(c)	in its program	
18.444(d)(1)	under the education program or activity operated by the recipient	
18.447(a)(1), first sentence	programs and activities	aid, benefits, or services
18.451	programs and activities	programs or activities
18.451	or benefit from	
18.454, first sentence	program or activity	program or activity that provides aid, benefits, or services

Subpart E—Nondiscrimination on the Basis of Age

■ 15. The authority citation for subpart E continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*; 45 CFR part 90 (1979).

■ 16. Section 18.503 is amended by redesignating paragraphs (j) through (l) as paragraphs (k) through (m), and adding a new paragraph (j) to read as follows:

§ 18.503 Definitions.

* * * * *

(j) *Program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.

Appendix B to Subpart E to Part 18 [Amended]

■ 17. The heading for appendix B to subpart E to part 18 is amended by removing the word ''Programs''.

■ 18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
18.501, last sentence	programs and activities	programs or activities
18.531	programs and activities	programs or activities
18.532	programs and activities	programs or activities
18.544(a)(2), last sentence	program	
18.546(b), first sentence	program and activity	program or activity
18.546(c)(2), first sentence	Federal	
18.549(b)(2)	program or activity	Federal financial assistance

Dated: May 4, 2001.

Anthony Principi,

Secretary, Department of Veterans Affairs.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

RIN 2020–AA43

Authority and Issuance

■ For the reasons set forth in the joint preamble, EPA amends 40 CFR chapter I, part 7 as set forth below:

PART 7—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

■ 1. The heading for part 7 is revised to read as set forth above.

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

Authority: 42 U.S.C. 2000d to 2000d–7; 29 U.S.C. 794; 33 U.S.C. 1251 nt.

■ 3. Section 7.25 is amended by adding the new definition of ''Program or activity'' in alphabetical order to read as follows:

§ 7.25 Definitions.

* * * * *

Program or activity and *program* mean all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

§ 7.55 [Amended]

■ 4. The heading for § 7.55 is amended by removing the word ''programs'' and adding, in its place, the words, ''aid, benefits, or services''.

■ 5. In § 7.65, the first sentence of paragraph (a) introductory text and the heading for paragraph (b) are revised to read as follows:

§ 7.65 Accessibility.

(a) *General.* A recipient shall operate each program or activity receiving EPA assistance so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

(b) *Methods of ensuring compliance in existing facilities.* * * *

* * * * *

Appendix A to Part 7 [Amended]

■ 6. The heading for appendix A to part 7 is amended by removing the word ''Programs'' and inserting the words ''Types of'' immediately before the word ''EPA''.

■ 7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
7.20(a)	compliance programs	means of ensuring compliance
7.25, undesignated definition of Project Officer	program	
7.35(a)(1)	program	program or activity
7.35(a)(2)	program	program or activity
7.35(a)(3)	program	program or activity
7.35(a)(4)	program	program or activity
7.35(a)(5)	program	program or activity
7.35(a)(6)	any program	any program or activity
7.35(a)(6)	the EPA assistance program	EPA assistance
7.35(b)	program	program or activity
7.35(c)	program	program or activity
7.50(a)(1)	program	program or activity
7.50(a)(3)	program	program or activity
7.50(a)(5)	program	program or activity
7.50(b)	or benefits from	

Section	Remove	Add
7.50(e)	programs	aid, benefits, or services
7.55	program	program or activity
7.55	programs	programs or activities
7.60(a)	or benefits from	
7.60(c)(8)	social	those that are social
7.60(c)(8)	programs	
7.60(d)	apprenticeship programs	apprenticeships
7.60(e)	program	program or activity
7.65(b)	offer program benefits to	serve
7.65(c)(2) first sentence,	make a program or activity accessible	comply with paragraph (a) of this section
7.65(d)	assisted program	
7.65(e), last sentence	program	statute
7.75, introductory text	program	program or activity
7.75(a)(3)	program accessibility	accessibility under § 7.65(a)
7.85(b), first sentence	programs	programs or activities
7.95(a), first sentence	programs	programs or activities
7.130(b)(4)	program	program or activity

Dated: April 30, 2001.

Christine Todd Whitman,

Administrator, Environmental Protection Agency.

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

RIN 3090–AH33

Authority and Issuance

■ For the reasons set forth in the joint preamble, GSA amends 41 CFR chapter 101, parts 101–6 and 101–8 as set forth below:

PART 101–6—MISCELLANEOUS REGULATIONS

Subpart 101–6.2—Nondiscrimination in Programs Receiving Federal Financial Assistance

■ 1. The authority citation for subpart 101–6.2 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1.

■ 2. Section 101–6.204–3 is amended by revising the heading to read as follows:

§ 101–6.204–3 Special benefits.

* * * * *

■ 3. Section 101–6.205–2 is amended by revising the heading to read as follows:

§ 101–6.205–2 Continuing Federal financial assistance.

* * * * *

■ 4. Section 101–6.205–4 is amended by revising paragraph (b) to read as follows:

§ 101–6.205–4 Applicability of assurances.

* * * * *

(b) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

■ 5. Section 101–6.216 is amended by revising paragraph (f) to read as follows:

§ 101–6.216 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of nay other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
101–6.201	52	42
101–6.201	2000d–2000d–4	2000d–2000d–7
101–6.203(a), last sentence	programs involving	
101–6.203(b)	the programs involving	
101–6.203(c)	programs	types of Federal financial assistance
101–6.204–2 (a)(4), first sentence	the program	a program
101–6.204–3	the benefits of a program	benefits
101–6.205–1(a), first sentence	to carry out a program	

Section	Remove	Add
101–6.205–1(a), first sentence	except a program	except an application
101–6.205–1(a), fifth sentence	for each program	
101–6.205–1(a), fifth sentence	in the program	
101–6.205–1(b), second sentence	under a program of	with
101–6.205–1(b), third sentence	program	statute
101–6.205–1(d)	programs	Federal financial assistance
101–6.205–2	to carry out a program involving	for
101–6.205–4(c)	under a program	
101–6.206(b), second sentence	except as provided in paragraph (b) of § 101–6.205–4	
101–6.206(d)	subject to the provisions of § 101–6.205–4(b)	
101–6.209–2, last sentence	of any program under	in
101–6.209–4	program under	program for
101–6.212–5, first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
101–6.213–6	under the program involved	to which this regulation applies
101–6.213–6	assistance will	assistance to which this regulation applies will
101–6.213–6	under such program	
101–6.215–1, introductory text, first sentence	under such program	
101–6.216(h)	for any program,	
101–6.216(h)	under any such program	
101–6.216(i)	for the purpose of carrying out a program	

PART 101–8—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 7. The heading for part 101–8 is revised to read as set forth above.

Subpart 101–8.3—Discrimination Prohibited on the Basis of Handicap

■ 8. Section 101–8.301 is amended by adding a new paragraph (f) to read as follows:

§ 101–8.301 Definitions.

* * * * *

(f) The term *program or activity* means all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

■ 9. Section 101–8.309 is amended by revising the section heading and the heading and first sentence of paragraph (b) to read as follows:

§ 101–8.309 Accessibility.

* * * * *

(b) *Accessibility.* A recipient shall operate any program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 10. Section 101–8.311 is amended by revising the section heading and the heading and the first sentence of the introductory text of paragraph (b)(1) to read as follows:

§ 101–8.311 Historic Preservation Programs.

* * * * *

(b) * * * (1) *Accessibility.* A recipient shall operate any program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
101–8.300(b)	or benefits from	
101–8.302	or benefits from	
101–8.303(a)(5)	program	program or activity
101–8.303(c)	programs or activities	aid, benefits, or services
101–8.303(d)(2)	program	program or activity
101–8.303(f)	or benefitting from	
101–8.303(g)	the benefits of a program	aid, benefits, or services
101–8.303(g)	from a program	from aid, benefits, or services

Section	Remove	Add
101–8.303(h), first sentence	programs and activities	programs or activities
101–8.305(c), last sentence	apprenticeship programs	apprenticeships
101–8.305(d)(8)	social	those that are social
101–8.305(d)(8)	programs	
101–8.306(a)	program	program or activity
101–8.306(c), introductory text	program	program or activity
101–8.306(c)(1)	program	program or activity
101–8.309(a)	or benefits from	
101–8.309(c), last sentence	offer programs and activities to	serve
101–8.309(f)(3)	program accessibility	accessibility under paragraph (a) of this section
101–8.311(a), introductory text	the term	
101–8.311(a)(1)	preservation programs	Preservation Programs
101–8.311(a)(1)	means programs receiving	are those that receive
101–8.311(b)(1), introductory text, last sentence	program	
101–8.311(b)(1)(iv)	program accessibility	accessibility
101–8.311(b)(1), concluding paragraph	historic preservation program	Historic Preservation Program
101–8.311(b)(1), concluding paragraph	program accessibility	accessibility
101–8.311(b)(2), introductory text	program	
101–8.311(b)(2)(iii)	program	program or activity

Subpart 101–8.7—Discrimination Prohibited on the Basis of Age

■ 12. The authority citation for subpart 101–8.7 continues to read as follows:

Authority: 42 U.S.C. 6101 *et seq.*

■ 13. Section 1101–8.703 is amended by redesignating paragraph (k) as paragraph (l) and by adding a new paragraph (k) to read as follows:

§ 101–8.703 Definitions of terms.

* * * * *

(k) *Program or activity* means all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a state or of a local government;

(ii) The entity of such state and local government that distributes such assistance and each such department or agency (and each other state or local government entity) to which the assistance is extended, in the case of assistance to a state or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

* * * * *

■ 14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
101–8.701, last sentence	Federal financial assistance	Federally assisted
101–8.701, last sentence	programs and activities	programs or activities
101–8.702(a)	that benefits from GSA Federal financial assistance	
101–8.703(g)(2)	program	policy
101–8.703(j)	for the purpose of carrying out a program	
101–703(l)	for any program	
101–8.703(l)	under any such program	
101–8.709	program	program or activity
101–8.710, first sentence	program	program or activity
101–8.710, second sentence	programs	
101–8.710, second sentence	provide	provides
101–8.710, last sentence	''Child Care Center'' program	Child Care Center Program
101–8.710, last sentence	two programs	two types of Federal financial assistance
101–8.711, first sentence	programs and activities	programs or activities
101–8.712(b)	program	
101–8.718(a), third sentence	program	
101–8.720(b), first sentence	program and activity	program or activity
101–8.720(c)(2), first sentence	Federal	
101–8.721(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
101–8.725(b)	program or activity	Federal financial assistance

Dated: February 26, 2003.

Stephen A. Perry,

Administrator, General Services Administration.

DEPARTMENT OF THE INTERIOR

43 CFR Subtitle A

RIN 1090–AA77

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOI amends 43 CFR subtitle A, part 17 as set forth below:

PART 17—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR

Subpart A—Nondiscrimination on the Basis of Race, Color, or National Origin

■ 1. The authority citation for subpart A continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; and the laws referred to in Appendix A.

■ 2. Section 17.3 is amended by revising the heading of paragraph (d) to read as follows:

§ 17.3 Discrimination prohibited.

* * * * *

(d) *Benefits for Indians, natives of certain territories, and Alaska natives.* * * *

■ 3. Section 17.4 is amended by revising the heading of paragraph (b) and paragraph (d)(2) to read as follows:

§ 17.4 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

* * * * *

(d) * * *

(2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

■ 4. Section 17.12 is amended by revising paragraph (f) to read as follows:

§ 17.12 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

Appendix B to Subpart A [Amended]

■ 5. The introductory text for appendix B to subpart A is amended by removing the word ''programs'' and adding, in its place, the words ''Federal financial assistance.''

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
17.2(a), second sentence	under any such program	
17.2(a)(2)	under any such program	
17.2(a)(3)	under any such program	
17.3(b)(1), introductory text	under any program	
17.3(c)(1), first sentence	a program of	the
17.3(c)(1), first sentence	assistance	assistance to a program
17.3(d), first sentence	the benefits of a program	benefits
17.3(d), first sentence	is limited	are limited
17.3(d), first sentence	the program is addressed	the benefits are addressed
17.3(d), last sentence	programs	benefits
17.4(a)(1), first sentence	to carry out a program	
17.4(a)(1), first sentence	except a program	except an application
17.4(a)(1), second sentence	program of	award of
17.4(a)(1), sixth sentence	for each program,	
17.4(a)(1), sixth sentence	in the program	
17.4(a)(2), second sentence	under a program of	with
17.4(a)(2), third sentence	program	statute
17.4(b)(1), introductory text	to carry out a program involving	for
17.4(d)(1)	a student assistance program	student assistance
17.5(b), last sentence	of any program under	in
17.5(d)	program under which	program for which
17.8(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
17.9(g)	under the program involved	to which this regulation applies
17.9(g)	assistance will	assistance to which this regulation applies will

Section	Remove	Add
17.9(g)	under such program	
17.11(a), first sentence	under such program	
17.12(h)	for any program,	
17.12(h)	under such program	
17.12(i)	for the purpose of carrying out a program	

Subpart B—Nondiscrimination on the Basis of Handicap

■ 7. The authority citation for subpart B continues to read as follows:

Authority: 29 U.S.C. 794.

■ 8. Section 17.202 is amended by adding a new paragraph (q) to read as follows:

§ 17.202 Definitions.

* * * * *

(q) *Program or activity* means all of the operations of any entity described in paragraphs (q)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (q)(1), (2), or (3) of this section.

■ 9. Section 17.203 is amended by revising the heading of paragraph (c) to read as follows:

§ 17.203 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

* * * * *

■ 10. The heading for § 17.216 is revised to read as follows:

§ 17.216 Accessibility.

* * * * *

■ 11. Section 17.217 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 17.217 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 12. Section 17.260 is amended by revising the section heading, the introductory text of paragraph (a), and the first sentence of paragraph (b)(1) introductory text to read as follows:

§ 17.260 Historic Preservation Programs.

(a) *Definitions.* For the purposes of this section, Historic Preservation Programs are those that receive Federal financial assistance that has preservation of historic properties as a primary purpose.

* * * * *

(b) * * *

(1) A recipient shall operate any program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 13. The section heading and the introductory text of § 17.270 are revised to read as follows:

§ 17.270 Recreation.

This section applies to recipients that operate, or that receive Federal financial assistance for the operation of programs or activities involving recreation.

* * * * *

■ 14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
17.201	or benefits from	
17.202(i)	recreation and program spaces	spaces, including those used for recreation,
17.202(m)	programs	the recipient
17.202(m)	should be available	should make its aid, benefits, or services available
17.202(n)	programs	programs or activities
17.203(a)	or benefits from	
17.203(b)(1)(v)	program	program or activity
17.203(b)(3)	programs or activities	aid, benefits, or services
17.203(b)(4)(ii)	program	program or activity
17.203(b)(5)(i)	or benefits from	
17.203(b)(6)	or benefiting from	
17.203(c)	the benefits of a program	aid, benefits, or services
17.203(c)	from a program	from aid, benefits, or services
17.204(a), first sentence	for a program or activity	
17.204(a), first sentence	the program	the program or activity
17.204(c)(4), first sentence	to carry out a program involving	for
17.204(c)(4)(i)	program	program or activity

Section	Remove	Add
17.204(c)(4)(ii)	the program	the program or activity
17.204(c)(4)(ii)	under such program	
17.205(a)(3)(i)	program	program or activity
17.205(a)(3)(ii)	program	program or activity
17.207(a), second sentence	programs and activities	programs or activities
17.210(a)(2)	programs	programs or activities
17.210(a)(4), last sentence	apprenticeship programs	apprenticeships
17.210(b)(8)	social	those that are social
17.210(b)(8)	programs	
17.211(a)	program	program or activity
17.211(c), introductory text	program	program or activity
17.211(c)(1)	program	program or activity
17.217(b), last sentence	offer programs and activities to	serve
17.217(e)(3)	program accessibility	accessibility under paragraph (a) of this section
17.220, first sentence	programs and activities	programs or activities
17.220, first sentence	or benefit from	
17.232, first sentence	programs and activities	programs or activities
17.232, first sentence	or benefit from	
17.250, introductory text	programs and activities	programs or activities
17.250, introductory text	or benefit from	
17.252, first sentence	activity for	activity that provides aid, benefits, or services for
17.260(b)(1), introductory text, last sentence	program	
17.260(b)(1)(iv)	program	
17.260(b)(1), concluding text	historic preservation program	Historic Preservation Program
17.260(b)(1), concluding text	program accessibility	accessibility
17.260(b)(2), introductory text, first sentence	program	
17.260(b)(2), introductory text, last sentence	program	
17.260(b)(2)(iii)	program	program or activity
17.270(a)(1)	programs	aid, benefits, or services
17.270(a)(2)	programs or activities	aid, benefits, or services
17.270(a)(5)	program or activity	aid, benefits, or services

Subpart C—Nondiscrimination on the Basis of Age

■ 15. The authority citation for subpart C continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR part 90.

■ 16. The heading of § 17.302 is revised to read as follows:

§ 17.302 To what programs or activities do these regulations apply?

* * * * *

■ 17. Section 17.303 is amended by redesignating paragraphs (j) through (m) as paragraphs (k) through (n) and adding a new paragraph (j) to read as follows:

§ 17.303 Definitions.

* * * * *

(j) *Program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.

* * * * *

■ 18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
17.300, first sentence	programs and activities	programs or activities
17.300, last sentence	programs and activities	programs or activities
17.301, last sentence	programs and activities	programs or activities
17.302(a)	or benefits from	
17.313	program	program or activity
17.314	program	program or activity
17.320, first sentence	programs and activities	programs or activities

Section	Remove	Add
17.321(b)	program	
17.333(a)(2), last sentence	program	
17.335(c)(2), first sentence	Federal	
17.338(b)(2)	program or activity	Federal financial assistance

Dated: October 11, 2002.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management, and Budget, Department of the Interior.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Chapter I

RIN 1660–AA12

Authority and Issuance

■ For the reasons set forth in the joint preamble, FEMA amends 44 CFR chapter I, part 7 as set forth below:

PART 7—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS (FEMA REG. 5)

■ 1. The heading for subpart A is revised to read as follows:

Subpart A—Nondiscrimination in FEMA-Assisted Programs—General

■ 2. The authority citation for subpart A continues to read as follows:

Authority: FEMA Reg. 5 issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; 42 U.S.C. 1855–1885g; 50 U.S.C. 404.

■ 3. Section 7.2 is amended by revising paragraph (d) to read as follows:

§ 7.2 Definitions.

* * * * *

(d) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (d)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (d)(1), (2), or (3) of this section.

* * * * *

■ 4. Section 7.3 is revised to read as follows:

§ 7.3 Application of this regulation.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this regulation applies.

■ 5. Section 7.9 is amended by revising paragraph (b) to read as follows:

§ 7.9 Assurances from institutions.

* * * * *

(b) The assurances required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institutions or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
7.2(f)	for any program,	
7.2(f)	under any such program	
7.2(g)	for the purpose of carrying out a program	
7.4, second sentence	under any such program	
7.4(b)	under any such program	
7.4(c)	under any such program	
7.5(a), introductory text	under any program	
7.7, first sentence	to carry out a program	
7.7, fifth sentence	for each program,	
7.7, fifth sentence	in the program	
7.10(b), last sentence	of any program under	in
7.10(d)	program under which	program for which
7.13(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
7.14(f)	under the program involved	to which this regulation applies
7.14(f)	assistance will	assistance to which this regulation applies will
7.14(f)	under such program	
7.16(a), first sentence	under such program	

■ 7. The heading for subpart E is revised to read as follows:

Subpart E—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From FEMA

■ 8. The authority citation for subpart E is revised to read as follows:

Authority: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45 CFR part 90.

■ 9. The heading for § 7.912 is revised to read as follows:

§ 7.912 To what programs or activities does this regulation apply?

* * * * *

■ 10. Section 7.913 is amended by adding, in alphabetical order, a definition of ''Program or activity'' to read as follows:

§ 7.913 Definition of terms used in this regulation.

* * * * *

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
7.910	programs and activities	programs or activities
7.911, last sentence	programs, activities	programs or activities
7.912(a)	or benefits from	
7.925	program	program or activity
7.926	program	program or activity
7.930, first sentence	programs and activities	programs or activities
7.931(b)	program	
7.943(a)(2), last sentence	program	
7.945(b), first sentence	program and activity	program or activity
7.945(c)(2), first sentence	Federal	
7.948(b)(2)	program or activity	Federal financial assistance

Dated: May 8, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

NATIONAL SCIENCE FOUNDATION

45 CFR Chapter VI

RIN 3145–AA38

Authority and Issuance

■ For the reasons set forth in the joint preamble, NSF amends 45 CFR chapter VI, parts 605, 611, and 617 as set forth below:

PART 605—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The heading for part 605 is revised to read as set forth above.

■ 2. The authority citation for part 605 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 3. Section 605.3 is amended by adding a new paragraph (m) to read as follows:

§ 605.3 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

§ 605.4 [Amended]

■ 4. In § 605.4, the heading of paragraph (c) is amended by removing the word ''Programs'' and adding, in its place, the words ''Aid, benefits, or services''.

Subpart C to Part 605—[Amended]

■ 5. The heading for subpart C is amended by removing the word ''Program''.

■ 6. In § 605.22, the heading and first sentence of paragraph (a) are revised to read as follows:

§ 605.22 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped persons. * * *

* * * * *

§ 605.38 [Amended]

■ 7. The heading for § 605.38 is amended by removing the word ''programs''.

§ 605.39 [Amended]

■ 8. The heading for § 605.39 is amended by removing the word ''programs''.

■ 9. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
605.0, first sentence	programs and activities	programs or activities
605.2	or benefits from	
605.3(k)(5), second sentence	programs	aid, benefits, or services
605.3(k)(5), third sentence	program	
605.4(a)	or benefits from	
605.4(b)(1)(v)	recipients program	recipient's program or activity
605.4(b)(3)	programs or activities	aid, benefits, or services
605.4(b)(4)(ii)	program	program or activity
605.4(b)(5)(i)	or benefits from	
605.4(b)(6)	or benefiting from	
605.4(c)	the benefits of a program	aid, benefits, or services
605.4(c)	from a program	from aid, benefits or services
605.5(a)	under a program or activity	
605.5(a)	programs	programs or activities
605.6(a)(3)(i)	program	program or activity
605.6(a)(3)(ii)	program	program or activity
605.8(a), second sentence	programs and activities	programs or activities
605.11(a)(2)	programs	programs or activities
605.11(a)(4), last sentence	apprenticeship programs	apprenticeships
605.11(b)(8)	social	those that are social
605.11(b)(8)	programs	
605.12(a)	program	program or activity
605.12(c), introductory text	program	program or activity
605.12(c)(1)	program	program or activity
605.22(b), last sentence	offer programs and activities to	serve
605.22(e)(3)	program accessibility	accessibility under paragraph (a) of this section
605.31	programs and activities	programs or activities
605.31	or benefit from	
605.33(b)(2)	individualized education program	Individualized Education Program
605.33(b)(3), first sentence	in	
605.33(b)(3), first sentence	to a program	for aid, benefits, or services
605.33(b)(3), first sentence	the one	those
605.33(b)(3), first sentence	operates	operates or provides
605.33(c)(1), second sentence	in	
605.33(c)(1), second sentence	to a program	for aid, benefits, or services
605.33(c)(1), second sentence	operated	operated or provided
605.33(c)(1), second sentence	program	aid, benefits, or services
605.33(c)(2)	person in	person
605.33(c)(2)	to a program	for aid, benefits, or services
605.33(c)(2)	operated	operated or provided
605.33(c)(2)	the program	the aid, benefits, or services
605.33(c)(3)	placement in	
605.33(c)(3)	program	placement
605.33(c)(4), last sentence	such a program	a free appropriate public education
605.35(a)	program	program or activity
605.35(a)	a regular or special education program	regular or special education
605.37(c)(1), first sentence	programs and activities	aid, benefits, or services
605.37(c)(1), last sentence	in these activities	
605.38	operates a	provides
605.38	day care program or activity	day care
605.38	an adult education program or activity	adult education
605.38	from the program or activity	
605.38	under the program or activity	
605.39(a)	operates a	provides
605.39(a)	education program	education
605.39(a)	from such program	
605.39(a)	the recipient's program	that recipient's program or activity
605.39(c), first sentence	operates	provides
605.39(c), first sentence	programs shall operate such programs	shall do so

Section	Remove	Add
605.41	programs and activities	programs or activities
605.41	or benefit from	
605.43(a)	program or activity	aid, benefits, or services
605.43(d)	programs and activities	program or activity
605.44(a), second sentence	program of	
605.44(c)	in its program	
605.47(a)(1), first sentence	programs and activities	aid, benefits, or services
605.51	programs and activities	programs or activities
605.51	or benefit from	
605.54, first sentence	activity for	activity that provides aid, benefits, or services for

PART 611—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE NATIONAL SCIENCE FOUNDATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 10. The authority citation for part 611 continues to read as follows:

Authority: Sec. 11(a), National Science Foundation Act of 1950, as amended, 42 U.S.C. 1870(a); 42 U.S.C. 2000d–1.

■ 11. Section 611.4 is amended by revising paragraph (c)(2) to read as follows:

§ 611.4 Assurances required.

* * * * *

(c) * * *

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

■ 12. Section 611.5 is amended by revising the example 2. to read as follows:

§ 611.5 Illustrative applications.

* * * * *

2. In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

* * * * *

■ 13. Section 611.13 is amended by revising paragraph (f) to read as follows:

§ 611.13 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

■ 14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
611.2, first sentence	Federally-assisted programs and activities	types of Federal financial assistance
611.2, second sentence	under any such program	
611.2(b)	under any such program	
611.2(c)	under any such program	
611.2, penultimate sentence	program or activity	type of Federal financial assistance
611.2, penultimate sentence	such program	a program
611.2, last sentence	programs	types of Federal financial assistance
611.3(b)(1), introductory text	under any program	
611.3(c)(2)	Programs	Types of Federal financial assistance
611.4(a)(1), first sentence	to carry out a program	
611.4(a)(1), fourth sentence	for each program	
611.4(a)(1), fourth sentence	in the program	
611.4(a)(2), second sentence	under a program of	with
611.4(a)(2), third sentence	program	statute
611.5, introductory text, first sentence	programs of	programs aided by
611.5, example 1., first sentence	In programs for	For
611.5, example 4., first sentence	grant programs	grants
611.6(b), last sentence	of any program under	in
611.6(d)	program under	program for

Section	Remove	Add
611.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
611.10(f)	under the program involved	to which this regulation applies
611.10(f)	assistance will	assistance to which this regulation applies will
611.10(f)	under such program	
611.12(a), first sentence	under such program	
611.13(h)	for any program,	
611.13(h)	under any such program	
611.13(i)	for the purpose of carrying out a program	

PART 617—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM NSF

■ 15. The authority citation for part 617 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*; 45 CFR part 90.

§ 617.2 [Amended]

■ 16. In § 617.2, the list is amended by adding, in alphabetical order, the term ''Program or activity.''

■ 17. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
617.1, last sentence	programs and activities	programs or activities
617.8, first sentence	program or activities	program or activity
617.11(a)(2), last sentence	program	
617.12(a), first sentence	under	for
617.12(c), first sentence	program	program or activity
617.12(e), first sentence	Federal	
617.12(f)(2)(ii)	program or activity	Federal financial assistance

Dated: April 26, 2001.

Lawrence Rudolph,

General Counsel, National Science Foundation.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Chapter XI

RIN 3135–AA17, RIN 3136–AA24, RIN 3137–AA11

Authority and Issuance

■ For the reasons set forth in the joint preamble, NFAH, composed of the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services, amends 45 CFR chapter XI, part 1110, as set forth below:

PART 1110—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

■ 1. The authority citation for part 1110 is revised to read as follows:

Authority: 42 U.S.C. 2000d–2000d–7.

■ 2. Section 1110.4 is amended by revising the heading of paragraph (b) and paragraph (d)(2) to read as follows:

§ 1110.4 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance* * * *

* * * * *

(d) * * *

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

■ 3. Section 1110.5 is amended by revising paragraph (a) to read as follows:

§ 1110.5 Illustrative applications.

* * * * *

(a) In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

* * * * *

■ 4. Section 1110.13 is amended by revising paragraph (g) to read as follows:

§ 1110.13 Definitions.

* * * * *

(g) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1110.2, first sentence	federally assisted programs and activities	types of Federal financial assistance
1110.2, second sentence	under any such program	
1110.2, fifth sentence	program or activity	type of Federal financial assistance
1110.2, fifth sentence	that such program	that a program
1110.2, last sentence	programs	types of Federal financial assistance
1110.4(a)(1), first sentence	to carry out a program	
1110.4(a)(1), third sentence	for each program	
1110.4(a)(1), third sentence	in the program	
1110.4(a)(2), first sentence	through a program of	with
1110.4(a)(2), second sentence	under a program of	with
1110.4(a)(2), third sentence	program	statute
1110.4(b)	to carry out a program involving	for
1110.6(b), last sentence	of any program under	in
1110.6(d)	program under which	program for which
1110.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1110.10(f)	under the program involved	to which this regulation applies
1110.10(f)	assistance will	assistance to which this regulation applies will
1110.10(f)	under such program	
1110.13(i)	for any program,	
1110.13(i)	under any such program	
1110.13(j)	for the purposes of carrying out a program	

Dated: January 16, 2003.

Karen Elias,

Deputy General Counsel, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

Dated: January 17, 2003.

Daniel Schneider,

General Counsel, National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

Dated: January 16, 2003.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Chapter XI

RIN 3135–AA17

Authority and Issuance

■ For the reasons set forth in the joint preamble, NEA amends 45 CFR chapter XI, parts 1151 and 1156, as set forth below:

PART 1151—NONDISCRIMINATION ON THE BASIS OF HANDICAP

■ 1. The authority citation for part 1151 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 2. Section 1151.3 is amended by adding a new paragraph (h) to read as follows:

§ 1151.3 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

§ 1151.21 [Amended]

■ 3. The undesignated center heading immediately preceding § 1151.21 is amended by removing the word ''Program''.

■ 4. Section 1151.22 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1151.22 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1151.2	or benefits from	
1151.4(a), second sentence	programs and activities	programs or activities
1151.16(a)	or benefits from	
1151.16(b)	the benefits of a program	aid, benefits, or services
1151.16(c)	program	program or activity
1151.16(c)	or benefiting from	
1151.16(e)	programs and activities	programs or activities
1151.17(a), introductory text	benefit, service, or program	benefit, or service
1151.17(a)(1)	program,	
1151.17(a)(5)	program	program or activity
1151.17(b)	programs or activities	aid, benefits, or services
1151.17(c)(2)	program	program or activity
1151.17(d)(1)	or benefits from	
1151.17(e)	or benefiting from	
1151.18(a)(3)	for a specific program offered	and offering, for example, a specific event
1151.18(a)(3)	that program	that specific event
1151.18(b)	programs	aid, benefits, or services
1151.18(d)	benefits of the programs and activities	aid, benefits, or services
1151.18(d)	programs and activities	aid, benefits, or services
1151.18(e)	programs and activities	programs or activities
1151.22(b), last sentence	offer programs and activities to	serve
1151.22(c)	to make programs or, activities in existing facilities accessible	
1151.22(d)(3)	program accessibility	accessibility under paragraph (a) of this section
1151.31(a)	or benefits from	
1151.31(c), last sentence	apprenticeship programs	apprenticeships
1151.31(d)(8)	social	those that are social
1151.31(d)(8)	programs	
1151.32(a)	program	program or activity
1151.32(c), introductory text	program	program or activity
1151.32(c)(1)	program	program or activity
1151.41(a), first sentence	for a program or activity	
1151.41(a), first sentence	the program	the program or activity

PART 1156—NONDISCRIMINATION ON THE BASIS OF AGE

■ 6. The authority citation for part 1156 continues to read as follows:

Authority: 42 U.S.C. 6101 *et seq.*; 45 CFR part 90.

§ 1156.2 [Amended]

■ 7. Section 1156.2 is amended by removing the words ''and to each program or activity that receives or benefits from such assistance'' in paragraph (a).

■ 8. Section 1156.3 is amended by redesignating paragraphs (h) through (n) as paragraphs (i) through (o), respectively; and by adding a new paragraph (h) to read as follows:

§ 1156.3 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

■ 9. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1156.1, last sentence	programs and activities	programs or activities
1156.7(c)	program	program or activity
1156.10, first sentence	programs and activities	programs or activities
1156.17(a)(2), last sentence	program	
1156.19(c)(2), first sentence	Federal	
1156.20(b)(2)	program or the activity	Federal financial assistance

Dated: April 17, 2001.

Karen Elias,

Deputy General Counsel, National Endowment for the Arts.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Chapter XI

RIN 3136–AA24

Authority and Issuance

■ For the reasons set forth in the joint preamble, NEH amends 45 CFR chapter XI, part 1170 as set forth below:

PART 1170—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

■ 1. The heading for part 1170 is revised to read as set forth above.

■ 2. The authority citation for part 1170 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 3. Section 1170.3 is amended by revising paragraph (g) to read as follows:

§ 1170.3 Definitions.

* * * * *

(g) The term *program or activity* means all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

Subpart D to Part 1170—[Amended]

■ 4. The heading for subpart D is amended by removing the word ''Program''.

■ 5. Section 1170.32 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 1170.32 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1170.2	or benefits from	
1170.3(a)	and	
1170.3(a)	95–602	95–602, and by the Civil Rights Restoration Act of 1987, Pub. L. 100–259
1170.3(d)	program	program or activity
1170.11	or benefits from	
1170.12(a)(5)	program	program or activity
1170.12(b)	programs or activities	aid, benefits, or services
1170.12(c)(2)	program	program or activity
1170.12(d)(1)	or benefits from	
1170.12(e)	the benefits of a program	aid, benefits, or services
1170.12(e)	from a program	from aid, benefits, or services
1170.12(f)	programs and activities	programs or activities
1170.13(a)(3)	programs	aid, benefits, or services
1170.13(a)(3)	program	aid, benefit, or service
1170.13(a)(4), first sentence	of a program's	
1170.13(c)	the programs and activities	the program or activity
1170.13(c)	museum programs and activities	museum aid, benefits, or services
1170.13(d)	programs and activities	programs or activities
1170.21(a)	or benefits from	
1170.21(c), last sentence	apprenticeship programs	apprenticeships
1170.21(d)(8)	social	those that are social
1170.21(d)(8)	programs	
1170.22(a)	program	program or activity
1170.22(c), introductory text	program	program or activity
1170.22(c)(1)	program	program or activity
1170.32(b), last sentence	offer program and activities to	serve
1170.32(d)(3)	program accessibility	accessibility under paragraph (a) of this section
1170.41	programs and activities	programs or activities
1170.41	or benefit from	
1170.43(a)	program or activity	aid, benefit, or service
1170.43(d)	programs and activities	program or activity
1170.44(a), second sentence	program of	
1170.44(c),	in its program	

Section	Remove	Add
1170.44(d)(1)	under the education program or activity operated by the recipient	
1170.47(a)(1), first sentence	programs and activities	aid, benefits, or services
1170.51(a), first sentence	for a program or activity	
1170.51(a), first sentence	the program	the program or activity
1170.52(a)(3)(i)	program	program or activity
1170.52(a)(3)(ii)	program	program or activity
1170.54(a), second sentence	programs and activities	programs or activities

Dated: January 17, 2003.

Daniel Schneider,

General Counsel, National Endowment for the Humanities.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XII

RIN 3045–AA29

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Corporation amends 45 CFR chapter XII, parts 1203 and 1232 as set forth below:

PART 1203—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 1203 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1.

■ 2. Section 1203.3 is amended by revising paragraph (e) to read as follows:

§ 1203.3 Definitions.

* * * * *

(e) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 1203.5 is amended by revising paragraph (b), paragraph (c)(2), and the heading of paragraph (d) to read as follows:

§ 1203.5 Assurances required.

* * * * *

(b) *Assurances from Government agencies.* In the case of an application from a department, agency, or office of a State or local government for Federal financial assistance for a specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of the other department, agency, or office will substantially affect the project for which Federal financial assistance is requested.

(c) * * *

(2) The assurance required by an academic institution, detention or correctional facility, or any other institution or facility, relating to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to these individuals, is applicable to the entire institution or facility.

(d) *Continuing Federal financial assistance.* * * *

* * * * *

Appendix A to Part 1203 [Amended]

■ 4. The heading for appendix A to part 1203 is amended by removing the word ''Programs'' and adding, in its place, the words ''Federal Financial Assistance''.

Appendix B to Part 1203 [Amended]

■ 5. The heading for appendix B to part 1203 is amended by removing the word ''Programs'' and adding, in its place, the words ''Federal Financial Assistance''.

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1203.2(a), introductory text, first sentence	federally assisted programs	types of Federal financial assistance
1203.2(a), introductory text, second sentence	under a program	
1203.2(a)(2)	under a program	
1203.2(a)(3)	under a program	
1203.2(a), concluding text, first sentence	a program	a type of Federal financial assistance
1203.2(a), concluding text, first sentence	the program	a program
1203.2(a)(4) concluding text last sentence	programs	types of Federal financial assistance
1203.2(b)	as part of the program receiving that assistance	
1203.3(d)	for the purpose of carrying out a program	
1203.3(f)	for any program,	

Section	Remove	Add
1203.3(f)	under a program	
1203.4(b)(1), introductory text	under a program	
1203.4(c)(1), first sentence	a program of	the
1203.5(a)(1), first sentence	to carry out a program	
1203.5(a)(1), first sentence	except a program	except an application
1203.5(a)(1), second sentence	program	award
1203.5(a)(1), sixth sentence	for each program,	
1203.5(a)(1), sixth sentence	in the program	
1203.5(a)(2), second sentence	under a program of	with
1203.5(a)(2), third sentence	program	statute
1203.5(d), introductory text	to carry out a program involving	for
1203.5(d), introductory text	programs	types of Federal financial assistance
1203.6(b), second sentence	of a program under	in
1203.6(d)	program under which	program for which
1203.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1203.10(f)	under the program involved	to which this regulation applies
1203.10(f)	assistance will	assistance to which this regulation applies will
1203.10(f)	under the programs	
1203.12(a), first sentence	under a program	

PART 1232—NONDISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 7. The heading for part 1232 is revised to read as set forth above.

■ 8. The authority citation for part 1232 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 9. Section 1232.3 is amended by adding a new paragraph (m) to read as follows:

§ 1232.3 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

Subpart C of Part 1232—[Amended]

■ 10. The heading for subpart C of part 1232 is amended by removing the word ''Program''.

§ 1232.13 [Amended]

■ 11. The heading for § 1232.13 is amended by removing the word ''program''.

■ 12. Section 1232.14 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 1232.14 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible and usable by handicapped persons. * * *

(b) A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Where structural changes are necessary to comply with paragraph (a) of this section, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

* * * * *

■ 13. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1232.2, first sentence	or benefits from	
1232.2, first sentence	including volunteer programs such as	including, but not limited to
1232.3(k)	under any programs	as
1232.4(b)(1)(v)	program	program or activity
1232.4(b)(2)	programs or activities	aid, benefits, or services
1232.4(b)(3)(ii)	program	program or activity
1232.4(b)(4)(i)	or benefits from	
1232.4(c)	the benefits of a program	aid, benefits, or services

Section	Remove	Add
1232.4(c)	from a program	from aid, benefits, or services
1232.4(d)	programs and activities .	programs or activities
1232.4(f)	program	program or activity
1232.4(f)	or benefiting from	
1232.5(a), first sentence	for a program or activity	
1232.5(a), first sentence	program	program or activity
1232.5(c)	volunteer program	program or activity
1232.7(a)(3)(i)	program	program or activity
1232.7(a)(3)(ii)	program	program or activity
1232.7(a)(3)(iii)	program	program or activity
1232.9(a)	or benefits from	
1232.9(c)(8)	social	those that are social
1232.9(c)(8)	programs	
1232.9(d), last sentence	apprenticeship programs	apprenticeships
1232.9(f)	volunteer program	program or activity
1232.10(a)	program	program or activity
1232.10(c), introductory text	program	program or activity
1232.10(c)(1)	program	program or activity

Dated: September 17, 2002.

Frank Trinity,

General Counsel, Corporation for National and Community Service.

DEPARTMENT OF TRANSPORTATION

49 CFR Subtitle A

RIN 2105–AC96

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOT amends 49 CFR subtitle A, parts 21 and 27 as set forth below:

PART 21—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 21 is revised to read as follows:

Authority: 42 U.S.C. 2000d-2000d–7.

■ 2. Section 21.7 is amended by removing the fifth sentence of paragraph (a)(1) and by revising the heading of paragraph (b) to read as follows:

§ 21.7 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

■ 3. Section 21.23 is amended by revising paragraph (e) to read as follows:

§ 21.23 Definitions.

* * * * *

(e) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

* * * * *

■ 4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
21.3(a), introductory text, first sentence	federally assisted programs and activities	types of Federal financial assistance
21.3(a), introductory text, second sentence	under any such program	
21.3(a)(2)	under any such program	
21.3(a)(3)	under any such program	
21.3(a), concluding text, first sentence	program or activity	type of Federal financial assistance
21.3(a), concluding text, first sentence	such	a
21.3(a), concluding text, last sentence	programs	types of Federal financial assistance
21.5(b)(1), introductory text	under any program	
21.5(b)(6)	programs of	types of Federal financial assistance administered by
21.5(c)(1), first sentence	a program of	the
21.5(c)(1), first sentence	assistance	assistance to a program
21.7(a)(1), first sentence	to carry out a program	
21.7(a)(1), first sentence	except a program	except an application
21.7(a)(1), second sentence	program	award
21.7(a)(1), sixth sentence	for each program	

Section	Remove	Add
21.7(a)(1), sixth sentence	in the program	
21.7(a)(2), second sentence	under a program of	with
21.7(a)(2), third sentence	program	statute
21.7(b)	to carry out a program involving	for
21.7(b)	programs	types of Federal financial assistance
21.9(b), second sentence	of any program under	in
21.9(d)	under	for
21.15(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
21.17(f)	under the program involved	to which this regulation applies
21.17(f)	assistance will	assistance to which this regulation applies will
21.17(f)	under such programs	
21.21(a), first sentence	under such program	
21.23(d)	for the purpose of carrying out a program	
21.23(f)	for any program,	
21.23(f)	under any such program	

PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 5. The heading for part 27 is revised to read as set forth above.

■ 6. The authority citation for part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310 (a) and (f)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

Subpart A—General

■ 7. Section 27.5 is amended by revising the definition of *Primary recipient* and adding, in alphabetical order, a definition of *Program or activity* to read as follows:

§ 27.5 Definitions.

* * * * *

Primary recipient means any recipient that is authorized or required to extend Federal financial assistance from the Department to another recipient.

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

■ 8. Section 27.7 is amended by revising the heading for paragraph (d) to read as follows:

§ 27.7 Discrimination prohibited.

* * * * *

(d) *Aid, benefits, or services limited by Federal law.* * * *

■ 9. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
27.3(a)	or benefits from	
27.5, definition of Qualified handicapped person, paragraph (2).	activities	services
27.5, definition of Recipient	for any Federal program,	
27.5, definition of Recipient	under any such program	
27.7(a)	or benefits from	
27.7(b)(1)(v)	program	program or activity
27.7(b)(3)	programs or activities	aid, benefits, or services
27.7(b)(4)(ii)	program	program or activity
27.7(b)(5)(i)	or benefits from	
27.7(b)(6)	or benefitting from	
27.7(d)	In programs	For aid, benefits, or services
27.9(a), first sentence	to carry out a program	
27.9(a), first sentence	program will	program or activity will
27.9(b)(4)	program	program or activity
27.11(a)(3)(i)	program	program or activity
27.11(a)(3)(ii)	program	program or activity

■ 10. The heading of subpart B is revised to read as follows:

Subpart B—Accessibility Requirements in Specific Operating Administration Programs: Airports, Railroads, and Highways

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
27.71(b), last sentence	programs	programs or activities
27.77	Essential Air Service program	Essential Air Service Program

Subpart C—Enforcement

■ 12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
27.121(b), last sentence	of any program under	in
27.121(d)	program	program or activity
27.125(b)(2)	program	program or activity
27.127(f), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
27.129(e), first sentence	under the program involved	to which this first regulation applies
27.129(e), last sentence	assistance	assistance to which this regulation applies

Dated: April 27, 2001.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–21140 Filed 8–25–03; 8:45 am]

BILLING CODES 3410–94–P, 7590–01–P, 6450–01–P, 8025–01–P, 7510–01–P, 3510–BP–P, 4710–10–P, 6116–01–P, 4410–13–P, 4510–23–P, 8320–01–P, 6560–50–P, 6820–34–P, 4310–RE–P, 6718–01–P, 7555–01–P, 7536–01–P, 7536–01–P, 7036–01–P, 6050–28–P, 4910–62–P

Federal Register

Tuesday,
August 26, 2003

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602
Exclusions From Gross Income of Foreign Corporations; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9087]

RIN 1545–BA07

Exclusions From Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations implementing sections 883(a) and (c) that relate to income derived by foreign corporations from the international operation of ships or aircraft. The final regulations reflect changes made by the Tax Reform Act of 1986 and subsequent legislative amendments. The final regulations provide, in general, that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft shall exclude qualified income from gross income for purposes of U.S. Federal income taxation, provided that the corporation can satisfy certain ownership and related documentation requirements. The final regulations explain when a foreign country is a qualified foreign country and what income is considered to be qualified income. The final regulations specify how a foreign corporation may satisfy the ownership and related documentation requirements. In addition, the final regulations describe the information that the foreign corporation must include on its U.S. income tax return in order to claim an exemption. All foreign corporations engaged in the international operation of ships or aircraft that claim an exemption from U.S. Federal income tax based on section 883 are affected by these regulations.

DATES: *Effective Date:* These regulations are effective August 26, 2003.

Applicability Date: These regulations are applicable to taxable years of the foreign corporation beginning 30 days or more after August 26, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bray or David L. Lundy at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1677. Responses to these collections of information are mandatory.

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 control number assigned by the Office of Management and Budget.

For corporations, the estimated annual burden per respondent varies from 30 minutes to eight hours, depending on the individual circumstances of the foreign corporation, with an estimated average of one hour. For shareholders, the estimated annual burden per respondent varies from zero minutes to eight hours, depending on the individual circumstances of the shareholder or intermediary, with an estimated average of 90 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this 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.

Background

A notice of proposed rulemaking (REG–208280–86) under sections 883(a) and (c) was published in the **Federal Register** (65 FR 6065) on February 8, 2000 (the 2000 proposed regulations). Due to the substantial number of comments that were received on the 2000 proposed regulations, and the significant impact the regulations have on large segments of the shipping and air transport industries, the 2000 proposed regulations were withdrawn on August 2, 2002. A revised notice of proposed rulemaking (REG–136311–01) was published in the **Federal Register** (67 FR 50510) on August 2, 2002 (the proposed regulations), and provided an opportunity for additional comments. A public hearing on the proposed regulations was held on November 25, 2002. Numerous comments have been received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

The preamble to the 2000 proposed regulations contains a detailed explanation of the provisions in the 2000 proposed regulations, and the preamble to the proposed regulations describes the comments received on the 2000 proposed regulations and the consequent changes reflected in the proposed regulations. The explanations contained in those preambles are not repeated herein. The comments submitted to the IRS on the proposed regulations and the consequent changes reflected in the final regulations are described herein.

Public Comments

Comments Relating to § 1.883–1: Exclusion of Income From the International Operation of Ships or Aircraft

A. Substantiation and Reporting Requirements

For a foreign corporation to be considered a qualified foreign corporation under § 1.883–1(c)(3), the proposed regulations require that the corporation provide on its return a reasonable estimate of the amount of income in each category of qualified income for which an exemption is claimed to the extent such amounts are readily determinable. Commentators criticized this requirement on the ground that it could require the creation of a separate accounting system, and would necessitate the allocation of expenses to each of the specific categories of income. Commentators suggested that whether amounts are *readily determinable* should depend on whether records to ascertain such amounts are available in the ordinary course of business.

The IRS and Treasury believe that the suggested definition of *readily determinable* does not ensure that adequate records will be maintained. That term should be interpreted in accordance with § 1.6012–2(g)(1)(i). However, the final regulations have been revised to clarify that a reasonable estimate of the gross amount of income in each category is required. Accordingly, there is no requirement that expenses be allocated to each category of income.

B. Operation of Ships or Aircraft

Section 1.883–1(e) of the proposed regulations provides generally that a corporation is considered engaged in the operation of ships or aircraft only when it is an owner or lessee of an entire ship or aircraft used in the carriage of passengers or cargo for hire.

Commentators said that a shipping company utilizing less than the entire space on several vessels also should be considered engaged in the operation of ships or aircraft. The final regulations do not adopt this suggestion. The IRS and Treasury believe that it is appropriate to consider a foreign corporation to be engaged in the operation of ships or aircraft for purposes of section 883 only when it is an owner or lessee of an entire ship or aircraft.

C. Pool, Partnership, Strategic Alliance, Joint Operating Agreement, Code-Sharing Arrangement or Other Joint Venture

Section 1.883–1(e)(2) generally treats a foreign corporation as engaged in the operation of ships or aircraft with respect to its participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture. Commentators asked that these rules be made applicable to single-member disregarded entities in addition to arrangements with multiple owners. Commentators also asked for clarification concerning whether these rules apply to tiered partnerships, such as in the case of a foreign corporation that is a partner in a partnership, whose sole activity is to be a partner in another partnership that is engaged in international shipping.

The rules have been revised to cover single-member disregarded entities, and to clarify that they apply to tiered entities in the case of both joint venture entities and joint ventures that are not entities. An example was added to illustrate these revisions.

D. Cruises to Nowhere

Section 1.883–1(f)(1) excludes from the international operation of ships or aircraft the carriage of passengers or cargo on a voyage or flight that begins and ends in the United States, even if the voyage or flight contains a segment extending beyond the territorial limits of the United States, unless the passenger disembarks or the cargo is unloaded outside the United States. Commentators renewed their objection to this exclusion of such ''cruises to nowhere.'' The final regulations continue to exclude cruises to nowhere because such travel has beginning and ending points within the United States within the meaning of section 863(c)(1).

E. Determining Whether Income Is Derived From International Operation of Ships or Aircraft

Section 1.883–1(f)(2) of the proposed regulations provides that whether income is derived from international operation of ships or aircraft is determined on a passenger by passenger basis and on an item-of-cargo by item-of-cargo basis. Commentators suggested that with respect to the carriage of passengers by ship, the determination should be made on a voyage by voyage basis. Commentators said the voyage should be treated as international if it cannot be completed because of weather or similar factors.

The final regulations do not adopt the suggestion that income be determined on a voyage by voyage basis. The regulations have been revised, however, to exempt income from the sale of a ticket for international carriage of a passenger when the passenger does not begin or complete an international journey because of unanticipated circumstances. For example, if a passenger does not leave on an international flight because of a change in plans, or is unable to complete an international voyage because of illness, any income derived from the sale of the ticket nonetheless will qualify for exemption.

F. International Carriage of Cargo

Under § 1.883–1(e)(1), a foreign corporation is considered engaged in the operation of ships or aircraft only if the ship or aircraft is used in the carriage of passengers or cargo for hire. Commentators pointed out that the regulations do not define the term *for hire.* They expressed concern that requiring the carriage of cargo for hire might be interpreted to exclude income derived by a vessel owner or operator who charters a vessel to a lessee, if the lessee uses it to transport the lessee's own cargo or repositions the vessel without cargo on board for its next voyage. Commentators suggested that the term *for hire* be defined to include carriage of proprietary goods and an empty backhaul voyage, or that it be deleted from the regulations.

Section 1.883–1(f)(2)(iv) of the final regulations provides that if a foreign corporation time, voyage, or bareboat charters out a ship or aircraft, and the lowest-tier lessee uses the ship or aircraft to carry passengers or cargo on a fee basis, the ship or aircraft is considered used to carry passengers or cargo for hire, regardless of whether the ship or aircraft may be empty during a portion of the charter period due to a backhaul voyage or flight or for purposes of repositioning. If a foreign corporation time, voyage, or bareboat charters out a ship or aircraft, and the lowest-tier lessee uses the ship or aircraft for the carriage of proprietary goods, including an empty backhaul voyage or flight or repositioning related to such carriage of proprietary goods, the ship or aircraft similarly will be treated as used to carry cargo for hire.

G. Bareboat Charter of Ships or Dry Lease of Aircraft Used in International Operation of Ships or Aircraft

When a foreign corporation bareboat charters a ship or dry leases an aircraft to a lessee, § 1.883–1(f)(2)(iii) of the proposed regulations requires the corporation to adopt a reasonable method for determining the amount of charter income attributable to the international operation of ships or aircraft by the lowest tier lessee. The regulations contain two ratios that may provide a reasonable method for determining the amount of qualifying charter income.

Commentators asked for clarification that business records or log books are a reasonable method for determining the amount of charter income when those records show that the vessel has been used exclusively in international transportation. Commentators also asserted that the ratios are unnecessary and suggested that they be deleted.

The IRS and Treasury believe that business records or log books showing that a ship or aircraft has been used exclusively on voyages or flights that begin or end in the United States (but not both) may be sufficient to establish that the foreign corporation's entire gross income is income from the international operation of ships or aircraft. However, if the ship or aircraft also has been used on voyages or flights that begin and end outside the United States, the foreign corporation must determine the amount of the charter income that is attributable to voyages or flights that begin or end in the United States (but not both) to determine the amount of income potentially within the scope of section 883. The final regulations have been revised generally to require such a foreign corporation to determine the amount of such income based on the total number of days of uninterrupted travel on voyages or flights between the United States and the farthest point or points where cargo or passengers are loaded en route to, or discharged en route from, the United States. However, the final regulations permit the foreign corporation to adopt an alternative method for determining the amount of the charter income that is attributable to the international operation of ships or aircraft if it can establish that the alternative method more accurately reflects the amount of such income.

H. Activities Incidental to the International Operation of Ships or Aircraft

Section 1.883–1(g) of the proposed regulations provides that certain activities of an operator of a ship or aircraft are so closely related to the primary activity of the international operation of ships or aircraft that income from those incidental activities shall be considered income from the international operation of ships or aircraft, and thus eligible for exemption.

Intermodal Containers

Section 1.883–1(g)(1)(x) of the proposed regulations treats certain container rental activities in the United States as incidental to the international operation of ships or aircraft. The regulations limit incidental treatment to the rental of containers for use in the United States for a period not exceeding five days beyond the original delivery date to the consignee as stated on the bill of lading, and also impose other limitations on incidental treatment.

Commentators stated that ocean carriers provide containers to their customers as an integral part of international shipping, but do not ''rent'' containers or provide them for ''temporary warehousing'' of cargo. Commentators also noted that deliveries can be delayed beyond five days for many reasons that clearly do not involve warehousing, such as congestion at port facilities. Commentators said it would be difficult and unrealistic to allocate a portion of the shipping charges to the use of containers.

For these reasons, the reference to container rental as an incidental activity has been modified. The ''five day'' rule has been eliminated and replaced with a more flexible rule under which the provision of containers or other related equipment by the foreign corporation in connection with the international carriage of cargo for use by its customers, including short-term use within the United States immediately preceding or following the international carriage of cargo, is considered an incidental activity. The regulations presume that a container is used in connection with the international carriage of cargo if it is used for a period of five days or less immediately preceding or following the international carriage of cargo. Beyond this five-day period, whether a container is being used in connection with the international carriage of cargo, or for some other purpose such as warehousing of cargo, will depend on the facts and circumstances. The regulations make clear that the use of containers for any such other purpose will be considered to give rise to income that is not incidental to the international operation of ships or aircraft.

Hotel Accommodations

Arranging for one night in a hotel within the United States before or after a cruise is considered incidental to the international operation of ships under § 1.883–1(g)(1)(vii) of the proposed regulations. Commentators suggested that the exception also should apply to one-night hotel accommodations arranged by airlines. Commentators said that airlines occasionally provide such accommodations to passengers on tour packages for the same reasons that cruise companies provide accommodations. The final regulations do not adopt this suggestion. The IRS and Treasury believe that different rules are appropriate in light of operational differences between the airline and cruise industries.

Inland Transportation of Cargo

Section 1.883–1(g)(1)(v) treats the inland transportation of cargo by a related or unrelated corporation as incidental. Commentators suggested that inland transportation of cargo by the foreign corporation itself (after the cargo has passed through Customs) also should be treated as incidental. The final regulations do not adopt this suggestion. The IRS and Treasury are concerned that an exemption would permit foreign corporations engaged in international transportation to compete unfairly with other corporations engaged in the inland transportation of cargo.

Under the proposed regulations, inland transportation by another corporation must be documented by a through bill of lading, airway bill, or similar document. Commentators asked whether the term *similar document* can include any document showing an inland leg to international transportation, such as a seaway bill or cargo receipt. The IRS and Treasury believe that *similar document* may be construed broadly to include any appropriate document.

Commentators stated that some unincorporated entities provide inland transportation, and asked that such entities be included in the regulations. Accordingly, the final regulations have been revised to permit any unrelated person (whether incorporated or not) to provide inland transportation of cargo. The final regulations also provide that the rules of section 267(b) shall apply for purposes of determining whether persons are related.

Inland Transportation of Passengers

Section 1.883–1(g)(1)(vi) treats the sale or issuance by a foreign corporation of interline or code-sharing tickets for the inland transportation of passengers by air as an incidental activity. Commentators suggested that the inland segment of an international journey also should be treated as incidental when provided by the foreign airline itself through the sale or issuance of an intraline ticket. The final regulations extend incidental treatment to the sale or issuance of intraline tickets. The final regulations also impose a maximum 12-hour scheduled interval between the international and inland segments of any flight involving intraline tickets.

Shore Excursions

Land tour packages are excluded from incidental activities under § 1.883–1(g)(2)(i). Commentators contend that single-day shore excursions are not the same as land tour packages and should qualify as an incidental activity. The final regulations do not adopt this suggestion because the two activities are similar in nature.

Short-term Use

Ships normally engaged in international cruises may occasionally be used for other purposes, such as cruises to nowhere. Commentators asked that such short-term use be treated as an incidental activity. The final regulations do not adopt this suggestion because domestic use of a vessel does not qualify as the international operation of ships or aircraft.

Airline Tickets

Section 1.883–1(g)(1) treats as incidental the sale of tickets by an airline for international transportation on another airline, and the sale of tickets by a ship operator on behalf of another ship operator. Section 1.883–1(g)(2)(iii), however, excludes from incidental income the sale of airline tickets by a cruise company. Commentators objected to this exclusion. This exclusion is retained in the final regulations. Cruise companies that sell airline tickets are acting in a capacity comparable to travel agents, and would have an unfair competitive advantage if their income from this activity were exempt.

Ground Services and Other Services

The proposed regulations, in § 1.883–1(g)(3), reserve on the treatment of ground services, maintenance and catering, as well as other services not mentioned as included among incidental activities. In the absence of a

clear international norm or standard regarding the appropriate treatment of such services, the IRS and Treasury solicited comments on an appropriate rule. Commentators generally suggested that activities be treated as incidental unless they rise to the level of a separate, nonshipping business. The final regulations continue to reserve on this issue, pending further consideration by the IRS and Treasury.

I. Determining Equivalent Exemptions for Each Category of Income

Section 1.883–1(h)(2) of the proposed regulations provides that if an exemption is unavailable in a foreign country for one of the eight enumerated categories of income, the foreign country is not considered to grant an equivalent exemption with respect to that category of income. Paragraph (h)(2)(vi) of this section treats incidental income, other than incidental bareboat charter or dry lease income and incidental container-related income, as one category of income.

Commentators suggested that an equivalent exemption be determined on an item-of-income basis rather than by category of income. Commentators objected to the requirement that a foreign country exempt all items of income within a category of income to be treated as granting an equivalent exemption. The examples provided by commentators indicated that this concern arose primarily in the context of the residual category of incidental income described in paragraph (h)(2)(vi).

The final regulations retain the requirement that a foreign country exempt all items of income within a category of income, but provide an exception for incidental income described in paragraph (h)(2)(vi). The final regulations permit an exemption of any type of incidental income that qualifies under paragraph (g)(1) if a foreign country grants an equivalent exemption with respect to that type of income. For example, if a foreign country grants an equivalent exemption for the sale of airline tickets on behalf of another corporation engaged in international operation of aircraft, as provided in paragraph (g)(1)(iii), but does not provide an equivalent exemption for the inland transportation of cargo, as provided in paragraph (g)(1)(v), the foreign country is nonetheless considered to grant an equivalent exemption for the sale of airline tickets.

Commentators also pointed out that some income items may be described in more than one category of income, and asked which category would apply for purposes of determining whether the foreign country provides an equivalent exemption. The IRS and Treasury believe that the taxpayer can select any applicable category of income that provides an exemption.

J. Special Rules With Respect to Income Tax Conventions

Section 1.883–1(h)(3)(i) of the proposed regulations provides that if a taxpayer is eligible to exempt income under both an applicable income tax convention and section 883, the taxpayer may claim an exemption under both the applicable income tax convention and section 883 with respect to such category of income. Such an election must be made with respect to all income of the foreign corporation from the international operation of ships or aircraft, and cannot be made separately with respect to different categories of income.

Commentators requested clarification concerning the election to claim an exemption under both the applicable income tax convention and section 883 when the benefits under the two exemptions are not co-extensive with respect to any category of income.

The final regulations have been clarified to provide that if a corporation chooses to claim an exemption under an income tax convention, it may simultaneously claim an exemption under section 883 with respect to any category of income listed in paragraphs (h)(2)(i) through (v), (vii), and (viii) of § 1.883–1 and to any type of income described in paragraph (h)(2)(vi) of § 1.883–1, but only to the extent that such income also is exempt under the income tax convention.

K. Participation in Certain Joint Ventures

Under § 1.883–1(h)(3)(i), a corporation organized in a foreign country that provides an exemption only through an income tax convention is not permitted to claim an exemption under section 883, with one exception. Paragraph (h)(3)(ii) permits such corporation to claim an exemption under section 883 if the foreign corporation participates in a joint venture described in paragraph (e)(2) that is not treated as fiscally transparent with respect to the category of income derived from the joint venture under the income tax laws of the jurisdiction where the foreign corporation is organized, and treaty benefits would be available but for this reason.

Commentators suggested that the exception in § 1.883–1(h)(3)(ii) should apply to single-owner disregarded entities in addition to transparent joint ventures. This suggestion was not adopted. The IRS and Treasury believe that the policy justification for relief in the joint venture context is not present in the context of a wholly owned entity.

L. Independent Interpretation of Income Tax Conventions

Section 1.883–1(h)(3)(iii) of the proposed regulations clarifies that definitions provided in these regulations do not give meaning or provide guidance regarding similar terms in U.S. income tax conventions or the scope of any treaty exemption. Commentators stated that definitions in the regulations and income tax conventions should have the same scope and be interpreted in the same way. The IRS and Treasury continue to believe that terms used in the proposed regulations should not be used to interpret terms and concepts in U.S. income tax conventions except to the extent that a treaty that entered into force after August 26, 2003 or its legislative history explicitly refers to section 883 and guidance thereunder for its meaning.

Comments Relating to § 1.883–2: Treatment of Publicly-traded Corporations

A. Closely-held Classes of Stock not Treated as Meeting Trading Requirements

Section 1.883–2(d)(3)(i) of the proposed regulations disqualifies a class of stock from being relied on to satisfy the publicly traded test if, at any time during the taxable year, one or more 5-percent shareholders of that class of stock (determined without regard to the attribution rules in § 1.883–4) owns, in the aggregate, 50 percent or more of the total vote and value of that class of stock (closely-held rule).

Commentators pointed out that a company could lose its exemption if a nonqualified shareholder held a sufficiently large block of stock for one day. Commentators suggested requiring a longer period of ownership by nonqualified shareholders before disqualifying a class of stock from being relied on to satisfy the publicly traded test.

This suggestion has been adopted. The final regulations provide that a class of stock will be disqualified if one or more 5-percent shareholders of that class of stock owns, in the aggregate, 50 percent or more of the total vote and value of that class of stock for more than half the number of days during the corporation's taxable year. In this way, the closely-held rule matches the exception provided in § 1.883–2(d)(3)(ii)

which permits a foreign corporation to establish that qualified shareholders own sufficient shares in the closely-held block of stock to preclude nonqualified shareholders from owning 50 percent or more of the total value of the class of stock for more than half the number of days during the taxable year.

To demonstrate that a class of stock is not closely-held for purposes of § 1.883–2(d)(3)(i), a foreign corporation whose stock is traded on an established securities market in the United States may rely on current Schedule 13G filings with the Securities and Exchange Commission to identify its 5-percent shareholders in each class of stock relied upon to meet the regularly traded test, without having to make any independent investigation to determine the identity of the 5-percent shareholders. § 1.883–4(d)(3)(viii). Commentators suggested that a foreign corporation also be permitted to rely on current Schedule 13D filings with the Securities and Exchange Commission to identify 5-percent shareholders for purposes of meeting the exception contained in § 1.883–2(d)(3)(ii). The final regulations adopt this suggestion.

Under § 1.883–2(d)(3)(iii)(B) of the proposed regulations, an investment company registered under the Investment Company Act of 1940 will not be treated as a 5-percent shareholder if no person owns both 5 percent or more of the value of the outstanding interests in the investment company and 5 percent or more of the value of the shares of the class of stock of the foreign corporation. Commentators suggested that this exception be extended to foreign mutual funds, other investment companies not registered under the Investment Company Act of 1940, and financial institutions with customer or nominee accounts. Commentators also pointed out that it would be difficult for a shipping company to determine the identity of 5-percent owners of a mutual fund because most mutual fund shares are held in street name.

The final regulations eliminate the provision that treats an investment company registered under the Investment Company Act of 1940 as a 5-percent shareholder if a person owns both 5 percent or more of the value of the outstanding interests in the investment company and 5 percent or more of the value of the shares of the class of stock of the foreign corporation. Instead, the final regulations provide that such an investment company shall not be treated as a 5-percent shareholder for purposes of these regulations. The final regulations do not expand the mutual fund exception to include other types of investment vehicles or financial institutions.

Comments Relating to § 1.883–3: Treatment of Controlled Foreign Corporations

Income Inclusion Test

Section 883(c)(2) provides that the stock ownership test of section 883(c)(1) shall not apply to controlled foreign corporations (CFCs). Under the proposed regulations, a CFC is considered to satisfy the CFC exception of section 883(c)(1) if it meets the requirements of § 1.883–3. One such requirement is the income inclusion test of § 1.883–3(b). This test requires that more than 50 percent of the subpart F income derived by the CFC from the international operation of ships or aircraft be includible in the gross income of one or more U.S. citizens, individual residents of the United States, or domestic corporations.

Commentators restated their objection to the income inclusion test. They argued that the test is too restrictive because it could deny qualified foreign corporation status to CFCs legitimately owned and controlled by U.S. shareholders.

The IRS and Treasury continue to believe that the income inclusion rule contained in the proposed regulations is supported by the legislative history to section 883(c). The Conference report accompanying the legislation that added the CFC exception provides with respect to the exception that ''corporations are not considered residents of countries that exempt U.S. persons unless 50 percent or more of the ultimate individual owners are U.S. shareholders of controlled foreign corporations''. H.R. Conf. Rep. No. 99–841, 99th Cong., 2d Sess. 598 (1986), reprinted in 1986–3 C.B. vol. 4, at 598 (1986). The intent of the CFC exception, therefore, is for the general ownership requirement of section 883(c)(1) to apply unless the foreign corporation is a CFC and 50 percent or more of the subpart F income of that corporation derived from the international operation of ships or aircraft is includible by U.S. citizens, individual residents, or domestic corporations.

Commentators stated that if the income inclusion test is retained, the regulations should provide that income derived by U.S. tax-exempt organizations holding shares in CFCs should be counted toward satisfying the income inclusion test even though the income is not taxed.

The final regulations do not adopt this suggestion. A U.S. tax-exempt organization is not in substance different from a U.S. person that is not required to include in its gross income the subpart F income of a CFC.

Comments Relating to § 1.883–4: Qualified Shareholder Stock Ownership Test

A. Qualified Shareholders

A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if more than 50 percent of the value of its outstanding shares is owned, or treated as owned through attribution, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders. Section 1.883–4(b)(1)(i)(A) of the proposed regulations treats an individual resident in a qualified foreign country as a qualified shareholder, but excludes individuals described in § 1.883–4(b)(1)(i)(E) and (F). Commentators stated that the exclusion of pension fund beneficiaries described in paragraph (b)(1)(i)(E) could be interpreted to prevent the qualification of an individual under paragraph (b)(1)(i)(A). For example, if an individual held stock directly in a shipping company and also was the beneficiary of a pension fund holding stock in the same company, commentators believe that the individual might not qualify under paragraph (b)(1)(i)(A) with respect to the individual's direct ownership. The final regulations clarify that an individual can be a qualified shareholder under paragraph (b)(1)(i)(A) and also be a qualified shareholder under paragraph (b)(1)(i)(E) with respect to a category of income for which a foreign corporation is seeking an exemption.

Under § 1.883–4(b)(1)(i)(D) of the proposed regulations, a not-for-profit organization described in § 1.883–4(b)(4) is treated as a qualified shareholder. Section 1.883–4(b)(4)(iii)(A) requires a not-for-profit organization to expend more than 50 percent of its annual support on behalf of individuals described in § 1.883–4(b)(1)(i)(A).

Commentators suggested that the category of recipients eligible for support be expanded to include other not-for-profit organizations. This suggestion has been adopted in part. The final regulations provide that a not-for-profit organization may be a qualified shareholder if it expends more than 50 percent of its annual support on behalf of U.S. organizations that have received determination letters under section 501(c)(3) and on behalf of individuals described in § 1.883–4(b)(1)(i)(A).

Commentators asked that the list of qualified shareholders in § 1.883–4(b)(1)(i) be expanded to include international organizations as defined in section 7701(a)(18), and pension funds established for employees of such organizations. The final regulations do not adopt this suggestion. Under section 883(c)(1) and § 1.883–4(a), a foreign corporation satisfies the stock ownership test if more than 50 percent of the value of its outstanding shares is owned by qualified shareholders who are residents of qualified foreign countries. The remaining shares of the foreign corporation can be owned by nonqualified shareholders, including international organizations.

Section 1.883–4(b)(1)(ii) of the proposed regulations provides that a shareholder is a qualified shareholder only if the shareholder does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of § 1.883–4(c). Commentators renewed their objection to this rule. The final regulations retain this provision due to the difficulty of reliably demonstrating the true ownership of bearer shares.

B. Substantiation of Stock Ownership

Section 1.883–4(b)(1)(iii) of the proposed regulations provides that a shareholder is a qualified shareholder only if the shareholder provides to the foreign corporation the documentation required in § 1.883–4(d), and the foreign corporation meets the reporting requirements of § 1.883–4(e) with respect to such shareholder. Commentators argued that the required reporting requirements are burdensome, and suggested that taxpayers have the option of submitting a sworn statement with their return stating that qualified individuals own the corporation and that supporting documentation has been deposited with a qualified tax practitioner in the United States. The final regulations do not adopt this suggestion. The IRS and Treasury continue to believe that this information is necessary for proper administration of section 883 and that the provision of this information with the foreign corporation's tax return is not unduly burdensome.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of U.S. small entities. This certification is based upon the fact that these regulations apply to foreign corporations and impose only a limited collection of information burden on shareholders of such corporations, which in some cases may include U.S. small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is David L. Lundy of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.883–1 is also issued under 26 U.S.C. 883.

Section 1.883–2 is also issued under 26 U.S.C. 883.

Section 1.883–3 is also issued under 26 U.S.C. 883.

Section 1.883–4 is also issued under 26 U.S.C. 883.

Section 1.883–5 is also issued under 26 U.S.C. 883. * * *

■ **Par. 2.** Section 1.883–0 is added to read as follows:

§ 1.883–0 Outline of major topics.

This section lists the major paragraphs contained in §§ 1.883–1 through 1.883–5.

§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

(a) General rule.
(b) Qualified income.
(c) Qualified foreign corporation.
(1) General rule.
(2) Stock ownership test.
(3) Substantiation and reporting requirements.
(i) General rule.
(ii) Further documentation.
(4) Commissioner's discretion to cure defects in documentation.
(d) Qualified foreign country.
(e) Operation of ships or aircraft.
(1) General rule.
(2) Pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.
(3) Activities not considered operation of ships or aircraft.
(4) Examples.
(5) Definitions.
(i) Bareboat charter.
(ii) Code-sharing arrangement.
(iii) Dry lease.
(iv) Entity.
(v) Fiscally transparent entity under the income tax laws of the United States.
(vi) Full charter.
(vii) Nonvessel operating common carrier.
(viii) Space or slot charter.
(ix) Time charter.
(x) Voyage charter.
(xi) Wet lease.
(f) International operation of ships or aircraft.
(1) General rule.
(2) Determining whether income is derived from international operation of ships or aircraft.
(i) International carriage of passengers.
(A) General rule.
(B) Round trip travel on ships.
(ii) International carriage of cargo.
(iii) Bareboat charter of ships or dry lease of aircraft used in international operation of ships or aircraft.
(iv) Charter of ships or aircraft for hire.
(g) Activities incidental to the international operation of ships or aircraft.
(1) General rule.
(2) Activities not considered incidental to the international operation of ships or aircraft.
(3) Services.
(i) Ground services, maintenance, and catering.
(ii) Other services.
(4) Activities involved in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.
(h) Equivalent exemption.
(1) General rule.
(2) Determining equivalent exemptions for each category of income.
(3) Special rules with respect to income tax conventions.
(i) General rule.
(ii) Participation in certain joint ventures.
(iii) Independent interpretation of income tax conventions.
(4) Exemptions not qualifying as equivalent exemptions.
(i) General rule.
(ii) Reduced tax rate or time limited exemption.
(iii) Inbound or outbound freight tax.
(iv) Exemptions for limited types of cargo.

■ **Par. 3.** § 1.883–1 is revised to read as follows:

§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

(a) *General rule.* Qualified income derived by a qualified foreign corporation from its international operation of ships or aircraft is excluded from gross income and exempt from United States Federal income tax. Paragraph (b) of this section defines the term *qualified income*. Paragraph (c) of this section defines the term *qualified foreign corporation.* Paragraph (f) of this section defines the term *international operation of ships or aircraft.*

(b) *Qualified income.* Qualified income is income derived from the international operation of ships or aircraft that—

(1) Is properly includible in any of the income categories described in paragraph (h)(2) of this section; and

(2) Is the subject of an equivalent exemption, as defined in paragraph (h) of this section, granted by the qualified foreign country, as defined in paragraph (d) of this section, in which the foreign corporation seeking qualified foreign corporation status is organized.

(c) *Qualified foreign corporation*—(1) *General rule.* A qualified foreign corporation is a corporation that is organized in a qualified foreign country and considered engaged in the international operation of ships or aircraft. The term *corporation* is defined in section 7701(a)(3) and the regulations thereunder. Paragraph (d) of this section defines the term *qualified foreign country*. Paragraph (e) of this section defines the term *operation of ships or aircraft*, and paragraph (f) of this section defines the term *international operation of ships or aircraft*. To be a qualified foreign corporation, the corporation must satisfy the stock ownership test of paragraph (c)(2) of this section and satisfy the substantiation and reporting requirements described in paragraph (c)(3) of this section. A corporation may be a qualified foreign corporation with respect to one category of qualified income but not with respect to another such category. See paragraph (h)(2) of this section for a discussion of the categories of qualified income.

(2) *Stock ownership test.* To be a qualified foreign corporation, a foreign corporation must satisfy the publicly-traded test of § 1.883–2(a), the CFC stock ownership test of § 1.883–3(a), or the qualified shareholder stock ownership test of § 1.883–4(a).

(3) *Substantiation and reporting requirements*—(i) *General rule.* To be a qualified foreign corporation, a foreign corporation must include the following information in its Form 1120-F, ''U.S. Income Tax Return of a Foreign Corporation,'' in the manner prescribed

by such form and its accompanying instructions—

(A) The corporation's name and address (including mailing code);

(B) The corporation's U.S. taxpayer identification number;

(C) The foreign country in which the corporation is organized;

(D) The applicable authority for an equivalent exemption, for example, citation of a statute in the country where the corporation is organized, a diplomatic note between the United States and such country, (for further guidance, see Rev. Rul. 2001–48 (2001–2 C.B. 324) (see § 601.601(d)(2) of this chapter)), or, in the case of a corporation described in paragraph (h)(3)(ii) of this section, an income tax convention between the United States and such country;

(E) The category or categories of qualified income for which an exemption is being claimed;

(F) A reasonable estimate of the gross amount of income in each category of qualified income for which the exemption is claimed, to the extent such amounts are readily determinable;

(G) Any other information required under § 1.883–2(f), 1.883–3(d), or 1.883–4(e), as applicable; and

(H) Any other relevant information specified by the Form 1120–F and its accompanying instructions.

(ii) *Further documentation.* If the Commissioner requests in writing that the foreign corporation document or substantiate representations made under paragraph (c)(3)(i) of this section, or under § 1.883–2(f), 1.883–3(d) or 1.883–4(e), the foreign corporation must provide the documentation or substantiation within 60 days following the written request. If the foreign corporation does not provide the documentation and substantiation requested within the 60-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the documentation or substantiation. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner after considering all the facts and circumstances.

(4) *Commissioner's discretion to cure defects in documentation.* The Commissioner retains the discretion to cure any defects in the documentation where the Commissioner is satisfied that the foreign corporation would otherwise be a qualified foreign corporation.

(d) *Qualified foreign country.* A qualified foreign country is a foreign country that grants to corporations organized in the United States an equivalent exemption, as described in paragraph (h) of this section, for the category of qualified income, as described in paragraph (h)(2) of this section, derived by the foreign corporation seeking qualified foreign corporation status. A foreign country may be a qualified foreign country with respect to one category of qualified income but not with respect to another such category.

(e) *Operation of ships or aircraft*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, a foreign corporation is considered engaged in the operation of ships or aircraft only during the time it is an owner or lessee of one or more entire ships or aircraft and uses such ships or aircraft in one or more of the following activities—

(i) Carriage of passengers or cargo for hire;

(ii) In the case of a ship, the leasing out of the ship under a time or voyage charter (full charter), space or slot charter, or bareboat charter, as those terms are defined in paragraph (e)(5) of this section, provided the ship is used to carry passengers or cargo for hire; and

(iii) In the case of aircraft, the leasing out of the aircraft under a wet lease (full charter), space, slot, or block-seat charter, or dry lease, as those terms are defined in paragraph (e)(5) of this section, provided the aircraft is used to carry passengers or cargo for hire.

(2) *Pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.* A foreign corporation is considered engaged in the operation of ships or aircraft within the meaning of paragraph (e)(1) of this section with respect to its participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture if it directly, or indirectly through one or more fiscally transparent entities under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section—

(i) Owns an interest in a partnership, disregarded entity, or other fiscally transparent entity under the income tax laws of the United States that itself would be considered engaged in the operation of ships or aircraft under paragraph (e)(1) of this section if it were a foreign corporation; or

(ii) Participates in a pool, strategic alliance, joint operating agreement, code-sharing arrangement, or other joint venture that is not an entity, as defined in paragraph (e)(5)(iv) of this section, involving one or more activities described in paragraphs (e)(1)(i) through (iii) of this section, but only if—

(A) In the case of a direct interest, the foreign corporation is otherwise engaged in the operation of ships or aircraft under paragraph (e)(1) of this section; or

(B) In the case of an indirect interest, either the foreign corporation is otherwise engaged, or one of the fiscally transparent entities would be considered engaged if it were a foreign corporation, in the operation of ships or aircraft under paragraph (e)(1) of this section.

(3) *Activities not considered operation of ships or aircraft.* Activities that do not constitute operation of ships or aircraft include, but are not limited to—

(i) The activities of a nonvessel operating common carrier, as defined in paragraph (e)(5)(vii) of this section;

(ii) Ship or aircraft management;

(iii) Obtaining crews for ships or aircraft operated by another party;

(iv) Acting as a ship's agent;

(v) Ship or aircraft brokering;

(vi) Freight forwarding;

(vii) The activities of travel agents and tour operators;

(viii) Rental by a container leasing company of containers and related equipment; and

(ix) The activities of a concessionaire.

(4) *Examples.* The rules of paragraphs (e)(1) through (3) of this section are illustrated by the following examples:

Example 1. Three tiers of charters—(i) *Facts.* A, B, and C are foreign corporations. A purchases a ship. A and B enter into a bareboat charter of the ship for a term of 20 years, and B, in turn, enters into a time charter of the ship with C for a term of 5 years. Under the time charter, B is responsible for the complete operation of the ship, including providing the crew and maintenance. C uses the ship during the term of the time charter to carry its customers' freight between U.S. and foreign ports. C owns no ships.

(ii) *Analysis.* Because A is the owner of the entire ship and leases out the ship under a bareboat charter to B, and because the sublessor, C, uses the ship to carry cargo for hire, A is considered engaged in the operation of a ship under paragraph (e)(1) of this section during the term of the time charter. B leases in the entire ship from A and leases out the ship under a time charter to C, who uses the ship to carry cargo for hire. Therefore, B is considered engaged in the operation of a ship under paragraph (e)(1) of this section during the term of the time charter. C time charters the entire ship from B and uses the ship to carry its customers' freight during the term of the charter. Therefore, C is also engaged in the operation of a ship under paragraph (e)(1) of this section during the term of the time charter.

Example 2. Partnership with contributed shipping assets—(i) *Facts.* X, Y, and Z, each a foreign corporation, enter into a partnership, P. P is a fiscally transparent

entity under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section. Under the terms of the partnership agreement, each partner contributes all of the ships in its fleet to P in exchange for interests in the partnership and shares in the P profits from the international carriage of cargo. The partners share in the overall management of P, but each partner, acting in its capacity as partner, continues to crew and manage all ships previously in its fleet.

(ii) *Analysis.* P owns the ships contributed by the partners and uses these ships to carry cargo for hire. Therefore, if P were a foreign corporation, it would be considered engaged in the operation of ships within the meaning of paragraph (e)(1) of this section. Accordingly, because P is a fiscally transparent entity under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section, X, Y, and Z are each considered engaged in the operation of ships through P, within the meaning of paragraph (e)(2)(i) of this section, with respect to their distributive share of income from P's international carriage of cargo.

Example 3. Joint venture with chartered in ships—(i) *Facts.* Foreign corporation A owns a number of foreign subsidiaries involved in various aspects of the shipping business, including S1, S2, S3, and S4. S4 is a foreign corporation that provides cruises but does not own any ships. S1, S2, and S3 are foreign corporations that own cruise ships. S1, S2, S3, and S4 form joint venture JV, in which they are all interest holders, to conduct cruises. JV is a fiscally transparent entity under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section. Under the terms of the joint venture, S1, S2, and S3 each enter into time charter agreements with JV, pursuant to which S1, S2, and S3 retain control of the navigation and management of the individual ships, and JV will use the ships to carry passengers for hire. The overall management of the cruise line will be provided by S4.

(ii) *Analysis.* S1, S2, and S3 each owns ships and time charters those ships to JV, which uses the ships to carry passengers for hire. Accordingly, S1, S2, and S3 are each considered engaged in the operation of ships under paragraph (e)(1) of this section. JV leases in entire ships by means of the time charters, and JV uses those ships to carry passengers on cruises. Thus, JV would be engaged in the operation of ships within the meaning of paragraph (e)(1) of this section if it were a foreign corporation. Therefore, although S4 does not directly own or lease in a ship, S4 also is engaged in the operation of ships, within the meaning of paragraph (e)(2)(i) of this section, with respect to its participation in JV.

Example 4. Tiered partnerships—(i) *Facts.* Foreign corporations A, B, and C enter into a partnership, P1. P1 is one of several shareholders of Poolco, a foreign limited liability company that makes an election pursuant to § 301.7701–3 of this chapter to be treated as a partnership for U.S. tax purposes. P1 acquires several ships and time charters them out to Poolco. Poolco slot or voyage charters such ships out to third parties for use in the carriage of cargo for hire. P1 and Poolco are fiscally transparent entities under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section.

(ii) *Analysis.* A, B, and C are considered engaged in the operation of ships under paragraph (e)(2)(i) of this section with respect to their direct interest in P1 and with respect to their indirect interest in Poolco because both P1 and Poolco are fiscally transparent entities under the income tax laws of the United States and would be considered engaged in the operation of ships under paragraph (e)(1) of this section if they were foreign corporations. The result would be the same if Poolco were a single-member disregarded entity owned solely by P1.

(5) *Definitions*—(i) *Bareboat charter.* A bareboat charter is a contract for the use of a ship or aircraft whereby the lessee is in complete possession, control, and command of the ship or aircraft. For example, in a bareboat charter, the lessee is responsible for the navigation and management of the ship or aircraft, the crew, supplies, repairs and maintenance, fees, insurance, charges, commissions and other expenses connected with the use of the ship or aircraft. The lessor of the ship bears none of the expense or responsibility of operation of the ship or aircraft.

(ii) *Code-sharing arrangement.* A code-sharing arrangement is an arrangement in which one air carrier puts its identification code on the flight of another carrier. This arrangement allows the first carrier to hold itself out as providing service in markets where it does not otherwise operate or where it operates infrequently. Code-sharing arrangements can range from a very limited agreement between two carriers involving only one market to agreements involving multiple markets and alliances between or among international carriers which also include joint marketing, baggage handling, one-stop check-in service, sharing of frequent flyer awards, and other services. For rules involving the sale of code-sharing tickets, see paragraph (g)(1)(vi) of this section.

(iii) *Dry lease.* A dry lease is the bareboat charter of an aircraft.

(iv) *Entity.* For purposes of this paragraph (e), an entity is any person that is treated by the United States as other than an individual for U.S. Federal income tax purposes. The term includes disregarded entities.

(v) *Fiscally transparent entity under the income tax laws of the United States.* For purposes of this paragraph (e), an entity is fiscally transparent under the income tax laws of the United States if the entity would be considered fiscally transparent under the income tax laws of the United States under the principles of § 1.894–1(d)(3).

(vi) *Full charter.* Full charter (or full rental) means a time charter or a voyage charter of a ship or a wet lease of an aircraft but during which the full crew and management are provided by the lessor.

(vii) *Nonvessel operating common carrier.* A nonvessel operating common carrier is an entity that does not exercise control over any part of a vessel, but holds itself out to the public as providing transportation for hire, issues bills of lading, assumes responsibility or is liable by law as a common carrier for safe transportation of shipments, and arranges in its own name with other common carriers, including those engaged in the operation of ships, for the performance of such transportation.

(viii) *Space or slot charter.* A space or slot charter is a contract for use of a certain amount of space (but less than all of the space) on a ship or aircraft, and may be on a time or voyage basis. When used in connection with passenger aircraft this sort of charter may be referred to as the sale of block seats.

(ix) *Time charter.* A time charter is a contract for the use of a ship or aircraft for a specific period of time, during which the lessor of the ship or aircraft retains control of the navigation and management of the ship or aircraft (*i.e.*, the lessor continues to be responsible for the crew, supplies, repairs and maintenance, fees and insurance, charges, commissions and other expenses connected with the use of the ship or aircraft).

(x) *Voyage charter.* A voyage charter is a contract similar to a time charter except that the ship or aircraft is chartered for a specific voyage or flight rather than for a specific period of time.

(xi) *Wet lease.* A wet lease is the time or voyage charter of an aircraft.

(f) *International operation of ships or aircraft*—(1) *General rule.* The term *international operation of ships or aircraft* means the operation of ships or aircraft, as defined in paragraph (e) of this section, with respect to the carriage of passengers or cargo on voyages or flights that begin or end in the United States, as determined under paragraph (f)(2) of this section. The term does not include the carriage of passengers or cargo on a voyage or flight that begins and ends in the United States, even if the voyage or flight contains a segment extending beyond the territorial limits of the United States, unless the passenger disembarks or the cargo is unloaded outside the United States. Operation of ships or aircraft beyond the territorial limits of the United States does not constitute in itself

international operation of ships or aircraft.

(2) *Determining whether income is derived from international operation of ships or aircraft.* Whether income is derived from international operation of ships or aircraft is determined on a passenger by passenger basis (as provided in paragraph (f)(2)(i) of this section) and on an item-of-cargo by item-of-cargo basis (as provided in paragraph (f)(2)(ii) of this section). In the case of the bareboat charter of a ship or the dry lease of an aircraft, whether the charter income for a particular period is derived from international operation of ships or aircraft is determined by reference to how the ship or aircraft is used by the lowest-tier lessee in the chain of lessees (as provided in paragraph (f)(2)(iii) of this section).

(i) *International carriage of passengers*—(A) *General rule.* Except in the case of a round trip described in paragraph (f)(2)(i)(B) of this section, income derived from the carriage of a passenger will be income from international operation of ships or aircraft if the passenger is carried between a beginning point in the United States and an ending point outside the United States, or vice versa. Carriage of a passenger will be treated as ending at the passenger's final destination even if, en route to the passenger's final destination, a stop is made at an intermediate point for refueling, maintenance, or other business reasons, provided the passenger does not change ships or aircraft at the intermediate point. Similarly, carriage of a passenger will be treated as beginning at the passenger's point of origin even if, en route to the passenger's final destination, a stop is made at an intermediate point, provided the passenger does not change ships or aircraft at the intermediate point. Carriage of a passenger will be treated as beginning or ending at a U.S. or foreign intermediate point if the passenger changes ships or aircraft at that intermediate point. Income derived from the sale of a ticket for international carriage of a passenger will be treated as income derived from international operation of ships or aircraft even if the passenger does not begin or complete an international journey because of unanticipated circumstances.

(B) *Round trip travel on ships.* In the case of income from the carriage of a passenger on a ship that begins its voyage in the United States, calls on one or more foreign intermediate ports, and returns to the same or another U.S. port, such income from carriage of a passenger on the entire voyage will be treated as income derived from international operation of ships or aircraft under paragraph (f)(2)(i)(A) of this section. This result obtains even if such carriage includes one or more intermediate stops at a U.S. port or ports and even if the passenger does not disembark at the foreign intermediate point.

(ii) *International carriage of cargo.* Income from the carriage of cargo will be income derived from international operation of ships or aircraft if the cargo is carried between a beginning point in the United States and an ending point outside the United States, or vice versa. Carriage of cargo will be treated as ending at the final destination of the cargo even if, en route to that final destination, a stop is made at a U.S. intermediate point, provided the cargo is transported to its ultimate destination on the same ship or aircraft. If the cargo is transferred to another ship or aircraft, the carriage of the cargo may nevertheless be treated as ending at its final destination, if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Similarly, carriage of cargo will be treated as beginning at the cargo's point of origin, even if en route to its final destination a stop is made at a U.S. intermediate point, provided the cargo is transported to its ultimate destination on the same ship or aircraft. If the cargo is transferred to another ship or aircraft at the U.S. intermediate point, the carriage of the cargo may nevertheless be treated as beginning at the point of origin, if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Repackaging, recontainerization, or any other activity involving the unloading of the cargo at the U.S. intermediate point does not change these results, provided the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. A lighter vessel that carries cargo to, or picks up cargo from, a vessel located beyond the territorial limits of the United States and correspondingly loads or unloads that cargo at a U.S. port, carries cargo between a point in the United States and a point outside the United States. However, a lighter vessel that carries cargo to, or picks up cargo from, a vessel located within the territorial limits of the United States, and correspondingly loads or unloads that cargo at a U.S. port, is not engaged in international operation of ships or aircraft. Income from the carriage of military cargo on a voyage that begins in the United States, stops at a foreign intermediate port or a military prepositioning location, and returns to the same or another U.S. port without unloading its cargo at the foreign intermediate point, will nevertheless be treated as derived from international operation of ships or aircraft.

(iii) *Bareboat charter of ships or dry lease of aircraft used in international operation of ships or aircraft.* If a qualified foreign corporation bareboat charters a ship or dry leases an aircraft to a lessee, and the lowest tier lessee in the chain of ownership uses such ship or aircraft for the international carriage of passengers or cargo for hire, as described in paragraphs (f)(2)(i) and (ii) of this section, then the amount of charter income attributable to the period the ship or aircraft is used by the lowest tier lessee is income from international operation of ships or aircraft. The foreign corporation generally must determine the amount of the charter income that is attributable to such international operation of ships or aircraft by multiplying the amount of charter income by a fraction, the numerator of which is the total number of days of uninterrupted travel on voyages or flights of such ship or aircraft between the United States and the farthest point or points where cargo or passengers are loaded en route to, or discharged en route from, the United States during the smaller of the taxable year or the particular charter period, and the denominator of which is the total number of days in the smaller of the taxable year or the particular charter period. For this purpose, the number of days during which the ship or aircraft is not generating transportation income, within the meaning of section 863(c)(2), are not included in the numerator or denominator of the fraction. However, the foreign corporation may adopt an alternative method for determining the amount of the charter income that is attributable to the international operation of ships or aircraft if it can establish that the alternative method more accurately reflects the amount of such income.

(iv) *Charter of ships or aircraft for hire.* For purposes of this section, if a foreign corporation time, voyage, or bareboat charters out a ship or aircraft, and the lowest-tier lessee uses the ship or aircraft to carry passengers or cargo on a fee basis, the ship or aircraft is considered used to carry passengers or cargo for hire, regardless of whether the ship or aircraft may be empty during a portion of the charter period due to a backhaul voyage or flight or for

purposes of repositioning. If a foreign corporation time, voyage, or bareboat charters out a ship or aircraft, and the lowest-tier lessee uses the ship or aircraft for the carriage of proprietary goods, including an empty backhaul voyage or flight or repositioning related to such carriage of proprietary goods, the ship or aircraft similarly will be treated as used to carry cargo for hire.

(g) *Activities incidental to the international operation of ships or aircraft*—(1) *General rule.* Certain activities of a foreign corporation engaged in the international operation of ships or aircraft are so closely related to the international operation of ships or aircraft that they are considered incidental to such operation, and income derived by the foreign corporation from its performance of these incidental activities is deemed to be income derived from the international operation of ships or aircraft. Examples of such activities include—

(i) Temporary investment of working capital funds to be used in the international operation of ships or aircraft by the foreign corporation;

(ii) Sale of tickets by the foreign corporation engaged in the international operation of ships for the international carriage of passengers by ship on behalf of another corporation engaged in the international operation of ships;

(iii) Sale of tickets by the foreign corporation engaged in the international operation of aircraft for the international carriage of passengers by air on behalf of another corporation engaged in the international operation of aircraft;

(iv) Contracting with concessionaires for performance of services onboard during the international operation of the foreign corporation's ships or aircraft;

(v) Providing (either by subcontracting or otherwise) for the carriage of cargo preceding or following the international carriage of cargo under a through bill of lading, airway bill or similar document through a related corporation or through an unrelated person (and the rules of section 267(b) shall apply for purposes of determining whether a corporation or other person is related to the foreign corporation);

(vi) To the extent not described in paragraph (g)(1)(iii) of this section, the sale or issuance by the foreign corporation engaged in the international operation of aircraft of intraline, interline, or code-sharing tickets for the carriage of persons by air between a U.S. gateway and another U.S. city preceding or following international carriage of passengers, provided that all such flight segments are provided pursuant to the passenger's original invoice, ticket or itinerary and in the case of intraline tickets are a part of uninterrupted international air transportation (within the meaning of section 4262(c)(3));

(vii) Arranging for port city hotel accommodations within the United States for a passenger for the one night before or after the international carriage of that passenger by the foreign corporation engaged in the international operation of ships;

(viii) Bareboat charter of ships or dry lease of aircraft normally used by the foreign corporation in international operation of ships or aircraft but currently not needed, if the ship or aircraft is used by the lessee for international carriage of cargo or passengers;

(ix) Arranging by means of a space or slot charter for the carriage of cargo listed on a bill of lading or airway bill or similar document issued by the foreign corporation on the ship or aircraft of another corporation engaged in the international operation of ships or aircraft; and

(x) The provision of containers or other related equipment by the foreign corporation in connection with the international carriage of cargo for use by its customers, including short-term use within the United States immediately preceding or following the international carriage of cargo (and for this purpose, a period of five days or less shall be presumed to be short-term).

(2) *Activities not considered incidental to the international operation of ships or aircraft.* Examples of activities that are not considered incidental to the international operation of ships or aircraft include—

(i) The sale of or arranging for train travel, bus transfers, single day shore excursions, or land tour packages;

(ii) Arranging for hotel accommodations within the United States other than as provided in paragraph (g)(1)(vii) of this section;

(iii) The sale of airline tickets or cruise tickets other than as provided in paragraph (g)(1)(ii), (iii), or (vi) of this section;

(iv) The sale or rental of real property;

(v) Treasury activities involving the investment of excess funds or funds awaiting repatriation, even if derived from the international operation of ships or aircraft;

(vi) The carriage of passengers or cargo on ships or aircraft on domestic legs of transportation not treated as either international operation of ships or aircraft under paragraph (f) of this section or as an activity that is incidental to such operation under paragraph (g)(1) of this section;

(vii) The carriage of cargo by bus, truck or rail by a foreign corporation between a U.S. inland point and a U.S. gateway port or airport preceding or following the international carriage of such cargo by the foreign corporation; and

(viii) The provision of containers or other related equipment by the foreign corporation within the United States other than as provided in paragraph (g)(1)(x) of this section, including warehousing.

(3) *Services*—(i) *Ground services, maintenance and catering.* [Reserved]

(ii) *Other services.* [Reserved]

(4) *Activities involved in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.* Notwithstanding paragraph (g)(1) of this section, an activity is considered incidental to the international operation of ships or aircraft by a foreign corporation, and income derived by the foreign corporation with respect to such activity is deemed to be income derived from the international operation of ships or aircraft, if the activity is performed by or pursuant to a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture in which such foreign corporation participates directly, or indirectly through a fiscally transparent entity under the income tax laws of the United States, provided that—

(i) Such activity is incidental to the international operation of ships or aircraft by the pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture, and provided that it is described in paragraph (e)(2)(i) of this section; or

(ii) Such activity would be incidental to the international operation of ships or aircraft by the foreign corporation, or fiscally transparent entity if it performed such activity itself, and provided the foreign corporation is engaged or the fiscally transparent entity would be considered engaged if it were a foreign corporation in the operation of ships or aircraft under paragraph (e)(1) of this section.

(h) *Equivalent exemption*—(1) *General rule.* A foreign country grants an equivalent exemption when it exempts from taxation income from the international operation of ships or aircraft derived by corporations organized in the United States. Whether a foreign country provides an equivalent exemption must be determined separately with respect to each category of income, as provided in paragraph (h)(2) of this section. An equivalent

exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. For rules regarding foreign corporations organized in countries that provide exemptions only through an income tax convention, see paragraph (h)(3) of this section. An equivalent exemption may exist where the foreign country—

(i) Generally imposes no tax on income, including income from the international operation of ships or aircraft;

(ii) Specifically provides a domestic law tax exemption for income derived from the international operation of ships or aircraft, either by statute, decree, or otherwise; or

(iii) Exchanges diplomatic notes with the United States, or enters into an agreement with the United States, that provides for a reciprocal exemption for purposes of section 883.

(2) *Determining equivalent exemptions for each category of income.* Whether a foreign country grants an equivalent exemption must be determined separately with respect to income from the international operation of ships and income from the international operation of aircraft for each category of income listed in paragraphs (h)(2)(i) through (v), (vii), and (viii) of this section. If an exemption is unavailable in the foreign country for a particular category of income, the foreign country is not considered to grant an equivalent exemption with respect to that category of income. Income in that category is not considered to be the subject of an equivalent exemption and, thus, is not eligible for exemption from income tax in the United States, even though the foreign country may grant an equivalent exemption for other categories of income. With respect to paragraph (h)(2)(vi) of this section, a foreign country may be considered to grant an equivalent exemption for one or more types of income described in paragraph (g)(1) of this section. The following categories of income derived from the international operation of ships or aircraft may be exempt from United States income tax if an equivalent exemption is available—

(i) Income from the carriage of passengers and cargo;

(ii) Time or voyage (full) charter income of a ship or wet lease income of an aircraft;

(iii) Bareboat charter income of a ship or dry charter income of an aircraft;

(iv) Incidental bareboat charter income or incidental dry lease income;

(v) Incidental container-related income;

(vi) Income incidental to the international operation of ships or aircraft other than incidental income described in paragraphs (h)(2)(iv) and (v) of this section;

(vii) Capital gains derived by a qualified foreign corporation engaged in the international operation of ships or aircraft from the sale, exchange or other disposition of a ship, aircraft, container or related equipment or other moveable property used by that qualified foreign corporation in the international operation of ships or aircraft; and

(viii) Income from participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement, international operating agency, or other joint venture described in paragraph (e)(2) of this section.

(3) *Special rules with respect to income tax conventions*— (i) *General rule.* Except as provided in paragraph (h)(3)(ii) of this section, if a corporation is organized in a foreign country that provides an exemption only through an income tax convention with the United States, the foreign corporation is not organized in a foreign country that grants an equivalent exemption. Rather, the foreign corporation must satisfy the terms of that convention to receive a benefit under the convention, and the foreign corporation may not claim an exemption under section 883. If the corporation is organized in a foreign country that offers an exemption under an income tax convention and also by some other means, such as by diplomatic note or domestic statutory law, the foreign corporation may choose annually whether to claim an exemption under section 883 based upon the equivalent exemption provided by such other means or under the income tax convention. However, if a corporation chooses to claim an exemption under an income tax convention under the preceding sentence, it may simultaneously claim an exemption under section 883 with respect to any category of income listed in paragraphs (h)(2)(i) through (v), (vii), and (viii) of this section and to any type of income described in paragraph (h)(2)(vi) of this section, but only to the extent that such income also is exempt under the income tax convention. Any such choice will apply with respect to all qualified income of the corporation from the international operation of ships or aircraft and cannot be made separately with respect to different categories of such income. If a foreign corporation bases its claim for an exemption on section 883, the foreign corporation must satisfy all of the requirements of this section to qualify for an exemption from U.S. income tax. See § 1.883–4(b)(3) for rules regarding satisfying the ownership test of paragraph (c)(2) of this section using shareholders resident in a foreign country that offers an exemption under an income tax convention.

(ii) *Participation in certain joint ventures.* Notwithstanding paragraph (h)(3)(i) of this section, if a corporation is organized in a foreign country that provides an exemption only through an income tax convention with the United States, the foreign corporation will be treated as organized in a foreign country that grants an equivalent exemption under section 883 with respect to a category of income derived through participation, directly or indirectly, in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture described in paragraph (e)(2) of this section, but only where treaty benefits would be available under the treaty but for the treatment of the pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture as not fiscally transparent with respect to that category of income under the income tax laws of the foreign country in which the foreign corporate interest holder is organized for purposes of § 1.894–1(d)(3)(iii)(A).

(iii) *Independent interpretation of income tax conventions.* Nothing in this section and §§ 1.883–2 through 1.883–5 affects the rights or obligations under any income tax convention. The definitions provided in this section and §§ 1.883–2 through 1.883–5 shall neither give meaning to similar terms used in income tax conventions nor provide guidance regarding the scope of any exemption provided by such conventions, unless an income tax convention that entered into force after August 26, 2003 or its legislative history explicitly refers to section 883 and guidance thereunder for its meaning.

(4) *Exemptions not qualifying as equivalent exemptions*—(i) *General rule.* Certain types of exemptions provided to corporations organized in the United States by foreign countries do not satisfy the equivalent exemption requirements of this section. Paragraphs (h)(4)(ii) through (vii) of this section provide descriptions of some of the types of exemptions that do not qualify as equivalent exemptions for purposes of this section.

(ii) *Reduced tax rate or time limited exemption.* The exemption granted by the foreign country's law or income tax convention must be a complete exemption. The exemption may not constitute merely a reduction to a

nonzero rate of tax levied against the income of corporations organized in the United States derived from the international operation of ships or aircraft or a temporary reduction to a zero rate of tax, such as in the case of a tax holiday.

(iii) *Inbound or outbound freight tax.* With respect to the carriage of cargo, the foreign country must provide an exemption from tax for income from transporting freight both inbound and outbound. For example, a foreign country that imposes tax only on outbound freight will not be treated as granting an equivalent exemption for income from transporting freight inbound into that country.

(iv) *Exemptions for limited types of cargo.* A foreign country must provide an exemption from tax for income from transporting all types of cargo. For example, if a foreign country were generally to impose tax on income from the international carriage of cargo but were to provide a statutory exemption for income from transporting agricultural products, the foreign country would not be considered to grant an equivalent exemption with respect to income from the international carriage of cargo, including agricultural products.

(v) *Territorial tax systems.* A foreign country with a territorial tax system will be treated as granting an equivalent exemption if it treats all income derived from the international operation of ships or aircraft derived by a U.S. corporation as an entirely foreign source and therefore not subject to tax, including income derived from a voyage or flight that begins or ends in that foreign country.

(vi) *Countries that tax on a residence basis.* A foreign country that provides an equivalent exemption to corporations organized in the United States but also imposes a residence-based tax on certain corporations organized in the United States may nevertheless be considered to grant an equivalent exemption if the residence-based tax is imposed only on a corporation organized in the United States that maintains its center of management and control or other comparable attributes in that foreign country. If the residence-based tax is imposed on corporations organized in the United States and engaged in the international operation of ships or aircraft that are not managed and controlled in that foreign country, the foreign country shall not be treated as a qualified foreign country and shall not be considered to grant an equivalent exemption for purposes of this section.

(vii) *Exemptions within categories of income.* With respect to paragraphs (h)(2)(i) through (v), (vii), and (viii) of this section, a foreign country must provide an exemption from tax for all income in a category of income, as defined in paragraph (h)(2) of this section. For example, a country that exempts income from the bareboat charter of passenger aircraft but not the bareboat charter of cargo aircraft does not provide an equivalent exemption. However, an equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. With respect to paragraph (h)(2)(vi) of this section, a foreign country may be considered to grant an equivalent exemption for one or more types of income described in paragraph (g)(1) of this section.

(i) *Treatment of possessions.* For purposes of this section, a possession of the United States will be treated as a foreign country. A possession of the United States will be considered to grant an equivalent exemption and will be treated as a qualified foreign country if it applies a mirror system of taxation. If a possession does not apply a mirror system of taxation, the possession may nevertheless be a qualified foreign country if, for example, it provides for an equivalent exemption through its internal law. A possession applies the mirror system of taxation if the U.S. Internal Revenue Code of 1986, as amended, applies in the possession with the name of the possession used instead of ''United States'' where appropriate.

(j) *Expenses related to qualified income.* If a qualified foreign corporation derives qualified income from the international operation of ships or aircraft as well as income that is not qualified income, and the nonqualified income is effectively connected with the conduct of a trade or business within the United States, the foreign corporation may not deduct from such nonqualified income any amount otherwise allowable as a deduction from qualified income, if that qualified income is excluded under this section. See section 265(a)(1).

■ **Par. 4.** Sections 1.883–2 through 1.883–5 are added to read as follows:

§ 1.883–2 Treatment of publicly-traded corporations.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if it is considered a publicly-traded corporation and satisfies the substantiation and reporting requirements of paragraphs (e) and (f) of this section. To be considered a publicly-traded corporation, the stock of the foreign corporation must be primarily traded and regularly traded, as defined in paragraphs (c) and (d) of this section, respectively, on one or more established securities markets, as defined in paragraph (b) of this section, in either the United States or any qualified foreign country.

(b) *Established securities market*—(1) *General rule.* For purposes of this section, the term *established securities market* means, for any taxable year—

(i) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the qualified foreign country in which the market is located, and has an annual value of shares traded on the exchange exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the taxable year;

(ii) A national securities exchange that is registered under section 6 of the Securities Act of 1934 (15 U.S.C. 78f);

(iii) A United States over-the-counter market, as defined in paragraph (b)(4) of this section;

(iv) Any exchange designated under a Limitation on Benefits article in a United States income tax convention; and

(v) Any other exchange that the Secretary may designate by regulation or otherwise.

(2) *Exchanges with multiple tiers.* If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(3) *Computation of dollar value of stock traded.* For purposes of paragraph (b)(1)(i) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(4) *Over-the-counter market.* An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers that regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets that are prepared and distributed by a broker or dealer in the regular course of business and that

contain only quotations of such broker or dealer.

(5) *Discretion to determine that an exchange does not qualify as an established securities market.* The Commissioner may determine that a securities exchange that otherwise meets the requirements of paragraph (b) of this section does not qualify as an established securities market, if—

(i) The exchange does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements); or

(ii) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(c) *Primarily traded.* For purposes of this section, stock of a corporation is primarily traded in a country on one or more established securities markets, as defined in paragraph (b) of this section, if, with respect to each class of stock described in paragraph (d)(1)(i) of this section (relating to classes of stock relied on to meet the regularly traded test)—

(1) The number of shares in each such class that are traded during the taxable year on all established securities markets in that country exceeds.

(2) The number of shares in each such class that are traded during that year on established securities markets in any other single country.

(d) *Regularly traded*—(1) *General rule.* For purposes of this section, stock of a corporation is regularly traded on one or more established securities markets, as defined in paragraph (b) of this section, if—

(i) One or more classes of stock of the corporation that, in the aggregate, represent more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the taxable year; and

(ii) With respect to each class relied on to meet the more than 50 percent requirement of paragraph (d)(1)(i) of this section—

(A) Trades in each such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the taxable year (or 1/6 of the number of days in a short taxable year); and

(B) The aggregate number of shares in each such class that are traded on such market or markets during the taxable year are at least 10 percent of the average number of shares outstanding in that class during the taxable year (or, in the case of a short taxable year, a percentage that equals at least 10 percent of the average number of shares outstanding in that class during the taxable year multiplied by the number of days in the short taxable year, divided by 365).

(2) *Classes of stock traded on a domestic established securities market treated as meeting trading requirements.* A class of stock that is traded during the taxable year on an established securities market located in the United States shall be considered to meet the trading requirements of paragraph (d)(1)(ii) of this section if the stock is regularly quoted by dealers making a market in the stock. A dealer makes a market in a stock only if the dealer regularly and actively offers to, and in fact does, purchase the stock from, and sell the stock to, customers who are not related persons (as defined in section 954(d)(3)) with respect to the dealer in the ordinary course of a trade or business.

(3) *Closely-held classes of stock not treated as meeting trading requirements*—(i) *General rule.* Except as provided in paragraph (d)(3)(ii) of this section, a class of stock of a foreign corporation that otherwise meets the requirements of paragraph (d)(1) or (2) of this section shall not be treated as meeting such requirements for a taxable year if, for more than half the number of days during the taxable year, one or more persons who own at least 5 percent of the vote and value of the outstanding shares of the class of stock, as determined under paragraph (d)(3)(iii) of this section (each a 5-percent shareholder), own, in the aggregate, 50 percent or more of the vote and value of the outstanding shares of the class of stock. If one or more 5-percent shareholders own, in the aggregate, 50 percent or more of the vote and value of the outstanding shares of the class of stock, such shares held by the 5-percent shareholders will constitute a closely-held block of stock.

(ii) *Exception.* Paragraph (d)(3)(i) of this section shall not apply to a class of stock if the foreign corporation can establish that qualified shareholders, as defined in § 1.883–4(b), applying the attribution rules of § 1.883–4(c), own sufficient shares in the closely-held block of stock to preclude nonqualified shareholders in the closely-held block of stock from owning 50 percent or more of the total value of the class of stock of which the closely-held block is a part for more than half the number of days during the taxable year. Any shares that are owned, after application of the attribution rules in § 1.883–4(c), by a qualified shareholder shall not also be treated as owned by a nonqualified shareholder in the chain of ownership for purposes of the preceding sentence. A foreign corporation must obtain the documentation described in § 1.883–4(d) from the qualified shareholders relied upon to satisfy this exception. However, no person shall be treated for purposes of this paragraph (d)(3) as a qualified shareholder if such person holds an interest in the class of stock directly or indirectly through bearer shares.

(iii) *Five-percent shareholders*—(A) *Related persons.* Solely for purposes of determining whether a person is a 5-percent shareholder, persons related within the meaning of section 267(b) shall be treated as one person. In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned through the application of section 1563(e)(1), and stock owned through the application of section 267(c). In determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned through the application of section 267(e)(3).

(B) *Investment companies.* For purposes of this paragraph (d)(3), an investment company registered under the Investment Company Act of 1940, as amended (54 Stat. 789), shall not be treated as a 5-percent shareholder.

(4) *Anti-abuse rule.* Trades between or among related persons described in section 267(b), as modified by paragraph (d)(3)(iii) of this section, and trades conducted in order to meet the requirements of paragraph (d)(1) of this section shall be disregarded. A class of stock shall not be treated as meeting the trading requirements of paragraph (d)(1) of this section if there is a pattern of trades conducted to meet the requirements of that paragraph. For example, trades between two persons that occur several times during the taxable year may be treated as an arrangement or a pattern of trades conducted to meet the trading requirements of paragraph (d)(1)(ii) of this section.

(5) *Example.* The closely-held test in paragraph (d)(3) of this section is illustrated by the following example:

Example. Closely-held exception—(i) *Facts.* X is a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships. X has one class of stock, which is primarily traded on an established securities market in the qualified foreign country. The stock of X meets the regularly traded requirements of paragraph (d)(1)(ii) of this section without

regard to paragraph (d)(3)(i) of this section. A, B, C and D are four members of the corporation's founding family who each own, during the entire taxable year, 25 percent of the stock of Hold Co., a company that issues registered shares. Hold Co., in turn, owns 60 percent of the stock of X during the entire taxable year. The remaining 40 percent of the stock of X is not owned by any 5-percent shareholder, as determined under paragraph (d)(3)(iii) of this section. A, B, and C are not residents of a qualified foreign country, but D is a resident of a qualified foreign country.

(ii) *Analysis.* Because Hold Co. owns 60 percent of the stock of X for more than half the number of days during the taxable year, Hold Co. is a 5-percent shareholder that owns 50 percent or more of the value of the stock of X. Thus, the shares owned by Hold Co. constitute a closely-held block of stock. Under paragraph (d)(3)(i) of this section, the stock of X will not be regularly traded within the meaning of paragraph (d)(1) of this section unless X can establish, under paragraph (d)(3)(ii) of this section, that qualified shareholders within the closely-held block of stock own sufficient shares in the closely-held block of stock to preclude nonqualified shareholders in the closely-held block of stock from owning 50 percent or more of the value of the outstanding shares in the class of stock for more than half the number of days during the taxable year. A, B, and C are not qualified shareholders within the meaning of § 1.883–4(b) because they are not residents of a qualified foreign country, but D is a resident of a qualified foreign country and therefore is a qualified shareholder. D owns 15 percent of the outstanding shares of X through Hold Co. (25 percent × 60 percent = 15 percent) while A, B, and C in the aggregate own 45 percent of the outstanding shares of X through Hold Co.. D, therefore, owns sufficient shares in the closely-held block of stock to preclude the nonqualified shareholders in the closely-held block of stock, A, B and C, from owning 50 percent or more of the value of the class of stock (60 percent − 15 percent = 45 percent) of which the closely-held block is a part. Provided that X obtains from D the documentation described in § 1.883–4(d), X's sole class of stock meets the exception in paragraph (d)(3)(ii) of this section and will not be disqualified from the regularly traded test by virtue of paragraph (d)(3)(i) of this section.

(e) *Substantiation that a foreign corporation is publicly traded*—(1) *General rule.* A foreign corporation that relies on the publicly traded test of this section to meet the stock ownership test of § 1.883–1(c)(2) must substantiate that the stock of the foreign corporation is primarily and regularly traded on one or more established securities markets, as that term is defined in paragraph (b) of this section. If one of the classes of stock on which the foreign corporation relies to meet this test is closely-held within the meaning of paragraph (d)(3)(i) of this section, the foreign corporation must obtain an ownership statement described in § 1.883–4(d) from each qualified shareholder and intermediary that it relies upon to satisfy the exception to the closely-held test, but only to the extent such statement would be required if the foreign corporation were relying on the qualified shareholder stock ownership test of § 1.883–4 with respect to those shares of stock. The foreign corporation must also maintain and provide to the Commissioner upon request a list of its shareholders of record and any other relevant information known to the foreign corporation supporting its entitlement to an exemption under this section.

(2) *Availability and retention of documents for inspection.* The documentation described in paragraph (e)(1) of this section must be retained by the corporation seeking qualified foreign corporation status until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and such place as the Commissioner may request in writing.

(f) *Reporting requirements.* A foreign corporation relying on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120–F, ''U.S. Income Tax Return of a Foreign Corporation,'' for the taxable year. The information must be current as of the end of the corporation's taxable year and must include the following—

(1) The name of the country in which the stock is primarily traded;

(2) The name of the established securities market or markets on which the stock is listed;

(3) A description of each class of stock relied upon to meet the requirements of paragraph (d) of this section, including the number of shares issued and outstanding as of the close of the taxable year;

(4) For each class of stock relied upon to meet the requirements of paragraph (d) of this section, if one or more 5-percent shareholders, as defined in paragraph (d)(3)(i) of this section, own in the aggregate 50 percent or more of the vote and value of the outstanding shares of that class of stock for more than half the number of days during the taxable year—

(i) The days during the taxable year of the corporation in which the stock was closely-held without regard to the exception in paragraph (d)(3)(ii) of this section and the percentage of the vote and value of the class of stock that is owned by 5-percent shareholders during such days;

(ii) For each qualified shareholder who owns or is treated as owning stock in the closely-held block upon whom the corporation intends to rely to satisfy the exception to the closely-held test of paragraph (d)(3)(ii) of this section—

(A) The name of each such shareholder;

(B) The percentage of the total value of the class of stock held by each such shareholder and the days during which the stock was held;

(C) The address of record of each such shareholder; and

(D) The country of residence of each such shareholder, determined under § 1.883–4(b)(2) (residence of individual shareholders) or § 1.883–4(d)(3) (special rules for residence of certain shareholders); and

(5) Any other relevant information specified by Form 1120–F and its accompanying instructions.

§ 1.883–3 Treatment of controlled foreign corporations.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if it is a controlled foreign corporation (CFC), as defined in section 957(a), and satisfies the income inclusion test in paragraph (b) of this section and the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively. A CFC that fails the income inclusion test of paragraph (b) of this section will not be a qualified foreign corporation unless it meets either the publicly traded test of § 1.883–2(a) or the qualified shareholder stock ownership test of § 1.883–4(a).

(b) *Income inclusion test*—(1) *General rule.* A CFC shall not be considered to satisfy the requirements of paragraph (a) of this section unless more than 50 percent of the CFC's adjusted net foreign base company income (as defined in § 1.954–1(d) and as increased or decreased by section 952(c)) derived from the international operation of ships or aircraft is includible in the gross income of one or more United States citizens, individual residents of the United States or domestic corporations, pursuant to section 951(a)(1)(A) or another provision of the Internal Revenue Code, for the taxable years of such persons in which the taxable year of the CFC ends.

(2) *Examples.* The income inclusion test of paragraph (b)(1) of this section is illustrated in the following examples:

Example 1. Ship Co is a CFC organized in a qualified foreign country. All of Ship Co's income is foreign base company shipping income that is derived from the international

operation of ships. All of its shares are owned by a domestic partnership that is a United States shareholder for purposes of section 951(b). All of the partners in the domestic partnership are citizens and residents of foreign countries. Ship Co fails the income inclusion test of paragraph (b)(1) of this section because no amount of Ship Co's subpart F income that is adjusted net foreign base company income derived from the international operation of ships is includible under any provision of the Internal Revenue Code in the gross income of one or more United States citizens, individual residents of the United States or domestic corporations. Therefore, Ship Co must satisfy the qualified shareholder stock ownership test of § 1.883–4(a), in order to satisfy the stock ownership test of § 1.883–1(c)(2) and to be considered a qualified foreign corporation.

Example 2. Ship Co is a CFC organized in a qualified foreign country. All of Ship Co's income is foreign base company shipping income that is derived from the international operation of ships. Corp A, a domestic corporation, owns 50 percent of the value of the stock of Ship Co. X, a domestic partnership, owns the remaining 50 percent of the value of the stock of Ship Co. A United States citizen is a partner owning a 10 percent income interest in X. Individual partners owning 90 percent of X are citizens and residents of foreign countries. There are no special allocations of partnership income. Ship Co satisfies the income inclusion test of paragraph (b)(1) of this section because 55 percent (50 percent + (10 percent × 50 percent)) of the subpart F income that is adjusted net foreign base company income derived from the international operation of ships would be includible in the gross income of U.S. citizens, individual residents of the United States or domestic corporations. If Ship Co satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, it will meet the stock ownership test of § 1.883–1(c)(2).

(c) *Substantiation of CFC stock ownership*—(1) *General rule.* A foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must substantiate all the facts necessary to satisfy the Commissioner that it qualifies under the income inclusion test of paragraph (b)(1) of this section. For purposes of the income inclusion test, if the CFC has one or more United States shareholders, as defined in section 951(b), that are domestic partnerships, estates, or trusts, the pro rata share of the subpart F income includible in the gross income of such shareholders will only be treated as includible in the income of any partner, beneficiary or other interest owner of such United States shareholder that is a United States citizen, resident of the United States or a domestic corporation if the CFC obtains the documentation described in paragraph (c)(2) of this section.

(2) *Documentation from certain United States shareholders*—(i) *General rule.* A CFC only meets the documentation requirements of paragraph (c)(1) of this section if the CFC obtains the following documentation with respect to each United States shareholder, as defined in section 951(b), that is a partnership, estate or trust, for the taxable year of the shareholder which ends with or within the taxable year of the CFC—

(A) A copy of the Form 5471, ''Information Return of U.S. Persons with Respect to Certain Foreign Corporations,'' filed with the controlling United States shareholder's return;

(B) A written statement, signed under penalties of perjury by a person authorized to sign the U.S. Federal tax return of each such United States shareholder, providing the following information with respect to each United States citizen, individual resident of the United States or domestic corporation that is a partner, beneficiary or other interest owner of each such United States shareholder and upon whom the CFC intends to rely to satisfy the income inclusion test of paragraph (b)(1) of this section—

(*1*) The name, address from the CFC's corporate records (that is a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent), and taxpayer identification number of the interest owner;

(*2*) The interest owner's proportionate interest in the United States shareholder that reflects that owner's share of subpart F income required to be included in income on such interest owner's U.S. Federal income tax return;

(*3*) The percentage of the value of shares of the CFC owned by each such interest owner pursuant to the attribution rules in § 1.883–4(c); and

(C) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(ii) *Availability and retention of documents for inspection.* The documentation described in paragraph (c)(2)(i) of this section must be retained by the corporation seeking qualified foreign corporation status (the CFC) until the expiration of the statute of limitations for the taxable year of the CFC to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such place as the Commissioner may request in writing.

(d) *Reporting requirements.* A foreign corporation that relies on the CFC test of this section to satisfy the stock ownership test of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120-F, ''U.S. Income Tax Return of a Foreign Corporation,'' for the taxable year. The information must be current as of the end of the corporation's taxable year and must include the following—

(1) The name, address from the CFC's corporate records (that is a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent), and taxpayer identification number of each United States shareholder, as defined in section 951(b), of the CFC;

(2) The percentage of the vote and value of the shares of the CFC that is owned by each United States shareholder, as defined in section 951(b);

(3) If one or more of the United States shareholders is a domestic partnership, estate or trust, the name, address, taxpayer identification number and the percentage of the value of shares of the CFC owned (as determined under § 1.883–4(c)) by each interest owner of each such United States shareholder that is a United States citizen, individual resident of the United States or a domestic corporation; and

(4) Any other relevant information specified by Form 1120-F and its accompanying instructions.

§ 1.883–4 Qualified shareholder stock ownership test.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if more than 50 percent of the value of its outstanding shares is owned, or treated as owned by applying the attribution rules of paragraph (c) of this section, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders, as defined in paragraph (b) of this section. A shareholder may be a qualified shareholder with respect to one category of income while not being a qualified shareholder with respect to another. A foreign corporation will not be considered to satisfy the stock ownership test of § 1.883–1(c)(2) pursuant to this section unless the foreign corporation meets the substantiation and reporting requirements of paragraphs (d) and (e) of this section.

(b) *Qualified shareholder*—(1) *General rule.* A shareholder is a qualified shareholder only if the shareholder—

(i) With respect to the category of income for which the foreign

corporation is seeking an exemption, is—

(A) An individual who is a resident, as described in paragraph (b)(2) of this section, of a qualified foreign country;

(B) The government of a qualified foreign country (or a political subdivision or local authority of such country);

(C) A foreign corporation that is organized in a qualified foreign country and meets the publicly traded test of § 1.883–2(a);

(D) A not-for-profit organization described in paragraph (b)(4) of this section that is not a pension fund as defined in paragraph (b)(5) of this section and that is organized in a qualified foreign country;

(E) An individual beneficiary of a pension fund (as defined in paragraph (b)(5)(iv) of this section) that is administered in or by a qualified foreign country, who is treated as a resident under paragraph (d)(3)(iii) of this section, of a qualified foreign country; or

(F) A shareholder of a foreign corporation that is an airline covered by a bilateral Air Services Agreement in force between the United States and the qualified foreign country in which the airline is organized, provided the United States has not waived the ownership requirement in the Air Services Agreement, or that the ownership requirement has not otherwise been made ineffective;

(ii) Does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of paragraph (c) of this section; and

(iii) Provides to the foreign corporation the documentation required in paragraph (d) of this section and the foreign corporation meets the reporting requirements of paragraph (e) of this section with respect to such shareholder.

(2) *Residence of individual shareholders*—(i) *General rule.* An individual described in paragraph (b)(1)(i)(A) of this section is a resident of a qualified foreign country only if the individual is fully liable to tax as a resident in such country (e.g., an individual who is liable to tax on a remittance basis in a foreign country will not be treated as a resident of that country unless all residents of that country are taxed on a remittance basis only) and, in addition—

(A) The individual has a tax home, within the meaning of paragraph (b)(2)(ii) of this section, in that qualified foreign country for 183 days or more of the taxable year; or

(B) The individual is treated as a resident of a qualified foreign country based on special rules pursuant to paragraph (d)(3) of this section.

(ii) *Tax home.* For purposes of this section, an individual's tax home is considered to be located at the individual's regular or principal (if more than one regular) place of business. If the individual has no regular or principal place of business because of the nature of his business (or lack of a business), then the individual's tax home is located at his regular place of abode in a real and substantial sense. If an individual has no regular or principal place of business and no regular place of abode in a real and substantial sense in a qualified foreign country for 183 days or more of the taxable year, that individual does not have a tax home for purposes of this section. A foreign estate or trust, as defined in section 7701(a)(31), does not have a tax home for purposes of this section. See paragraph (c)(3) of this section for alternative rules in the case of trusts or estates.

(3) *Certain income tax convention restrictions applied to shareholders.* For purposes of paragraph (b)(1) of this section, a shareholder described in paragraph (b)(1) of this section may be considered a resident of, or organized in, a qualified foreign country if that foreign country provides an exemption by means of an income tax convention with the United States, but only if the shareholder demonstrates that it is treated as a resident of that country under the convention and qualifies for benefits under any Limitation on Benefits article, and that the convention provides an exemption for the relevant category of income. If the convention has a requirement in the shipping and air transport article other than residence, such as place of registration or documentation of the ship or aircraft, the shareholder is not required to demonstrate that the corporation seeking qualified foreign corporation status could satisfy any such additional requirement.

(4) *Not-for-profit organizations.* The term *not-for-profit organization* means an organization that meets the following requirements—

(i) It is a corporation, association taxable as a corporation, trust, fund, foundation, league or other entity operated exclusively for religious, charitable, educational, or recreational purposes, and not organized for profit;

(ii) It is generally exempt from tax in its country of organization by virtue of its not-for-profit status; and

(iii) Either—

(A) More than 50 percent of its annual support is expended on behalf of individuals described in paragraph (b)(1)(i)(A) of this section (see paragraph (d)(3)(v) of this section for special rules to substantiate the residence of individual beneficiaries of not-for-profit organizations) and on behalf of U.S. exempt organizations that have received determination letters under section 501(c)(3); or

(B) More than 50 percent of its annual support is derived from individuals described in paragraph (b)(1)(i)(A) of this section (see paragraph (d)(3)(v) of this section for special rules to substantiate the residence of individual supporters of not-for-profit organizations).

(5) *Pension funds*—(i) *Pension fund defined.* The term *pension fund* shall mean a government pension fund or a nongovernment pension fund, as those terms are defined, respectively, in paragraphs (b)(5)(ii) and (iii) of this section, that is a trust, fund, foundation, or other entity that is established exclusively for the benefit of employees or former employees of one or more employers, the principal purpose of which is to provide retirement, disability, and death benefits to beneficiaries of such entity and persons designated by such beneficiaries in consideration for prior services rendered.

(ii) *Government pension funds.* A government pension fund is a pension fund that is a controlled entity of a foreign sovereign within the principles of § 1.892–2T(c)(1) (relating to pension funds established for the benefit of employees or former employees of a foreign government).

(iii) *Nongovernment pension funds.* A nongovernment pension fund is a pension fund that—

(A) Is administered in a foreign country and is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country;

(B) Is generally exempt from income taxation in its country of administration;

(C) Has 100 or more beneficiaries; and

(D) The trustees, directors or other administrators of which pension fund provide the documentation required in paragraph (d) of this section.

(iv) *Beneficiary of a pension fund.* The term *beneficiary of a pension fund* shall mean any person who has made contributions to a pension fund, as that term is defined in paragraph (b)(5)(i) of this section, or on whose behalf contributions have been made, and who is currently receiving retirement,

disability, or death benefits from the pension fund or can reasonably be expected to receive such benefits in the future, whether or not the person's right to receive benefits from the fund has vested. See paragraph (c)(7) of this section for rules regarding the computation of stock ownership through nongovernment pension funds.

(c) *Rules for determining constructive ownership*—(1) *General rules for attribution.* For purposes of applying paragraph (a) of this section and the exception to the closely-held test in § 1.883–2(d)(3)(ii), stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders, as provided in paragraphs (c)(2) through (7) of this section. The proportionate interest rules of this paragraph (c) shall apply successively upward through a chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph (c) shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c). No attribution will apply to an interest held directly or indirectly through bearer shares.

(2) *Partnerships*—(i) *General rule.* A partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the least of—

(A) The partner's percentage distributive share of the partnership's dividend income from the stock;

(B) The partner's percentage distributive share of gain from disposition of the stock by the partnership; or

(C) The partner's percentage distributive share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

(ii) *Partners resident in the same country.* For purposes of this paragraph, all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country shall be treated as one partner. Thus, the percentage distributive shares of dividend income, gain and liquidation rights of all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country are aggregated prior to determining the least of the three percentages set out in paragraph (c)(2)(i) of this section. For the meaning of the term *resident*, see paragraph (b)(2) of this section.

(iii) *Examples.* The rules of paragraph (c)(2)(ii) of this section are illustrated by the following examples:

Example 1. Stock held solely by qualified shareholders through a partnership. Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P's only asset is the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. A's distributive share of P's income and gain on the disposition of P's assets is 80 percent, but A's distributive share of P's assets (or the proceeds therefrom) on P's liquidation is 20 percent. B's distributive share of P's income and gain is 20 percent and B is entitled to 80 percent of the assets (or proceeds therefrom) on P's liquidation. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B will be treated as a single partner owning in the aggregate 100 percent of the stock of Z owned by P.

Example 2. Stock held by both qualified and nonqualified shareholders through a partnership. Assume the same facts as in *Example 1* except that C, an individual who is not a resident of a qualified foreign country, is also a partner in P and that C's distributive share of P's income is 60 percent. The distributive shares of A and B are the same as in *Example 1*, except that A's distributive share of income is 20 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, qualified shareholders A and B will be treated as a single partner owning in the aggregate 40 percent of the stock of Z owned by P (i.e., the lowest aggregate percentage of A and B's distributive shares of dividend income (40 percent), gain (100 percent), and liquidation rights (100 percent) with respect to the Z stock). Thus, only 40 percent of the Z stock is treated as owned by qualified shareholders.

Example 3. Stock held through tiered partnerships. Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P is a partner in Partnership P1, which owns the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. Assume that P's distributive share of the dividend income, gain and liquidation rights with respect to the Z stock held by P1 is 40 percent. Assume that of the remaining partners of P1 only D is a qualified shareholder. D's distributive share of P1's dividend income and gain is 15 percent; D's distributive share of P1's assets on liquidation is 25 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B, treated as a single partner, will own 40 percent of the Z stock owned by P1 (100 percent × 40 percent) and D will be treated as owning 15 percent of the Z stock owned by P1 (the least of D's dividend income (15 percent), gain (15 percent), and liquidation rights (25 percent) with respect to the Z stock). Thus, 55 percent of the Z stock owned by P1 is treated as owned by qualified shareholders.

(3) *Trusts and estates*—(i) *Beneficiaries.* In general, an individual shall be treated as having an interest in stock of a foreign corporation owned by a trust or estate in proportion to the individual's actuarial interest in the trust or estate, as provided in section 318(a)(2)(B)(i), except that an income beneficiary's actuarial interest in the trust will be determined as if the trust's only asset were the stock. The interest of a remainder beneficiary in stock will be equal to 100 percent minus the sum of the percentages of any interest in the stock held by income beneficiaries. The ownership of an interest in stock owned by a trust shall not be attributed to any beneficiary whose interest cannot be determined under the preceding sentence, and any such interest, to the extent not attributed by reason of this paragraph (c)(3)(i), shall not be considered owned by a beneficiary unless all potential beneficiaries with respect to the stock are qualified shareholders. In addition, a beneficiary's actuarial interest will be treated as zero to the extent that someone other than the beneficiary is treated as owning the stock under paragraph (c)(3)(ii) of this section. A substantially separate and independent share of a trust, within the meaning of section 663(c), shall be treated as a separate trust for purposes of this paragraph (c)(3)(i), provided that payment of income, accumulated income or corpus of a share of one beneficiary (or group of beneficiaries) cannot affect the proportionate share of income, accumulated income or corpus of another beneficiary (or group of beneficiaries).

(ii) *Grantor trusts.* A person is treated as the owner of stock of a foreign corporation owned by a trust to the extent that the stock is included in the portion of the trust that is treated as owned by the person under sections 671 through 679 (relating to grantors and others treated as substantial owners).

(4) *Corporations that issue stock.* A shareholder of a corporation that issues stock shall be treated as owning stock of a foreign corporation that is owned by such corporation on any day in a proportion that equals the value of the stock owned by such shareholder to the value of all stock of such corporation. If, however, there is an agreement, express

or implied, that a shareholder of a corporation will not receive distributions from the earnings of stock owned by the corporation, the shareholder will not be treated as owning that stock owned by the corporation.

(5) *Taxable nonstock corporations.* A taxable nonstock corporation that is entitled in its country of organization to deduct from its taxable income amounts distributed for charitable purposes may deem a recipient of such charitable distributions to be a shareholder of such taxable nonstock corporation in the same proportion as the amount that such beneficiary receives in the taxable year bears to the total income of such taxable nonstock corporation in the taxable year. Whether each such recipient is a qualified shareholder may then be determined under paragraph (b) of this section or under the special rules of paragraph (d)(3)(vii) of this section.

(6) *Mutual insurance companies and similar entities.* Stock held by a mutual insurance company, mutual savings bank, or similar entity (including an association taxable as a corporation that does not issue stock interests) shall be considered owned proportionately by the policyholders, depositors, or other owners in the same proportion that such persons share in the surplus of such entity upon liquidation or dissolution.

(7) *Computation of beneficial interests in nongovernment pension funds.* Stock held by a pension fund shall be considered owned by the beneficiaries of the fund equally on a pro-rata basis if—

(i) The pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(ii) The trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries' actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(iii) Either—

(A) Any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or

(B) The foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or

(C) The pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions and employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(iv) The trustees, directors or other administrators provide the relevant documentation as required in paragraph (d) of this section.

(d) *Substantiation of stock ownership*—(1) *General rule.* A foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883–1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned applying paragraph (c) of this section, by qualified shareholders. A foreign corporation cannot meet this requirement with respect to any stock that is issued in bearer form. A shareholder that holds shares in the foreign corporation either directly or indirectly in bearer form cannot be a qualified shareholder.

(2) *Application of general rule*—(i) *Ownership statements.* Except as provided in paragraph (d)(3) of this section, a person shall only be treated as a qualified shareholder of a foreign corporation if—

(A) For the relevant period, the person completes an ownership statement described in paragraph (d)(4) of this section or has a valid ownership statement in effect under paragraph (d)(2)(ii) of this section;

(B) In the case of a person owning stock in the foreign corporation indirectly through one or more intermediaries (including mere legal owners or recordholders acting as nominees), each intermediary in the chain of ownership between that person and the foreign corporation seeking qualified foreign corporation status completes an intermediary ownership statement described in paragraph (d)(4)(v) of this section or has a valid intermediary ownership statement in effect under paragraph (d)(2)(ii) of this section; and

(C) The foreign corporation seeking qualified foreign corporation status obtains the statements described in paragraphs (d)(2)(i)(A) and (B) of this section.

(ii) *Three–year period of validity.* The ownership statements required in paragraph (d)(2)(i) of this section shall remain valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed, or the day that a change of circumstance occurs that makes any information on the ownership statement incorrect. For example, an ownership statement signed on September 30, 2000, remains valid through December 31, 2003, unless a change of circumstance occurs that makes any information on the ownership statement incorrect.

(3) *Special rules*—(i) *Substantiating residence of certain shareholders.* A foreign corporation seeking qualified foreign corporation status or an intermediary that is a direct or indirect shareholder of such foreign corporation may substantiate the residence of certain shareholders, for purposes of paragraph (b)(2)(i)(B) of this section, under one of the following special rules in paragraphs (d)(3)(ii) through (viii) of this section, in lieu of obtaining the ownership statements required in paragraph (d)(2)(i) of this section from such shareholders.

(ii) *Special rule for registered shareholders owning less than one percent of widely-held corporations.* A foreign corporation with at least 250 registered shareholders, that is not a publicly-traded corporation, as described in § 1.883–2 (a widely-held corporation), is not required to obtain an ownership statement from an individual shareholder owning less than one percent of the widely-held corporation at all times during the taxable year if the requirements of paragraphs (d)(3)(ii)(A) and (B) of this section are satisfied. If the widely-held foreign corporation is the foreign corporation seeking qualified foreign corporation status, or an intermediary that meets the documentation requirements of paragraphs (d)(4)(v)(A) and (B) of this section, the widely-held foreign corporation may treat the address of record in its ownership records as the residence of any less than one percent individual shareholder if—

(A) The individual's address of record is a specific street address and not a

nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(B) The officers and directors of the widely-held corporation neither know nor have reason to know that the individual does not reside at that address.

(iii) *Special rule for beneficiaries of pension funds*—(A) *Government pension fund.* An individual who is a beneficiary of a government pension fund, as defined in paragraph (b)(5)(ii) of this section, may be treated as a resident of the country in which the pension fund is administered if the pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*1*) of this section.

(B) *Nongovernment pension fund.* An individual who is a beneficiary of a nongovernment pension fund, as described in paragraph (b)(5)(iii) of this section, may be treated as a resident of the country of the beneficiary's address as it appears on the records of the fund, provided it is not a nonresidential address, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not an individual resident of such foreign country. The rules of this paragraph (d)(3)(iii)(B) shall apply only if the nongovernment pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(2) of this section.

(iv) *Special rule for stock owned by publicly-traded corporations.* Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a publicly-traded corporation will be treated as owned by an individual resident in the country where the publicly-traded corporation is organized if the foreign corporation receives the statement described in paragraph (d)(4)(iii) of this section from the publicly-traded corporation and copies of any relevant ownership statements from shareholders of the publicly-traded corporation relied on to satisfy the exception to the closely-held test of § 1.883–2(d)(3)(ii), as required in paragraph (d)(2)(i) of this section.

(v) *Special rule for not-for-profit organizations.* For purposes of meeting the ownership requirements of paragraph (a) of this section, a not-for-profit organization may rely on the addresses of record of its individual beneficiaries and supporters to determine the residence of an individual beneficiary or supporter, within the meaning of paragraph (b)(2)(i)(B) of this section, to the extent required under paragraph (b)(4) of this section, provided that—

(A) The addresses of record are not nonresidential addresses such as a post office box or in care of a financial intermediary;

(B) The officers, directors or administrators of the organization do not know or have reason to know that the individual beneficiaries or supporters do not reside at that address; and

(C) The foreign corporation seeking qualified foreign corporation status receives the statement required in paragraph (d)(4)(iv) of this section from the not-for-profit organization.

(vi) *Special rule for a foreign airline covered by an air services agreement.* A foreign airline that is covered by a bilateral Air Services Agreement in force between the United States and the qualified foreign country in which the airline is organized may rely exclusively on the Air Services Agreement currently in effect and will not have to otherwise substantiate its ownership under this section, provided that the United States has not waived the ownership requirements in the agreement or that the ownership requirements have not otherwise been made ineffective. Such an airline will be treated as owned by qualified shareholders resident in the country where the foreign airline is organized.

(vii) *Special rule for taxable nonstock corporations.* Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a taxable nonstock corporation will be treated as owned, in any taxable year, by the recipients of distributions made during that taxable year, as set out in paragraph (c)(5) of this section. The taxable nonstock corporation may treat the address of record in its distribution records as the residence of any recipient if—

(A) An individual recipient's address is in a qualified foreign country and is a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent;

(B) The address of a nonindividual recipient's principal place of business is in a qualified foreign country;

(C) The officers and directors of the taxable nonstock corporation neither know nor have reason to know that the recipients do not reside or have their principal place of business at such addresses; and

(D) The foreign corporation receives the statement described in paragraph (d)(4)(v)(D) of this section from the taxable nonstock corporation intermediary.

(viii) *Special rule for closely-held corporations traded in the United States.* To demonstrate that a class of stock is not closely-held for purposes of § 1.883–2(d)(3)(i), a foreign corporation whose stock is traded on an established securities market in the United States may rely on current Schedule 13D and Schedule 13G filings with the Securities and Exchange Commission to identify its 5-percent shareholders in each class of stock relied upon to meet the regularly traded test, without having to make any independent investigation to determine the identity of the 5-percent shareholder. However, if any class of stock is determined to be closely-held within the meaning of § 1.883–2(d)(3)(i), the publicly traded corporation cannot satisfy the requirements of § 1.883–2(e) unless it obtains sufficient documentation described in this paragraph (d) to demonstrate that the requirements of § 1.883–2(d)(3)(ii) are met with respect to the 5-percent shareholders.

(4) *Ownership statements from shareholders*—(i) *Ownership statements from individuals.* An ownership statement from an individual is a written statement signed by the individual under penalties of perjury stating—

(A) The individual's name, permanent address, and country where the individual is fully liable to tax as a resident, if any;

(B) If the individual was not a resident of the country for the entire taxable year of the foreign corporation seeking qualified foreign corporation status, each of the foreign countries in which the individual resided and the dates of such residence during the taxable year of such foreign corporation;

(C) If the individual directly owns stock in the corporation seeking qualified foreign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation that are so owned, and the period of time during the taxable year of the foreign corporation during which the individual owned the stock;

(D) If the individual directly owns an interest in a corporation, partnership, trust, estate or other intermediary that directly or indirectly owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or amount and nature of the interest of the individual in such intermediary, and the period of time during the taxable year of the corporation seeking qualified foreign

corporation status during which the individual held such interest;

(E) To the extent known by the individual, a description of the chain of ownership through which the individual owns stock in the corporation seeking qualified foreign corporation status, including the name and address of each intermediary standing between the intermediary described in paragraph (d)(4)(i)(D) of this section and the foreign corporation and whether this interest is owned either directly or indirectly through bearer shares; and

(F) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(ii) *Ownership statements from foreign governments.* An ownership statement from a foreign government that is a qualified shareholder is a written statement—

(A) Signed by any one of the following—

(*1*) An official of the governmental authority, agency or office who has supervisory authority with respect to the government's ownership interest and who is authorized to sign such a statement on behalf of the authority, agency or office; or

(*2*) The competent authority of the foreign country (as defined in the income tax convention between the United States and the foreign country); or

(*3*) An income tax return preparer that, for purposes of this paragraph (d)(4)(ii) only, shall mean a firm of licensed or certified public accountants, a law firm whose principals or members are admitted to practice in one or more states, territories or possessions of the United States or the country of such government, or a bank or other financial institution licensed to do business in such foreign country and having assets at least equivalent to 50 million U.S. dollars and who is authorized to represent the government or governmental authority; and

(B) That provides—

(*1*) The title of the official or other person signing the statement;

(*2*) The name and address of the government authority, agency or office that has supervisory authority and, if applicable, the income tax preparer which has prepared such ownership statement;

(*3*) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied ''government'' instead of ''individual'') with respect to the government's direct or indirect ownership of stock in the corporation seeking qualified resident status;

(*4*) In the case of an ownership statement prepared by an income tax return preparer, a statement under penalties of perjury identifying the documentation relied upon in the conduct of due diligence for the taxable year to determine the aggregate government investment in the stock of the shipping or aircraft company in preparation of such ownership statement attached to a valid power of attorney to represent the taxpayer for the taxable year; and

(*5*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(iii) *Ownership statements from publicly-traded corporate shareholders.* An ownership statement from a publicly-traded corporation that is a direct or indirect owner of the corporation seeking qualified foreign corporation status is a written statement, signed under penalties of perjury by a person that would be authorized to sign a tax return on behalf of the shareholder corporation containing the following information—

(A) The name of the country in which the stock is primarily traded;

(B) The name of the established securities market or markets on which the stock is listed;

(C) A description of each class of stock relied upon to meet the requirements of § 1.883–2(d)(1), including the number of shares issued and outstanding as of the close of the taxable year;

(D) For each class of stock relied upon to meet the requirements of § 1.883–2(d)(1), if one or more 5-percent shareholders, as defined in § 1.883–2(d)(3)(i), own in the aggregate 50 percent or more of the vote and value of the outstanding shares of that class of stock for more than half the number of days during the taxable year—

(*1*) The days during the taxable year of the corporation in which the stock was closely-held without regard to the exception in paragraph (d)(3)(ii) of this section and the percentage of the vote and value of the class of stock that is owned by 5-percent shareholders during such days;

(*2*) For each qualified shareholder who owns or is treated as owning stock in the closely-held block upon whom the corporation intends to rely to satisfy the exception to the closely-held test of § 1.883–2(d)(3)(ii)—

(*i*) The name of each such shareholder;

(*ii*) The percentage of the total value of the class of stock held by each such shareholder and the days during which the stock was held;

(*iii*) The address of record of each such shareholder; and

(*iv*) The country of residence of each such shareholder, determined under paragraph (b)(2) or (d)(3) of this section;

(E) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied ''publicly-traded corporation'' instead of ''individual'') with respect to the publicly-traded corporation's direct or indirect ownership of stock in the corporation seeking qualified resident status; and

(F) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(iv) *Ownership statements from not-for-profit organizations.* An ownership statement from a not-for-profit organization (other than a pension fund as defined in paragraph (b)(5) of this section) is a written statement signed by a person authorized to sign a tax return on behalf of the organization under penalties of perjury stating—

(A) The name, permanent address, and principal location of the activities of the organization (if different from its permanent address);

(B) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied ''not-for-profit organization'' instead of ''individual'');

(C) A representation that the not-for-profit organization satisfies the requirements of paragraph (b)(4) of this section; and

(D) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(v) *Ownership statements from intermediaries*—(A) *General rule.* The foreign corporation seeking qualified foreign corporation status under the shareholder stock ownership test must obtain an intermediary ownership statement from each intermediary standing in the chain of ownership between it and the qualified shareholders on whom it relies to meet this test. An intermediary ownership statement is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or a person who would be authorized to sign a tax return on behalf of the intermediary (if the intermediary is not an individual) containing the following information—

(*1*) The name, address, country of residence, and principal place of business (in the case of a corporation or partnership) of the intermediary, and, if

the intermediary is a trust or estate, the name and permanent address of all trustees or executors (or equivalent under foreign law), or if the intermediary is a pension fund, the name and permanent address of place of administration of the intermediary;

(*2*) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied ''intermediary'' instead of ''individual'');

(*3*) If the intermediary is a nominee for a shareholder or another intermediary, the name and permanent address of the shareholder, or the name and principal place of business of such other intermediary;

(*4*) If the intermediary is not a nominee for a shareholder or another intermediary, the name and country of residence (within the meaning of paragraph (b)(2) of this section) and the proportionate interest in the intermediary of each direct shareholder, partner, beneficiary, grantor, or other interest holder (or if the direct holder is a nominee, of its beneficial shareholder, partner, beneficiary, grantor, or other interest holder), on which the foreign corporation seeking qualified foreign corporation status intends to rely to satisfy the requirements of paragraph (a) of this section. In addition, such intermediary must obtain from all such persons an ownership statement that includes the period of time during the taxable year for which the interest in the intermediary was owned by the shareholder, partner, beneficiary, grantor or other interest holder. For purposes of this paragraph (d)(4)(v)(A), the proportionate interest of a person in an intermediary is the percentage interest (by value) held by such person, determined using the principles for attributing ownership in paragraph (c) of this section;

(*5*) If the intermediary is a widely-held corporation with registered shareholders owning less than one percent of the stock of such widely-held corporation, the statement set out in paragraph (d)(4)(v)(B) of this section, relating to ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediaries;

(*6*) If the intermediary is a pension fund, within the meaning of paragraph (b)(5) of this section, the statement set out in paragraph (d)(4)(v)(C) of this section, relating to ownership statements from pension funds;

(*7*) If the intermediary is a taxable nonstock corporation, within the meaning of paragraph (c)(5) of this section, the statement set out in paragraph (d)(4)(v)(D) of this section, relating to ownership statements from intermediaries that are taxable nonstock corporations; and

(*8*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(B) *Ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.* An ownership statement from an intermediary that is a corporation with at least 250 registered shareholders, but that is not a publicly-traded corporation within the meaning of § 1.883–2, and that relies on paragraph (d)(3)(ii) of this section, relating to the special rule for registered shareholders owning less than one percent of widely-held corporations, must provide the following information in addition to the information required in paragraph (d)(4)(v)(A) of this section—

(*1*) The aggregate proportionate interest by country of residence in the widely-held corporation of such registered shareholders or other interest holders whose address of record is a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(*2*) A representation that the officers and directors of the widely-held intermediary neither know nor have reason to know that the individual shareholder does not reside at his or her address of record in the corporate records; and

(*3*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(C) *Ownership statements from pension funds*—(*1*) *Ownership statements from government pension funds.* A government pension fund (as defined in paragraph (b)(5)(ii) of this section) that relies on paragraph (d)(3)(iii) of this section (relating to the special rules for pension funds) generally must provide the documentation required in paragraph (d)(4)(v)(A) of this section, and, in addition, the government pension fund must also provide the following information—

(*i*) The name of the country in which the plan is administered;

(*ii*) A representation that the fund is established exclusively for the benefit of employees or former employees of a foreign government, or employees or former employees of a foreign government and nongovernmental employees or former employees that perform or performed governmental or social services;

(*iii*) A representation that the funds that comprise the trust are managed by trustees who are employees of, or persons appointed by, the foreign government;

(*iv*) A representation that the trust forming part of the pension plan provides for retirement, disability, or death benefits in consideration for prior services rendered;

(*v*) A representation that the income of the trust satisfies the obligations of the foreign government to the participants under the plan, rather than inuring to the benefit of a private person; and

(*vi*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(*2*) *Ownership statements from nongovernment pension funds.* The trustees, directors, or other administrators of the nongovernment pension fund, as defined in paragraph (b)(5)(iii) of this section, that rely on paragraph (d)(3)(iii) of this section, relating to the special rules for pension funds, generally must provide the pension fund's intermediary ownership statement described in paragraph (d)(4)(v)(A) of this section. In addition, the nongovernment pension fund must also provide the following information—

(*i*) The name of the country in which the pension fund is administered;

(*ii*) A representation that the pension fund is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country, and, if so, the name of the governmental authority (or other authority delegated to perform such supervision or regulation);

(*iii*) A representation that the pension fund is generally exempt from income taxation in its country of administration;

(*iv*) The number of beneficiaries in the pension plan;

(*v*) The aggregate percentage interest of beneficiaries by country of residence based on addresses shown on the books and records of the fund, provided the addresses are not nonresidential addresses, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not a resident of such foreign country;

(*vi*) A representation that the pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(*vii*) A representation that the trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries' actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(*viii*) A representation that any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or that the foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or that the pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions, and that employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(*ix*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(*3*) *Time for making determinations.* The determinations required to be made under this paragraph (d)(4)(v)(C) shall be made using information shown on the records of the pension fund for a date during the foreign corporation's taxable year to which the determination is relevant.

(D) *Ownership statements from taxable nonstock corporations.* An ownership statement from an intermediary that is a taxable nonstock corporation must provide the following information in addition to the information required in paragraph (d)(4)(v)(A) of this section—

(*1*) With respect to paragraph (d)(4)(v)(A)(*7*) of this section, for each beneficiary that is treated as a qualified shareholder, the name, address of residence (in the case of an individual beneficiary, the address must be a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary; in the case of a nonindividual beneficiary, the address of the principal place of business) and percentage that is the same proportion as the amount that the beneficiary receives in the tax year bears to the total net income of the taxable nonstock corporation in the tax year;

(*2*) A representation that the officers and directors of the taxable nonstock corporation neither know nor have reason to know that the individual beneficiaries do not reside at the address listed in paragraph (d)(4)(v)(D)(*1*) of this section or that any other nonindividual beneficiary does not conduct its primary activities at such address or in such country of residence; and

(*3*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(5) *Availability and retention of documents for inspection.* The documentation described in paragraphs (d)(3) and (4) of this section must be retained by the corporation seeking qualified foreign corporation status (the foreign corporation) until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and place as the Commissioner may request in writing.

(e) *Reporting requirements.* A foreign corporation relying on the qualified shareholder stock ownership test of this section to meet the stock ownership test of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120–F, ''U.S. Income Tax Return of a Foreign Corporation,'' for each taxable year. The information should be current as of the end of the corporation's taxable year. The information must include the following—

(1) A representation that more than 50 percent of the value of the outstanding shares of the corporation is owned (or treated as owned by reason of paragraph (c) of this section) by qualified shareholders for each category of income for which the exemption is claimed;

(2) With respect to each individual qualified shareholder owning 5 percent or more of the foreign corporation, applying the attribution rules of paragraph (c) of this section, and relied upon to meet the 50 percent ownership test of paragraph (a) of this section, the name and street address, as represented on each such individual's ownership statement;

(3) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of paragraph (a) of this section, the total percentage of the value of the outstanding shares owned, applying the attribution rules of paragraph (c) of this section, by all qualified shareholders resident in a qualified foreign country, by country; and

(4) Any other relevant information specified by the Form 1120–F and its accompanying instructions.

§ 1.883–5 Effective dates.

(a) *General rule.* Sections 1.883–1 through 1.883–4 apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning 30 days or more after August 26, 2003.

(b) *Election for retroactive application.* Taxpayers may elect to apply §§ 1.883–1 through 1.883–4 for any open taxable year of the foreign corporation beginning after December 31, 1986, except that the substantiation and reporting requirements of § 1.883–1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) or §§ 1.883–2(f), 1.883–3(d) and 1.883–4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies the stock ownership test) will not apply to any year beginning before September 25, 2003. Such election shall apply to the taxable year of the election and to all subsequent taxable years beginning before September 25, 2003.

(c) *Transitional information reporting rule.* For taxable years of the foreign corporation beginning 30 days or more after August 26, 2003, and until such time as the Form 1120–F, ''U.S. Income Tax Return of a Foreign Corporation,'' or its instructions are revised to provide otherwise, the information required in § 1.883–1(c)(3) and § 1.883–2(f), § 1.883–3(d) or § 1.883–4(e), as applicable, must be included on a written statement attached to the Form 1120–F and filed with the return.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ *Par. 5.* The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ *Par. 6.* In § 602.101, paragraph (b) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * * * *	
1.883–1	1545–1677
11.883–2	1545–1677
1.883–3	1545–1677
1.883–4	1545–1677
1.883–5	1545–1677
* * * * * * *	

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: July 11, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–21354 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
August 26, 2003

Part IV

General Services Administration

41 CFR Parts 101–45 and 102–38
Federal Management Regulation; Sale of Personal Property; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–45 and 102–38

[FPMR Amendment H–211 and FMR Amendment B–3]

RIN 3090–AH10

Federal Management Regulation; Sale of Personal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Property Management Regulations (FPMR) by revising coverage on the sale of personal property and moving it into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: *Effective Date:* August 26, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Robert Holcombe, Director, Personal Property Management Policy Division, (202) 501–3828. Please cite PMR H–211.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates, streamlines, and clarifies FPMR part 101–45 and moves most of the part into the FMR. FPMR part 101–45 is revised to include a cross reference to the regulations moved to FMR part 102–38. Section 101–45.101 has been revised to clarify the applicability of these regulations to agencies in the executive, legislative, and judicial branches of the Federal Government. Section 101–45.307 has been revised to reflect Congress' clear intent as stated in the codification of title 40 into positive law whereby Congress recognized that GSA and other agencies are permitted to retain direct and reasonably related indirect expenses of sale from the proceeds of sale of surplus personal property. Sections 101–45.309–3, 101–45.309–9, 101–45.309–12, and 101–45.309–13 remain in part 101–45 but are revised and given new section numbers. The final rule is written in a plain language question and answer format. This style uses an active voice, shorter sentences, and pronouns. A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

A proposed rule was published in the **Federal Register** at 67 FR 47494, July 19, 2002. All public comments received were considered in the formulation of this final rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–45 and 102–38

Government property management, Surplus Government property.

Dated: July 10, 2003.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

1. Part 101–45 is revised to read as follows:

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Sec.

Authority: 40 U.S.C. 545 and 121(c).

§ 101–45.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on the sale of personal property previously contained in this part, see FMR part 38 (41 CFR part 102–38).

§ 101–45.001 Demilitarization and decontamination.

(a) Dangerous material shall not be disposed of pursuant to part 102–38 of the Federal Management Regulation (FMR) without first being demilitarized or decontaminated when a duly authorized official of the executive agency concerned determines this action to be in the interest of public health, safety, or security. This may include rendering the property innocuous, stripping from it any confidential or secret characteristics, or otherwise making it unfit for further use.

(b) Demilitarization or decontamination of property to be donated to public bodies pursuant to part 102–37 of the FMR shall be accomplished in a manner so as to preserve so far as possible any civilian utility or commercial value of the property.

(c) Except for those sales otherwise authorized by part 101–42 of the Federal Property Management Regulations or other statutes, and for specialized sales authorized by the Secretary of Defense, U.S. Munitions List items identified as requiring demilitarization shall not be reported for public sale without first being demilitarized or requiring demilitarization to be a part of the terms and conditions of sale. The General Services Administration may refer technical questions on demilitarization to the Department of Defense for advice.

§ 101–45.002 Gold.

(a) Gold will be sold in accordance with this section and part 102–38 of the Federal Management Regulation.

(b) Sales of gold shall be processed to—

(1) Use the sealed bid method of sale;

(2) Require a 20 percent bid deposit;

(3) Certify all forms of bid deposit and payments; and

(4) Include in the invitation for bids only gold and such other precious and semiprecious materials as may be available for sale at that time.

(c) Each agency generating scrap gold and also having a continuing need for fine gold may arrange for the acceptance of scrap gold for fine gold with a private

contractor or the Defense Logistics Agency.

§ 101–45.003 Vehicle reconditioning.

(a) For the purpose of this section, vehicle reconditioning means restoring or improving the appearance of any motorized passenger or cargo vehicle designed primarily for highway use that is to be disposed of through surplus or exchange/sale procedures to the general public.

(b) To produce the maximum net proceeds, holding agencies shall determine, prior to sale, the appropriate level of reconditioning commensurate with the estimated fair market value of each vehicle scheduled for sale.

(c) Holding agencies shall arrange for the reconditioning to be accomplished just prior to the dates scheduled for public inspection and sale.

(d) For all motor vehicles above salvage condition or value, the minimum level of reconditioning required is as follows:

(1) For the driver and passenger compartment—

(i) Remove debris;

(ii) Vacuum floors and seats;

(iii) Clean dashboard, instrument panel, armrests, door panels, and rear shelf;

(iv) Remove Government stickers or decals without marring surface;

(v) Clean ashtrays and glove compartment; and

(vi) Wash windows.

(2) For the trunk—

(i) Remove debris;

(ii) Vacuum; and

(iii) Position spare tire and tools.

(3) For the engine compartment—

(i) Remove debris;

(ii) Replenish lubricants and coolant to required levels and replace missing caps/covers; and

(iii) Charge battery, if necessary.

(4) For the exterior—

(i) Remove Government stickers or decals without marring paint finish;

(ii) Wash exterior, including glass, door jambs, tires, and wheel rims/covers; and

(iii) Inflate tires to recommended pressure.

(e) Additional reconditioning of selected motor vehicles should be considered when such action is expected to substantially improve the return on the sale of a vehicle. Generally, a return of $2 for each dollar invested should be estimated to justify additional reconditioning. Additional reconditioning should include some or all of the following:

(1) For the driver and passenger compartment—

(i) Shampoo seats, dashboard, headliner, door panels, and floor covering;

(ii) Spray-dye floor carpets and mats;

(iii) Polish where appropriate;

(iv) Apply vinyl/rubber reconditioners where appropriate; and

(v) Replace missing knobs, nameplates, and light lenses and/or bulbs.

(2) For the trunk—

(i) Wash interior surface; and

(ii) Spray-dye mats.

(3) For the engine compartment—

(i) Clean major surface areas (air cleaner cover, battery, *etc.*);

(ii) Wash or steam clean, when necessary;

(iii) Replace air and fuel filters; and

(iv) Make minor adjustments and/or replacements to engine systems (electrical, fuel, cooling, *etc.*) to ensure that the vehicle will start and idle correctly during inspection by prospective purchasers.

(4) For the exterior—

(i) Rotate tires, including the spare, to ensure that the best tires are displayed on the vehicle. Properly inflate, clean, and apply rubber conditioner or black tire paint to all tires;

(ii) Wash and blacken wheel splash shields;

(iii) Apply touch-up paint to nicks and scratches;

(iv) Wax and polish;

(v) Replace missing or damaged molding, nameplates, lenses, caps, mirrors, antennas, and wheel covers;

(vi) Repaint exterior of vehicle to original factory color if scrapes, dings, *etc.,* are excessive;

(vii) Repair minor body damage;

(viii) Apply decorative molding and/or striping to add eye appeal; and

(ix) Obtain State safety and/or emission control inspections, if required.

(f) Reconditioning, when possible, should be accomplished no earlier than the calendar week prior to the scheduled sale date.

(g) Agencies should contact the nearest General Services Administration Federal Supply Service Bureau office for information regarding the availability of reconditioning services.

(h) The expense of reconditioning is the responsibility of the holding agency.

§ 101–45.004 All terrain vehicles.

(a) Three-wheeled all terrain vehicles (ATVs) may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

(b) Four-wheeled ATVs no longer needed by the Government can be exchanged with a dealer under the provisions of part 102–39 of the Federal Management Regulation. If the unit cannot be exchanged, four-wheeled ATVs may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

2. Part 102–38 is added to subchapter B of chapter 102 to read as follows:

PART 102–38—SALE OF PERSONAL PROPERTY

Subpart A—General Provisions

Definitions

Responsibilities

Subpart B—Sales Process

Methods of Sale

Competitive Sales

Negotiated Sales

Authority: 40 U.S.C. 545 and 40 U.S.C. 121(c).

Subpart A—General Provisions

§ 102–38.5 What does this part cover?

This part prescribes the policies governing the sale of Federal personal property, including—

(a) Surplus personal property that has completed all required Federal and/or donation screening; and

(b) Personal property to be sold under the exchange/sale authority.

Note to § 102–38.5: You must follow additional guidelines in 41 CFR parts 101–42 and 101–45 of the Federal Property Management Regulations (FPMR) for the sale of personal property that has special handling requirements or property containing hazardous materials. Additional requirements for the sale of aircraft and aircraft parts are provided in part 102–33 of this chapter.

§ 102–38.10 What is the governing authority for this part?

The authority for the regulations in this part governing the sale of Federal personal property is 40 U.S.C. 541 through 548, 571, 573 and 574.

§ 102–38.15 Who must comply with these sales provisions?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to follow these provisions.

§ 102–38.20 Must we follow the regulations of this part when selling all personal property?

Generally, yes, you must follow the regulations of this part when selling all personal property; however—

(a) Materials acquired for the national stockpile or supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093) are excepted from this part;

(b) The Maritime Administration, Department of Transportation, has jurisdiction over the disposal of vessels of 1,500 gross tons or more and determined by the Secretary to be merchant vessels or capable of conversion to merchant use;

(c) Sales made by the Secretary of Defense pursuant to 10 U.S.C. 2576 (Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies) are exempt from these provisions; and

(d) Foreign excess personal property is exempt from these provisions.

§ 102–38.25 To whom do ''we'', ''you'', and their variants refer?

Unless otherwise indicated, use of pronouns ''we'', ''you'', and their variants throughout this part refer to the holding agency responsible for the sale of the property.

§ 102–38.30 How do we request a deviation from the provisions of this part?

Refer to §§ 102–2.60 through 102–2.110 of this chapter for information on how to obtain a deviation from this part.

Definitions

§ 102–38.35 What definitions apply to this part?

The following definitions apply to this part:

Bid means a response to an offer to sell that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

Bidder means any entity that is responding to or has responded to an offer to sell.

Estimated fair market value means the selling agency's best estimate of what the property would be sold for if offered for public sale.

Identical bids means bids for the same item of property having the same total price.

Personal property means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories:

(1) Battleships;
(2) Cruisers;
(3) Aircraft carriers;
(4) Destroyers; and
(5) Submarines.

State Agency for Surplus Property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in 40 U.S.C. 549.

State or local government means a State, territory, possession, political subdivision thereof, or tax-supported agency therein.

Responsibilities

§ 102–38.40 Who may sell personal property?

You may sell personal property as the holding agency or on behalf of another agency when so requested, or have the General Services Administration, a contractor, or another Federal agency conduct the sale for you, provided that only Federal officials authorized by your agency approve the sale and bind the United States.

§ 102–38.45 What are our responsibilities in selling personal property?

Your responsibilities in selling personal property are to—

(a) Ensure the sale complies with the provisions of Title 40 of the U.S. Code, the regulations of this part, and any other applicable laws;

(b) Issue internal guidance to promote uniformity of sales procedures;

(c) Assure that officials designated to conduct and finalize sales are adequately trained;

(d) Be accountable for the care and handling of the personal property prior to its removal by the buyer; and

(e) Adjust your property and financial records to reflect the final disposition.

§ 102–38.50 What must we do when we suspect violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property?

If you suspect violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property, you must—

(a) Refer the violations to the Inspector General of your agency and/or the Attorney General, Department of Justice, Washington, DC 20530, for further investigation. You must cooperate with and provide evidence concerning the suspected violation or crime to the investigating agency assuming jurisdiction of the matter; and

(b) Submit to the General Services Administration (GSA), Property Management Division (FBP), 1800 F Street, NW., Washington, DC 20406, a report of any compliance investigations concerning such violations. The report must contain information concerning the noncompliance, including the corrective action taken or contemplated, and, for cases referred to the Department of Justice, a copy of the transmittal letter. A copy of each report must be submitted also to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405.

§ 102–38.55 What must we do when selling personal property?

When selling personal property, you must ensure that—

(a) All sales are made after publicly advertising for bids, except as provided for negotiated sales in §§ 102–38.100 through 102–38.125; and

(b) Advertising for bids must permit full and free competition consistent with the value and nature of the property involved.

§ 102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

You are responsible for the care and handling costs of the personal property until it is removed by the buyer or the buyer's designee. When specified in the terms and conditions of sale, you may charge costs for storage when the buyer is delinquent in removing the property.

§ 102–38.65 What if we are notified of a Federal requirement for surplus personal property before the sale is complete?

Federal agencies have first claim to excess or surplus personal property reported to the General Services Administration. When a bona fide need for the property exists and is expressed by a Federal agency, and when no like item(s) are located elsewhere, you must make the property available for transfer to the maximum extent practicable and prior to transfer of title to the property.

§ 102–38.70 May we abandon or destroy personal property either prior to or after trying to sell it?

(a) Yes, you may abandon or destroy personal property either prior to or after trying to sell it, but only when an authorized agency official has made a written determination that—

(1) The personal property has no commercial value; or

(2) The estimated cost of continued care and handling would exceed the estimated sales proceeds.

(b) In addition to the provisions in paragraph (a) of this section, see the regulations at §§ 102–36.305 through 102–36.330 of this subchapter B that are applicable to the abandonment or destruction of personal property in general, and excess personal property in particular.

Subpart B—Sales Process

Methods of Sale

§ 102–38.75 How may we sell personal property?

(a) You may sell personal property upon such terms and conditions as the head of your agency or designee deems proper to promote fairness, openness, and timeliness. In selling personal property, you must document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

(1) Inspection.
(2) Condition and location of property.
(3) Eligibility of bidders.
(4) Consideration of bids.
(5) Bid deposits and payments.
(6) Submission of bids.
(7) Bid price determination.
(8) Title.
(9) Delivery, loading, and removal of property.
(10) Default, returns, or refunds.
(11) Modifications, withdrawals, or late bids.
(12) Requirements to comply with applicable laws and regulations.
(13) Certificate of independent price determinations.

(14) Covenant against contingent fees.
(15) Limitation on Government's liability.
(16) Award of contract.
(b) Standard government forms (*e.g.*, Standard Form 114 series) may be used to document terms and conditions of the sale.
(c) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

§ 102–38.80 Which method of sale should we use?

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and open competition. Exceptions to the requirement for competitive bids for negotiated sales (including fixed price sales) are contained in §§ 102–38.100 through 102–38.125. You must select the method of sale that will bring maximum return at minimum cost, considering factors such as—
(1) Type and quantity of property;
(2) Location of property;
(3) Potential market;
(4) Cost to prepare and conduct the sale;
(5) Available facilities; and
(6) Sales experience of the selling activity.
(b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

Competitive Sales

§ 102–38.85 What is a sealed bid sale?

A sealed bid sale is a sale in which bid prices are kept confidential until bid opening. Bids are submitted either electronically or in writing according to formats specified by the selling agency, and all bids are held for public disclosure at a designated time and place.

§ 102–38.90 What is a spot bid sale?

A spot bid sale is a sale where immediately following the offering of the item or lot of property, bids are examined, and awards are made or bids rejected on the spot. Bids are either submitted electronically or in writing according to formats specified by the selling agency, and must not be disclosed prior to announcement of award.

§ 102–38.95 What is an auction?

An auction is a sale where the bid amounts of different bidders are disclosed as they are submitted, providing bidders the option to increase their bids if they choose. Bids are submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property.

Negotiated Sales

§ 102–38.100 What is a negotiated sale?

A negotiated sale is a sale where the selling price is arrived at between the seller and the buyer, subject to obtaining such competition as is feasible under the circumstances.

§ 102–38.105 Under what conditions may we negotiate sales of personal property?

You may negotiate sales of personal property when—

(a) The personal property has an estimated fair market value that does not exceed $15,000;

(b) The disposal will be to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(c) Bid prices after advertising are not reasonable and re-advertising would serve no useful purpose;

(d) Public exigency does not permit any delay such as that caused by the time required to advertise a sale;

(e) The sale promotes public health, safety, or national security;

(f) The sale is in the public interest under a national emergency declared by the President or the Congress. This authority may be used only with specific lot(s) of property or for categories determined by the Administrator of General Services for a designated period but not in excess of three months;

(g) Selling the property competitively would have an adverse impact on the national economy, provided that the estimated fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation, *e.g.*, sale of large quantities of an agricultural product that impact domestic markets; or

(h) Otherwise authorized by Title 40 of the U.S. Code or other law.

§ 102–38.110 Who approves our determinations to conduct negotiated sales?

The head of your agency (or his/her designee) must approve all negotiated sales of personal property.

§ 102–38.115 What are the specific reporting requirements for negotiated sales?

For negotiated sales of personal property, you must—

(a) In accordance with 40 U.S.C. 545(e), and in advance of the sale, submit to the oversight committees for the General Services Administration (GSA) in the Senate and House, explanatory statements for each sale by negotiation of any personal property with an estimated fair market value in excess of $15,000. You must maintain copies of the explanatory statements in your disposal files. No statement is needed for negotiated sales at fixed price or for any sale made without advertising when authorized by law other than 40 U.S.C. 545; and

(b) Report annually to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC, 20405, within 60 calendar days after the close of each fiscal year, a listing and description of all negotiated sales of personal property with an estimated fair market value in excess of $5,000. You may submit the report electronically or manually (see § 102–38.330).

§ 102–38.120 When may we conduct negotiated sales of personal property at fixed prices (fixed price sale)?

You may sell personal property at fixed prices when the head of your agency, or designee, determines in writing that such sale serves the best interests of the Government. You must publicize such sale to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You may also establish additional terms and conditions that must be met by the successful purchaser.

§ 102–38.125 May we sell personal property at fixed prices to State agencies?

Yes, before offering to the public, you may offer the property at fixed prices (through the State Agencies for Surplus Property) to any States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, which have expressed an interest in obtaining the property. For additional information, *see* subpart G of this part.

Advertising

§ 102–38.130 Must we publicly advertise sales of Federal personal property?

Yes, you must provide public notice of your sale of personal property to permit full and open competition.

§ 102–38.135 What constitutes a public advertisement?

Announcement of the sale using any media that reaches the public and is appropriate to the type and value of personal property to be sold is considered public advertising. You may also distribute mailings or flyers of your offer to sell to prospective purchasers on mailing lists. Public notice should be made far enough in advance of the sale to ensure adequate notice, and to target your advertising efforts toward the market that will provide the best return at the lowest cost.

§ 102–38.140 What must we include in the public notice on sale of personal property?

In the public notice, you must provide information necessary for potential buyers to participate in the sale, such as—

(a) Date, time and location of sale;

(b) General categories of property being offered for sale;

(c) Inspection period;

(d) Method of sale (*i.e.*, spot bid, sealed bid, auction);

(e) Selling agency; and

(f) Who to contact for additional information.

Pre-Sale Activities

§ 102–38.145 Must we allow for inspection of the personal property to be sold?

Yes, you must allow for an electronic or physical inspection of the personal property to be sold. You must allow prospective bidders sufficient time for inspection. If inspection is restricted to electronic inspections only, due to unusual circumstances prohibiting physical inspection, you must notify your General Services Administration Regional Personal Property Office in writing, with the circumstances surrounding this restriction at least 3 days prior to the start of the screening period.

§ 102–38.150 How long is the inspection period?

The length of the inspection period allowed depends upon whether the inspection is done electronically or physically. You should also consider such factors as the circumstances of sale, volume of property, type of property, location of the property, and accessibility of the sales facility. Normally, you should provide at least 7 calendar days to ensure potential buyers have the opportunity to perform needed inspections.

Offer to Sell

§ 102–38.155 What is an offer to sell?

An offer to sell is a notice listing the terms and conditions for bidding on an upcoming sale of personal property, where prospective purchasers are advised of the requirements for a responsive bid and the contractual obligations once a bid is accepted.

§ 102–38.160 What must be included in the offer to sell?

The offer to sell must include—

(a) Sale date and time;

(b) Method of sale;

(c) Description of property being offered for sale;

(d) Selling agency;

(e) Location of property;

(f) Time and place for receipt of bids;

(g) Acceptable forms of bid deposits and payments; and

(h) Terms and conditions of sale, including any specific restrictions and limitations.

§ 102–38.165 Are the terms and conditions in the offer to sell binding?

Yes, the terms and conditions in the offer to sell are normally incorporated into the sales contract, and therefore binding upon both the buyer and the seller once a bid is accepted.

Subpart C—Bids

Buyer Eligibility

§ 102–38.170 May we sell Federal personal property to anyone?

Generally, you may sell Federal personal property to anyone of legal age. However, certain persons or entities are debarred or suspended from purchasing Federal property. You must not enter into a contract with such a person or entity unless your agency head or designee responsible for the disposal action determines that there is a compelling reason for such an action.

§ 102–38.175 How do we find out if a person or entity has been suspended or debarred From doing business with the Government?

Refer to the List of Parties Excluded From Federal Procurement and Nonprocurement Programs to ensure you do not solicit from or award contracts to these persons or entities. The list is available through subscription from the U.S. Government Printing Office, or electronically on the Internet at *http://epls.arnet.gov.* For policies, procedures, and requirements for debarring/suspending a person or entity from the purchase of Federal personal property, follow the procedures in the Federal Acquisition Regulation (FAR) subpart 9.4 (48 CFR part 9, subpart 9.4).

§ 102–38.180 May we sell Federal personal property to a Federal employee?

Yes, you may sell Federal personal property to any Federal employee whose agency does not prohibit their employees from purchasing such property. However, unless allowed by Federal or agency regulations, employees having nonpublic information regarding property offered for sale may not participate in that sale (see 5 CFR 2635.703). For purposes of this section, the term ''Federal employee'' also applies to an immediate member of the employee's household.

§ 102–38.185 May we sell Federal personal property to State or local governments?

Yes, you may sell Federal personal property to State or local governments. Additional guidelines on sales to State or local governments are contained in subpart G of this part.

Acceptance of Bids

§ 102–38.190 What is considered a responsive bid?

A responsive bid is a bid that complies with the terms and conditions of the sales offering, and satisfies the requirements as to the method and timeliness of the submission. Only responsive bids may be considered for award.

§ 102–38.195 Must bidders use authorized bid forms?

No, bidders do not have to use authorized bid forms; however if a bidder uses his/her own bid form to submit a bid, the bid may be considered only if—

(a) The bidder accepts all the terms and conditions of the offer to sell; and

(b) Award of the bid would result in a binding contract.

§ 102–38.200 Who may accept bids?

Authorized agency representatives may accept bids for your agency. These individuals should meet your agency's requirements for approval of Government contracts.

§ 102–38.205 Must we accept all bids?

No, the Government reserves the right to accept or reject any or all bids. You may reject any or all bids when such action is advantageous to the Government, or when it is in the public interest to do so.

§ 102–38.210 What happens when bids have been rejected?

You may re-offer items for which all bids have been rejected at the same sale, if possible, or another sale.

§ 102–38.215 When may we disclose the bid results to the public?

You may disclose bid results to the public after the sales award of any item or lot of property. On occasions when there is open bidding, usually at a spot

bid sale or auction, all bids are disclosed as they are submitted. No information other than names may be disclosed regarding the bidder(s).

§ 102–38.220 What must we do when the highest bids received have the same bid amount?

When the highest bids received have the same bid amount, you must consider other factors of the sale (*e.g.*, timely removal of the property, terms of payment, etc.) that would make one offer more advantageous to the Government. However, if you are unable to make a determination based on available information, and the Government has an acceptable offer, you may re-offer the property for sale, or you may utilize random tiebreakers to avoid the expense of reselling the property.

§ 102–38.225 What are the additional requirements in the bid process?

All sales except fixed price sales must contain a certification of independent price determination. If there is suspicion of false certification or an indication of collusion, you must refer the matter to the Department of Justice or your agency's Office of the Inspector General.

Bid Deposits

§ 102–38.230 Is a bid deposit required to buy personal property?

No, a bid deposit is not required to buy personal property. However, should you require a bid deposit to protect the Government's interest, a deposit of 20 percent of the total amount of the bid is generally considered reasonable.

§ 102–38.235 What types of payment may we accept as bid deposits?

In addition to the acceptable types of payments in § 102–38.290, you may also accept a deposit bond. A deposit bond may be used in lieu of cash or other acceptable form of deposit when permitted by the offer to sell, such as the Standard Form (SF) 150, Deposit Bond—Individual Invitation, Sale of Government Personal Property, SF 151, Deposit Bond—Annual, Sale of Government Personal Property, and SF 28, Affidavit of Individual Surety. For information on how to obtain these forms, *see* § 102–2.135 of subchapter A.

§ 102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw his/her bid?

(a) When a bid deposit is secured by a deposit bond and the bidder defaults, you must issue a notice of default to the bidder and the surety company.

(b) When a bid deposit is secured by a deposit bond and the bidder wants to withdraw his/her bid, you should return the deposit bond to the bidder.

Late Bids

§ 102–38.245 Do we consider late bids for award?

Consider late bids for award only when the bids were delivered timely to the address specified and your agency caused the delay in delivering the bids to the official designated to accept the bids.

§ 102–38.250 How do we handle late bids that are not considered?

Late bids that are not considered must be returned to the bidder promptly. You must not disclose information contained in returned bids.

Modification or Withdrawal of Bids

§ 102–38.255 May we allow a bidder to modify or withdraw a bid?

(a) Yes, a bidder may modify or withdraw a bid prior to the start of the sale or the time set for the opening of the bids. After the start of the sale, or the time set for opening the bids, the bidder will not be allowed to withdraw his/her bid.

(b) You may consider late modifications to an otherwise successful bid at any time, but only when it makes the terms of the bid more favorable to the Government.

Mistakes in Bids

§ 102–38.260 Who makes the administrative determinations regarding mistakes in bids?

The administrative procedures for handling mistakes in bids are contained in FAR 14.407, Mistakes in Bids (48 CFR 14.407). Your agency head, or his/her designee, may delegate the authority to make administrative decisions regarding mistakes in bids to a central authority, or a limited number of authorities in your agency, who must not re-delegate this authority.

§ 102–38.265 Must we keep records on administrative determinations?

Yes, you must—

(a) Maintain records of all administrative determinations made, to include the pertinent facts and the action taken in each case. A copy of the determination must be attached to its corresponding contract; and

(b) Provide a signed copy of any related determination with the copy of the contract you file with the Comptroller General when requested.

§ 102–38.270 May a bidder protest the determinations made on sales of personal property?

Yes, protests regarding the validity or the determinations made on the sale of personal property may be submitted to the Comptroller General.

Subpart D—Completion of Sale

Awards

§ 102–38.275 To whom do we award the sales contract?

You must award the sales contract to the bidder with the highest responsive bid, unless a determination is made to reject the bid under § 102–38.205.

§ 102–38.280 What happens when there is no award?

When there is no award made, you may sell the personal property at another sale, or you may abandon or destroy it pursuant to § 102–36.305 of this subchapter B.

Transfer of Title

§ 102–38.285 How do we transfer title from the Government to the buyer for personal property sold?

(a) Generally, no specific form or format is designated for transferring title from the Government to the buyer for personal property sold. For internal control and accountability, you must execute a bill of sale or another document as evidence of transfer of title or any other interest in Government personal property. You must also ensure that the buyer submits any additional certifications to comply with specific conditions and restrictions of the sale.

(b) For sales of vehicles, you must issue to the purchaser a Standard Form (SF) 97, the United States Government Certificate to Obtain Title to a Vehicle, or a SF 97A, the United States Government Certificate to Obtain a Non-Repairable or Salvage Certificate, as appropriate, as evidence of transfer of title. For information on how to obtain these forms, see § 102–2.135 of this chapter.

Payments

§ 102–38.290 What types of payment may we accept?

You must adopt a payment policy that protects the Government against fraud. Acceptable payments include, but are not limited to, the following:

(a) U.S. currency or any form of credit instrument made payable on demand in U.S. currency, *e.g.*, cashier's check, money order. Promissory notes and postdated credit instruments are not acceptable.

(b) Irrevocable commercial letters of credit issued by a United States bank payable to the Treasurer of the United States or to the Government agency conducting the sale.

(c) Credit or debit cards.

Disposition of Proceeds

§ 102–38.295 May we retain sales proceeds?

(a) You may retain that portion of the sales proceeds equal to the direct costs and reasonably related indirect costs incurred in selling surplus personal property.

(b) You may retain all sales proceeds when—

(1) You have statutory authority to retain all proceeds from sales of personal property;

(2) You sold property acquired with non-appropriated funds as defined in § 102–36.40 of this subchapter B;

(3) You sold surplus Government property that was in the custody of a contractor or subcontractor and the contract or subcontract provisions authorize the proceeds of sale to be credited to the price or cost of the contract or subcontract;

(4) You sold property to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this subchapter B; or

(5) You sold property related to waste prevention and recycling programs, under the authority of Section 607 of Public Law 107–67 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 107–67, 115 Stat. 514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

§ 102–38.300 What happens to sales proceeds that we are not authorized to retain or that are unused?

Any sales proceeds that are not retained pursuant to the authorities in § 102–38.295 must be deposited as miscellaneous receipts in the U.S. Treasury.

Disputes

§ 102–38.305 How do we handle disputes involved in the sale of Federal personal property?

First contact your Office of General Counsel. Further guidance can be found in the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), and the Federal Acquisition Regulation (FAR) at 48 CFR part 33.

§ 102–38.310 Are we required to use the Disputes clause in the sale of personal property?

Yes, you must ensure the Disputes clause contained in Federal Acquisition Regulation (FAR) 52.233–1 (48 CFR part 52) is included in all offers to sell and contracts for the sale of personal property.

§ 102–38.315 Are we required to use Alternative Disputes Resolution for sales contracts?

No, you are not required to use Alternative Disputes Resolution (ADR) for sales contracts. However, you are encouraged to use ADR procedures in accordance with the authority and the requirements of the Alternative Disputes Resolution Act of 1998 (28 U.S.C. 651—658).

Subpart E—Other Governing Statutes

§ 102–38.320 Are there other statutory requirements governing the sale of Federal personal property?

Yes, in addition to Title 40 of the U.S. Code the sale of Federal personal property is governed by other statutory requirements, such as the Debt Collection Improvement Act of 1996 (Public Law 104–134, sec. 31001, 110 Stat. 1321–358) and antitrust requirements that are discussed in § 102–38.325.

Antitrust Requirements

§ 102–38.325 What are the requirements pertaining to antitrust laws?

When the sale of personal property has an estimated fair market value of $3 million or more or if the sale involves a patent, process, technique, or invention, you must notify the Attorney General of the Department of Justice (DOJ) and get DOJ's opinion as to whether the sale would give the buyer an unfair advantage in the marketplace and violate any antitrust laws. Include in the notification the description and location of the property, method of sale and proposed selling price, and information on the proposed purchaser and intended use of the property.

You must not complete the sale until you have received confirmation from the Attorney General that the proposed transaction would not violate any antitrust laws.

Subpart F—Reporting Requirements

§ 102–38.330 Are there any reports that we must submit to the General Services Administration?

Yes, there are two sales reports you must submit to the General Services Administration (GSA), Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405—

(a) *Negotiated sales report.* Within 60 calendar days after the close of each fiscal year, you must provide GSA with a listing and description of all negotiated sales with an estimated fair market value in excess of $5,000 (*see* § 102–38.115). For each negotiated sale that meets this criterion, provide the following:

(1) Description of the property (including quantity and condition).

(2) Acquisition cost and date (if not known, estimate and so indicate).

(3) Estimated fair market value (including date of estimate and name of estimator).

(4) Name and address of purchaser.

(5) Date of sale.

(6) Gross and net sales proceeds.

(7) Justification for conducting a negotiated sale.

(b) *Exchange/sale report.* Within 90 calendar days after the close of each fiscal year, you must provide a summary report to GSA of transactions conducted under the exchange/sale authority under part 102–39 of this subchapter B (*see* § 102–39.75).

§ 102–38.335 Is there any additional personal property sales information that we must submit to the General Services Administration?

Yes, you must report to the General Services Administration's (GSA's) Asset Disposition Management System (ADMS), once that capability is established, any sales information that GSA deems necessary.

Subpart G—Provisions for State and Local Governments

§ 102–38.340 How may we sell personal property to State and local governments?

You may sell Government personal property to State and local governments through—

(a) Competitive sale to the public;

(b) Negotiated sale, through the appropriate State Agency for Surplus Property (SASP); or

(c) Negotiated sale at fixed price (fixed price sale), through the appropriate SASP. (This method of sale can be used prior to a competitive sale to the public, if desired.)

§ 102–38.345 Do we have to withdraw personal property advertised for public sale if a State Agency for Surplus Property wants to buy it?

No, you are not required to withdraw the item from public sale if the property has been advertised.

§ 102–38.350 Are there special provisions for State and local governments regarding negotiated sales?

Yes, you must waive the requirement for bid deposits and payment prior to removal of the property. However, payment must be made within 30 calendar days after purchase. If payment is not made within 30 days, you may charge simple interest at the rate established by the Secretary of the Treasury as provided in section 12 of

the Contract Disputes Act of 1978 (41 U.S.C. 611), from the date of written demand for payment.

§ 102–38.355 Do the regulations of this part apply to State Agencies for Surplus Property (SASPs) when conducting sales?

Yes, State Agencies for Surplus Property (SASPs) must follow the regulations in this part when conducting sales on behalf of the General Services Administration of Government personal property in their custody.

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To amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes. (Aug. 15, 2003; 117 Stat. 892)

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